Court File No. CV-18-00001938-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

KELLY LYNN DONOVAN

Plaintiff
(Responding Party)

- and -

WATERLOO REGIONAL POLICE SERVICES BOARD
and BRYAN LARKIN

Defendants
(Moving Party)

MOTION RECORD OF THE MOVING PARTY
(returnable February 22, 2021)

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Plaintiff/Responding Party

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TAB 1

Court File No. CV-18-00001938-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

KELLY LYNN DONOVAN

Plaintiff

- and -

WATERLOO REGIONAL POLICE SERVICES BOARD
and BRYAN LARKIN

Defendants

NOTICE OF MOTION
(Returnable February 22, 2021)

The Defendants will make a motion to a judge, on February 22, 2021, at 10:00 AM or as soon after that time as the motion can be heard, at the A. Grenville and William Davis Courthouse, 7755 Hurontario Street, Brampton, Ontario, L6W 4T6.

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

☐ in writing under subrule 37.12.1(1).
☐ in writing as an opposed motion under subrule 37.12.1(4);
☒ orally.

THE MOTION IS FOR:

(a) An Order dismissing (or, in the alternative, staying) the Amended Amended Statement of Claim in its entirety pursuant to Rule 21.01(3)(a) on the ground that this Honourable Court has no jurisdiction over the subject matter of the within action;

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

(c) If necessary, an Order abridging or extending the time limit for service and/or filing of the Defendants' Motion Record, Factum, Book of Authorities, and/or Confirmation of Motion;

(d) An Order pursuant to Rule 57.03(1) for costs of this motion and of the within action payable to the Defendants within 30 days; and

(e) Such further and other relief as this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

1. This Honourable Court has no jurisdiction over the within action, which, in its essential character, arises from a collective agreement between the Regional Municipality of Waterloo Police Services Board ("WRPSB") and the Waterloo Regional Police Association ("WRPA").

2. The WRPSB is an agency created under the *Police Services Act*, R.S.O. 1990, c. P.15 ("*PSA*"), and is responsible for the provision of police services to the Regional Municipality of Waterloo through oversight of the Waterloo Regional Police Service ("WRPS").

3. Bryan Larkin is the Chief of Police of the WRPS, having been appointed into this role on or about August 31, 2014.

4. The WRPA is a police association governed by the *PSA* and is the exclusive bargaining agent for uniform and civilian employees of the WRPSB.

5. The WRPSB and the WRPA are parties to a Uniform Collective Agreement that governs all terms and conditions of employment for members of the WRPA's uniform bargaining unit, subject to and in accordance with the *PSA*.

6. The Plaintiff, Kelly Donovan, was formerly employed by the WRPSB as a Constable from 2010 to June 25, 2017.

7. By virtue of her employment and Constable rank, the Plaintiff was represented by the WRPA in respect of her employment (including her employment cessation and issues arising therefrom) and governed by the Uniform Collective Agreement.

8. On or about May 9, 2016, the Plaintiff was served with a Notice of Internal Investigation for potential charges under the *PSA* of misconduct as a police officer.

9. On or about May 31, 2016, the Plaintiff was served with a second Notice of Internal Investigation for further possible *PSA* charges of discreditable conduct, neglect of duty, and/or breaches of confidence.

10. On or about June 3, 2016, the Plaintiff filed an application with the Human Rights Tribunal of Ontario (the "2016 Application"), alleging that she was subject to discrimination in employment on the basis of sex and marital status contrary to the Ontario *Human Rights Code*, R.S.O. 1990, c. H.19 (the "*Code*").

11. On or about June 8, 2017, the Plaintiff, the WRPSB, and the WRPA negotiated and entered into a Resignation Agreement that fully resolved all matters relating to the Plaintiff's employment with or cessation of employment with the WRPSB (including, most critically, the 2016 Application and potential *PSA* charges against the Plaintiff).

12. Chief Larkin executed the Resignation Agreement on behalf of the WRPSB.

13. Under the Resignation Agreement:

    (a) The Plaintiff expressly and irrevocably agreed that she was "freely and voluntarily resigning her employment with the [WRPSB] effective on or about June 25, 2017";

    (b) The Plaintiff and the WRPSB mutually agreed to keep the terms of their settlement and the Plaintiff's employment resignation in strict confidence except where disclosure was required by law;

    (c) The Plaintiff and the WRPSB executed mutual Full and Final Releases;

(d) 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"; and

(e) The Plaintiff 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".

14. Subsequently, by decision dated July 12, 2017, the WRPSB received notice that the Workplace Safety and Insurance Board ("WSIB") had granted initial entitlement (i.e. eligibility for benefits) to the Plaintiff in respect of her claim for work-related post-traumatic stress disorder ("PTSD").

15. By Statement of Claim dated May 9, 2018, the Plaintiff commenced the within action against the Defendants for breach of contract.

16. On consent of the Parties, the Plaintiff filed an Amended Statement of Claim on or about January 16, 2019.

17. As permitted by an Order of the Court of Appeal for Ontario, the Plaintiff filed an Amended Amended Statement of Claim on or about January 29, 2020.

18. As set out in the Amended Amended Statement of Claim, the Plaintiff's claims against the WRPSB and Chief Larkin arise out of allegations that:

(a) By Chief Larkin's swearing of an affidavit in defence of a class action lawsuit against the WRPSB (which included a reference to an anonymized female officer who had voluntarily resigned from the WRPSB and withdrawn a human rights application), the Defendants breached the confidentiality provisions of the Resignation Agreement;

(b) By filing an Intent to Object Form in respect of the WSIB's decision to grant workers' compensation benefits to the Plaintiff, the Defendants breached the provisions of the Full and Final Release executed by the WRPSB under the Resignation Agreement; and

(c) Chief Larkin committed misfeasance in public office by knowingly including an anonymized reference to the Plaintiff in his class action affidavit in violation of the Resignation Agreement and in order to impede the Plaintiff's recovery from PTSD.

19. None of these claims are properly before this Honourable Court.

20. Put simply, the Amended Amended Statement of Claim makes allegations that, in their essential character, pertain to issues relating to human rights, labour relations, and workers' compensation benefits — namely, the freely-negotiated settlement of the Plaintiff's employment-based 2016 Application before the Human Rights Tribunal of Ontario; the terms and conditions of the Plaintiff's voluntary resignation; participation in the WSIB benefits process relating to the Plaintiff's work-related PTSD, and the Defendants' actions in respect of same.

21. All of the Plaintiff's claims properly fall within the jurisdiction of one of the following specialized forums and/or dispute resolution processes:

(a) The application and hearing processes of the Human Rights Tribunal of Ontario as established under the *Code*, especially those processes pertaining to the interpretation and enforcement of human rights settlements;

(b) Pursuant to the labour relations regime established by the *PSA* and the grievance and arbitration process under the Uniform Collective Agreement, a labour arbitrator;

(c) The appeal and hearing processes of the WSIB and the Workplace Safety and Insurance Appeals Tribunal, as established under the *Workplace Safety and Insurance Act, 1997*, S.O. 1997, c. 16, Sched. A ("*WSIA*"); and/or

(d) The complaints process under the *PSA* and, to the extent applicable following its coming into force, the *Comprehensive Ontario Police Services Act, 2019*, S.O. 2019, c. 1 ("*COPS Act*"), along with all applicable regulations thereunder.

22. The Court therefore has no jurisdiction over the subject matter of the action.

23. Notably, on or about July 27, 2018, the Plaintiff filed an Application for Contravention of Settlement at the Human Rights Tribunal of Ontario.

24. The Plaintiff's Application for Contravention of Settlement continues to run concurrently alongside the within action, is based on exactly the same facts, and raises the same alleged breaches of the Resignation Agreement that form the subject matter of this action.

25. The Defendants rely on:

(a) Rules 2.03, 3.02, 21.01(3)(a), 37, 57.03(1), and 59.06(1) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 94;

(b) The *Code*, including sections 45.9 and 46.1 thereof;

(c) The *WSIA*, including sections 118 and 123 thereof;

(d) The *PSA* and the regulations thereunder; and

(e) Following its coming into force, the *COPS Act* and the regulations thereunder.

26. Such further and other grounds as counsel may advise and this Court may permit.

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

(a) The Amended Amended Statement of Claim in this action and the documents referred to therein;

(b) The Resignation Agreement;

(c) The Uniform Collective Agreement effective January 1, 2015, to December 31, 2019;

(d) The Affidavit(s) of Laura J. Freitag and/or Virginia Torrance, including all exhibits thereto; and

(e) Such further and other evidence as counsel may advise and this Court may permit.

August 31, 2020

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Plaintiff

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
(Returnable February 22, 2021)

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Lawyers for the Defendants

TAB 2

Court File No. CV-18-00001938-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

KELLY LYNN DONOVAN

Plaintiff
(Responding Party)

- and -

WATERLOO REGIONAL POLICE SERVICES BOARD
and BRYAN LARKIN

Defendants
(Moving Party)

AFFIDAVIT OF LAURA FREITAG
(Sworn February 9, 2021)

I, Laura Freitag, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a lawyer at the law firm of Filion Wakely Thorup Angeletti LLP, counsel for the Defendants. I have reviewed the file for this matter and as such I have knowledge of the matters to which I hereinafter depose.

The Parties

2. The Organizational Defendant, the Waterloo Regional Police Services Board ("WRPSB"), is an agency created under the *Police Services Act* ("*PSA*") for the provision of adequate and effective police services to the Regional Municipality of Waterloo (including the cities of Kitchener, Waterloo, and Cambridge). The WRPSB oversees the Waterloo Regional Police Service ("WRPS").

3. The Personal Defendant, Bryan Larkin, was appointed the Chief of Police of the WRPS on or about August 31, 2014, and remains in this role currently.

4. The Plaintiff, Kelly Lynn Donovan, commenced employment with the WRPSB, in or around 2010. At the time of her employment resignation, she held the rank of Constable and was assigned to Administrative Command, Training Branch.

5. At all times during her employment with the WRPSB, the Plaintiff was represented by the Waterloo Regional Police Association (the "WRPA"), the bargaining agent for all uniform and civilian members of the WRPS, save and except for the Chief of Police, the Deputy Chiefs, and employees represented by the Senior Officers' Association. Accordingly, subject to and in accordance with the *PSA*, the terms and conditions of the Plaintiff's employment were governed by the Uniform Collective Agreement negotiated by the WRPSB and the WRPA. A copy of the 2015-2019 Uniform Collective Agreement is attached hereto as **Exhibit "A"**.

The Plaintiff's Medical Leave of Absence

6. On or about February 24, 2011, the Plaintiff attended at a gun range at the Ontario Police College in Aylmer, Ontario. While at the gun range, the Plaintiff witnessed an individual accidentally discharging his firearm into his leg.

7. The Plaintiff subsequently commenced a medical leave of absence in or around February 2017. The Plaintiff remained off work until her employment resignation.

8. Subsequent to commencing her medical leave, the Plaintiff was diagnosed with post-traumatic stress disorder ("PTSD") as a result of the incident she had witnessed at the Ontario Police College.

The Plaintiff's WSIB Claim and Entitlement to Benefits Thereunder

9. On or about April 10, 2017, the Plaintiff applied for benefits from the Workplace Safety and Insurance Board in respect of her PTSD diagnosis. The date of injury/illness specified on the Plaintiff's claim for benefits (WSIB Form 7) was February 1, 2017.

10. On or about July 12, 2017, a Case Manager from the WSIB, Jane Drake, issued a decision granting initial entitlement to the Plaintiff and finding that the Plaintiff was

entitled to healthcare benefits and loss of earnings benefits from February 27, 2017 to June 24, 2017. A copy of the decision is attached hereto as **Exhibit "B"**.

11. Under the WSIB's established processes, an employer can only receive a copy of an injured worker's claim file if the employer has filed an Intent to Object ("ITO") form with the WSIB (see **Exhibit "C"** hereto at pages 4 to 5). On or about January 11, 2018, the WRPSB filed such an ITO form (attached hereto as **Exhibit "D"**) to request a review of Case Manager Drake's decision and obtain a copy of the Plaintiff's WSIB claim file. As is evidenced from the WRPSB's submissions accompanying the ITO form, the WRPSB was unaware at the time of filing the ITO form that the Plaintiff's diagnosis was related to the shooting accident of February 2011. Rather, the WRPSB assumed that the Plaintiff's PTSD was connected to the more recent non-compensable events surrounding the potential *PSA* charges against the Plaintiff (see Schedule "A" of Exhibit "D" at paras. 14 to 17).

12. Case Manager Drake reviewed the claims file and issued a reconsideration decision dated August 3, 2018, re-affirming her July 12, 2017 initial entitlement decision. In accordance with its practice, the WSIB also released a copy of the Plaintiff's WSIB claim file to the WRPSB. A copy of the reconsideration decision is attached hereto as **Exhibit "E"**.

13. Following its receipt and review of the Plaintiff's WSIB claim file, the WRPSB learned that the Plaintiff's PTSD was connected to the February 2011 shooting accident. Since then, the WRPSB has not taken any steps to initiate any further WSIB reviews of the July 12, 2017 decision or the Plaintiff's WSIB claim.

The Plaintiff's Initial Human Rights Application and Potential *PSA* Charges, and the Settlement Thereof

14. On or about May 4, 2016, the Plaintiff made a delegation to the WRPSB regarding her belief that the WRPS was investigating domestic violence inconsistently where WPRS members were involved as either alleged victims or perpetrators. During her delegation, the Plaintiff identified herself as a police officer, referred to confidential

information contained in a Crown Brief, criticized the WRPS and its members, and suggested that WRPS officers may have suppressed evidence in a criminal investigation.

15. By making her delegation without prior notice or approval from the WRPS Chief of Police, or his designate, and potentially accessing a protected Crown Brief, the Plaintiff engaged in acts that appeared to constitute professional misconduct under the *PSA*. Accordingly, the WRPSB issued a formal Notice of Investigation to the Plaintiff advising that, subject to and following an external review of the substance of the Plaintiff's allegations, the Plaintiff's conduct on May 4, 2016, would be investigated to determine whether she had breached the *PSA* and/or engaged in discreditable conduct. The Plaintiff was also issued a Directive instructing her, *inter alia*, not to have any conduct with WRPSB members without prior authorization from the Chief of Police.

16. Shortly thereafter, the Plaintiff sent an email to members of the WRPSB advising that she had been served with a Directive and a Notice of Investigation. She also asserted that her actions were beyond reproach and that she had no personal interest in any of the matters that she had brought to the WRPSB's attention.

17. The Plaintiff received a second Notice of Investigation on May 31, 2016, as a result of her email communications with the WRPSB and, again, was notified that an investigation would be conducted to determine if her actions constituted discreditable conduct under the *PSA*.

18. On or about June 6, 2016, the Applicant filed an application with the Human Rights Tribunal of Ontario (the "HRTO"), having HRTO File No. 2016-245566-I ("the 2016 Application"), alleging that she was discriminated against on the basis of sex and marital status. A copy of the 2016 Application (excluding documents attached to the 2016 Application) is attached hereto as **Exhibit "F"**.

19. The WRPSB, the WRPA, and the Plaintiff successfully negotiated a Resignation Agreement to fully resolve and settle the 2016 Application, the potential *PSA*

charges against the Plaintiff, all matters related to the Plaintiff's employment with the WRPSB and the cessation of that employment, and all outstanding matters among the parties. The Resignation Agreement was executed by the WRPSB, the WRPA, and the Plaintiff on or about June 8, 2017. A redacted copy of the Resignation Agreement is attached hereto as **Exhibit "G"**.

20. Pursuant to the Resignation Agreement, the Plaintiff confirmed that she was freely, voluntarily, and irrevocably resigning from her employment with the WRPSB effective June 25, 2017.

21. The WRPSB and the Plaintiff also released each other from, *inter alia*, any and all complaints and claims arising out of or in any way relating to the Plaintiff's employment with the WRPSB, including but not limited to the 2016 Application and the potential *PSA* charges against the Plaintiff.

22. The Resignation Agreement contained the following confidentiality provision, at paragraph 16:

> 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.

The Class Action Against the WRPSB and the WRPA

23. The WRPSB and the WRPA were named as defendants in a proposed class action lawsuit on or about May 30, 2017. The putative class members in the class action were current and former employees of the WRPSB and their family members. The class action alleged that the WRPSB and the WRPA were liable for systemic gender-based discrimination and sexual harassment by members of the WRPS, though the Plaintiff was not a putative class member. The class action was subsequently dismissed by Madam Justice Baltman on July 13, 2018, as outside the Court's jurisdiction. The Court of Appeal for Ontario upheld Justice Baltman's decision on April 5, 2019, and the putative class action plaintiffs' application for leave to appeal to the Supreme Court of Canada was dismissed on October 24, 2019.

24. On or about December 21, 2017, the WRPS's Chief of Police, Bryan Larkin, swore an affidavit in support of a dismissal motion in the class action. This affidavit was served on counsel for the class members as part of the WRPSB's Reply and Responding Motion Record.

25. Chief Larkin's affidavit attached several exhibits. Exhibit "F" to Chief Larkin's affidavit was a chart with anonymized details about human rights applications that were commenced by female WRPSB employees from 2012 to 2017. The chart did not contain any information identifying the Plaintiff, only the following information:

NAME	GROUNDS FOR DISCRIMINATION	RESOLUTION
Female Constable	• Sex, including sexual harassment and pregnancy • Marital status	SETTLED • monetary settlement • withdrawal of OHRT application • voluntary resignation

A copy of Chief Larkin's affidavit and its Exhibit "F" are attached hereto as **Exhibit "H"**.

26. On or about January 15, 2018, counsel for the putative class action plaintiffs' uploaded a copy of Chief Larkin's affidavit to a website that they had created about

the proposed class action. The WRPSB and Chief Larkin had neither involvement in nor control over the website. Counsel for the class action plaintiffs did not seek the Defendants' prior authorization before publishing Chief Larkin's affidavit online. The Defendants only learned of the online publication of Chief Larkin's affidavit after the WRPSB's Human Resources team was notified by a WRPSB employee of such publication on or about January 24, 2018.

The HRTO Proceedings Between the Plaintiff and the WRPSB

27. On or about June 28, 2018, the WRPSB filed an Application for Contravention of Settlement with the HRTO, having HRTO File No. 2018-33237-S (the "WRPSB's Enforcement Application"). The WRPSB alleges that, following the execution of the Resignation Agreement, the Plaintiff has repeatedly contravened the terms, undertakings, and confidentiality provision of the Resignation Agreement by, *inter alia*, stating that she was constructively dismissed by the WRPSB, making complaints about the WRPSB, and referring to events giving rise to the 2016 Application. The WRPSB's Enforcement Application seeks such relief from the HRTO as is necessary to ensure the Plaintiff's ongoing compliance with the terms of the Resignation Agreement. A copy of the WRPSB's Enforcement Application is attached hereto as **Exhibit "I"**.

28. On or about July 10, 2018, the Plaintiff filed a Response to the WRPSB's Enforcement Application; however, her Response failed to address the merits of the WRPSB's Enforcement Application. A copy of the Plaintiff's Response is attached hereto as **Exhibit "J"**.

29. On or about July 27, 2018, the Plaintiff filed an Application for Contravention of Settlement against the WRPSB, having HRTO File No. 2018-33503-S (the "Plaintiff's Enforcement Application"). Like the instant Claim, the Plaintiff's Enforcement Application alleges a breach of the Resignation Agreement as a result of Chief Larkin's affidavit in the class action and claims damages. A copy of the Plaintiff's Enforcement Application is attached hereto as **Exhibit "K"**.

30. Due to the Plaintiff's failure to file any substantive response to the merits of the WRPSB's Enforcement Application, on or about July 30, 2018, the WRPSB filed a Request for an Order During Proceedings ("RFOP") with the HRTO. The RFOP requested that the HRTO move to a determination of remedy in respect of the WRPSB's Enforcement Application absent any substantive submissions by the Plaintiff in response to the merits of the WRPSB's Enforcement Application. A copy of the RFOP is attached hereto as **Exhibit "L"**.

31. The HRTO's Rules of Procedure, and specifically Rule 19.6 therein, required the Plaintiff to file a response to the RFOP not later than 14 days (i.e. August 13, 2018) after the RFOP was delivered. A copy of the HRTO's Rules of Procedure is attached hereto as **Exhibit "M"**.

32. On or about August 1, 2018, the Plaintiff emailed counsel for the WRPSB to request an extension for filing her response to the RFOP.

33. By email dated August 2, 2018, the WRPSB consented to granting the Plaintiff an extension to August 22, 2018, for the filing of her response to the RFOP.

34. The HRTO issued a Notice of Hearing on August 3, 2018, in respect of the WRPSB's Enforcement Application, which scheduled the matter for hearing on February 22, 2019. A copy of the Notice of Hearing is attached hereto as **Exhibit "N"**.

35. On or about August 10, 2018, the HRTO issued a Notice of Intent to Dismiss, informing the parties that it intended to dismiss the Plaintiff's Enforcement Application for untimeliness. The Notice of Intent to Dismiss instructed the Plaintiff to provide the HRTO with written submissions as to the reasons for her untimely filing of the Plaintiff's Enforcement Application. The deadline for these written submissions was September 7, 2018. A copy of the Notice of Intent to Dismiss is attached hereto as **Exhibit "O"**.

36. By email dated August 20, 2018, the Plaintiff asked the HRTO to grant time extensions for filing her response to the RFOP (in respect of the WRPSB's Enforcement Application) and for filing her written submissions in response to the

HRTO's Notice of Intent to Dismiss (in respect of the Plaintiff's Enforcement Application).

37. On or about September 4, 2018, the HRTO granted the Plaintiff until September 28, 2018, to file her response to the RFOP in respect of the WRPSB's Enforcement Application. A copy of the HRTO's extension notice is attached as **Exhibit "P"**.

38. Similarly, on or about September 7, 2018, the HRTO granted the Plaintiff until October 26, 2018, to file written submissions in response to its Notice of Intent to Dismiss in respect of the Plaintiff's Enforcement Application. A copy of this extension notice is attached hereto as **Exhibit "Q"**.

39. As a result of the Plaintiff's failure to file her written submissions and response to RFOP within the required time limits, the HRTO adjourned the February 22, 2019 hearing date and, instead, convened a case management conference call on February 19, 2019. Following the case management conference call, the HRTO directed that the WRPSB's Enforcement Application and the Plaintiff's Enforcement Application would be processed and heard together. The HRTO also scheduled a mediation between the WRPSB and the Plaintiff, which took place on May 1, 2019. The Interim Decision arising from the HRTO's February 19, 2019 case management conference call is attached hereto as **Exhibit "R"**.

40. In an Interim Decision dated September 30, 2019 (attached as **Exhibit "S"**), the HRTO stated that it would schedule a full-day preliminary hearing held by conference call. The WRPSB and the Plaintiff are currently awaiting receipt of the HRTO's Notice of Hearing for this preliminary hearing.

The Plaintiff's Claim Against the Defendants

41. On or about May 9, 2018, the Plaintiff commenced the instant action against the WRPSB and Chief Larkin by filing a Statement of Claim in the Ontario Superior Court of Justice in Brampton, Ontario. In the Statement of Claim, the Plaintiff alleges that the Defendants breached the Resignation Agreement as a result of the anonymized chart that had been appended to Chief Larkin's affidavit in the class

action lawsuit. The Plaintiff claims $210,000.00 in damages and seeks an order that she be reinstated to employment with the WRPS. A copy of the Statement of Claim is attached hereto as **Exhibit "T"**.

42. On or about June 7, 2018, the Defendants brought a motion to dismiss the Plaintiff's Statement of Claim on the grounds that: (a) the Court lacked jurisdiction over the subject matter of the action; (b) the Statement of Claim failed to disclose a reasonable cause of action against one or more of the Defendants; and (c) the action was frivolous, vexatious and/or an abuse of process. A copy of the Defendants' Notice of Motion is attached hereto as **Exhibit "U"**.

43. An Amended Statement of Claim was served on the Defendants on January 16, 2019. The Amended Statement of Claim raises an additional alleged breach of the Resignation Agreement, being the WRPSB's filing of an Intent to Object form in the Plaintiff's WSIB claim. A copy of the Amended Statement of Claim is attached hereto as **Exhibit "V"**.

44. The Defendants' dismissal motion was heard by Justice Doi on or about February 13, 2019. In his decision dated February 21, 2019, Justice Doi dismissed the Amended Statement of Claim for having no reasonable cause of action against the Defendants (see **Exhibit "W"** hereto). Justice Doi did not rule on the issue of the Court's jurisdiction over the subject matter of the Amended Statement of Claim.

45. On or about October 11, 2019, the Plaintiff successfully appealed Justice Doi's decision in respect of whether the Amended Statement of Claim disclosed a reasonable cause of action to the Court of Appeal for Ontario (see **Exhibit "X"** hereto).

46. On or about January 29, 2020, the Plaintiff served an Amended Amended Statement of Claim on the Defendants. The Amended Amended Statement of Claim alleged misfeasance in public office by Chief Larkin. The Plaintiff also pleaded new factual allegations regarding, *inter alia*, her motivations for entering into the Resignation Agreement, the Plaintiff's PTSD symptoms, Chief Larkin's knowledge of the

Resignation Agreement, the publication of Chief Larkin's affidavit on the class action website, and comments by Chief Larkin and the Plaintiff about PTSD in the police services sector. A copy of the Amended Amended Statement of Claim is attached hereto as **Exhibit "Y"**.

47. On or about February 19, 2020, the Defendants sought the Court's direction on the appropriate next steps in the proceeding, given that the Defendants' jurisdiction motion had not been ruled upon (see **Exhibit "Z"**). At Justice Doi's invitation, the Plaintiff and the Defendants filed submissions in respect of the processing of the Defendants' outstanding jurisdiction motion on or about, respectively, March 17, 2020, and April 3, 2020 (see **Exhibits "AA" and "BB"** hereto)

48. By Endorsement dated April 20, 2020, Justice Doi held that the Defendants' jurisdiction motion should be returned as a new motion under Rule 59.06(1) for hearing before another judge of the Court (see **Exhibit "CC"** hereto at para. 3).

49. On or about August 31, 2020, the Defendants brought the instant motion pursuant to Rule 21.01(3)(a) and, in accordance with Justice Doi's Endorsement, Rule 59.06(1).

50. On or about December 9, 2020, the Plaintiff served the Defendants with a Fresh Amended Statement of Claim (issued November 23, 2020), attached hereto as **Exhibit "DD"**. The Fresh Amended Statement of Claim included new claims in tort (*viz*. misfeasance in public office and negligence) against the Defendants jointly and severally, as well as removed the Plaintiff's remedial request for reinstatement to a Constable position with the WRPSB. The Fresh Amended Statement of Claim also pleaded new factual allegations, including that the Defendants negligently allowed Chief Larkin's affidavit to be published online and that the class action was dismissed as a result of the motion relying on Chief Larkin's affidavit.

51. I make this Affidavit in support of the Defendants' motion and for no improper purpose.

SWORN REMOTELY by Laura Freitag stated as being located in the City of Toronto, in the Province of Ontario, BEFORE me at the City of Toronto in the Province of Ontario, this 9th day of February, 2021, in accordance with O. Reg. 431/20.

Commissioner for Taking Affidavits

LAURA FREITAG

TAB A

THIS IS EXHIBIT "A" REFERRED TO IN THE AFFIDAVIT OF LAURA J. FREITAG SWORN BEFORE ME THIS 9th DAY OF February, 2021.

A COMMISSIONER FOR TAKING AFFIDAVITS

2015 - 2019 COLLECTIVE AGREEMENT

BETWEEN

WATERLOO REGIONAL POLICE SERVICES BOARD

- AND -

THE WATERLOO REGIONAL POLICE ASSOCIATION

UNIFORM

EFFECTIVE JANUARY 1, 2015 TO DECEMBER 31, 2019

I N D E X

I N D E X

THIS AGREEMENT made this 17th day of December, 2015.

B E T W E E N :

THE WATERLOO REGIONAL POLICE SERVICES BOARD,

Hereinafter called the **"BOARD"**,

of the FIRST PART,

- AND -

THE WATERLOO REGIONAL POLICE ASSOCIATION,

Hereinafter called the **"ASSOCIATION"**,

of the SECOND PART,

WHEREAS pursuant to Section 119 of the Police Services Act, R.S.O. 1990, Chapter 10 and amendments thereto, the parties have agreed to enter into these presents for the purpose of defining, and providing for remuneration and pensions, sick leave credits, grievance procedures and working conditions, except such working conditions as are governed by regulations made by the Lieutenant Governor in Council of said Act;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and the mutual covenants and agreements herein contained the parties hereto covenant and agree as follows:

ARTICLE 1 - RECOGNITION AND SCOPE

1.01 The Board recognizes the Association as the sole collective bargaining agent for all Members of the Police Service for the Regional Municipality of Waterloo, save and except the Chief of Police, the Deputy Chiefs and Members represented by the Senior Officers' Association.

1.02 The Board and the Association agree that there will be no discrimination, interference, restraint or coercion exercised or practiced with respect to any Member of the Police Service because of their membership or connection with the Association and that membership in the Association by Members of the Police Service who are eligible to join will not be discouraged.

1.03 This Agreement does not apply to Civilian Employees in respect of which there will be one or more separate agreements.

ARTICLE 2 - MANAGEMENT RIGHTS

2.01 The Association and its Members recognize and acknowledge that subject to the provisions of the Police Services Act and Regulations thereto, it is the exclusive function of the Board to:

(a) Maintain order, discipline and efficiency;

(b) Hire, discharge, direct, classify, transfer, promote, demote and suspend or otherwise discipline any Member provided that a claim for discriminatory and/or bad faith promotion, demotion or transfer or a claim that an employee has been discharged or disciplined without just cause, may be the subject of a grievance and dealt with as hereinafter provided.

2.02 There shall be no discrimination practiced by reason of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, gender identity, gender expression, family status or disability, as defined in Section 1 of the Ontario Human Rights Code (OHRC).

ARTICLE 3 - ASSOCIATION REPRESENTATION

3.01 A Member may request and receive the representation of the Association at any meeting where a formal notice of investigation is to be or has been served, subject to the representative being available within a reasonable time.

ARTICLE 4 - ASSOCIATION DUES

4.01 The annual dues as determined by the Association shall be paid in twenty-six (26) or twenty-seven (27), as the case may be, equal installments deducted from the bi-weekly pay of each Association Member and remitted to the Association Treasurer. Such deduction shall commence upon the employment of the Member and shall be made irrespective of whether any Member is or is not a Member of the said Association.

The Association agrees to indemnify and save the Board harmless against any claim or liability arising out of the application of this Article except for any claim or liability arising out of an error committed by the Board.

4.02 All Police Personnel on date of employment shall be deemed to be full Members.

4.03 The Board agrees to supply the Association, with a current alphabetical listing of personnel on a bi-annual basis, including address, phone number and postal code. This is not to preclude the current co-operative exchange of information.

ARTICLE 5 - SALARIES

5.01 The salaries of the Members of the Police Service, to which this Agreement applies, shall be in accordance with the schedule attached hereto as Appendix "A". First Class Constables who have been Members of the Waterloo Regional Police Service for at least two (2) years may be transferred to Plainclothes duties in the Detective, Forensic Identification, Homicide, Fraud, Major Case, Domestic Violence, Intelligence, Professional Standards, or Drug Branches and shall receive while assigned, a premium paid as part of salary equal to six percent (6%) of the pay of the First Class Constable for the first two (2) years of such assignment and thereafter, a premium paid as part of salary equal to nine percent (9%) of the pay of the First Class Constable. If a Member is assigned to a plainclothes branch for a minimum of three (3) years and the Member is transferred to Uniform detail, except as a result of performance or disciplinary reasons, that Member's rate of pay shall remain unchanged and will remain at that rate of pay until other Members' salaries are increased to the same rate as that of the transferred Member.

5.02 In addition to any other entitlement pursuant to this Agreement, the Board shall pay to each Member covered by this Agreement an experience allowance which shall be in the amount set out below and which shall be subject to the following terms and conditions:

(a) The experience allowance shall be paid bi-weekly as a bonus, and shall be taken into account when calculating overtime, court-time pay, acting pay, call-out, on-call pay, stand-by duty pay, sick leave (but excluding sick leave gratuities paid on retirement, resignation or termination of employment), pregnancy and parental

supplementary benefit, annual leave and statutory holiday pay, pension contributions, and life insurance benefit pay out.

(b) Subsequent to the date of ratification, for the purpose of this Article, years of service means years of continuous service completed from the date of hire in this bargaining unit with the Waterloo Regional Police Service.

(c) In order to be entitled to the experience allowance, a Member must be free of a disciplinary conviction for which the confirmed penalty was the forfeiture of forty (40) hours or more of pay or leave. The experience allowance will be reduced by one (1) level and will be reinstated two (2) years from date of conviction, provided there is no further conviction for which the confirmed penalty is the forfeiture of forty (40) hours or more of pay or leave.

(d) The experience allowance shall take effect on January 1, 2005 and shall be calculated based on the years of completed service commencing from the date of hire within this bargaining unit and the percentages as follows:

8-15 years of service - three percent (3%) of First Class Constable

16-22 years of service - six percent (6%) of First Class Constable

23 or more years of service - nine percent (9%) of First Class Constable

(e) Members employed by the Board on or before the date of ratification of this agreement shall have their prior service as a Sworn Officer with any other Canadian Police Service recognized pursuant to Article 33.09. For the purpose of this Article, the date the Member is sworn as a Police Officer shall be the date used for determination of the experience allowance.

5.03 Members except those detailed to a steady day shift, shall be paid in addition to and as part of their regular annual salary, in lieu of shift premium, the sum of Four Hundred Dollars ($400.00) if required to work three (3) shifts and Two Hundred and Fifty Dollars ($250.00) if required to work two (2) shifts. For the purpose of this Article, shift premiums are payable to those Members with less than eight (8) years of completed service.

5.04 (a) Members who are designated as Coach Officers or the equivalent shall receive, while so assigned, a premium paid as part of salary equal to one-half (½) of the difference between the pay of a First Class Constable and a Sergeant.

(b) Members who are qualified as Explosive Disposal Technicians shall receive, while so assigned, a premium paid as part of salary equal to one-half (½) of the difference between the pay of a First Class Constable and a Sergeant.

(c) Members assigned to the Traffic Branch, collision reconstruction, who are qualified as Collision Reconstructionists (Level III and/or IV) shall receive, a premium paid as part of salary equal to two percent (2%) of a First Class Constable salary for the first two (2) years of such assignment and thereafter, a premium paid as part of salary equal to four percent (4%) of a First Class Constable salary.

(d) Members who are designated Emergency Response Team Leaders shall receive, while so assigned, a premium paid as part of salary equal to that of a Sergeant.

(e) Members who are assigned to the Emergency Response Unit shall receive, a premium paid as part of salary equal to two percent (2%) of a First Class Constable salary for the first two (2) years of such assignment and thereafter, a premium paid as part of salary equal to four percent (4%) of a First Class Constable salary.

(f) For the purpose of this Article "while so assigned" shall be restricted to the time actually spent performing the duties of the specified task. This shall include an Emergency Response Team Leader while engaged in training activities when not under the direct supervision of the Emergency Response Sergeant.

5.05 Each Member of the Service who is a Member of the Canine Unit shall receive the sum of One Hundred and Twenty-five Dollars ($125.00) per month for care, maintenance and housing of the animal in such Member's care.

5.06 Nothing in this Agreement is intended to prevent the Chief of Police from making short term transfers between Divisions to meet the operational

exigencies of the Service. Personnel so transferred will be paid their normal rate of pay for a period not to exceed three (3) months.

ARTICLE 6 - PROMOTIONS

6.01 A Member shall be hired as a "Constable-in-Training". The "Constable-in-Training" status will remain in effect until the Member has successfully completed the Basic Recruit Training Level II Course at Aylmer. Upon successful completion of the prescribed Police Recruit Training Program the Member shall be appointed to the rank of Fourth Class Constable. The Member's salary will be adjusted, effective the date of appointment, to the appropriate Fourth Class level pursuant to Appendix "A".

6.02 Promotions from Fourth to Third Class Constable, from Third to Second Class Constable and from Second to First Class Constable shall be made after fourteen (14) month's service in each Class unless the Chief of Police shows to the Board why such Member should not be promoted.

6.03 Except as provided above promotions are at the discretion of the Chief.

6.04 The Board, upon request, shall grant a Member a loan for those expenses charged to that Member while attending the prescribed Recruit Training Program. The loan shall be repaid over a maximum period of five (5) years by direct payroll deduction. This shall be an interest free loan.

ARTICLE 7 - ESTABLISHED COMPLEMENT, ACTING RANKS

7.01 The Board shall continue to have an established complement, which may be adjusted from time to time by the Board and which shall designate all Officers serving in senior ranks.

7.02 In any calendar year in which an Officer above the rank of Second Class Constable is detailed to relieve a Senior Officer who is absent from duty due to illness, annual leave, course attendance, detached duties, days off, or who has retired, such relieving Officer shall be paid on the basis of the higher rank so relieved from the date of assumption.

ARTICLE 8 - PAID DUTY PAY

8.01 A Member who accepts paid duty assignments on time off (at sports events, etc.) shall be paid at time and one-half (1½) basis, the Member's current rate of pay. If the Member is a Sergeant or Staff Sergeant, the Member shall be paid at time and one-half (1½) their current rank rate. Three (3)

hours minimum to apply to all ranks. Where a paid duty assignment is cancelled within forty-eight (48) hours, the Member shall be entitled to a payment of three (3) hours at time and one-half (1½). Paid duty assignments will be posted and awarded in a fair and equitable manner.

ARTICLE 9 - PAY FOR OVERTIME, CALL-OUT, STAND-BY AND ON-CALL

9.01 Members shall be paid for overtime at the rate of time and one-half (1½) provided that if the overtime period exceeds ten (10) cumulative hours the excess will be paid at double time. If overtime beyond the ten (10) cumulative hours extends into the Member's next following shift, that shift shall be paid at double time. The rate per hour shall be calculated on the Member's basic annual salary for fifty-two (52) weeks of forty (40) hours. Overtime following a regular shift shall not be claimed unless it is in excess of twenty (20) minutes. Part of an hour will count as one (1) hour for the first hour worked. After the first hour, overtime shall be claimed and paid for each quarter (¼) hour or part of a quarter (¼) hour worked. For the purpose of this Article, cumulative shall be hours worked immediately before and after the Member's regular scheduled shift.

9.02 Members who are called out to report for duty or to report for mandatory management meetings at any time that is not within one (1) hour of the commencement of their regular shift, shall be paid at the same rate as for overtime pay with a minimum credit for each call-out of three (3) hours at time and one-half (1½). Members shall be entitled to payment from the time the call is received only if required to report immediately for duty. Members shall not be entitled to pay where the call-out of such Member has been necessitated by reason of neglect or improper act on the part of such Member during the course of their duty.

9.03 Members who are required to start their shift within one (1) hour of the commencement of their regular shift will be deemed to have completed their shift when they have worked the regularly scheduled number of hours calculated from the actual start time of that shift. Where there is a requirement for a Member to work beyond the new end of shift, overtime provisions will apply.

9.04 A Member who is called out to report for duty during their annual leave and/or block of statutory holiday leave (a minimum of thirty (30) hours) shall be paid at double time for the first day (minimum sixteen (16) hours pay) and at time and one-half (1½) (minimum twelve (12) hours pay) for each subsequent consecutive day of attendance during their leave. For the purpose of this Article, annual leave shall include days off which precede, follow or are between the block(s) as booked.

9.05 When a Member is required to be on stand-by, they are entitled to be paid at their hourly rate of pay for one-third (⅓) of their stand-by hours, but where such stand-by is less than eight (8) hours they are entitled to three (3) hours pay. Stand-by is a period of time during which in accordance with Administrative procedures established by the Chief of Police, a Member is ordered to remain at their residence and to be available for prompt return to work. Stand-by shall not be credited for any period in which the Member is paid for court-time, overtime, call-out or special duty. This Article shall not eliminate or prohibit the co-operative practice under which a Member of the Service provides advice to their Superior as to their proposed whereabouts while off duty.

9.06 A Member who is assigned to on-call duty, as designated by their Supervisor, shall be paid at the rate of one-quarter (¼) the Member's regular rate of pay while on-call. In the event the Member is recalled to active duty the Member shall be paid at the call-out rate, or the overtime rate, as applicable. "On-call" duty means that the Member is reasonably available at the Member's home or elsewhere to be called back to active duty. It is the responsibility of the Member performing on-call duty to assure that the Member may be contacted in order to be able to report for active duty within a reasonable period of time, being no more than one (1) hour.

9.07 Compensation for travel time spent while attending a work-related course, conference or meeting (exclusive of Article 18) shall be governed by the provisions of Article 17.03.

ARTICLE 10 - COURT-TIME PAY

10.01 Members attending court on off hours will receive a minimum credit of three (3) hours at time and one-half (1½). Should a court sitting extend

beyond three (3) hours the additional hour(s) or part thereof shall be payable at time and one-half (1½). The hourly rate will be calculated on the Member's basic annual salary for fifty-two (52) weeks of forty (40) hours. Morning and afternoon attendance shall be recorded as separate appearances. Morning court shall be deemed to be any sitting which commences at or after nine a.m. and ends at or before one-thirty p.m. If morning court extends beyond one-thirty p.m., it shall be deemed to be an afternoon appearance. Afternoon court shall be deemed to be any sitting which commences at or after one-thirty p.m.

10.02 A Member attending a court which commences during their regular shift and extending beyond the period of their shift will be paid at their overtime rate for the period that extends beyond their shift. Overtime shall not be claimed unless it is in excess of twenty (20) minutes.

10.03 A Member who is required to attend court during their annual leave and/or block of statutory holiday leave (a minimum of thirty (30) hours) will be paid sixteen (16) hours court-time for each day of attendance during their leave. For the purpose of this Article, annual leave shall include days off which precede, follow or are between the block(s) as booked.

10.04 For this purpose, attendance at court or any proceeding relating to a Municipal, Provincial or Federal Statute including attendance as a Prosecutor's Assistant, or as a witness in Provincial, District or Supreme Court or Coroner's Inquest or by Summons to Witness, on matters arising from the performance of police duties, but does not include any hearings under the Police Services Act or any court hearings in which a Member is charged with an offence. Any court hearing in which a Member is charged with any offence under Federal or Provincial Statutes during the legal execution of their duty, will be allowed to attend court as though it was their regular shift, such allowance will be at the discretion of the Officer in Charge. In the event the Member is not acquitted, they shall reimburse such time used to the Service.

10.05 A Member attending court on their day off or after working the late night shift or any scheduled shift which extends beyond midnight shall be credited with six (6) hours per appearance. Any shift which extends

beyond midnight, subject to the exigencies of the Service, shall be re-scheduled to an earlier start.

10.06 When a Member's scheduled Court appearance is cancelled within forty-eight (48) hours of their scheduled appearance, the Member shall be entitled to a court-time appearance of three (3) hours at time and one-half (1½) per scheduled day. When a Member is on annual leave and is scheduled to appear in court and that appearance is cancelled within forty-eight (48) hours of the scheduled appearance the Member shall be entitled to a court-time appearance at sixteen (16) hours, and twelve (12) hours court-time for any appearance that would have otherwise occurred within forty-eight (48) hours of the cancellation notification.

10.07 A former Member who has retired on pension and who is required to attend court on matters arising from the performance of their duties while an active Member of the Service, shall receive payment in accordance with Article 10.01 using a First (1st) Class Constable's rate of pay. In addition to the time in court attendance, such Member shall be reimbursed up to a maximum of ten (10) hours for court preparation duties, with the prior approval of the Chief or designate. Payment to the retired Member shall be made by cheque within six (6) weeks of the scheduled appearance.

10.08 All witness fees, exclusive of transportation allowances received by any Member attending either on or off duty any court, shall be paid over to the Administration of the Waterloo Regional Police Service, where such Member is entitled to payment from the Board for such court appearance.

10.09 A Member who attends court more than sixty (60) km from Police Headquarters while off duty shall be paid one (1) minute for each kilometer travelled from Headquarters and return to, for travelling time by motor vehicle to a maximum of eight (8) hours. The present practice of treating air travel time as on duty time, but subject to the stipulation that no overtime will be allowed, will be continued.

ARTICLE 11 - PAYMENT FOR OVERTIME, COURT-TIME, ETC.

11.01 The Board agrees that all hours earned under Articles 9, 10 and 15.01 will be recorded using the appropriate format.

(a) A Member must maintain and bank a minimum of twenty (20) hours. Any accumulated time in excess of twenty (20) hours, not taken by the first pay in June and December, shall be paid out. If the Member is

reclassified to a position of higher or lower compensation, all hours in the overtime accrual bank in excess of twenty (20) hours shall be paid on the pay immediately preceding the reclassification. At any time a Member may submit an electronic request, through the Service's electronic time management system, to have hours in excess of twenty (20) hours paid out on the next suitable pay period.

(b) Notwithstanding clause (a), a Member may apply time towards casual days or part days off duty in accordance with Article 11.02.

(c) A current account of hours standing to a Member's credit will be individually distributed monthly.

11.02 On request, and at the discretion of the Chief of Police, a Member may be granted casual days or part days off duty. Such casual leave will be debited against any accumulation of the Member's twenty (20) hour court-time and overtime standing to their credit.

ARTICLE 12 - LEGAL INDEMNIFICATION

12.01 The Board shall indemnify a Member of the Police Service for reasonable legal costs incurred in the course of their employment;

(a) In the defence of a civil action for damages because of acts done in the course of employment under the following circumstances only:

(i) where the Board is not joined in the action as a party pursuant to Section 50 (1) of the Police Services Act, and the Board does not defend the action on behalf of itself and of the Member as joint tort feasors at the Board's sole expense.

(ii) where the Board is joined as a party or elects to defend the action, but the solicitor retained on behalf of the Board and the Member is of the view that it would be improper for him or her to act for both the Board and the Member in that action.

(b) In the defence of a criminal prosecution, excluding a criminal prosecution in which the Member is found guilty of a criminal offence.

(c) In the defence of a statutory prosecution, excluding a statutory prosecution in which the Member is found guilty.

(d) In respect of any proceeding relating to a Municipal, Provincial or Federal Statute or a proceeding under the Coroner's Act, a hearing,

investigation or inquiry under the Police Services Act involving a Public Complaint or the Ontario Civilian Police Commission (OCPC), including that which may arise as a result of the assignment of the Member to duties outside Ontario, whether the proceeding occurs in Ontario or outside Ontario, where a penalty is not imposed or the Member is not found guilty of misconduct.

12.02 The Board agrees that legal counsel(s), as determined by the Association, may be provided, at the Board's expense, to a Member(s) who, as a result of police duties, may be directly or indirectly involved in an occurrence investigated by the Special Investigations Unit subject to the condition that the Association consult with and receive the consent of the Chief or Deputy Chief. Such consent shall not be unreasonably withheld. The benefit afforded the Member(s) shall include counsel immediately after the occurrence and during the investigative period, for the purpose of providing legal advice and guidance to the Member(s) involved during the period of the investigation. The benefit afforded the Member(s) under this clause ceases upon completion of the SIU investigation. This does not preclude coverage under other clauses of this Article.

12.03 The Officer in Charge shall be required to give an active Association Board Member immediate notification of any investigation involving the Special Investigations Unit.

12.04 Where a question arises as to reasonable legal costs, the Board shall indemnify the Member at 1.5 times the scale established by the Legal Aid Plan.

12.05 The provisions of 12.01 shall not restrict the Board from indemnifying a Member whose conduct in the performance of their duties is or may be called into question in a proceeding or inquiry not specified in Article 12.01. Legal advice and/or counsel in each case will be the subject of discussion between the Board and the Association.

12.06 Notwithstanding clause 12.01, the Board may refuse payment otherwise authorized under Article 12.01 where the Board can establish that the actions of the Member from which the charges arose amounted to a gross dereliction of duty or deliberate abuse of their powers as a Police Officer.

ARTICLE 13 - HOURS OF WORK

13.01 The work week shall consist of a five (5) day, forty (40) hour week. Consecutive days off shall be granted except in emergencies. The discretion of the Chief of Police shall be absolute in determining the emergency of the situation.

13.02 Notwithstanding Article 13.01 the Compressed Work Week schedule whereby Members work fourteen 10 hour shifts and seven 8 hour shifts in a 35 day cycle shall be continued in the Divisions where it was applicable on January 1, 1988. The work week shall average 40 hours. Consecutive days off shall be granted except in emergencies. The discretion of the Chief of Police shall be absolute in determining the emergency of the situation.

13.03 Hours of work for Uniform Patrol and Traffic Branch personnel, who are on the Compressed Work Week described in Article 13.02 shall be as follows:

Day Shift	-	10 consecutive hours between 0600 - 1800 hours
Evening Shift	-	10 consecutive hours between 1300 - 0300 hours
Night Shift	-	8 consecutive hours between 2000 - 0800 hours

The hours for any block of working shifts shall be subject to the exigencies of the Service but a Member shall work the same continuous hours throughout any one (1) block of shifts. The Member in charge shall post the work schedule thirty-five (35) days in advance.

13.04 Hours of work for the Identification, Youth, and Detective Branches who are on the Compressed Work Week shall be as follows:

Day Shift	-	0700 - 1700 hours
Evening Shift	-	10 consecutive hours between 1200 - 0200 hours
7 day 8 hour stretch	-	8 consecutive hours between 0700 - 0300 hours

The hours for the 7 day, 8 hour stretch shall be subject to the exigencies of the Service, but a Member shall work the same 8 continuous hours throughout the 7 days. The Member in charge shall post the work schedule for the evening shift and the 8 hour shift 35 days in advance.

13.05 Hours of work for the Emergency Response Unit, shall be as follows:

Day Shift	-	10 consecutive hours between 0600 - 1800 hours
Evening Shift	-	10 consecutive hours between 1300 - 0300 hours

The hours of work shall consist of a three platoon system comprised of four (4) ten (10) hour days, five (5) days off, five (5) ten (10) hour afternoon shifts, two (2) days off, three (3) ten (10) hour afternoon shifts and two (2) days off. Each Wednesday shall be a day shift for Training purposes.

13.06 Members in the Identification, Youth, Traffic, Divisional Detective and Uniform Patrol Branches who are required, due to the exigencies of the Service, to work an unscheduled shift change, shall have the overtime rate applied for the following shift worked.

13.07 A day for purposes of a disciplinary penalty under the Police Services Act means 8 hours.

13.08 Allotted Training Days must be completed. Training Days falling during a Member's annual leave or on days off immediately before or after annual leave days will be re-scheduled.

ARTICLE 14 - EXCHANGE OF SHIFTS

14.01 A Member may request to be relieved of their shift through an exchange of shifts by submitting a request utilizing the appropriate format by both the Applicant Member and the Relief Member to the Applicant Member's Officer in Charge and the Relief Member's Officer in Charge not less than forty-eight (48) hours prior to the relevant shift.

The request shall be approved provided:

(a) The Applicant Member has not made a disproportionate number of such requests in the past;

(b) The Relief Member has had training for and is capable of assuming the Applicant Member's duties. If the Applicant Member and Relief Member work in different Divisions, they shall report to the other Member's home Division in uniform and ready for assignment in time to attend the involved Member's shift briefing;

(c) The involved Members will not thereby work two (2) consecutive shifts;

(d) The exchange or relief will not impair the efficiency or morale of the shift or the Service;

(e) The request shall specify both the dates to be worked by the Applicant Member and Relief Member.

14.02 If the Officer in Charge of the shift should refuse the request they shall forward the application and their reasons to the Officer in Charge of the Division for review. The discretion of the Officer in Charge of the division, when exercised, shall be final and not subject to grievance procedure.

14.03 Upon request in writing signed by the Applicant, the Officer in Charge of their shift may permit the applicant to switch their days off in order to secure a specific day off for a special reason if in the absolute discretion of the Officer in Charge such an arrangement will not impair the overall efficiency or morale of the shifts affected, or the Service.

14.04 Where the reasons for requesting an exchange of duties or days off is not deemed adequate by the Chief of Police, the Member may nevertheless be granted time off at the discretion of the Chief of Police in accordance with Article 11.02.

14.05 If a Member is scheduled to work both Christmas Day and New Year's Day of the same holiday season, they shall be entitled to exchange one of their regular days off for one of those days.

14.06 At the request of the Member, Christmas Eve or New Year's Eve may be granted in lieu of Christmas Day or New Year's Day.

14.07 Article 14.05 and 14.06 do not apply to those on the Compressed Work Week referred to in Article 13.02, however, the Board agrees that if it can reasonably do so it will schedule those otherwise entitled days.

ARTICLE 15 - LUNCH PERIOD, MEAL ALLOWANCE

15.01 A Member shall be assigned a paid one (1) hour lunch period to commence after the completion of two and one-half (2½) hours duty and be completed a minimum of two (2) hours preceding the end of the shift. When the requirements of the Service do not permit the taking of an assigned lunch period, the Member and the Member's supervisory Officer may agree upon

some other period during the said tour, or the Member shall be credited with one (1) hour straight time which shall be recorded on the appropriate form in accordance with the provisions of Article 11.01.

15.02 A Member who is out of the Region over a normal meal period on duty or on a court attendance arising from the performance of their duties shall be reimbursed for a meal up to the amount of Sixteen Dollars ($16.00) upon production of the appropriate receipts. A Member who is out of the Region for a full day (three (3) or more consecutive meal periods) on duty or on a court attendance arising from the performance of duties shall be provided with Sixty Dollars ($60.00) allowance per day upon production of appropriate receipts.

15.03 A Member who is on duty within the Region three (3) hours prior to the start of their normal shift and/or three (3) hours beyond their normal shift, shall be allowed the meal allowance specified in Article 15.02. If due to the exigencies of the Service, a Member works a full eight (8) hours beyond their normal shift, a second overtime meal allowance will be provided. Payment of this meal allowance shall be automatically made on the following pay period after the overtime is worked.

ARTICLE 16 - CLOTHING

16.01 Clothing and footwear will be issued in accordance with the department regulations. Clothing issued will include summer uniforms for uniformed personnel.

16.02 Members of the Plainclothes Branches shall be entitled to a clothing and footwear allowance of One Thousand Two Hundred Dollars ($1,200.00).

16.03 Invoices for such items referred to in Articles 16.02 and 16.05, will be paid upon the production of an itemized paid bill - to the extent of the allowance credited to the Member.

16.04 A Member's uniform or a Plainclothes Member's clothing suitable for court attendance, will be dry cleaned bi-weekly, or as required, which includes the following exclusions:

- Summer hats
- Police shirts and police sweaters by exception only with approval from Stores Fleet Manager through Stores at Police Headquarters
- Sweatshirts

- o Silk dresses and blouses
- o Leather clothing
- o Suede clothing
- o Toques
- o T-Shirts
- o Fur and otherwise trimmed garments

16.05 Constables who are assigned to a Plainclothes Division for a period in excess of thirty-five (35) calendar days will receive a pro-rated clothing allowance for the period of their assignment.

16.06 Members shall be issued with body armour that:

(a) is tailored to each individual Member;

(b) is replaced every five (5) years or earlier with the approval of their Staff Sergeant;

(c) has vest holders replaced every two (2) years or as required with the approval of their Staff Sergeant;

(d) is the best quality body armour available on the market at the time of issue for protection, comfort and fit, as defined by the Provincial Soft Body Armour Committee and the Waterloo Regional Police Service standards.

A Member shall be exempt from wearing body armour for a medical condition verified in writing by a physician.

ARTICLE 17 - ALLOWANCE FOR ATTENDING CLASSES

17.01 A Member attending classes or attending to police business away from their usual abode shall receive a Ten Dollar ($10.00) per day allowance per night away, including Saturday and/or Sunday night.

17.02 Members who use their own automobiles to attend courses of instruction outside the Region which they are required to attend by the Board will receive mileage at the Regional Municipality of Waterloo mileage rate, subject to the following conditions:

(a) one (1) trip to attend course of instruction including recruit training;

(b) one (1) additional trip for each five (5) weeks of completed course of instruction excluding recruit training;

(c) additional trip(s) for the purpose of attending court or other authorized police duties;

(d) travel allowances provided by other levels of government are to be paid over to the Service in exchange for mileage.

17.03 When a Member attends a work-related course, conference or meeting, (exclusive of Article 18) outside of the Regional Municipality of Waterloo, more than sixty (60) km from Police Headquarters, in which off duty time is spent in travel, the Member shall be paid one (1) minute for each kilometer traveled from Headquarters and return to, for travelling time by motor vehicle, to a maximum of eight (8) hours. When travel occurs during both off and on duty hours, Members may claim for kilometers travelled during their off duty hours only. Air travel time shall be treated as on duty time, which includes airport check in time, as specified by the carrier, air flight time to destination and travel time directly from airport to place of final accommodation or business.

ARTICLE 18 - TUITION FOR SUPPLEMENTARY EDUCATION

18.01 A Member who attends a course of study relevant to police work as approved by the Board shall receive an interest free loan to pay the tuition fee, which loan will be forgiven on the successful completion of the course, or repaid if the Member does not complete the course successfully. Where the course is not approved by the Board, the Member's application shall be returned with a brief explanation. Should the Member leave the employment of the Waterloo Regional Police Service within two years of completing the course (except for medical reasons) the full amount of the loan will be repayable to the Board.

18.02 The Board will provide at its own expense all textbooks or study materials relevant to the O.P.C. Promotional Exam or any other departmental screening test.

ARTICLE 19 - DEPARTMENTAL BY-LAWS

19.01 All future by-laws and regulations proposed by the Board for the government of the Service shall be referred to the Association before enactment and the Association shall be given an opportunity to make submission thereon. This provision shall not limit the absolute authority of the Board to enact by-laws and regulations and the enactments shall not

be subject to grievance proceedings except insofar as such enactments offend the provisions of this Agreement or the Police Services Act.

ARTICLE 20 - INJURY ON DUTY

20.01 When a Member of the Service is absent by reason of illness or injury occasioned by, or as a result of, their duties within the meaning of the Workplace Safety and Insurance Act, they will be entitled to their full pay while they are thereby incapacitated and there shall be no loss of accumulated sick leave credits. "Full pay" shall be interpreted so as to preclude the possibility of a Member receiving a greater net pay while on Compensation than while working. Pension and benefit calculations are to be based upon the Member's salary as per Appendix "A". This provision shall not prevent the Chief of Police from assigning light duties which they are capable of performing in spite of the disability of such Member.

20.02 A Member who incurs an injury on duty of sufficient seriousness to require absence from work extending into the Member's annual leave or who incurs an accident or sickness which requires hospitalization before and either extending into the Member's annual leave or requiring convalescence such that the Member would not have been able to work on or before the first day of the annual leave will be permitted to change the annual leave for a time to be mutually agreed on between the Member and their N.C.O. All such requests must be made prior to the commencement of this leave. All requests will be in writing and supported by a Doctor's certificate.

ARTICLE 21 - STATUTORY OR DECLARED HOLIDAYS

21.01 Each Member shall be granted twelve (12) statutory or declared holidays with pay as follows:

New Year's Day	Victoria Day	Thanksgiving Day
Family Day	Canada Day	Remembrance Day
Good Friday	Civic Holiday	Christmas Day
Easter Monday	Labour Day	Boxing Day

21.02 In each year, a Member will receive twelve (12) days or ninety-six (96) hours holidays in lieu of statutory holidays as provided in Article 21.01. Five (5) days or forty (40) hours to be given in the form of pay on the 1st of December, or on the regular pay date preceding December 1st. Seven (7) days or fifty-six (56) hours will be taken in time off in a block of

thirty (30), forty (40) or fifty-six (56) hours. The remaining time, if any, will be taken as casual time off during the year. This time off must be submitted by request to the Officer in Charge who shall make a determination within three (3) working days of receiving the request. Members with less than one (1) year of service will receive one (1) day or eight (8) hours for each completed month of service to a maximum of twelve (12) days or ninety-six (96) hours, in lieu of statutory holiday.

21.03 In each year, in lieu of taking the five (5) days (40 hours maximum) referred to in Article 21.02 a Member may take those days as a block of statutory holiday leave or casual days off provided the Member so requests and provided the Chief of Police consents. Members determining whether to be paid or taking statutory holidays off after November 1st shall submit the request by October 15th and the Officer in Charge shall make a determination within three (3) working days of receiving the request.

Members requesting time off after November 1st for dates other than Christmas Eve, Christmas Day, Boxing Day, New Year's Eve and New Year's Day, shall submit the request before October 15th. Their Supervisor shall make a determination within three (3) working days of receiving the request.

Members requesting time off for Christmas Eve, Christmas Day, Boxing Day, New Year's Eve and New Year's Day, shall submit the request on or before October 15th. Their Supervisor shall make a determination on these requests based on a seniority basis by October 22nd.

21.04 A Member required to work on a statutory or declared holiday referred to in Article 21.01, shall be paid at the rate of one and one-half (1½) times the regular rate of pay for all hours worked on such day. Unless required to work by a Supervisor, Members working a Monday to Friday day shift schedule shall only be paid at their regular rate of pay on all worked statutory and declared holidays.

21.05 In the case where a Member is working the Compressed Work Week the aforementioned days will be calculated as hours: (1 day = 8 hours).

ARTICLE 22 - ASSOCIATION MEETINGS

22.01 Eight (8) Members of the Association will each be allowed five (5) consecutive days and essential travelling time off to attend the Annual

Police Association of Ontario Conference without loss of pay for normally scheduled work time. Arrangements will also be made on request to switch duties of two (2) other Members so they may attend the Conference. The Association may choose to utilize one (1) of these eight (8) leaves for attendance at the Annual Conference of the Canadian Police Association.

22.02 Four (4) Members of the Association will be allowed two (2) days each and essential travelling time to attend three (3) two-day Member meetings of the Police Association of Ontario. Arrangements will also be made upon request to switch the duties of another Member so they may attend three (3) two-day Member meetings of the Police Association of Ontario.

22.03 If a Member of the Association is elected or appointed to the Board of Directors of the Police Association of Ontario or the Canadian Police Association, such Member will be granted time off to attend three (3) two-day Member meetings, annual conference and ten (10) one-day Member meetings of the Police Association of Ontario or the Canadian Police Association and be allowed to switch duties to attend such other one-day Board meetings as may be called.

22.04 (a) Members of the Board of Directors and Executives of the Association shall be entitled to time off duty to attend regular fortnightly meetings of the Association; and

(b) a maximum of two (2) Members of the Board of Directors and Executives of the Association having provided two weeks notice shall be entitled to time off duty to attend workshops or seminars which are sanctioned by the Association; and

(c) additional Members of the Board of Directors and Executives of the Association not covered by the provisions of paragraph (2) or those required to attend Committee Meetings sanctioned by the Association may, subject to the exigencies of the Service, be granted time off duty to attend to such Association business.

Each such Member referred to in paragraphs (a) through (c) shall be paid for such part of the time so spent so as to represent hours that they would normally have been on duty and the cost thereof shall be charged to the "Bank" established under Article 22.05. Notwithstanding the authority to make these deductions, where Members are required to attend

negotiations with the Board or other Joint Management/Association Meetings, no deduction will be made from the "Bank" but such time will be deemed to represent hours that the Member(s) would normally have been on duty and the time applied towards the Member's regularly scheduled shift provided that the shift falls within twenty-four (24) hours of the meeting. In the application of this Article a Member shall not be entitled to overtime and a meeting which exceeds six (6) hours shall be considered a full shift worked.

22.05 Each Member of the Association shall have one (1) hour deducted from their accumulated court-time and overtime and the value of the time so deducted shall be used to pay the payments to be made to Executive Members under Article 22.04. Whenever, this "Bank" is exhausted it will be replenished by deducting a further hour from the accumulated court-time and overtime of each Member. The Board will provide to the Association at four month intervals, a statement of the "Bank" which will identify credits, debits and the balance at the end of the period.

22.06 Articles 22.01, 22.02, 22.03, and 22.04 will be applied as written whether the Members involved are scheduled to work 8 hour shifts or 10 hour shifts.

22.07 One (1) or two (2) Members selected by the Association shall be granted leave of absence from their duties to act as Association Business Agent with no loss of their seniority or fringe benefits. The Association shall reimburse the Board for the full cost of such Member(s) including fringe benefits. However, the Member's unused sick leave credits shall be drawn from the Central Sick Leave Bank as per Article 26.04 and shall be credited to their individual Sick Leave Bank. Sick leave taken shall be reported annually to the Administration.

ARTICLE 23 - GRIEVANCES

23.01 All complaints or grievances shall be dealt with under the provisions of Article 42 of this Agreement.

ARTICLE 24 - PENSIONS

24.01 Upon employment, each Member shall be enrolled in the Ontario Municipal Employees Retirement System (OMERS) Plan and 2% OMERS Type I and Type III Supplementary Plan, providing for a normal retirement pension in respect

of their credited service equal to the indicated percentage of their best sixty (60) consecutive months average salary multiplied by the number of years of credited service, adjusted for Canada Pension Plan and reduced by the normal retirement pension payable to the employee under any other approved pension plan in respect of their service and providing an early retirement pension equal to their basic pension and supplementary pension without actuarial discount on retirement within ten (10) years before their normal retirement date, if they are permanently, partially disabled or has completed thirty (30) years of service. All continuous service in municipal Police Forces in Waterloo County prior to January 1st, 1973 as well as any optional service as defined in OMERS regulations the Member may have, shall be included for the purposes of this Article. Each participating Member shall have deducted from their salary the amount to be contributed by the Member required by the OMERS Act and Regulations.

24.02 All Members are covered by the Canada Pension Plan as amended from time to time.

24.03 Qualified Members of the Association are allowed to purchase past service in accordance with OMERS regulations as follows:

(a) Service with any municipality or Local Board in Canada.

(b) Service with the Civil Service of Canada or of any Province of Canada.

(c) Service with the staff of any Board, Commission or public institution established under any Act of Canada or any Province of Canada.

(i) That effective January 1st, 1978, any Member of the Service may establish optional service in the existing pension provisions for all or part of such service in accordance with the provisions of the OMERS Act and regulations, and,

(ii) Further that the payment for such credited optional service will be in accordance with the provisions of the OMERS Act and regulations, and,

(iii) Further that the application for such credited optional service will be in accordance with the provisions of the OMERS Act and regulations.

ARTICLE 25 - BENEFIT COVERAGE

25.01 Each Member shall be provided with the benefit coverage described in this Article, subject to the terms and conditions of the Health Insurance Act or the applicable insurance policy. The Board may change the insurance carrier for any benefit from time to time provided that the benefits will be at least equivalent to those provided in the previous plan or policy and that the cost to individual Members will not thereby be increased without the Association's consent. Copies of all policies will be provided to the Association by the Police Service as they are received by the provider and any changes made to the master plan and/or policies will be forwarded to the Association forthwith or upon request. In the case of a dispute with the provider, at the request of a Member, the Police Service will make inquiries in support of the Member to ensure that they receive their full benefit entitlement. The Police Service responsibility shall be limited solely to the proper payment of the premiums.

25.02 **Provincial Health Plan**

The Board will pay the Employer Health Tax on behalf of each Member, to the Province of Ontario.

25.03 **Extended Health Care Plan**

Each Member, on the first day of the month following their date of being taken on strength, will be enrolled in the Extended Health Care Plan which will provide coverage for the Member and their eligible dependents with no deductible and no co-insurance for such items as:

- **prescription drugs;** the drug plan will provide for a drug benefit card, "positive enrolment", i.e. a listing of all covered family members; and will require the insurance carrier to ensure that the confidentiality provisions of the current claim form apply to the carrier and any contractor they utilize for provision of service. The prescription drug plan will have a dispensing fee cap of Ten Dollars ($10.00) per prescription. For the purposes of this Article, prescribed drugs to treat erectile dysfunction shall be covered by the drug plan, to a maximum Five Hundred Dollars ($500.00) per annum;

- **vision care** subject to a maximum per person per two (2) consecutive calendar year period of Four Hundred Dollars ($400.00). Laser eye surgery is included in the overall vision maximums;
- supplementary hospital benefit; **(semi-private accommodation);**
- supplementary health care benefit provided they are prescribed by a physician including:
  - services of a **registered nurse and/or registered practical nurse** limited to Twenty-five Thousand Dollars ($25,000.00) in a calendar year,
  - services of a **physiotherapist,**
  - services of a **speech pathologist** limited to Seven Hundred and Fifty Dollars ($750.00) in a calendar year,
  - **rental or purchase** (at insurance company's option), of a wheel chair, hospital bed, walker and other durable equipment (approved by insurance company), required for temporary therapeutic use,
  - **trusses, crutches and braces,**
  - artificial limbs or eyes or other **prosthetic appliances,**
  - **intrauterine devices**, but not including fees for insertion,
  - **oxygen and oxygen delivery equipment,**
  - diagnostic laboratory and x-ray **examination,**
  - licenced **ground ambulance** service to the nearest hospital equipped to provide the required treatment,
  - emergency **air ambulance** service,
  - services of a **dental surgeon** required for the treatment of a fractured jaw or for the treatment of accidental injuries to natural teeth if the fracture or injury was caused by external, violent and accidental means provided the services are performed within 36 months of the accident,
  - services of a **registered massage therapist**, limited to a yearly maximum benefit per person of One Thousand Dollars ($1,000.00),
  - services of a **chiropractor**, limited to Five Hundred Dollars ($500.00) in a calendar year,

- services of an **osteopath**, limited to Five Hundred Dollars ($500.00) in a calendar year,
- services of a **naturopath**, limited to Five Hundred Dollars ($500.00) in a calendar year,
- services of a **podiatrist**, limited to Five Hundred Dollars ($500.00) in a calendar year,
- services of a **psychologist**, limited to Four Thousand Dollars ($4,000.00) per Member and Two Thousand Dollars ($2,000.00) for each dependent and retired Member in a calendar year,
- **hearing aids** and repairs to them, excluding batteries, limited to Seven Hundred and Fifty Dollars ($750.00) during the three (3) year period ending on the date an eligible expense is incurred,
- **orthopedic shoes** which are part of a brace or specially constructed, limited to One Hundred and Fifty Dollars ($150.00) in a calendar year,
- **surgical dressing**, pressure bandages and syringes furnished by a physician or surgeon in a doctor's office while traveling outside of Canada,
- **expenses related to out-of-province** emergency or referral, less the amount payable by a government plan;
- services of an **Audiologist** limited to Seventy-Five Dollars ($75.00) per three (3) consecutive calendar years;
- Sun Life's **Medi-Passport** travel assistance benefit or equivalent,
- wigs or hair pieces limited to Three Hundred and Fifty Dollars ($350.00) per calendar year when prescribed by a doctor or Five Hundred Dollars ($500.00) per person per lifetime.

NOTE: MANY OF THE ABOVE BENEFITS HAVE LIMITS ON THE EXTENT AND APPLICABILITY OF THE COVERAGES. SPECIFIC DETAILS SHOULD BE ACCESSED THROUGH THE HUMAN RESOURCES BRANCH.

25.04 **Dental Coverage**

Each Member, on the first day of the month following their date of being taken on strength, shall be provided with a Dental Plan which will provide coverage for the Member and their eligible dependents equivalent to the

applicable provision of Sun Life Policy 82000. Coverage shall be provided as follows:

Part	Benefits	Deductible per Family Unit	Reimbursement	Maximum
A	Basic, Endodontic, Periodontic Services and Denture Repairs	none	100%	none
B	Dentures	none	50%	none
C	Orthodontic Services	none	50%	$3,000*
D	Crowns and Bridges	none	80%	none

***The maximum lifetime amount payable applies to the eligible expenses incurred under Part C for the Member and for each insured dependent.**

****Dental implants will only be covered if the procedure is an alternative procedure to crowns and bridges, as recommended by the Member's dentist, and with a monetary limit equal to coverage for alternative crowns or bridge procedure. In order to be eligible for coverage, the Member will ensure that an estimate for the crown or bridge is submitted with the dental implant estimate.**

Routine dental checkups are to be provided once in each nine (9) month period and six (6) months for dependents aged 16 and under. The fee schedule to be used is the Ontario Dental Association current fee schedule. Benefits as detailed above shall be premium cost shared on the following basis:

PART A 100% Board

PART B 75% Board and 25% Member

PART C 75% Board and 25% Member

PART D 100% Member

25.05 **Group Life and Accidental Death and Dismemberment Insurance**

Each Member, on the first day of the month following their date of being taken on strength, will be provided both Group Life and Accidental Death and Dismemberment Insurance in an amount equal to two (2) times basic annual salary, until the end of the month in which the Member turns age 70. If two (2) times basic annual salary is not a whole number of thousands, the amount of insurance will be increased to the next thousand.

25.06 **Dependent Life Insurance**

Each Member with eligible dependents, on the first day of the month following their date of being taken on strength, will be provided, at the expense of the Board, with Dependent Life Insurance coverage, of Twenty Thousand Dollars ($20,000.00) for spouse and Ten Thousand Dollars ($10,000.00) for each eligible child, until the end of the month in which the Member turns age 70.

25.07 **Spouse of Deceased Member**

(a) Benefit coverage for the spouse of a deceased Member with fifteen (15) or more years service will continue until;

(i) age 65, or

(ii) remarriage, or

(iii) eligible for coverage through another Employer.

(b) Benefit coverage for the spouse of a deceased Member with less than fifteen (15) years service will continue for twenty-four (24) months.

(c) After the age of sixty-five (65), if not remarried, the spouse of a deceased Member may opt to pay the premium of the group plan in order to maintain the same benefit coverage. This must occur within sixty (60) days of the deceased Member's spouse attaining the age of sixty-five (65). If the spouse of the deceased Member is above the age of sixty-five (65) upon the death of the Member, the spouse may opt within sixty (60) days of the death of the Member to pay the premium of the group plan in order to maintain coverage.

(d) The surviving partner of a Member killed in the line of duty shall have continued family benefit coverage pursuant to Article 25.01. This coverage shall continue until remarriage or eligible for coverage through another Employer. Eligible dependents are defined by our existing benefit plan.

25.08 **Retired Members Coverage**

All retired Members shall be provided with the following benefit coverage:

(a) Extended Health Care Plan; as provided in Article 25.03, premiums to be borne one hundred percent (100%) by the Board.

(b) Dental Plan; as provided in Article 25.04, premiums to be borne one hundred percent (100%) by the Retiree. (Post-dated Cheques will be provided in advance and the Plan shall be administered by the Board).

(c) Members who retired prior to June 1, 1997 shall be provided with benefit coverage (Extended Health Care and Dental) as it existed in the 1995 Collective Agreement.

Members retiring June 1, 1997 or later shall be provided with benefit coverage (Extended Health Care and Dental) as modified in the 1996-1999 Collective Agreement.

(d) Group Life and Accidental Death and Dismemberment Insurance; premiums to be borne one hundred percent (100%) by the Board, as provided below for Members who retire on or after June 30, 1987:

1. From date of retirement to the end of the month in which the Member attains the age of sixty (60) years - the amount in effect on the date of retirement.

2. From the end of the month in which the Member attains the age of sixty (60) years to the end of the month in which the Member attains the age of sixty-five (65) years - Twenty Thousand Dollars ($20,000.00).

25.09 **Spouse of Deceased Retiree**

The Board will extend to the spouse of a deceased retiree the same benefit coverage as provided for the Retired Member in Articles 25.08 (a) and 25.08 (b), subject to the provision of clause (c), until the age of sixty-five (65), or remarriage. After the age of sixty-five (65), if not remarried, the spouse of the deceased retiree may opt to pay the premium of the group plan in order to maintain coverage. This must occur within sixty (60) days of the deceased retiree's spouse attaining the age of sixty-five (65). If the spouse of the deceased retiree is above the age of sixty-five (65) upon the death of the retiree, the spouse may opt within sixty (60) days of the death of the retiree to pay the premium of the group plan in order to maintain coverage.

25.10 The ninety (90) day waiting period as required in the above benefit coverage shall be waived for an Officer who is hired directly from another

Canadian Municipal or Provincial Police Service, the Royal Canadian Mounted Police, the Canadian Military Police or Railway Police.

25.11 A Member has the right of access to all the Member's health information held by the Board, including the right to submit corrections supported by additional medical documentation or a notation of the Member's objection.

25.12 The Board shall not reveal any health information concerning a present or former Member to a third party, unless otherwise required by law, without the consent of the Member. For the purpose of this Article, a third party will not include the Regional Municipality of Waterloo Human Resources Department where the information is provided for a bona fide administrative purpose. The Region of Waterloo will be bound by the same terms of confidentiality as the Board.

ARTICLE 26 - SICK LEAVE, SICK LEAVE BANK

26.01 Each Member covered by this Agreement shall be granted one and one-half (1½) days leave on account of sickness for each and every month of continuous service with full pay at the Member's current rate of pay. The days of unused sick leave shall be accumulated. A current account of hours standing to a Member's credit will be distributed annually.

26.02 A Member to whom Article 26.01 applies who is off work because of illness or non-compensable injury will receive full pay on an hour for hour basis to the extent of their unused credits.

26.03 Upon termination of employment a Member who has completed five (5) years continuous service shall be eligible to be paid for fifty percent (50%) of their unused sick leave credits at their current rate of pay at termination, to a maximum of six (6) months pay. This payment may be taken in a lump sum or in bi-weekly payments. In the case of the death of the Member the payment will be made to their estate. The accumulated sick leave payout will not apply to Members hired after August 15, 2005.

26.04 Each Member of the Association shall contribute one (1) day of their accumulated sick leave to a Central Sick Leave Bank and shall give additional days as required. The number of accumulated sick leave days contributed by a Member to the Central Sick Leave Bank shall not exceed one-half (½) day per month or six (6) days in a given year, thereby

allowing a Member to retain a minimum of one (1) day per month for the Member's own personal use. A Member who continues to be medically unfit for duty after they have exhausted their sick leave credits may draw from this Central Sick Leave Bank. Before a Member is allowed to draw from the Central Sick Leave Bank they must submit a medical report from their physician for consideration by the Association. The Association will determine eligibility. The Board will provide to the Association at four month intervals, a statement of the Central Sick Leave Bank which will identify credits, debits and the balance at the end of the period.

26.05 In accordance with Article 26.03 a Member may at their option elect to take the unused sick leave credits (fifty percent (50%)to a maximum of six (6) months) in bi-weekly payments prior to their retirement date which would fully discharge the Board's responsibility and the Member's entitlement under the clause. In the event the Member chooses to take their sick leave in bi-weekly payments, they will no longer be eligible to accrue sick leave credits, annual or statutory leaves. If the Member has less than two hundred and sixty (260) unused sick days to their credit the six (6) months shall be reduced to the period for which their credits under Article 26.03 will pay.

26.06 In the case where a Member is working the Compressed Work Week the aforementioned days will be calculated as hours: (1 day = 8 hours).

26.07 A Member absent on Workers' Compensation as a result of an action involving a third party shall notify the Workplace Safety and Insurance Board in writing of their decision to take the benefit package of the Workplace Safety and Insurance Board or not within ninety (90) days of the accident. No benefits will be paid to the Member beyond the ninety (90) days unless such notice is received. If a Member decides to take action against a third party, such action shall include the recovery of their full salary paid to them during a period of incapacity. The recovery shall be payable to the Board when received.

Upon reimbursement, sick leave days used shall be restored to the Member's Sick Leave Bank or the Central Sick Leave Bank, as the case may be.

26.08 Sick leave may not be used where an accident or injury results in lost time which was caused by a third party unless the Member agrees in writing to permit the Board to subrogate its claim. If the Member sues the third party recovery of the benefits shall be included in the action and paid over to the Board when received. If the Member elects not to sue, the Board may sue in the name of the Member for its subrogated claim.

Upon reimbursement, sick leave days used shall be restored to the Member's Sick Leave Bank or the Central Sick Leave Bank, as the case may be.

ARTICLE 27 - FAMILY LEAVE

27.01 Forty (40) hours per calendar year are available to facilitate/attend to emergent primary care for ill dependents or family members. A dependent or family member shall include spouse (as defined by the Ontario Government), sibling, child, parent, grandparent, and grandchild, including step relationships. This time will be deducted from the Member's sick bank and will not result in any adjustment to seniority and service. A Member must qualify for sick time and have enough time accumulated in their personal bank to cover the period of absence. These days cannot be accumulated from year to year. Additional leave time required for special needs or unique situations, in excess of five (5) days may be granted upon special request to the Chief of Police.

ARTICLE 28 - PREGNANCY AND PARENTAL LEAVE

28.01 Pregnancy leave shall be granted to a Member of the Waterloo Regional Police Service in accordance with the Employment Standards Act as amended and in accordance with the following provisions:

(a) A pregnant Member who started employment with the Service at least thirteen (13) weeks prior to the expected birth date is entitled to a seventeen (17) week unpaid pregnancy leave.

(b) Every pregnant Member shall provide a letter to the Chief of Police from a qualified medical practitioner verifying her pregnancy and the expected date of delivery, as soon as possible.

(c) Such Member shall commence pregnancy leave no earlier than seventeen (17) weeks prior to the expected date of delivery.

(d) Every pregnant Member shall provide the Chief of Police with at least two (2) weeks notice in writing of the date her pregnancy leave is to begin. In the spirit of cooperation and in recognition of the time required to address staffing needs, Members are encouraged to provide six (6) weeks notice in addition to the two (2) weeks.

28.02 Parental leave shall be granted to a Member of the Waterloo Regional Police Service in accordance with the Employment Standards Act as amended and in accordance with the following provisions:

(a) A Member who has been employed with the Service for at least thirteen (13) weeks and who is the parent of a child is entitled to up to a thirty-five (35) week leave of absence in the case of birth mothers or a thirty-seven (37) week leave of absence for all other parents, without pay following:

(i) the birth of the child; or

(ii) the coming of the child into the custody, care and control of a parent for the first time.

(b) The parental leave of a Member may begin no more than fifty-two (52) weeks after the day the child is born or comes into the custody, care and control of a parent for the first time; the parental leave of a Member who takes a pregnancy leave, however, must begin when the pregnancy leave ends, unless the child has not yet come into the custody, care and control of a parent for the first time.

(c) Every Member eligible for a parental leave shall provide the Chief of Police with at least two (2) weeks notice in writing of the date the parental leave is to begin. In the spirit of cooperation and in recognition of the time required to address staffing needs, Members are encouraged to provide six (6) weeks notice in addition to the two (2) weeks.

(d) Parental leave shall end thirty-five (35) weeks, in the case of birth mothers, or thirty-seven (37) weeks for all other parents, after it begins or on an earlier date if the Member gives the employer at least four (4) weeks written notice of that date.

28.03 If a Member does not return to duty following completion of their parental and/or pregnancy leave, their employment will be deemed to have ended,

unless the Chief of Police consents to an additional unpaid leave of absence. The Member will then receive payment for any benefits to which they may be entitled similar to other Members terminating their employment with the Service.

28.04 Pregnancy and Parental leave shall be in accordance with the Employment Standards Act of Ontario, except that a Member commencing such leave, who is in receipt of Employment Insurance benefits pursuant to the Employment Insurance Act shall be paid a supplementary benefit in the amount of:

(a) Eighty percent (80%)of the Member's regular weekly earnings for the two (2) week employment insurance waiting period, and

(b) The difference between eighty percent (80%) of the Member's regular weekly earnings and the sum of the Member's regular weekly employment insurance benefits for a maximum period of fifteen (15) weeks after completion of the two (2) week waiting period, for Pregnancy Leave, and

(c) The difference between eighty percent (80%) of the Member's regular weekly earnings and the sum of the Member's regular weekly employment insurance benefits for a maximum period of ten (10) weeks after completion of the two (2) week waiting period, for Parental Leave.

"Regular weekly earnings" shall be one-half (½) of the Member's regular gross bi-weekly earnings, on the date the leave commenced.

28.05 While a Member is on a pregnancy and/or parental leave the Board agrees that the following shall apply:

(a) In accordance with the Employment Standards Act of Ontario, the Board shall continue to pay the premiums normally paid by the Board to maintain those benefits to which the Member is entitled. Where a benefit has been provided at the Member's own expense the Member may elect to continue the coverage.

(b) Where a Member elects, prior to the commencement of pregnancy and/or parental leave, to continue their pension contributions pursuant to Article 24, the Board shall maintain the employer's portion.

(c) Where a Member elects to continue their pension contributions or benefits which are provided at their own expense, payments shall be made to the Board by providing post-dated cheques in advance.

(d) A Member shall continue to accrue sick leave credits during a pregnancy and/or parental leave.

(e) A Member shall accrue annual leave days during a pregnancy and/or parental leave, such leave shall be included in the years of service for the purpose of moving to the next level of annual leave entitlement and position in the annual leave signing list.

(f) A Member shall continue to accrue seniority during pregnancy and/or parental leave.

(g) A Member who has presented the Chief of Police with a letter from a qualified medical practitioner pursuant to Article 28.01 (b) shall have the option of being reassigned to station duties during the first two trimesters. The Member shall be reassigned to station duties during the third trimester.

(h) Where a Member is reassigned to station duties due to pregnancy, the Member shall be allowed to wear civilian clothing. This clothing shall be dry cleaned in accordance with Article 16.04.

(i) A Member on pregnancy and/or parental leave who is required to attend court shall be paid in accordance with Article 10.03. Court-time shall be banked until such time the Member returns to work.

(j) A Member on pregnancy and/or parental leave who is required to report for duty shall be paid at time and one half (1½) of their regular rate of pay and subject to a three (3) hour minimum. Overtime shall be banked until such time the Member returns to work.

28.06 A Member who has taken pregnancy and/or parental leave shall be reinstated with wages that are at least equal to the greater of:

(a) the wages the Member was most recently paid; or

(b) the wages that the Member would be earning had the Member worked throughout the leave.

28.07 A Member shall be granted up to two (2) days leave of absence without loss of seniority or benefits for the birth of their child. Payment for such leave will be debited against the Member's Court/Overtime, Statutory Holidays or Annual Leave.

ARTICLE 29 - ADOPTION LEAVE

29.01 A Member who does not take parental leave as provided in Article 28 shall be granted up to two (2) days leave of absence without loss of seniority d

benefits to attend to the needs directly related to the adoption of a child. Payment for such leave will be debited against the Member's Court/Overtime, Statutory Holidays or Annual Leave.

ARTICLE 30 - MARRIAGE LEAVE

30.01 A Member shall be allowed a leave of absence without loss of seniority or benefits as follows:

(a) *Member's marriage* - up to three (3) working days at the discretion of the Member,

(b) *Marriage of a Member's child, parent or sibling* - the day of the wedding. For the purposes of this benefit, a Member who is a step-parent, step-child or step-sibling of the person being married shall be allowed the leave specified.

A Member requesting Marriage Leave shall make the request utilizing the appropriate format to the Officer in Charge no less than thirty (30) days before the date of absence.

Payment for such leave will be debited against the Member's Court/Overtime, Statutory Holidays or Annual Leave.

ARTICLE 31 - BEREAVEMENT LEAVE

31.01 A Member shall be granted bereavement leave with pay, as per the following schedule and family relationships, for those days which fall on their scheduled working days for the purpose of attending the funeral of a member of their immediate family and to attend to family matters concerned with the death of a family member:

Five (5) Days	Spouse, Child, Parent (includes step- and common-law relationships)
Three (3) Days	Sibling, Grandchild, Grandparent, Parent-in-law, Child-in-law, Sibling-in-law (includes step-relationships)
One (1) Day	Aunt, Uncle, Niece, Nephew, Spouse's Grandparent

31.02 At the discretion of the Chief of Police, additional days to those allowed under Article 31.01 may be granted pursuant to Articles 11.02, 21.02 and 33.01.

ARTICLE 32 - PERSONAL LEAVE

32.01 The Chief of Police may grant a leave of absence without pay to a Member for a legitimate personal reason. Such leave shall be at the sole discretion of the Chief. Where a leave is granted pursuant to this Articl

all benefits normally accrued under this Agreement will be continued and the cost of those benefits shall be borne by the Member on the following basis:

(a) during *a leave of absence of one (1) month or less* - the Member shall be responsible for costs normally paid by the Member;

(b) during the second and third month of *a leave of absence greater than one (1) month* - the Member shall be responsible for costs normally paid by the Employer and the Member;

(c) during *a leave of absence greater than three (3) months and the subsequent period of absence* - the Member shall be responsible for costs normally paid by the Employer and the Member, the Member shall not accrue sick leave credits or annual leave entitlement.

Benefit costs, for the purpose of this Article, shall include among other contractual benefits, Association dues and OMERS Pension contributions. Payments shall be made by the Member in the form of post-dated cheques submitted to the Finance Branch.

ARTICLE 33 - ANNUAL LEAVE

33.01 Effective January 1, 2008, annual leave with pay at the Member's regular rate will be allowed annually as follows:

Members with less than one year of continuous service shall receive one (1) day off for each month of continuous service up to a maximum of ten (10) days.

Members who have completed one (1)
year of service but have not
completed three (3) years of service.....Eighty (80) Hours

Members who have completed three (3) years
of service but have not completed
eight (8) years of service.....One Hundred and twenty (120) Hours

Members who have completed eight (8) years
of service but have not completed
fifteen (15) years of service.....One Hundred and sixty (160) Hours

Members who have completed fifteen (15)
years of service but have not completed
twenty-three (23) years of service.....Two Hundred (200) Hours

Members who have completed twenty-three (23)
years of service but have not completed
twenty-eight (28) years of service.....Two Hundred and forty (240) Hours

Members who have completed twenty-eight (28)
years of service.....Two Hundred and eighty (280) Hours

33.02 Members on the Compressed Work Week, shall, subject to the exigencies of the Service be allowed to schedule annual leave within their respective Branches, and whenever reasonably possible within their Platoons. The Members in these Branches will remain primarily under the direction of their Branch Commanders.

33.03 Any Member taking their annual leave in months other than June, July, August and September shall receive Three Hundred Dollars ($300.00) bonus. A Member who takes at least seventy-five percent (75%) of, but not all of, their annual leave outside the months mentioned shall receive a proportionate part of the Three Hundred Dollars ($300.00). Five days of time which may be taken in lieu of Statutory Holidays pursuant to Articles 21.02 and 21.03 is to be considered to be annual leave for this purpose.

33.04 Statutory leave referred to in Article 21.03, shall be signed as blocks of statutory leave after all Members have signed their allotted annual leave.

33.05 In the case where a Member is working the Compressed Work Week the aforementioned days will be calculated as hours: (1 day = 8 hours).

33.06 Should any Member be transferred or re-assigned following October 31st, Members may not be required to re-sign any annual leave list unless there is mutual consent between both the Member and the Supervisor of the unit. (Members may be required to re-sign any annual leave list without requiring mutual consent when the transfer is made after October 31st if it was done to accommodate a Member or at the Member's request).

33.07 A list bearing the seniority of the affected Members shall be attached to all annual leave signing schedules.

33.08 Members shall sign annual leave by seniority within rank and based on the exigencies of the work unit, pursuant to Article 37.03. If a Member is hired on the same start date as another Member they shall sign based on the alphabetical order of surname on date of hire. Any unused annual leave

remaining at December 31st of each year is forfeited by the Member, unless otherwise approved by the Chief, due to operational exigencies.

33.09 A Member who is hired directly from another Canadian Municipal or Provincial Police Service, the Royal Canadian Mounted Police, the Canadian Military Police or Railway Police, shall have their prior years of service recognized for the purpose of determining annual leave entitlement. A Member who is hired directly from a University Police Service, who has successfully completed the O.P.C. Basic Constable Recruit Training Course, shall have their prior years of service recognized for the purpose of determining annual leave entitlement effective January 1, 2007. The Member will be required to submit satisfactory documentation of the prior police service as a Sworn Officer.

ARTICLE 34 - EXEMPTION FROM FOOT PATROL DUTY

34.01 No Member shall be assigned to foot patrol duty without their consent after they have attained their fiftieth (50th) birthday.

ARTICLE 35 - GENERAL PROVISIONS

35.01 Reference to the Chief of Police herein shall be construed as Acting Chief or Officer in Charge of the Service in the absence or incapacity of the Chief.

35.02 Any Member who became a Member of the Service on January 1st, 1973 by virtue of the Regional Municipality of Waterloo Act shall be credited with continuous service prior to December 31st, 1972 in the Service of which they were a Member on that date.

35.03 Appendices form part of this Agreement.

35.04 No current serving member of the Board of Directors of the Association shall be assigned to investigate a Member of the Police Service through a public complaint and/or Chief's complaint as defined within Part V, Complaints of the Ontario Police Services Act.

ARTICLE 36 - TRANSFERS

36.01 No unnecessary transfers shall be made during the months of November and December.

ARTICLE 37 - SENIORITY

37.01 Seniority in this Agreement shall be defined as the length of a Member's full-time accumulated service with the Board within the Bargaining Unit.

The term "Bargaining Unit" shall be interpreted to mean any group of employees covered by a separate Collective Agreement, notwithstanding that two or more Bargaining Units may be represented by the same Bargaining Agent. Calculation of seniority shall be based on the elapsed time from the date the Member was first employed within the specific Bargaining Unit with the Board, unless their service was broken, in which event, such calculation shall be from the date they returned to work following the last break in their service.

37.02 A Member shall be deemed to have broken service where:

(a) the Member is discharged for just cause;

(b) the Member voluntarily terminates their employment;

(c) the Member takes a Personal Leave pursuant to Article 32 that exceeds three (3) months; any other contractual leave will not constitute broken service;

(d) the Member is laid off for a period which exceeds eighteen (18) months.

37.03 For the purpose of determining annual leave entitlement, sick leave credits and insured benefits under this Agreement, service includes all continuous full-time service with the Board since the date of hire regardless of Bargaining Unit membership, but not including period(s) of broken service.

37.04 The Board will keep a seniority list up to date at all times, and whenever the Association raises a question of seniority, shall make the seniority list available for inspection for the purpose of settling the question. A current seniority list will be posted on Orders annually, and a list bearing the seniority of the affected Members shall be attached to all annual leave signing schedules. If a Member is hired on the same start date as another Member seniority shall be based on the alphabetical order of surname on date of hire.

ARTICLE 38 - LAYOFF

38.01 In the event of a layoff of one or more Members who have completed the probationary period prescribed by the Police Services Act, the following shall apply:

(a) The Member with the least seniority shall be the first laid off provided that the senior Member retained has the necessary skills,

qualifications, abilities and competence to perform the work available.

(b) Subject to (c) below Members on layoff, possessing the necessary skills, qualifications, abilities and competence to perform the work available, shall have right of recall for Police Officer job openings, as the case may be, occurring during layoff in reverse order of layoff.

(c) Right of recall shall cease eighteen (18) months after layoff and employment shall then cease for all purposes.

(d) The Board will not participate in the cost of a Member's benefits after the month in which the Member is laid off, provided that, subject to the conditions of the carriers, the Member may arrange to have benefits continued at the Member's expense until recall or the expiry of the period mentioned in (c), which ever first occurs, and,

(e) Seniority shall be calculated from date of the last hire.

ARTICLE 39 - AIR CONDITIONING

39.01 Vehicles ordered for the use of patrol, traffic and detectives after September 9th, 1986, are to be equipped with air conditioning.

ARTICLE 40 - PURGING OF FILES

40.01 Except as set out in Article 40.02, the Board agrees to purge all Service files, including a Member's personnel file of:

(a) all incidents, negative or otherwise, after two (2) years (recognizing that the purpose of recording an incident is to assist a Supervisor with an annual performance appraisal);

(b) all negative documentation, including performance tracking, two (2) years after the date of the last negative documentation;

(c) all records of any Criminal and/or Provincial Offence in which there was a withdrawal or dismissal of the charge against a Member, except as may be required for a related Police Services Act hearing; upon completion of the Police Services Act matter such records shall be purged;

(d) all records of any Provincial Offence conviction two (2) years after the date of the conviction;

(e) all records of any Criminal Offence five (5) years after the date of conviction where there was a conditional or absolute discharge;

(f) all records of any informal discipline, disposition without a hearing or discipline under the Police Services Act two (2) years after the last discipline provided the confirmed penalty (after all appeal procedures have been exhausted) does not exceed the forfeiture of forty (40) or more hours pay or leave, or forty (40) or more hours suspension without pay.

40.02 The retention and purging of files regarding complaints and investigations involving harassment and/or discrimination shall be in accordance with the Service's procedure on Harassment and Discrimination (current year plus seven (7) years) but only for the purposes set out in that Procedure.

ARTICLE 41 - MILEAGE REIMBURSEMENT FOR USE OF PERSONAL VEHICLE

41.01 Members who are required to use their own automobiles for police business will receive mileage at the Regional Municipality of Waterloo mileage rate from their assigned Division.

ARTICLE 42 - COMPLAINT AND GRIEVANCE PROCEDURE

It is the mutual desire of the parties hereto that complaints of Members shall be addressed as quickly as possible. Such complaints shall be acted upon in the following manner and sequence:

42.01 When a Member of the Bargaining Unit has any grievance or complaint, they shall forthwith (but in any event, no later than twenty-one days) convey to their immediate Supervisor, in writing, all facts relative to the grievance or complaint. The Member, with Association representation if requested, and the Supervisor shall make every attempt to resolve the problem at this preliminary stage.

42.02 If, after an additional fourteen (14) days, the Member of the Bargaining Unit and the Supervisor fail to resolve the grievance or complaint to the satisfaction of the Member, or if the Supervisor fails to discuss, acknowledge or otherwise deal with the complaint or grievance, the Member may invoke thereafter the following procedure in an attempt to remedy the cause of their complaint or grievance.

(a) The Member shall communicate their complaint or grievance in writing to the official representative of the Association, setting down all

matters pertinent to the dispute and if the communication differs in any important aspect from the original complaint, a copy shall be transmitted to the said Supervisor.

(b) The Association shall investigate the complaint or grievance and if in the judgment of the Association the complaint or grievance is justified, the Association President or designee shall, within fourteen (14) days, present such complaint or grievance to the Deputy Chief or their designee for consideration.

(c) The Deputy Chief shall hear or receive the complaint or grievance and within seven (7) days communicate, in writing to the Association President or designee, their decision relative to the complaint or grievance.

(d) If dissatisfied with the ruling of the Deputy Chief or their designee, or if the Deputy Chief fails or refuses to deal with the complaint or grievance within the specified time, the Association may file with the Chief of Police with a copy sent to the Board, the complaint or grievance within the fifteen (15) days of the date the complaint or grievance was submitted to the Deputy Chief or their designee.

(e) The Chief shall cause the complaint or grievance to be investigated or cause an inquiry to be held between the persons involved in the dispute, and shall within thirty (30) days of the receipt of the complaint or grievance, communicate in writing their decision in the matter.

This procedure shall not preclude the Board (after consulting with the Chief) from referring the complaint to the Ontario Civilian Police Commission (OCPC) where, in the opinion of the Board, the matter can be best determined by such a referral.

(f) If dissatisfied with the decision of the Chief, or if the Chief fails to acknowledge or act upon the complaint or grievance the Association may:

(i) Where the differences arise from the interpretation, application or administration of the Agreement submit the matter for conciliation and/or arbitration in accordance with

Part VIII of the Police Services Act(or any succession provisions thereof), or

(ii) Where the differences arise from other causes refer the dispute, grievance or complaint to the Ontario Civilian Police Commission (OCPC) for determination.

(g) Any time limit specified in this procedure may be enlarged or extended, by the consent of the Parties then so engaged in the procedure.

(h) In addition to or instead of the foregoing provisions, where the complaint or grievance involves:

(i) A Policy grievance regarding a question of the application or interpretation of the provision of this Agreement, or

(ii) A group of employees, or

(iii) The dismissal of any employee, or group of employees;

The grievance may be submitted, within fourteen (14) days by the President of the Association or designee directly to the Deputy Chief and then Sections (c), (d), (e), (f) and (g) shall be followed.

42.03 In all of the steps where time limits are named as days only, it is agreed that Saturdays, Sundays and statutory/declared holidays are excluded.

42.04 Replies to grievances shall be in writing at all stages.

42.05 This complaint and grievance procedure shall be subject to the provisions of the Police Services Act and Regulations thereto.

ARTICLE 43 - JOB SHARING PROGRAM

NOTWITHSTANDING certain provisions in the Uniform Collective Agreement the following Job Sharing Program shall take effect on date of signing, as outlined below.

43.01 **Statement of Principle**

Job sharing arrangements will be available for a limited number of qualified full-time Members. It may be necessary to limit the permissible number of job sharing arrangements and to identify certain positions, which are ineligible for job sharing. Such limitations will be determined after

consultation between the Chief of Police and the President of the Association. If no agreement is reached, the Chief of Police will make the final determination.

43.02 **Eligibility of Job Sharing**

(a) Job sharing arrangements will be for an initial six (6) month period and may be renewed by mutual agreement, in writing, between the job sharing Members, subject to the Chief's approval.

(b) Applicants must be of the same rank and employed in the same position, having at least three (3) years seniority with the Service. Job sharing partners must share the regular hours associated with the position being shared, and must work an average of forty (40) hours bi-weekly at the Division determined by the Chief. Regular hours of work per week will be construed to mean one half (1/2) of the normal scheduled hours of the shared position. Applicants must select a predefined job sharing schedule.

(c) Job sharing allows for two (2) qualified full-time Members to share one full-time job for which they are each qualified to perform so that the pay, benefits and hours of work for a job are, shared approximately equally by the two (2) Members, without reducing the efficiency or productivity of the position.

43.03 **Procedure to Apply**

(a) Requests for job sharing will be made on the prescribed form and then submitted to the Chief of Police or designate, through Human Resources, for consideration. Requests for job sharing must be made jointly by Members and will be considered on an individual basis by the Chief of Police. Any job sharing arrangements approved by the Chief of Police, together with the required joint and individual agreements signed by the Members, will be subject to and governed by the terms of this Agreement.

(b) When a job sharing request has been approved, a written document

confirming the arrangement and identifying the terms of the job sharing program will be prepared and signed by the employer, the Association and the two job sharing Members.

(c) In this written document, each Member will be required to specify their relationship to the job; their hours of work, benefits, job duties and the process used to monitor the successfulness of the arrangement.

(d) Full-time positions that become vacant due to an approved job sharing arrangement will be filled, on a full-time basis, through the normal external recruitment process.

43.04 **Conditions of Job Sharing Arrangements**

(a) Job sharing arrangements will not expire prior to the end of the initial six (6) month term and will only be terminated in accordance with this Article, unless the Chief exercises his/her discretion to grant early termination in exigent circumstances. In the event of early termination, the job sharing partners will be dealt with in accordance with 43.04(b),(c) and (d) below. Following the initial term, job sharing arrangements shall be renewable for one year terms.

(b) In the event one job sharing partner wishes not to renew the job sharing arrangement, such partner will provide no less than thirty (30) days written notice prior to the end of the six (6) month term to the job sharing partner, the Human Resources Branch, the Chief of Police and the President of the Association. Subject to 43.04(c) below, the shared position will revert to full-time status, to be retained by the job sharing partner with the most seniority. The more junior partner will be returned to the position occupied by the Member prior to the commencement of the job sharing, provided such position remains vacant. In the event such position is no longer vacant, the Member will be considered for any vacancies for which they are qualified. There is no guarantee that the junior Member will

be returned to their pre-job sharing platoon, Division, shift and/or assignment.

(c) If the job sharing arrangement terminates as a result of the transfer, promotion, retirement or termination of one job sharing partner, but the Chief of Police and the remaining job sharing partner agree to continue the arrangement, the available half of the position will be posted. If a new qualified candidate is chosen, the arrangement will continue. If a qualified candidate is not found, the remaining job sharing partner will be given thirty (30) days notice that the position is reverting to a full-time position to be retained by the remaining job sharing partner or, if necessary, filled in accordance with the Collective Agreement.

(d) When a vacancy occurs from a Member taking maternity or parental leave, or a leave of absence of more than one month in length, the arrangement will continue if a Member can be found to replace the Member on leave.

The following shall apply:

(i) The remaining job sharing partner will be offered the opportunity to assume full-time hours of the position for the remainder of the maternity or parental leave of the arrangement, whichever ends first; or,

(ii) The remaining Member may locate another Member and jointly make a written request to complete the remainder of the maternity or parental leave of the job sharing arrangement, whichever is shorter. A request in writing must be received by the Human Resources Director within ten (10) days of the notice of vacancy. In the event a request is not received or approved, the Human Resources Branch will post the vacancy to seek an applicant, to complete the reminder of the job sharing arrangement. If the remaining job sharing position is not

filled, the arrangement will be terminated.

(e) The Divisional Commander will evaluate the job sharing program on a continuous basis to ensure that work unit productivity does not deteriorate. If necessary, the Divisional Commander will resolve productivity concerns.

(f) Job sharing arrangements are subject to adjustment or termination as requirements of the Service may dictate. Management will provide thirty (30) days written notification of such adjustment or termination to each job sharing Member, except under exigent circumstances.

(g) Where in conflict, the terms of this Letter of Understanding will supersede the relevant articles in the Collective Agreement. In all other cases the Members are fully covered under the terms and conditions of the Collective Agreement.

(h) The job sharing Members may vary the days worked, within their assigned shifts or block, on one (1) week's written notice and upon consent of their immediate supervisor. Job sharing Members are not eligible for split shifts.

43.05 **Job Sharing Salary**

(a) Each Member will receive gross bi-weekly salary equal to fifty percent (50%) of the amount payable to a full-time Member at the same rank/classification, provided they work fifty percent (50%) of the time worked by a full-time Member of the same rank/classification.

(b) The reconciliation of actual versus required hours worked will be conducted by Finance Payroll for all job sharing Members every six (6) months. Any required adjustment of hours will be made to/from the Member's annual leave, overtime, court time, statutory holidays or sick bank time, on a straight time basis. If there are insufficient hours in these banks, any overpayment will be recovered by deduction from the Member's bi-weekly salary, which deductions the job sharing

partner hereby authorizes as a condition of participating in job sharing.

43.06 **Pro-Rating of Benefits and Perquisites**

The job sharing Member will receive fifty percent (50%) of the Shift Premium, Experience Allowance, Clothing Allowance, Sick Time Credits, and Summer Leave Bonus that would otherwise be applicable had the Member not participated in the job sharing arrangement.

43.07 **W.S.I.B.**

For the purpose of W.S.I.B. claims, compensation will be fifty percent (50%) of the job sharing Member's pay had they been working on a full-time basis.

43.08 **Service**

Service accumulation for seniority shall be pro-rated at fifty percent (50%) for each job sharing participant, such that the Member earns a maximum of six (6) months credited service for each year of service in the job sharing arrangement. The Member understands and acknowledges this will have the effect of lowering the Member's level of benefit, time eligible for the benefit, seniority in the organization and signing provisions for annual leave.

43.09 **Overtime**

Job sharing Members working beyond their full tour of duty will be entitled to overtime as per the Collective Agreement.

43.10 **Call Back**

In the event that a call back situation occurs, job share Members shall not be excluded. This shall be done in a fair and equitable rotational system to be paid as per the Collective Agreement.

43.11 **Court Attendance**

Members who are required to attend court shall be paid in accordance with the Collective Agreement.

43.12 **Statutory Holiday Credits**

Job sharing Members working the compressed work week schedule shall be entitled to fifty percent (50%) of the statutory holiday credits that would have been received by a full-time Member during the job sharing arrangement, as per the Collective Agreement.

43.13 Annual Leave

(a) Members are entitled to earn annual leave at a rate of fifty percent (50%) of their normal entitlement.

(b) When an Member commences an arrangement after the signing of their annual leave, the Member will relinquish fifty percent (50%) of their entitlement for the period of the arrangement.

(c) A Member whose arrangement ends December 31st in a given year shall be allowed to sign their full annual leave entitlement for the following year with their respective platoon and/or work unit.

(d) When an Member terminates the arrangement, they must sign any additional annual leave entitlement at that time. This will be selected from any vacant time on the existing annual leave list.

(e) The Member whose position is being shared or the Member, who remains within their original platoon and/or work unit, will be allowed to sign annual leave in accordance with the Member's individual seniority and the Collective Agreement.

(f) Where a second Member comes from another platoon and/or work unit, they will sign with all other employees of that platoon or work unit in accordance with their individual seniority and applicable collective agreement.

(g) Members working the Compressed Work Week schedule shall apply statutory holidays as annual leave.

(h) Members who over sign their annual leave entitlement, shall reimburse the police service by debiting their personal bank time (i.e. court time, overtime, statutory holiday pay time etc.).

43.14 **Pension**

Pension contributions and credits will be adjusted in accordance with the O.M.E.R.S. Act and Regulations. Members will make contributions based on job sharing salary. Members are not eligible to buy back service through O.M.E.R.S. for Job Sharing periods of time.

43.15 **Sick Leave**

Sick time will be deducted on a per hour basis from the individual's accumulated bank time. Sick time from the Central Sick Leave Bank will be processed as per practice via Association request.

43.16 **Life Insurance**

Group Life and Accidental Death and Dismemberment Insurance are payable at one hundred percent (100%) of the rate of a regular full-time Member. The principle sum shall be two times the regular salary of a full-time Member.

43.17 **Benefit Coverage**

(a) Benefit eligibility and entitlement is subject to the Rules and Regulations of the benefit plans and the benefit contract between the Regional Municipality of Waterloo, the Board and the Carrier.

(b) Members are required to continue to maintain extended health care benefits and dental plans and shall pay the additional fifty percent (50%) of the premium paid by the Board.

43.18 **Association Dues**

Association dues and assessments payable by each job sharing participant will be paid at the rate of one hundred percent (100%) of the regular dues paid by full-time Members.

43.19 **Training**

Job Sharing Members will be required to attend mandatory training days as scheduled with their assigned platoon.

43.20 **Other**

Any other benefit afforded to Members under the Uniform Collective Agreement and not addressed herein, shall be pro-rated for Members in job

sharing arrangements.

ARTICLE 44 - DURATION

44.01 Except as provided herein, the provisions of the Agreement shall have effect from the 1st day of January, 2015 and continue in effect until the 31st day of December, 2019 and thereafter until a new Agreement, Decision or Award takes effect.

Dated and signed at Cambridge, this day of , 2016.

ON BEHALF OF THE WATERLOO
REGIONAL POLICE SERVICES BOARD

Tom Galloway

Madeliene Widmeyer

ON BEHALF OF THE WATERLOO
REGIONAL POLICE ASSOCIATION

Paul Perchaluk

Tim Reparon

Steven Schmelzle

Mike Sullivan

Nancy Dargie

Beverley Walker

A P P E N D I X "A"

SALARY SCHEDULE FOR WATERLOO REGIONAL POLICE

(January 1, 2015 - December 31, 2017)

Rank	Jan. 1, 2015	Jan. 1, 2016	Jan. 1, 2017
Staff Sergeant I (12 months plus)	$116,990.99	$119,564.79	$121,836.52
Staff Sergeant II (0-12 months)	$116,044.26	$118,597.23	$120,850.58
Sergeant I (12 months plus)	$105,384.88	$107,703.35	$109,749.71
Sergeant II (0-12 months)	$104,438.15	$106,735.79	$108,763.77
Detective Constable I	$101,188.32	$103,414.46	$105,379.34
Detective Constable II	$ 98,403.32	$100,568.19	$102,478.99
Collision Reconstruction I	$ 96,546.65	$ 98,670.68	$100,545.42
Collision Reconstruction II	$ 94,689.99	$ 96,773.16	$ 98,611.86
Constables:			
First Class	$ 92,833.32	$ 94,875.65	$ 96,678.29
Second Class	$ 80,465.00	$ 82,235.23	$ 83,797.70
Third Class	$ 73,213.64	$ 74,824.34	$ 76,246.00
Fourth Class	$ 65,306.71	$ 66,743.46	$ 68,011.59
In-Training	$ 49,879.12	$ 50,976.46	$ 51,945.01

*Acting Pay shall be calculated at the salary level of Sergeant II and Staff Sergeant II.

A P P E N D I X "A"

SALARY SCHEDULE FOR WATERLOO REGIONAL POLICE

(January 1, 2018 - December 31, 2019)

Rank	Jan. 1, 2018	July 1, 2019
Staff Sergeant I (12 months plus)	$124,151.41	$126,559.95
Staff Sergeant II (0-12 months)	$123,146.74	$125,535.79
Sergeant I (12 months plus)	$111,834.95	$114,004.55
Sergeant II (0-12 months)	$110,830.28	$112,980.39
Detective Constable I	$107,381.55	$109,464.74
Detective Constable II	$104,426.09	$106,451.95
Collision Reconstruction I	$102,455.79	$104,443.42
Collision Reconstruction II	$100,485.48	$102,434.90
Constables:		
First Class	$ 98,515.18	$100,426.37
Second Class	$ 85,389.86	$ 87,046.42
Third Class	$ 77,694.67	$ 79,201.95
Fourth Class	$ 69,303.81	$ 70,648.30
In-Training	$ 52,931.97	$ 53,958.85

*Acting Pay shall be calculated at the salary level of Sergeant II and Staff Sergeant II.

A P P E N D I X "B"

LETTER OF UNDERSTANDING

B E T W E E N :

THE WATERLOO REGIONAL POLICE SERVICES BOARD,
Hereinafter referred to as the **"BOARD"**,
of the **FIRST PART**,

- and -

THE WATERLOO REGIONAL POLICE ASSOCIATION,
Hereinafter referred to as the **"ASSOCIATION"**,
of the **SECOND PART**,

The Parties agree as follows:

1. The complement of Officers with the rank of Sergeant or Staff Sergeant will be established annually on the recommendation of the Chief of Police. The Association will be given at least four (4) weeks advance notice of the Chief's recommendation in order to make submissions thereon to the Board.
2. The complement of Officers with the rank of Sergeant or Staff Sergeant is set at a minimum of 105 for the year 1996 and until varied pursuant to paragraph 1.

ON BEHALF OF THE WATERLOO REGIONAL POLICE SERVICES BOARD	ON BEHALF OF THE WATERLOO REGIONAL POLICE ASSOCIATION
Roger Hollingworth	T. Thornley
	R. Todd Loveday

A P P E N D I X "C"

VOLUNTEERS

The Board and the Association recognize that volunteers can provide a valuable contribution to the Police Service. The Board and the Association agree that:

(a) A volunteer is a member of the public who donates time without monetary compensation;

(b) Volunteer usage must be monitored to ensure the professionalism of the Service is not eroded;

(c) Volunteers will not be used to perform duties normally provided by Members of the Bargaining Unit;

(d) The use of volunteers will not result in the layoff or displacement of any Bargaining Unit Member;

(e) The Association will be given prior notice of all future use of volunteers in the Police Service.

A P P E N D I X "D"

LETTER OF UNDERSTANDING

10-35 Day/Afternoon/Night Shift Schedule

BETWEEN:

The Waterloo Regional Police Services Board

- AND -

The Waterloo Regional Police Association

The goal of this Letter of Understanding is to define the terms of implementation for a new shift schedule, in accordance with the Joint Shift Schedule Committee Terms of Reference, dated May 6, 2015, which is attached to this Letter of Understanding as Appendix "A".

The 10-35 Day/Afternoon/Night Shift Schedule rotation , in graphic form, is attached to this Letter of Understanding as Appendix "B".

The following terms relate to all Divisions, Branches and Units where sworn members are working the aforementioned 10-35 Schedule, unless otherwise specified.

Staffing Complement

The minimum Neighbourhood Policing Patrol staffing complement as of and after January 3, 2016, will be 346 fully deployable officers, comprised of 288 Constables, 43 Sergeants and 15 Staff Sergeants.

Should an absence cause the number of deployable officers to fall under 346 and the absence is expected to or known to exceed 90 calendar days, the Chief shall ensure that this absence is filled within 90 calendar days of the start date of the absence. If an absence is of unknown duration and has reached 55 calendar days in length, the Chief shall make arrangements to ensure that the absence is filled within 90 calendar days of the start date of the absence.

Any member temporarily transferred to Neighbourhood Policing Patrol to maintain the aforementioned minimum complement shall be entitled to continue to receive any applicable bonus, as per Article 5 of the Uniform Collective Agreement.

The President of the WRPA shall receive on or about the beginning of each month an updated copy of the Service's Neighbourhood Policing Patrol arena list.

Shift Hours

Dayshifts and afternoon shifts shall be ten hours in length. Nightshifts (or the corresponding 7 shifts of dayshift for Branches that do not work nightshifts) shall be 8.5 hours in length.

Shifts for Patrol constables shall be:

Day Shift	06:00 - 16:00
Day Shift	07:00 - 17:00
Afternoon Shift	13:30 - 23:30
Afternoon Shift	17:00 - 03:00
Night Shift	20:00 - 04:30
Night Shift	22:30 - 07:00

Shifts for Patrol Sergeants shall be:

Day Shift	06:00 - 16:00
Day Shift	07:00 - 17:00
Afternoon Shift	13:00 - 23:00
Afternoon Shift	16:30 - 02:30
Night Shift	20:00 - 04:30
Night Shift	22:00 - 06:30

Shifts for Patrol Staff Sergeants shall be:

Day Shift	06:00 - 16:00
Afternoon Shift	12:30 - 22:30
Night Shift	22:00 - 06:30

Lunch Periods

Lunch periods shall be in accordance with Article 15.01 of the Uniform Collective Agreement with the following amendment:

> **Members working the 10-35 schedule will be allowed a 75-minute lunch period per shift. This amendment shall also apply to members of the Core teams.**

Annual Leave and Statutory Leave Time

North and South Division Patrol Staff Sergeants and Sergeants shall sign annual leave and statutory leave time together in one column per platoon.

The Central Division Patrol Staff Sergeant and the designated Cellblock Sergeant shall sign annual and statutory leave together in one column per platoon. The remaining Central Division Patrol Sergeants shall sign together in one column per platoon.

Constables shall sign annual leave and statutory leave time within their divisional platoon using the ratio of one column per seven officers assigned.

The block of 7 nightshifts (or 7 dayshifts for those branches that do not work nightshifts) shall be broken into two consecutive blocks for holiday signing purposes as follows:

Thursday-Sunday	34 hours
Monday-Wednesday	25.5 hours

In order to accommodate the signing of blocks of 8.5 hour shifts, wherever Article 21.02 of the Uniform Collective Agreement references the use of 56 hours, this shall be deemed to mean 59.6 hours. These hours will be taken as time off in a block, as per the terms of this Article.

In-Service Training

The Training Branch shall develop a schedule that avoids unnecessary in-service training during the months of June through September. This training shall be delivered during regularly scheduled shifts.

Court Attendance

When a member is required to attend court between consecutively scheduled shifts, and the member's hours of work conclude beyond 03:20 hours, the member shall be entitled to 8 consecutive rest hours (Court Break) after the conclusion of the court appearance before reporting for duty.

When a member is required to attend an afternoon court appearance, as defined in Article 10.01 of the Uniform Collective Agreement, and is scheduled to work the

first night shift of a block on the same date, the members shall be entitled to 6 consecutive rest hours (Court Break) after the conclusion of the court appearance before reporting for duty.

Court Break hours shall not be debited from a member's annual leave, statutory holiday, overtime or sick bank.

A member who is entitled to a Court Break shall attend and work the remainder of their scheduled shift following the Court Break. A member who does not report for duty for this shift, either due to illness or approved time off, shall be debited hours from the appropriate bank equivalent to the full schedule shift.

Court Break provisions shall apply to members of the Core Teams.

The Court Break provisions contained herein shall supersede the provisions of Article 10.05 of the Uniform Collective Agreement.

The provisions of this Letter of Understanding shall be binding on the parties and enforceable through grievance and arbitration under the Uniform Collective Agreement.

Dated this 9th day of September 2015, in the City of Cambridge.

ON BEHALF OF THE WATERLOO REGIONAL POLICE ASSOCIATION

Paul Perchaluk, President

Tim Reparon, Vice President

ON BEHALF OF THE WATERLOO REGIONAL POLICE SERVICES BOARD

Tom Galloway, Chair

Madeliene Widmeyer, Executive Assistant

A P P E N D I X "D"

LETTER OF UNDERSTANDING

10-35 Day/Afternoon/Night Shift Schedule

BETWEEN:

The Waterloo Regional Police Services Board

- AND -

The Waterloo Regional Police Association

The goal of this Letter of Understanding is to define the terms of implementation for a new shift schedule, in accordance with the Joint Shift Schedule Committee Terms of Reference, dated May 6, 2015, which is attached to this Letter of Understanding as **Appendix "A."**

The 10-35 Day/Afternoon/Night Shift Schedule rotation, in graphic form, is attached to this Letter of Understanding as **Appendix "B."**

The following terms relate to all Divisions, Branches and Units where sworn members are working the aforementioned 10-35 Schedule, unless otherwise specified.

Staffing Complement

The minimum Neighbourhood Policing Patrol staffing complement as of and after January 3, 2016, will be 346 fully deployable officers, comprised of 288 Constables, 43 Sergeants and 15 Staff Sergeants.

Should an absence cause the number of deployable officers to fall under 346 and the absence is expected to or known to exceed 90 calendar days, the Chief shall ensure that this absence is filled within 90 calendar days of the start date of the absence. If an absence is of unknown duration and has reached 55 calendar days in length, the Chief shall make arrangements to ensure that the absence is filled within 90 calendar days of the start date of the absence.

Any member temporarily transferred to Neighbourhood Policing Patrol to maintain the aforementioned minimum complement shall be entitled to continue to receive any applicable bonus, as per Article 5 of the Uniform Collective Agreement.

The President of the WRPA shall receive on or about the beginning of each month an updated copy of the Service's Neighbourhood Policing Patrol arena lists.

Shift Hours

Dayshifts and afternoon shifts shall be ten hours in length. Nightshifts (or the corresponding 7 shifts of dayshift for Branches that do not work nightshifts) shall be 8.5 hours in length.

Shifts for Patrol Constables shall be:

Day Shift	06:00 - 16:00
Day Shift	07:00 - 17:00
Afternoon Shift	13:30 - 23:30
Afternoon Shift	17:00 - 03:00
Night Shift	20:00 - 04:30
Night Shift	22:30 - 07:00

Shifts for Patrol Sergeants shall be:

Day Shift	06:00 - 16:00
Day Shift	07:00 - 17:00
Afternoon Shift	13:00 - 23:00
Afternoon Shift	16:30 - 02:30
Night Shift	20:00 - 04:30
Night Shift	22:00 - 06:30

Shifts for Patrol Staff Sergeants shall be:

Day Shift	06:00 - 16:00
Afternoon Shift	12:30 - 22:30
Night Shift	22:00 - 06:30

Lunch Periods

Lunch periods shall be in accordance with Article 15.01 of the Uniform Collective Agreement with the following amendment:

> **Members working the 10-35 schedule will be allowed a 75-minute lunch period per shift. This amendment shall also apply to members of the Core teams.**

Annual Leave and Statutory Leave Time

North and South Division Patrol Staff Sergeants and Sergeants shall sign annual leave and statutory leave time together in one column per platoon.

The Central Division Patrol Staff Sergeant and the designated Cellblock Sergeant shall sign annual leave and statutory leave together in one column per platoon. The remaining Central Division Patrol Sergeants shall sign together in one column per platoon.

Constables shall sign annual leave and statutory leave time within their divisional platoon using the ratio of one column per seven officers assigned.

The block of 7 nightshifts (or 7 dayshifts for those branches that do not work nightshifts) shall be broken into two consecutive blocks for holiday signing purposes as follows:

Thursday-Sunday	34 hours
Monday-Wednesday	25.5 hours

In order to accommodate the signing of blocks of 8.5 hour shifts, wherever Article 21.02 of the Uniform Collective Agreement references the use of 56 hours, this shall be deemed to mean 59.5 hours. These hours will be taken as time off in a block, as per the terms of this Article.

In-Service Training

The Training Branch shall develop a schedule that avoids unnecessary in-service training during the months of June through September. This training shall be delivered during regularly scheduled shifts.

Court Attendance

When a member is required to attend court between consecutively scheduled shifts, and the member's hours of work conclude beyond 03:20 hours, the member shall be entitled to 8

consecutive rest hours (Court Break) after the conclusion of the court appearance before reporting for duty.

When a member is required to attend an afternoon court appearance, as defined in Article 10.01 of the Uniform Collective Agreement, and is scheduled to work the first night shift of a block on the same date, the member shall be entitled to 6 consecutive rest hours (Court Break) after the conclusion of the court appearance before reporting for duty.

Court Break hours shall not be debited from a member's annual leave, statutory holiday, overtime or sick bank.

A member who is entitled to a Court Break shall attend and work the remainder of their scheduled shift following the Court Break. A member who does not report for duty for this shift, either due to illness or approved time off, shall be debited hours from the appropriate bank equivalent to the full scheduled shift.

Court Break provisions shall apply to members of the Core Teams.

The Court Break provisions contained herein shall supersede the provisions of Article 10.05 of the Uniform Collective Agreement.

The provisions of this Letter of Understanding shall be binding on the parties and enforceable through grievance and arbitration under the Uniform Collective Agreement.

Dated this 9th day of September 2015, in the City of Cambridge.

ON BEHALF OF THE WATERLOO REGIONAL POLICE ASSOCIATION

Paul R. Perchaluk

Paul Perchaluk, President

Tim Reparon, Vice President

ON BEHALF OF THE WATERLOO REGIONAL POLICE SERVICES BOARD

Tom Galloway, Chair

Madeliene Widmeyer

Madeliene Widmeyer, Executive Assistant

(Appendix A)

Joint Shift Schedule Committee
Terms of Reference

GOAL

The goal of the Joint Shift Schedule Committee (JSSC) is to recommend three potential patrol shift schedules to be presented to the Waterloo Regional Police Association (WRPA) membership, with one permanent schedule to be selected through an elimination vote process.

GUIDING PRINCIPLES

Any recommended schedule should:

- Provide an adequate and safe level of staffing at all times;
- Include all Neighbourhood Policing Staff Sergeants, Sergeants and Constables;
- Recognize the importance of platoon members being able to work together as a team;
- Provide reasonable hours of work and lunch periods appropriate for the length of shift being worked;
- Provide a means for rotating days off;
- Allow members a sufficient amount of time off between each shift including court breaks;
- Provide training days within scheduled working hours; and
- Average approximately 2080 hours of work in a calendar year;

COMMITTEE MEMBERSHIP

Four Waterloo Regional Police Service (WRPS) members selected by the Chief
Four members selected by the WRPA President

PROCESS

1. The Committee members will be seconded on a full-time basis for an initial period of three weeks beginning May 4, 2015. Any potential extension of the secondment will be evaluated thereafter.
2. The Committee will develop and evaluate shift schedule options and best practices.
3. The Committee will select three shift schedule options for consideration.
4. The Committee will present the three shift schedule options to the Senior Leadership Team and the Executive of the WRPA for approval.
5. Upon approval of the recommended three shift schedule options, there will be a service-wide communication of the options. The parties agree to develop, implement and support a comprehensive joint communication strategy, which will assure that all members will be given the opportunity for a full and complete understanding of the three shift schedule options.
6. The three shift schedule options will be presented by the WRPA Executive to all members who are governed by the Uniform Collective Agreement for an elimination vote process which shall

be completed prior to the end of June 2015. The first round of voting will eliminate the shift option that has garnered the least amount of support. The second and final round of voting will determine which of the two schedules shall be adopted.

7. The WRPS and WRPA will agree upon a percentage of votes that must be cast in favour of one of the schedules to be considered sufficient for ratification. This percentage shall be greater than just a simple majority (i.e. a greater percentage than just a single vote more than half of the votes cast).
8. The ratified shift schedule will be presented by the Chief to the Police Services Board for consideration and approval.
9. Should the agreed upon threshold percentage of votes required for ratification not be reached, the WRPS Executive Leadership Team and WRPA Executive will meet to consider an appropriate course of action.
10. The Committee will make recommendations on annual leave signing practices with particular consideration to how the length of any recommended shift may affect members' abilities to effectively maximize the selection of annual leave in full blocks.
11. Once ratified, the approved shift schedule shall be formally adopted through the completion of a Letter of Understanding.
12. The approved schedule shall be implemented in January 2016.

Dated this 6th day of May, 2015 in the City of Cambridge.

ON BEHALF OF THE WATERLOO REGIONAL POLICE SERVICE

Bryan M. Larkin, Chief of Police

ON BEHALF OF THE WATERLOO REGIONAL POLICE ASSOCIATION

Paul Perchaluk, President

Tim Reparon, Vice President

ON BEHALF OF THE WATERLOO REGIONAL POLICE SERVICES BOARD

Tom Galloway, Chair

M. Widmeyer

Madeliene Widmeyer
Executive Assistant

10-35 DAN 8/10 Hour Schedule
2016 WRPS PATROL SHIFTS

(Appendix B)

	Rotation	Period	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S
10-35 DAN	35 Days	A												a	a	a	a			d	d	d			a	a	a			d	d	d	d				
		B	d	d	d																a	a	a	a			d	d	d			a	a	a			d
		C		a	a	a			d	d	d	d																a	a	a	a			d	d	d	
		D	a			d	d	d			a	a	a			d	d	d	d																a	a	a
		E					a	a	a	a			d	d	d			a	a	a			d	d	d	d												

DECEMBER	2015	20	21	22	23	24	25	26	27	28	29	30	31					1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
JANUARY		24	25	26	27	28	29	30	31					1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23
FEBRUARY		28	29							1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27
MARCH				1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31		
APRIL		3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30						1	2
MAY		8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31					1	2	3	4	5	6	7
JUNE	2016	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30						1	2	3	4	5	6	7	8	9	10	11
JULY		17	18	19	20	21	22	23	24	25	26	27	28	29	30	31					1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
AUGUST		21	22	23	24	25	26	27	28	29	30	31					1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
SEPTEMBER		25	26	27	28	29	30						1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
OCTOBER		30	31					1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29
NOVEMBER				1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30			
DECEMBER		4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31						1	2	3
JANUARY	2017	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31					1	2	3	4	5	6	7

SHIFT HOURS:

Patrol Constable	
d	0600-1600
d	0700-1700
a	1330-2330
a	1700-0300
	2000-0430
	2230-0700

Patrol Sergeant	
d	0600-1600
d	0700-1700
a	1300-2300
a	1630-0230
	2000-0430
	2200-0630

Patrol Staff Sergeant	
d	0600-1600
a	1230-2230
	2200-0630

A P P E N D I X "E"

SHIFT SCHEDULES - UNIFORM

BETWEEN:

The Waterloo Regional Police Services Board, hereinafter referred to as the "Board" of the FIRST PART,

-AND-

The Waterloo Regional Police Association, hereafter referred to as the "Association" of the SECOND PART.

The Parties agree as follows:

NOTWITHSTANDING certain provisions in the Uniform Collective Agreement, which pertain to "Shift Schedules" or "Hours of Work", the following shall take effect on date of signing, as outlined below:

I. Where a Branch has identified a need to work an alternate shift schedule, approved by the Chief or designate and the Association, the alternate shift shall include consecutive days worked and days off. A member shall work the same (10) ten continuous hours per shift in each working block. The work week shall average (40) forty hours. The defined alternate shift schedule shall include the definition of days, afternoons, and/or night shifts.

II. Each newly agreed to work schedule shall be implemented on a trial basis pending an evaluation of its effectiveness after a (6) six month period. This evaluation shall be reviewed by the Chief of Police or designate and the Association, to determine the continuation of the schedule. Where multiple shifts are required, i.e. days, afternoons and/or nights, both parties shall agree upon the shift definition. **The agreed to definition of this shift will be documented in Human Resources.**

III. Members may be permitted to work (10) ten hour shifts for (4) four consecutive days as approved by the Chief of Police or designate, subject to the exigencies of the service/branch.

IV. The supervisor in charge of the Branch will ensure at all times that the schedule is posted at least (35) thirty-five days in advance.

V. Employees will be entitled to all benefits and bonuses otherwise provided for in the Collective Agreement.

Dated this 11th day of February, 2004.

ON BEHALF OF THE WATERLOO REGIONAL POLICE SERVICES BOARD	ON BEHALF OF THE WATERLOO REGIONAL POLICE ASSOCIATION
T. Galloway	Roger Goulard
J.E. Kissner	R. Todd Loveday

TAB B

THIS IS EXHIBIT "B" REFERRED TO IN THE AFFIDAVIT OF LAURA J. FREITAG SWORN BEFORE ME THIS 9th **DAY OF** February**,** 2021**.**

A COMMISSIONER FOR TAKING AFFIDAVITS

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

Head Office:
200 Front Street West
Toronto, Ontario
Canada M5V 3J1

Siège social :
200, rue Front Ouest
Toronto, Ontario
Canada M5V 3J1

Telephone / Téléphone :
416-344-1000
1-800-387-0750
TTY / ATS : 1-800-387-0050

Fax / Télécopieur :
416-344-4684
1-888-313-7373

July 12, 2017

HEATHER HENNING
WATERLOO REGIONAL POLICE SERVICE
200 MAPLE GROVE ROAD
CAMBRIDGE ON N3H 5M1
CANADA

Claim No.: 30505408
Worker Name: KELLY DONOVAN
Date of Injury/Illness: 01/Feb/2017
Injury/Illness: Psychological Trauma

Dear Ms. Henning,

To keep you informed of the claim status, attached is a copy of a letter sent to Kelly Donovan.

I have made this decision based on the information available to me. If you do not understand the decision, or if you do not agree with the conclusions reached, please call me. I would be pleased to discuss your concerns.

It is important to know that the *Workplace Safety and Insurance Act* (the *Act*) imposes time limits on objections. If you want to object to my decision, the Act requires that you notify me in writing no later than January 12, 2018.

To submit this written appeal notice, please go to our website at www.wsib.on.ca and complete the Intent to Object Form. There is an instruction sheet included on the site which also lists organizations that can provide free representation. You can access the form and instruction sheet by typing "appeal" into the search box on the website and accessing the Worker Appeals or Employer Appeals page. They are also available in the "Forms" section of the website. If you do not have access to our website, you may call our toll free number at 1-800-387-0750 and request the form be mailed to you.

Yours sincerely,

Operations Division
Tel: 416-344-1000 or 1-800-387-0750

RECEIVED
JUL 20 2017
Human Resources Branch

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

Head Office:
200 Front Street West
Toronto, Ontario
Canada M5V 3J1

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416-344-1000
1-800-387-0750
TTY / ATS : 1-800-387-0050

Fax / Télécopieur :
416-344-4684
1-888-313-7373

July 12, 2017

KELLY DONOVAN
11 DANIEL PL
BRANTFORD ON N3R 1K6
CANADA

Claim No.: 30505408
Worker Name: KELLY DONOVAN
Date of Injury/Illness: 01/Feb/2017
Injury/Illness: Psychological Trauma

Dear Ms. Donovan,

Subject: Initial Entitlement (Eligibility to Benefits)

I am writing to confirm the allowance of your claim for Posttraumatic Stress Disorder (PTSD) as verbally communicated to you on July 12, 2017.

Details of the Case:

Your claim was established in April 2017 when we received your Worker's Report of Injury/Disease, as well as an Employer's Report of Injury/Disease. You were employed as a police officer with Waterloo Regional Police Service from December 19, 2010 until you resigned effective June 25, 2017. You are claiming you developed posttraumatic stress disorder as a result of your workplace duties, and you have been off work since February 27, 2017 due to your PTSD symptoms. A June 22, 2017 assessment report from your psychologist confirmed a diagnosis of PTSD.

Criteria:

The *Workplace Safety and Insurance Act* (WSIA) was amended as of April 6, 2016 and new provisions were introduced which establish presumptive entitlement to benefits for first responders and other designated workers diagnosed with PTSD. Operational Policy Manual (OPM) document 15-03-13 titled, Posttraumatic Stress Disorder in First Responders and Other Designated Workers, guides decision makers in the implementation of these legislative changes.

The policy provides that if a first responder or other designated worker is diagnosed with PTSD by a psychiatrist or psychologist, and if certain criteria have been met, the PTSD is presumed to have arisen out of and in the course of the first responder's or other designated worker's employment, unless the contrary is shown.

Decision:

The information in your claim has been carefully considered. It is confirmed you are a first responder as defined in OPM 15-03-13 and you were diagnosed with PTSD by a psychologist on June 22, 2017. Therefore, your claim for PTSD is allowed by presumption and considered to have arisen out of and in

the course of your employment noting the criteria under the policy have been satisfied. Your claim is allowed for healthcare benefits. This would include 12 initial counselling sessions.

The medical information on file supports that you were unable to work in any capacity; and were clinically authorized off work. As a result, you are entitled to full loss of earnings (LOE) benefits from February 27, 2017 up to June 24, 2017. I understand you received advances from your employer, which will be reimbursed to the employer by the WSIB.

Also, your WSIB Nurse Consultant, Missa Canave, may contact you in the future, to facilitate the recommended treatment with your psychologist.

I have made this decision based on the information available to me. If you do not understand the decision, or if you do not agree with the conclusions reached, please call me. I would be pleased to discuss your concerns.

It is important to know that the Workplace Safety and Insurance Act (the Act) imposes time limits on objections. If you want to object to my decision, the Act requires that you notify me in writing no later than January 12, 2018.

To submit this written appeal notice, please go to our website at www.wsib.on.ca and complete the Intent to Object Form. There is an instruction sheet included on the site which also lists organizations that can provide free representation. You can access the form and instruction sheet by typing "appeal" into the search box on the website and accessing the Worker Appeals or Employer Appeals page. They are also available in the "Forms" section of the website. If you do not have access to our website, you may call our toll free number at 1-800-387-0750 and request the form be mailed to you.

Yours sincerely,

Jane Drake, TMS EA / STCM
Case Manager
Traumatic Mental Stress Program

Tel: 416-344-5205 or 1-800-387-0750

Copy To: Waterloo Regional Police

TAB C

THIS IS EXHIBIT "C" REFERRED TO IN THE AFFIDAVIT OF LAURA J. FREITAG SWORN BEFORE ME THIS 9th DAY OF February, 2021.

A COMMISSIONER FOR TAKING AFFIDAVITS

APPEALS SERVICES DIVISION
PRACTICE & PROCEDURES

APPEALS SERVICES DIVISION

Fax: 416-344-3600

Phone: 416-344-1014

Toll-free: 1-800-387-0773

TTY: 1-800-387-0050

Website: wsib.on.ca

wsib ONTARIO

Effective January 1, 2018

KEY CHANGES TO THE ASD PRACTICE & PROCEDURES

Effective January 1, 2018

This procedural document is reviewed and updated, typically on an annual basis. The updated document will remain in effect until the date of the next review. In this version, dated January 1, 2018, we have updated information about Objection Intake, further clarified how the decisions regarding methods of resolution are made, and have begun to make improvements in the overall language of the document. For previous changes made to the Practice and Procedures document, **SEE APPENDIX B on page 64.**

Issue	Description	Page(s)
Objection Intake	The process for objection intake has been updated and now includes a review by the decision maker's manager.	**6**
Methods of Resolution and Criteria for Hearings in Writing vs. Oral Hearings	The information in this practice guideline was re-organized to provide a better flow of process, further clarification around how determining method of resolution is done, and additional criteria and examples for the factors taken into account. The ASD will use this new guideline effective January 1, 2018. Traumatic Mental Stress (TMS) was removed from the Oral hearings list "B" on page 22. Complex non-organic conditions on this list are meant to include TMS and Chronic Mental Stress.	**17-22**
Reconsiderations in the Appeals Services Division	This guideline was updated to clarify that when a de novo decision is needed, the timelines associated with the appeals process will apply.	**52-55**

Table of contents

Glossary of Acronyms

The following items will be described throughout this document using the acronyms/terms set out below:

WSIB	Workplace Safety and Insurance Board	**ARO**	Appeals Resolution Officer
WSIA	Workplace Safety and Insurance Act	**Registrar**	Appeals Registrar
WSIAT	Workplace Safety and Insurance Appeals Tribunal	**Coordinator**	Appeals Coordinator
		WPP	Workplace Party(ies)
ASD	Appeals Services Division		

Definition of Terms

Workplace party(ies)	The worker who has a wsib claim and the employer for that worker.
Front-line decision maker	This is the individual that made the initial decision on an issue of entitlement or related to an employer account.
Appeals Resolution Officer	The final decision maker of the WSIB.
Appeals Registrar	The primary contact for workplace parties and their representatives. Unrepresented workers and employers will have greater opportunity to discuss the appeals process with the appeals registrar at the beginning of the process. This role is responsible for reviewing the readiness of the appeal, making determinations on the appropriate appeal method of resolution, addressing disclosure issues, and making time limit decisions.
Appeals Coordinator	This role is responsible for all pre hearing activities of a file prior to assignment to an aro, and for scheduling oral hearings as required.
Objection	When a WPP receives a decision that they disagree with they may advise the front-line decision maker that they wish to object to that decision.
Intent to Object Form	This is a form available on the wsib website that allows the WPP to provide new information that might alter a decision by the front-line decision maker as well as to bookmark their objection within the time required by the workplace safety and insurance act. To bookmark an objection is to indicate disagreement with a decision made by a front-line decision maker; if it is done within the time frame required by the workplace safety and insurance act the WPP can move forward with their objection whenever they are ready to do so.
Objecting Party	The WPP or representative who disagrees with the decision made by the front-line decision maker and initiates an objection (appeal) to a wsib decision.
Appeal Readiness Form	The form that the WPP can complete and send to the wsib. It allows the parties to make their argument about their appeal and indicate their opinion on how the appeal should be resolved.

Respondent Form	The form that a participant (non-objecting party) completes to respond to the objecting party's argument about the appeal, and to indicate their opinion on how their appeal should be resolved.
Appeal	The process that occurs when a WPP has completed an intent to object form, an appeal readiness form and the file is registered in the appeals services division to resolve.
Participant	The WPP who has completed a participant form and wishes to participate in the appeal of the objecting party.
Respondent	The participant becomes the respondent for the purposes of the appeals process; they are responding to the arguments/testimony made by the objecting party.
Hearing in Writing	An appeal resolved by an aro based on the evidence found in the claim file and the appeal readiness form and respondent form.
Oral Hearing	The appeal participants attend a wsib office and appear in person (or by teleconference) before the aro. The worker and witnesses, and employer if participating, answer questions under oath and oral arguments are made by the participants.
Employer Account Appeals	Those appeals dealing with classification, transfer of cost, independent operator and worker status, or other revenue related issues.

Calculation of Time

Time in this document, unless otherwise noted, is delineated in calendar days. When a due date falls on a weekend or a holiday, the due date will be extended to the next weekday or the next day that is not a holiday.

Mission Statement

The mission of the Workplace Safety and Insurance Board (WSIB) appeals system is to consider and reach final resolutions to claims and employer account appeals. Resolutions shall be consistent with the Workplace Safety and Insurance Act (WSIA) and WSIB policy, and shall be timely, transparent and fair in dealing with appeals from both workers and employers.

The Appeals Services Division (ASD) will ensure service excellence by demonstrating a responsive appeals system that is committed to providing independent and transparent decision-making services by one independent decision maker (ARO). The ASD will provide two resolution methods, hearings in writing and oral hearings.

Oral hearings, when requested and found necessary by the ASD, are held at locations throughout Ontario to ensure the Workplace Parties (WPP), their representatives, and any relevant witnesses are not unduly inconvenienced or the location of the hearing does not form a barrier to a party's right to a fair and timely appeals process.

Statutory Authority

Section 119 of the WSIA states:

- *The Board shall make its decision based upon the merits and justice of a case and it is not bound by legal precedent.*
- *If, in connection with a claim for benefits under the insurance plan, it is not practicable to decide an issue because the evidence for and against it is approximately equal in weight, the issue shall be resolved in favour of the person claiming benefits.*
- *The Board shall give an opportunity for a hearing.*
- *The Board may conduct hearings orally, electronically or in writing.*

Section 131(1) of the WSIA states:

> *The Board shall determine its own practice and procedure in relation to applications, proceedings and mediation. With the approval of the Lieutenant Governor in Council, the Board may make rules governing its practice and procedure.*

ASD Practice and Procedures

The ASD has exercised its powers under s.131(1) to adopt the following document. The Appeals Services Division Practice & Procedures document is available on the WSIB website: www.wsib.on.ca.

For specific information regarding employer account appeals, **SEE PRACTICE GUIDELINE on EMPLOYER ACCOUNT APPEALS on page 61.**

This procedural document is reviewed and updated, typically on an annual basis. The updated document will remain in effect until the date of next review.

Key changes in this version are outlined at the beginning of the document.

PRACTICE GUIDELINE: Intent to Object – Handling By Operations

Adverse Decision

When a front-line decision maker makes an adverse decision, they will communicate that decision verbally when possible and in writing. A written decision will invite the WPP that has received the adverse decision to provide any additional information that might alter the decision, and will also advise the party of the time limit to object to the decision. **SEE PRACTICE GUIDELINE on TIME LIMIT TO OBJECT on page 7.**

If concerns are raised about the decision, the decision maker will review the concerns with the party, explain the rationale for the decision and address/review any new information that may be provided. If the decision is not changed, the party can then proceed with their objection.

Intent to Object and Possible Reconsideration

If the objection is to an Employer Account issue, **SEE PRACTICE GUIDELINE on EMPLOYER ACCOUNT APPEALS on page 61.**

For all other issues, the party/representative is required to obtain a blank Intent to Object Form from the WSIB website (www.wsib.on.ca), through the mail, or, upon request, by calling the WSIB at 416-344-1000 or 1-800-387-0750.

This form is intended to give parties an early opportunity to provide new information that might alter a decision by the front-line decision maker as well as to bookmark their objection. To bookmark an objection is to indicate disagreement with a front-line decision within the time limit set out in the WSIA.

The form requires the following information to be provided:

- Claim identifiers (worker name and claim number)
- Identification of the objecting party
- General information about the objecting party
- Representative contact information
- Date of decision(s) being objected to and the issues in dispute contained in the decision letters
- Indication of whether there is new information or additional explanation provided
- Signature and date

The form is structured so that only the first page must be returned; page 2 is optional and may be completed if the party has new information or would like to provide reasons for the objection.

The completed Intent to Object Form must be mailed/faxed to the WSIB within the Section 120 specified time limit to object. **SEE THE PRACTICE GUIDELINE ON TIME LIMIT TO OBJECT on page 7.**

While the WSIB prefers to receive the Intent to Object Form, it will continue to accept a letter of objection.

Reconsideration Stage in Operations

If the objecting party returns a completed Intent to Object Form, the original Operations decision maker will review the form for completeness and any new information that is provided. Where appropriate, the decision maker will reconsider the original decision. Where new issues are raised in the Intent to Object Form, the

decision maker will address those issues as well. The reconsideration process will generally take place within 14 days, or longer, if additional information must be obtained.

If the decision is altered, the objection process will not continue.

If the adverse decision is confirmed, a reconsideration letter is sent. The reconsideration letter should include the same information as the original decision, except without the inclusion of a time limit to object paragraph. The file is then referred to the Access Department.

Access

For a claim objection, the Access Department will provide the party/representative with access to the file record (in accordance with established WSIB policy) along with an Appeal Readiness Form and instruction sheet. An appeal will not proceed until all access issues have been resolved either through consent or by order of the WSIB or by WSIAT (on appeal). The non-objecting party will be sent a Participant Form. The non-objecting party will not be provided with access to the file record at this time. Access will be provided at a later time (i.e., once the Appeal Readiness Form is received). The non-objecting party (the Respondent) will be provided with a Respondent Form (along with access to the file record) and will be granted 45 days (plus 5 days for mailing) to complete and submit the form.

In the case of an employer account objection, access to the firm file is not provided automatically, but the employer/representative is given the opportunity to obtain access if they choose, through the firm file access area. The contents of a firm file are comprised primarily of correspondence between the WSIB and the employer, which makes the need for access to that information less likely.

For transfer of cost employers, (an employer, not the accident employer, who has been charged all or part of the claims costs due to the negligence of one of their employees), access is given to enable effective participation in the decision-making process. Access to transfer of cost employers is provided in the same manner as regular employers, except the worker can object to the disclosure of any information in the claim file, not just health care information.

Appeal Readiness Form

If the objecting party has completed and returned Intent to Object Form to the WSIB, there is no time limit attached to the completion of an Appeal Readiness Form.

If the objecting party has additional information relevant to the issue or is of the view the matter could be considered under another policy, and neither has been considered by the Operations decision maker, they should provide that information/argument to the original decision maker to consider. Only when all issues have been fully considered in Operations should the objecting party advance their appeal to the ASD by submitting an Appeal Readiness Form.

When the objecting party has gathered all of the information related to their appeal, has resolved any issues with access to medical file copies and is available to attend an oral hearing within 90 days if that is the method of resolution they have requested, they should complete the Appeal Readiness Form and fax or mail it to the WSIB. The objecting party may attach a written submission with the Appeal Readiness Form to further support their appeal.

Objection Intake

The Objection Intake Team (OIT) will receive and track the Appeal Readiness Form and review it for administrative completeness. OIT will then refer all Appeal Readiness Forms to the originating decision maker's manager for review of the decision and approval to proceed with referral to ASD.

In cases where the decision maker's manager has determined that the file is not appeal ready due to gaps in the file record or when new information has been provided, they will communicate this to the parties and will ensure that reconsiderations, where warranted, are completed in a timely manner.

When OIT is notified the appeal is ready to proceed, they will complete an Appeals Referral Form and will send the file to the ASD. The objecting and participating party (respondent) will be sent a letter advising of the referral.

PRACTICE GUIDELINE: Time Limit to Object

Overview

Section 120 of the WSIA establishes time limits to object to Board decisions. There is a 30-day time limit to object to a WSIB decision about Return to Work, Re-employment, or a Labour Market Re-entry (now work reintegration) plan made on or after January 1, 1998. There is a six-month time limit to object to any other WSIB decision made on or after January 1, 1998, including employer account decisions.

The WSIB will default to the 6 month time limit in a situation where a party is objecting to two different decisions with two different time limits (e.g., work transition (WT) issue with a 30 day time limit and a loss of earnings (LOE) issue with a time limit of 6 months).

Completing the Intent to Object Form

When the WSIB issues a decision, the WPP must be advised in a decision letter of the applicable time limits for objecting. In order to meet the Section 120 statutory requirements, the WSIB must receive a completed Intent to Object Form, or a letter of objection, by the time limit date set out in the decision letter.

If the party or parties do not confirm a desire to proceed, no further action will be taken.

If the case is brought forward for review after the appeal time limit has expired, the WSIB has the authority to extend the time limit in appropriate cases. Requests for extensions will be considered by decision makers who will notify the party in writing of the outcome of the review.

Appealing Time Limit Rulings

If the party or parties indicate a desire to appeal the time limit ruling, the matter will be referred by the Manager in Operations directly to a Manager in the ASD for priority assignment to a Registrar.

The completion of an Intent to Object Form on the time limit to appeal issue is not required, but both parties must be notified of the referral. The Operations decision maker has to complete an Appeals Referral Memo and place it on the file. Once the time limit appeal has been received in the ASD, the Coordinator will send/fax a letter to the objecting party giving 30 days (plus 5 days for mailing) to send in a submission on the issue.

The Registrar will rule on the time limit issue within 30 days of receiving submissions from the parties.

Criteria for Extending Time Limit to Object

Criteria to be considered for objections beyond the statutory time limit include:

- Whether there was actual notice of the time limit. This acknowledges that as of January 1, 1998, decisions specifically refer to the time limits but prior to that date, they do not;
- Serious health problems (experienced by the party or the party's immediate family) or the party leaving the province/country due to the ill health or death of a family member;
- An organic or non-organic condition that prevents the worker from understanding the time limit and/or meeting the time limit;
- Whether there is clear documentation in the claim file that the party was disputing the issue(s) in a particular decision even though a formal notice of objection was not filed (direct correspondence or memo outlining a telephone discussion about the particular issue);

- Whether there are other issues in the appeal that were appealed within the time limit which are so intertwined that the issue being objected to within the time limit cannot reasonably be addressed without waiving the time limit to appeal on the closely related issue.

If the extension is granted, the file will be returned to Operations and the usual access/Appeal Readiness Form process will be initiated for the substantive issue. **See PRACTICE GUIDELINE on INTENT TO OBJECT – HANDLING BY OPERATIONS on page 4.**

NOTE: the criteria related to the extension of the time limit to object that were in place at the time of the operating area decision on the time limit, should be applied. Appendix A includes the criteria and relevant time frames associated with those criteria.

PRACTICE GUIDELINE: Role of the ARO

All appeals accepted by the ASD are dealt with by AROs, with the exception of time limit appeals.* Outcomes are reached using one of two resolution methods, Hearing in Writing or Oral Hearing, which are determined by the nature of the issue under appeal. The method of resolution will be determined by the Registrar.** In the case of an employer account appeal, the method of resolution will be determined by an ARO.

AROs are responsible for resolving appeals. In performing their duties, AROs shall comply with the following code of conduct:

- Act in a fair and impartial manner and avoid any conflicts of interest.
- Be diligent and conscientious in the performance of their duties.
- Treat all parties and participants in the appeal process with courtesy, dignity and respect.
- Approach every appeal with an open mind, capable of fairly assessing and weighing evidence and avoid doing or saying anything that would cause a well-informed reasonable party to think otherwise.
- Conduct such enquiries as may be necessary to properly resolve an appeal, and to ensure appropriate protection for unrepresented parties, while respecting the non-adversarial nature of the WSIB's adjudication system.
- Reach conclusions based on objective and independent assessments of fact in accordance with the WSIA and WSIB policy.

*Time limit appeals will be dealt with by the Appeals Registrar. **SEE THE PRACTICE GUIDELINE on TIME LIMIT TO OBJECT on page 7.**

**** SEE PRACTICE GUIDELINE on ROLE OF APPEALS COORDINATOR AND APPEALS REGISTRAR on page 24.**

PRACTICE GUIDELINE: Appeal Participants

Objecting Party

The objecting party is the WPP or representative who disagrees with the decision made by the front-line decision maker and initiates an objection (appeal) to a WSIB decision.

Non-objecting Party (Respondent)

The non-objecting party is also a participant in the proceeding where they have confirmed on the Participant Form that they intend to participate. In the context of the appeals process the non-objecting party becomes the Respondent.

It is important that the Participant Form is completed and returned as soon as possible to ensure inclusion in the appeal process if the objecting party moves ahead quickly.

Where the non-objecting party has chosen not to participate on the Participant Form or does not return the Participant Form to the Appeals Services Division, there is no obligation to include that party in any of the proceedings; however, the party will be sent a copy of the decision, or agreement that is reached at the conclusion of the proceeding.

Third parties may be included in certain circumstances (e.g., successor employers or multiple workplace exposures involving more than one employer). When an employer is no longer in business and their WSIB account has been closed, they will generally not be included as a participant in the appeal proceeding. AROs may still request information from the former officers or employees of the company where such information is necessary to determine the merits of the appeal.

PRACTICE GUIDELINE: Representatives

Right to Representation

All parties have a right to be represented by a representative of their choice.

Both claim file and employer information can only be released to worker and employer representatives if such representatives/parties have given the WSIB written authorization. Please visit the WSIB website at www.wsib.on.ca and use our search bars to download the following forms:

Direction of Authorization
Employer's Direction of Authorization

Licensing Requirements

In order to provide legal services related to WSIB matters, representatives must have a license required and issued by the Law Society of Upper Canada (LSUC). The only exceptions are those persons who are exempt from the licensing requirements either under the *Law Society Act* or pursuant to a bylaw passed by the Law Society of Upper Canada.

The WSIB will not accept unlicensed representatives who are not otherwise exempt from the licensing requirement. A common exemption is that of a friend, which the LSUC describes as a person not in the business of providing legal services that occasionally provides assistance to someone for no fee.

Additional information on licensing requirements is available on the WSIB website: www.wsib.on.ca, and on the Law Society of Upper Canada website: www.lsuc.on.ca.

Requests for Representation

The WSIB does not require WPPs have a lawyer or a representative to have an appeal considered in the ASD. If the WPPs have a representative, the WSIB needs their current contact information.

If WPPs plan to have a representative to handle their appeal, they are not ready to proceed to the ASD until the WSIB has received a *Direction of Authorization* in the claim, AND the representative is also ready to proceed with the appeal.

Appeal proceedings will not be suspended in order for an objecting party or respondent to obtain representation. **SEE PRACTICE GUIDELINE on LATE REPRESENTATION AND PARTICIPATION on page 13.**

Please see the Intent to Object Form instruction sheets for information regarding organizations that provide free advice and representation.

PRACTICE GUIDELINE: Code of Conduct for Representatives

Representatives are expected to make good faith attempts to resolve issues in dispute at the Operations level and to be prepared and ready to proceed once an appeal is registered in the ASD.

The ASD recognizes and enforces the Code of Conduct established by the WSIB for representatives. The WSIB Code of Conduct can be found on the WSIB's website at www.wsib.on.ca.

ASD Code of Conduct for Representatives

As there is greater interaction with representatives at the ASD level, more details about the expected standard of behavior have been developed. Representatives at the ASD level are expected to:

- Be aware of and comply with the *Appeals Services Division Practice & Procedures* document;
- Be prepared to comply with the disclosure requirements set out in the *Appeals Services Division Practice & Procedures* document;
- Be courteous and respectful to the opposing party, witnesses, and ASD staff;
- Respect the confidentiality of the file information and related information submitted in the appeals process;
- Respect the privacy of the individuals involved in the appeals process;
- Provide submissions/responses by date required/requested; and
- Be on time when attending oral hearings.

Please also see the Law Society of Upper Canada *Rules of Professional Conduct* at www.lsuc.on.ca.

PRACTICE GUIDELINE: Late Representation and Participation

General

Appeal Readiness Form material makes clear to objecting parties that they should not be completing this form if they are seeking representation. The Participant Form provides a timeline for non-objecting parties to declare their interest in participating. Therefore, the ASD expects that late notice of representation and/or participation will be rare.

The ASD may grant a reasonable pause in appeal proceedings in cases of late notice of representation and/or participation in the circumstances set out below.

Late Participation

Hearing in Writing

- Once a hearing in writing appeal has been assigned to an ARO, the appeal will not be delayed (paused) due to notification of late participation.
- If the case has not yet been assigned to an ARO to complete a hearing in writing, the appeal may be paused for up to 30 days from the date of notification of participation by the respondent and the respondent must provide their written submission within those 30 days.

Oral Hearing

- If the case has not yet been assigned to an ARO because an oral hearing date has not been set, scheduling of the appeal may be paused for up to 30 days; the respondent must then be prepared to be available to attend an oral hearing within 90 days.
- If an oral hearing date has been scheduled, and the respondent provides notice of late participation, they will be allowed to participate in the appeal but must accept the oral hearing date that has been set and will not be permitted to add any issues to the hearing agenda.

Late Representation or Late Change in Representation

Hearing in Writing

- Once a hearing in writing appeal has been assigned to an ARO, the appeal will not be delayed (paused) due to notification of late representation.
- If the case has not yet been assigned to an ARO to complete a hearing in writing, the appeal may be paused for up to 30 days from the date of notification that either the objecting party or respondent have obtained representation or needed to change their representation. Both parties must provide their written submission within the further 30 days after the clock has restarted. The objecting party may also choose to withdraw the appeal, in which case the withdrawal consequences set out in the **PRACTICE GUIDELINE on WITHDRAWALS on page 50** will apply.

Oral Hearing

- If the case has not yet been assigned to an ARO because an oral hearing date has not been set, scheduling of the appeal may be paused for up to 30 days; both parties must then be available to attend an oral hearing within 90 days of the date of subsequent contact by the Appeals Coordinator. The objecting party may also choose to withdraw the appeal, in which case the withdrawal consequences set out in the **PRACTICE GUIDELINE on WITHDRAWALS on page 50** will apply.

- If an oral hearing date has been set and it is the objecting party who has obtained new representation the oral hearing may be postponed for a maximum of 30 days; if a hearing date cannot be established (agreement of objecting party and respondent) within the extra 30 days the appeal will be withdrawn from active status in the ASD and the withdrawal consequences set out in the **PRACTICE GUIDELINE on WITHDRAWALS on page 50** will apply.
- If an oral hearing date has been scheduled, and it is the respondent who has obtained new representation, the oral hearing may be postponed for a maximum of 30 days; if a hearing date cannot be established within the extra 30 days (agreement of objecting party and respondent) the oral hearing will proceed on the originally scheduled date.

This pause in proceedings will allow for file record access to be provided to the new representative or participants.

Requests from a late participant or new representative regarding witnesses or the provision of new documentary evidence will be authorized by the Registrar if the file has yet to be assigned to an ARO and by the ARO if the file has been assigned, if:

- The Registrar or ARO find the witness to be relevant,
- If both parties agree, if it is a two party hearing, and
- The hearing will be able to be completed within the timeframe scheduled.

For both late participation and late representation, if a determination on method of resolution is already made at the time of participation or representation, that method of resolution will not generally be altered, even if the late participant or representative has requested a different method of resolution on the Respondent Form.

PRACTICE GUIDELINE: Raising an Ontario Human Rights Code or Canadian Charter of Rights and Freedoms Question

A human rights or constitutional question raised at the ASD will be addressed only after a decision has been made on the substantive issues under appeal under the relevant statutory provision and/or policy (merit review).

If the merit review leads the substantive appeal to be allowed, the ASD will not rule on the human rights or constitutional question.

If the substantive appeal is denied, the ASD will address the human rights or constitutional question.

Ontario Human Rights Code

The ASD has the jurisdiction to consider a question under the *Ontario Human Rights Code* (Code) pursuant to the *Supreme Court of Canada* decision in *Tranchemontagne v. Ontario*.

Where a party to an appeal intends to raise a human rights question under the Code, the party must file a written notice to the ASD providing:

- A detailed explanation of the human rights question being raised along with the material facts;
- The section of the Code relied on, or the legal basis for the argument;
- The desired remedy; and
- The contact information for the party's representative, if any.

Canadian Charter of Rights and Freedoms

The ASD has the jurisdiction to consider a question under the *Canadian Charter of Rights and Freedoms* (Charter) pursuant to the *Supreme Court of Canada* decision in *Nova Scotia (Workers' Compensation Board) v. Martin*.

Where a party intends to raise a question under the Charter, with respect to the legislation or policy applicable for review by the ASD, the party must comply with s.109 of the *Courts of Justice Act*. Section 109 requires a party to serve a notice of constitutional question on the Attorney General of Canada and the Attorney General of Ontario. The notice must be served as soon as the circumstances requiring it become known. A copy of the notice of constitutional question must also be provided to the Director of the ASD and all parties to the appeal.

The notice should be similar to the form provided in the *Ontario Rules of Civil Procedure*. The notice must contain:

- A detailed explanation of the Charter question raised along with the material facts;
- The section(s) of the Charter relied on, or the legal basis for the argument (constitutional principles to be argued);
- The desired remedy; and
- The contact information for the party's representative.

Parties to these appeals must comply with the same requirements as established in the **PRACTICE GUIDELINE on RULES OF DISCLOSURE AND WITNESSES on page 45.**

Written submissions and evidence regarding the human rights or constitutional question will not be required until such time as the ASD deals with those issues.

Failure to Follow Procedure

If the above procedures are not followed, the party will not be permitted to raise the human rights or constitutional question in any proceeding before the ASD.

PRACTICE GUIDELINE: Methods of Resolution and Criteria for Hearings in Writing vs. Oral Hearings

Legislative Requirements

Section 119 (3) states:

> *The Board shall give an opportunity for a hearing.*

Section 119 (4) states:

> *The Board may conduct hearings orally, electronically, or in writing.*

To fulfill legislative requirements, we provide two resolution methods:

- a hearing in writing, or
- an oral hearing. The oral hearing may be held in person or by phone on a teleconference.

NOTE: Employer account appeals are managed differently. If you are looking for information on an employer account appeal, please see **PRACTICE GUIDELINE on EMPLOYER ACCOUNT APPEALS on PAGE 61.**

Factors involved in Determining the Method of Resolution

When submitting an Appeal Readiness Form or a Respondent Form, the person submitting the form can tell us if they prefer an oral hearing or a written hearing. The Registrar will consider this preference and determine the method of resolution. A list of guidelines helps Registrars decide if a case should be a hearing in writing or an oral hearing. You can find the **HEARINGS IN WRITING LIST on page 21** and the **ORAL HEARINGS LIST on page 22.**

These lists are guides in making a decision on what type of hearing is more appropriate but each determination is made on a case by case basis. This is to ensure that a fair decision can be made on each issue that is being appealed.

A Registrar will usually determine a hearing in writing is the best method of resolution when the issues are largely medical, legal, or policy based, and credibility is not an issue. The determination whether or not to grant an oral hearing is made by considering what information is already on the claim file.

As they review the claim file, the Registrar considers the questions below. If the answer is "yes" to one or more of these questions, the Registrar will likely decide an oral hearing is the best method of resolution for the appeal:

- Is direct testimony (making statements under oath) needed from the objecting party or material witnesses? For example: Direct testimony may be required if one party's evidence is in direct contradiction (i.e. disagrees) with another party's evidence about the accident date, time, place, location, etc.
- Does the case have significant factual issues in dispute? For example: Surveillance video is presented as evidence, and the parties interpret this evidence differently.
- Is there a reason that someone who does not have a representative cannot make a submission in writing? For example: There is a significant language barrier and a translator is needed.
- Is the information about a worker's non-organic functional abilities or limitations minimal or

inconsistent? Some examples of these are: activities of daily living, persistent fears or issues associated with the accident, ability to perform common workplace tasks, and ability to interact with others both in and outside of the workplace.

- Is there an issue of credibility* that can only be assessed in an oral hearing?

  *Credibility – whether someone should be trusted or believed – is an issue and an oral hearing is necessary in cases where there is significant conflicting information, and, in particular where the consistency of the evidence of the witness – to either his or her own prior statements or to the evidence as a whole – is in question.

  The following scenarios do not involve an issue of credibility because the ARO will weigh the evidence and make a finding:

  - an injured worker with an organic injury describing their level of impairment and/or pain to an ARO; and
  - disagreement between a worker and an employer about the nature and timing of a job offer or the details of an accident.

Process for Determining the Method of Resolution:

After the objecting party completes the objection process with the operating area and the decision they are appealing doesn't change, they can make a formal appeal by completing an Appeal Readiness Form. On this form they will have the option to request a hearing in writing or an oral hearing.

Request for a Hearing in Writing:

- The objecting party must include their arguments about the issue(s) they are appealing and their reasons for requesting a written hearing on the Appeal Readiness Form.
- When we receive the Appeal Readiness Form, the ASD Coordinator determines if there is a respondent participating in the appeal.
- If there is no respondent, only the Appeal Readiness Form is taken into account when deciding the method of resolution.
- If there is a respondent participating in the appeal, we send them a Respondent Form. They can use this form to respond to the issue(s) under appeal and request their preferred method of resolution.
- If the respondent agrees with the appeal being resolved with a hearing in writing, the respondent should complete the Respondent Form and include all information that they want to be taken into account. If the decision is made to resolve the appeal through a hearing in writing, there is no additional opportunity for the respondent to provide submissions (i.e. make their arguments). Instead, the appeal is assigned directly to an ARO to make a final decision on the issue.
- The Registrar reviews the Appeal Readiness Form and the Respondent Form together. If the respondent has requested an oral hearing, the Registrar reviews the reasons for this request.
- If the objecting party requests a hearing in writing, this method of resolution will usually be granted (even if the issue is normally resolved by an oral hearing).
- A hearing in writing will be granted for cases that are included on the Hearing in Writing List, unless the Registrar decides that there are other factors that would make an oral hearing the best method of resolution.

Request for an Oral Hearing:

- The objecting party must include their arguments about the issue(s) they are appealing and their reasons for requesting an oral hearing on the Appeal Readiness Form.
- If the objecting party requests an oral hearing, they should explain why they believe an oral hearing is necessary, even if their appeal involves an issue found on the Oral Hearing List. This is because there will be appeal cases that, even if found on the Oral Hearing List, would not necessarily require an oral hearing once we review the facts of the case.
- When explaining why they are requesting an oral hearing, the objecting party should be as specific as possible in explaining why they want the oral hearing and outline how it is related to the issue(s) under appeal. For example, the explanation should outline any key missing information, differences in statements, inconsistencies in medical reports and conflicting information between the employee, employer, co-workers and any witnesses.
- When we receive the Appeal Readiness Form, the ASD Coordinator determines if there is a respondent participating in the appeal.
- If there is no respondent, only the Appeal Readiness Form is taken into account when deciding the method of resolution.
- If there is a respondent participating in the appeal, they are sent a Respondent Form. They can use this form to respond to the issue(s) under appeal and request their preferred method of resolution. Like the objecting party, the respondent should provide a detailed explanation as to why they are requesting an oral hearing as the method of resolution.
- The Registrar will review the Appeal Readiness Form and the Respondent Form together.
- An oral hearing will not be granted for cases that are set out on the Hearings in Writing List unless the Registrar decides that there are reasons outlined under "Factors involved in Determining the Method of Resolution" that would call for an oral hearing.

Process following the Method of Resolution Decision

After the decision is made about the method of resolution, here is what can be expected to happen next:

If both parties request a hearing in writing:

- Appeals staff will not contact the parties to let them know the decision on method of resolution. The only exception is if the Registrar decides after reviewing the Respondent Form and any attached evidence or submissions, that the respondent's submission contains new evidence or an argument that is so significant that the objecting party should be granted time to rebut (i.e. disprove the argument). In these cases, a letter will be sent to the objecting party to advise them that they have 21 days (plus five days for mailing) to rebut the submission of the respondent. The case will be assigned to an ARO once the objecting party's rebuttal has been received, or once the 26 days have passed, whichever happens first.
- In all other circumstances, a hearing in writing is assigned directly to an ARO to decide on the issue being appealed. The ARO will make a decision based on the submissions made on or attached to the Appeal Readiness Form and Respondent Form, as well as the information in the claim file.
- The ARO will usually make a decision within 30 days.

If an oral hearing is requested by the objecting party and allowed:

- The parties will be sent a Notice of Hearing letting them know the date, time and location of the hearing.
- The hearing will usually take place within 90 calendar days.

If an oral hearing is requested by the objecting party and denied:

- The parties will be sent a letter letting them know that the method of resolution will be a hearing in writing.
- Both the objecting party and the respondent will be allowed 30 days (plus five days for mailing) to make their arguments in writing on the issue under appeal.
- The objecting party may be allowed 21 days (plus five days for mailing) to rebut the submission of the respondent only if the Registrar decides, after reviewing the Respondent Form and any attached evidence or submissions, that the respondent's submission contains new evidence or an argument that is so significant the objecting party should be granted time to rebut this information.

If an oral hearing is requested by the respondent and is denied:

- The parties will be sent a letter letting them know that the method of resolution will be a hearing in writing.
- Both the objecting party and the respondent will be allowed a further 30 days (plus five days for mailing) to make their arguments in writing on the issue under appeal.
- The objecting party may be allowed 21 days (plus five days for mailing) to rebut the submission of the respondent only if the Registrar concludes, after reviewing the Respondent Form and any attached evidence or submissions, that the respondent's submission contains new evidence or an argument that is so significant the objecting party should be granted time to rebut.

Reconsiderations regarding the Method of Resolution

The WSIB decision on method of resolution is an administrative decision made by the Registrar. A request for reconsideration of this decision can be made to the Registrar. There is no opportunity to request reconsideration by the Manager, Director or Vice-President of the ASD. For more information on the role of the Registrar, **SEE PRACTICE GUIDELINE on ROLE OF APPEALS COORDINATOR AND APPEALS REGISTRAR on Page 24.**

HEARINGS IN WRITING LIST

See PRACTICE GUIDELINE on Methods of Resolution and Criteria for Hearings In Writing vs. Oral Hearings on page 17.

A1.	Initial Entitlement – chance event where there is no factual dispute
A2.	Initial Entitlement one party – only issue is delay in reporting to employer and/or in seeking medical attention and a worker statement explaining delays can be provided
A3.	Initial Entitlement – Disablement where there is no factual dispute and there is sufficient information on file about the worker's reported job duties
A4.	Occupational Disease – medical causation
A5.	Noise Induced Hearing Loss
A6.	Medical Compatibility
A7.	Earnings Basis
A8.	Less than 4 weeks of loss of earnings (LOE) benefits where the dispute surrounds level of impairment
A9.	Job Suitability with or outside of injury employer – no factual dispute
A10.	Job Suitability – information about the offered job(s) and worker's functional information is already on file but parties disagree about job suitability
A11.	Suitability of the Suitable Occupation (SO)
A12.	Recurrence – 1 year or less from the date of injury/illness or 12 weeks or less of loss of earnings
A13.	New organic condition where entitlement rests on medical compatibility
A14.	Secondary Condition where entitlement rests on medical compatibility
A15.	Non-organic conditions – no factual dispute
A16.	Request for an Independent Medical Examination
A17.	Medication
A18.	Co-operation in Health Care Measures
A19.	Health care benefits
A20.	Pension or non-economic loss (NEL) award quantum or redetermination
A21.	Pension Arrears
A22.	Pension or future economic loss (FEL) Commutations
A23.	CPP Offset
A24.	Benefit Related Debt
A25.	Survivor Benefits – general
A26.	Second Injury and Enhancement Fund (SIEF)
A27.	LOE Lock-in – dispute over actual or deemed earnings to determine LOE benefits
A28.	LOE Lock-in – no factual dispute
A29.	Time limit to Object – s. 120
A30.	Time limit to Claim – s. 22
A31.	Any Issue that turns on a policy interpretation or a review and weighing of medical information
A32.	All Employer Account issues not outlined under Oral Hearing list B17 and B18 on page 20

ORAL HEARINGS LIST

See PRACTICE GUIDELINE on Methods of Resolution and Criteria for Hearings In Writing vs. Oral Hearings on page 17.

B1.	Initial Entitlement – Disablement where there is evidence of factual dispute related to the worker's job duties and/or there is insufficient information about the worker's job duties
B2.	Initial Entitlement (generally two party) – chance event where there is contradictory information and/or testimony would add to the information already in the case material
B3.	Complex occupational disease
B4.	Complex non-organic conditions
B5.	Job Suitability with or outside of injury employer – factual dispute
B6.	Job Suitability – information about the offered job(s) and worker's functional information is either not on file or is incomplete, and the parties disagree about job suitability
B7.	Co-operation in Return to Work
B8.	Co-operation in Work Transition (Labour Market Re-entry)
B9.	Work Transition Plans
B10.	Re-employment (where the threshold for re-employment has been met)
B11.	Complex LOE Lock-in – factual dispute
B12.	Recurrence – 1 year or more from the date of injury/illness or 12 weeks or more of loss of earnings
B13.	Survivor Benefits – complex determinations of who is a spouse/dependent
B14.	New organic condition where entitlement does not rest on medical compatibility
B15.	Secondary conditions where entitlement does not rest on medical compatibility
B16.	Transfer of Cost
B17.	Independent Operator and Worker Status

PRACTICE GUIDELINE: Special ADR Projects

Special Alternative Dispute Resolution (ADR) projects are offered by the ASD. Appeal cases arising from larger employers are sometimes dealt with through special projects that are aimed at reaching outcomes more efficiently and more consensually. These projects depend upon the willingness of the employer and the union to seek constructive ways to resolve appeals.

Each project is developed in consultation with the employer and union and procedures vary based on the needs of the parties.

For larger employers and unions where an ADR project has been implemented, the project involves a dedicated ARO who typically provides a written "view" or opinion of the case to the employer and union representatives. A meeting may be held with the employer and union representative where multiple cases are considered. The discussions focus around the "view" and most cases are resolved through this process. A small number of cases proceed to an oral hearing. In some cases, additional enquiries may be identified as necessary before a resolution can be reached.

More information about the opportunity to develop employer-specific ADR projects should be raised with the Vice-President of the ASD.

PRACTICE GUIDELINE: Role of Appeals Coordinator and Appeals Registrar

Role of the Appeals Coordinator

The Coordinator will be responsible for all pre hearing activities of a file prior to assignment to a Registrar or an ARO, and for scheduling oral hearings as required. Files that have been registered in the ASD will be assigned to a Coordinator. The Coordinator will review the Appeal Readiness Form and all attached submissions.

Coordinators are responsible for assigning cases to AROs.

If this is an employer account appeal, the Coordinator will refer to an ARO to determine the method of resolution. **SEE PRACTICE GUIDELINE on EMPLOYER ACCOUNT APPEALS on page 61.**

For all other cases, Coordinators will assign hearings in writing to AROs where the objecting party and the respondent (if there is one) have both requested a hearing in writing, or where a Registrar has denied a request for an oral hearing.

Where either the objecting party or respondent have requested resolution by oral hearing, the Coordinator will refer these cases to a Registrar. The Registrar will make a decision on the method of resolution. If a determination is made that an oral hearing is required, the Coordinator will schedule the oral hearing and assign the case to an ARO. **SEE PRACTICE GUIDELINE on HEARING SCHEDULING on page 29.**

Coordinators will coordinate and ensure the completion of the sharing of submissions when there is a respondent. **SEE PRACTICE GUIDELINE on RULES OF DISCLOSURE AND WITNESSES on page 45.**

Coordinators will also address all pre-hearing issues surrounding summonses, interpreters, travel, etc.

Role of the Appeals Registrar

The Registrar will be the primary contact for workplace parties and their representatives. The role provides unrepresented workers and employers a greater opportunity to discuss the appeals process from the beginning of the process. This role is responsible for reviewing the readiness of the appeal, making determinations on the appropriate appeal method of resolution, addressing disclosure and any add issue requests, making time limit decisions and providing process overview and status updates to unrepresented workers.

All cases where a method of resolution has not yet been determined and/or where a file has not yet been assigned to an ARO are the responsibility of the Registrar, who will respond to questions about status and the appeals process.

If either the objecting party or the respondent requests an oral hearing, the case will be referred to the Registrar to make an administrative decision regarding the method of resolution. This function can be delegated to another decision-maker in the ASD.

If the Registrar determines that a hearing in writing is appropriate, the workplace parties will be advised in writing and the file will be returned to the Coordinator to be assigned to an ARO. If an oral hearing is chosen, the parties will be advised in writing and the file will be returned to the Coordinator for scheduling.

Once a determination has been made by the Registrar that a case will be resolved through a hearing in writing and the case has been assigned, the ARO will not discuss the method of resolution issue with the workplace parties. In rare circumstances, e.g., if an issue(s) is added, the method of resolution may be changed after discussion with the Registrar.

If the Registrar determines that an oral hearing is required, he/she will also make a determination about what witnesses will be authorized, and the location of the hearing. The Coordinator may change the hearing location, as needed, at the time of scheduling.

The workplace parties may ask the Registrar who made the decision to reconsider the decision to deny an oral hearing. However, the reconsideration request must be made in writing directly to the Registrar and must be received within the 30 day (plus 5 days for mailing) period granted to the workplace parties to provide their written submissions.

The Registrar will not stop the clock; written submissions will still be required within 30 days (plus 5 days for mailing), and the Registrar will not perform a reconsideration on method of resolution once a hearing in writing appeal has been assigned to an ARO. If a reconsideration request is received within 30 days (plus 5 days for mailing), the Registrar will reconsider the decision and will not release the case for assignment until the reconsideration is completed.

If a reconsideration decision results in a reversal in the decision, the parties will be advised that the appeal has been forwarded to the Coordinator for scheduling.

If the reconsideration decision is denied and a hearing in writing confirmed, the appeal will be assigned to an ARO at the end of the 30 days (plus 5 days for mailing), whether or not a written submission has been received, and the ARO will proceed to make a decision. The ARO will not accept a late submission after they have started to work on their decision.

If an oral hearing is accepted as appropriate, either the objecting party or respondent may request a reconsideration of the decision made regarding witnesses. Any concerns surrounding the number and nature of witnesses allowed will not delay the scheduling of the oral hearing, but the Registrar may review any reconsideration request about witnesses at any time up to assignment to the ARO.

PRACTICE GUIDELINE: Adding Issues to the Appeals Agenda

Since the objecting parties may take as much time as they need to complete an Appeal Readiness Form, once a file has been registered in the ASD, only under exceptional circumstances will the Registrar permit to add a new issue to the agenda. Where the file is assigned to an ARO the decision to add an issue will rest with the ARO.

If an objecting party believes that an appeal cannot move forward to resolution in the absence of adding an issue, the file will be withdrawn and the consequences associated with appeal withdrawals will apply. **See PRACTICE GUIDELINE on WITHDRAWALS on page 50.**

PRACTICE GUIDELINE: Benefits Flowing

In all cases, the benefits that flow from a decision will be considered part of the issue agenda. The ARO will be responsible for ruling on benefits only to the extent that reliable information is either contained in the file or readily available to the ARO. Therefore, where the ARO accepts entitlement for an impairment or for a period of impairment/disability, the ARO will also resolve the nature, level and duration of benefits to the extent that available information permits.

If the objecting party or respondent requests that "benefits flowing" from a decision not be addressed by the ARO, the ARO will make a preliminary determination on the question at the time the request is made and will reference in the decision why he/she decided to either address or not address "benefits flowing". In the above scenario there is no requirement that both parties must agree before the ARO rules on benefits flowing from a decision.

In cases where an additional issue is presented after the appeal has entered the ASD and the time limit to appeal has expired, the issue will not be added to the agenda; the objecting party may either agree to move forward on the issue(s) contained in their Appeal Readiness Form or may withdraw the appeal and the consequences associated with appeal withdrawals will apply.

PRACTICE GUIDELINE: Downside Risk

The concept of downside risk means that an ARO, when reviewing the claim file, may recognize an error in the adjudication of a related issue that is so significant it cannot be overlooked and must be dealt with in order to decide the issue(s) under appeal. This could result in the reversal of those prior related decision(s).

An example of a downside risk to a worker is an appeal for a higher non-economic loss (NEL) award; an ARO could decide that the worker should receive a lower award than the worker currently receives, or perhaps is not entitled to a NEL award at all. For employers, an example is an employer appeal for an increased level of Second Injury and Enhancement Fund (SIEF) relief; the ARO could determine that the employer is entitled to less relief than they currently receive, or that they are not entitled to SIEF relief at all.

The objecting party will be allowed to withdraw their appeal once a downside risk is identified. There will be no documentation placed on the claim file beyond the indication that downside risk was discussed and the objecting party chose to withdraw.

If the objecting party chooses to proceed with the appeal, the objecting party and the respondent, if any, will be granted a period of 30 days (plus 5 days for mailing) from the date the downside risk was communicated to the party, to make a submission on the downside risk issue.

PRACTICE GUIDELINE: Hearing Scheduling

**Hearings in this guideline could include both oral hearings and hearings by teleconference.*

Initial Scheduling

Once it is determined that an oral hearing is required, the Registrar will refer the file to the Coordinator who will arrange a hearing date. When informed by letter that an oral hearing has been approved, it is expected parties will be available to attend a hearing within 90 days from the date of the letter. The Coordinator will be as flexible as possible in working with the parties to arrive at possible dates for the oral hearing within the 90 days.

If one or more of the parties are not available within the 90-day timeframe, the Coordinator will provide a further 30 days to secure a suitable oral hearing date. If the objecting party is available within 120 (90 + 30) days and the respondent is unavailable within that time period, the oral hearing will be scheduled based on the preferred date of the objecting party.

Situation	Timing	Consequence	Requirement for availability
Objecting Party is granted request for oral hearing	Within 90 days		Oral hearings will generally be scheduled within 90 days of the letter confirming an oral hearing is warranted
Objecting Party unavailable within 90 days	Within 120 days	Further discussion with the Coordinator will occur	Objecting Party must be available within the first 30 days after the 90 day time period
Objecting Party unavailable within the 120 day time period	Can reapply in 30 days	The case is withdrawn and the party will have to wait 30 days to resubmit an Appeal Readiness Form through the Objection Intake Team	Objecting Party must be available within 90 days of the resubmitted Appeal Readiness Form
Objecting Party unavailable within 90 days after resubmitted Appeal Readiness Form.	Can reapply in 90 days	The case is withdrawn and the party will have to wait 90 days to resubmit an Appeal Readiness Form through the Objection Intake Team	Objecting Party must be available within 60 days of the resubmitted Appeal Readiness Form
Objecting Party unavailable within 60 days after resubmitted Appeal Readiness Form		The case is withdrawn for a third time and the party must write to the Vice-President of the ASD to ask for a return to the ASD to have their appeal resolved	

NOTE: If an objecting party or respondent is temporarily unavailable to discuss the scheduling of an oral hearing for reasons beyond their control, such as the sudden and serious illness of the party or the need to leave the country to deal with an emergency, the appeal will not be withdrawn immediately but will remain with the Coordinator who will place the case on administrative hold until the situation has resolved. If the party is unavailable for more than 30 days, the ASD will determine whether to withdraw the case.

Date has been scheduled

Once a date has been arranged, the Coordinator will send a Notice of Hearing to the parties setting out the date, time and place for the hearing. Generally, hearings will be held in the city where the WSIB's file is administered or the city closest to that location where hearings are generally held.

NOTE: At the time of scheduling, the special requirements related to the following should be confirmed with the Coordinator, if warranted: security, interpreter, and summonses, as well as any video evidence that will be submitted. **See PRACTICE GUIDELINE on USE OF SURVEILLANCE MATERIAL IN THE APPEALS SERVICES DIVISION on page 58.**

PRACTICE GUIDELINE: Security and Interpreters

At the request of the ARO, WSIB or outside security may attend an oral hearing without the consent of the WPPs. The parties will be notified in advance that security officers will be present at the hearing. Requests by the WPPs for the presence of security at an oral hearing should be confirmed at the time the hearing is being scheduled.

Requests for security must be based on real and substantial concerns.

Interpreters

The ASD will arrange for an independent and objective interpreter to be in attendance at an oral hearing where it is requested by the WPPs. The party requesting the interpreter should include information about the request in the Appeal Readiness Form or the Respondent Form regarding:

- the need for an interpreter
- the language spoken
- the specific dialect

If there is no indication on the Appeal Readiness Form or the Respondent Form of the need for an interpreter, but one is subsequently requested, this request must be made to the Coordinator at the time the oral hearing is scheduled. If a request is subsequently made, but at least 14 days prior to the scheduled hearing date, the Coordinator will make every effort to obtain an interpreter. If an interpreter cannot be arranged, or if the request comes less than 14 days prior to the scheduled date, the appeal may be withdrawn and the usual consequences associated with a withdrawal without good reason, will be applied. **See PRACTICE GUIDELINE on WITHDRAWALS on page 50.**

For clients who are unrepresented, if the ARO accepts that failure to advise an interpreter was needed was caused due to language difficulties, the oral hearing may be postponed without consequence.

Friends and relatives of appeal participants generally are not permitted to interpret evidence at an oral hearing.

Interpreters are expected to provide verbatim interpretation of testimony unless he or she is directed to do otherwise by the ARO. This alternative direction will occur only if and when the ARO and the parties agree that the individual providing testimony requires only occasional assistance from the interpreter as opposed to verbatim interpretation.

If the interpreter is unable to translate a word or phrase in testimony, or does not understand the testimony, the interpreter must inform the parties in attendance at the oral hearing and await further instructions after a discussion is held between the parties and the ARO.

If an interpreter does not arrive for the oral hearing or if, mistakenly, an interpreter was not arranged, it will be up to the ARO and the parties to determine whether it is appropriate to proceed with the hearing without an interpreter or if the hearing must be adjourned and re-booked. When these circumstances are beyond the control of the objecting party or respondent, the parties will have a further 90 days to reschedule the oral hearing but will be encouraged to be available at their earliest convenience.

PRACTICE GUIDELINE: Summonses and Production of Documents

General

The party requesting a summons should include information about the request in the Appeal Readiness Form or the Respondent Form. The following information should be provided:

- Name of witness
- The reason a summons is necessary
- An address where the witness(es) can be served

In the case of documents, the request must identify the document(s) and indicate who has possession of the document(s). The request should also state the relevance and likely significance of the document(s).

Criteria

In determining whether a summons is essential and should be issued, the following facts should be considered:

- whether the evidence is relevant to the issue(s) in dispute;
- whether the evidence is likely to be significant to a determination of the issue(s) in dispute;
- whether the request to summon a witness will be used for the bona fide purpose of giving evidence before the proceeding or whether it will likely be used to harass or inconvenience the witness;
- whether the oral or written evidence can be obtained in a more reasonable manner. For example, in situations involving physicians or LMR/WT Service Providers it is generally more appropriate to obtain necessary information or clarification through written questions;
- whether the summons request is being used for the purpose of "fishing" in the hopes of
- obtaining relevant information;
- whether the person receiving the summons has access or control of information/ documents, relevant to the case. The summons should be issued to the person with custody of the necessary documents;
- whether the prospective witness is compellable in the proceedings (WSIB policy has established that WSIB employees are not compellable witnesses and other statutes limit the compellability of certain witnesses).

In complex cases, advice and direction in deciding if a summons should be issued may be sought from the Vice-President or Manager(s) of the ASD.

Procedures

Once a file has been scheduled, the Registrar will review the Appeal Readiness Form and make a determination on whether a summons is required before assigning the file to an ARO.

If there is no indication on the Appeal Readiness Form or the Respondent Form of the need to summon a witness(es) or a document(s), but one is subsequently requested, this request must be made to the Coordinator at the time the oral hearing is scheduled. If a request is subsequently made, but at least 30 days prior to the scheduled hearing date, the Coordinator will make every effort to ensure the processing of a summons. If a request for a summons comes less than 30 days prior to the scheduled date, the appeal will be

withdrawn and the usual consequences associated with a withdrawal without good reason, will be applied.
See PRACTICE GUIDELINE on WITHDRAWALS on page 50.

Where the Coordinator concludes that the document or the proposed witness is not essential to a determination of the issue in dispute, the Coordinator will communicate this to the parties in writing.

The Process Service Provider (PSP) will arrange for the summons to be served and provide the ASD with an Affidavit of Service that will be duly witnessed by a Commissioner.

At the oral hearing, should the summoned document or witness not be produced or attend, as the case may be, or where the Coordinator has refused to issue a summons, the ARO may:

- proceed without the evidence or the witness if it is determined that the evidence in question is not essential to the disposition of the issue(s) in dispute;
- proceed with the oral hearing, indicating that a decision on the need for the production of evidence or attendance of a witness will be reserved until the conclusion of the hearing. Where, at the conclusion of the hearing, it is determined that the evidence in question is essential, the ARO will direct the information be obtained by other means, or direct that the hearing be re-convened and that appropriate summonses be issued;
- decide at the outset that the summons should be issued and postpone the oral hearing for that purpose. This course of action should only be taken where the evidence in question is so critical as to make proceeding to hear the available evidence unreasonable.

If the summoned witness does not attend and the ARO is satisfied the evidence to be given is essential, then the ARO may decide to re-issue the summons with instructions to the PSP to communicate to the witness the necessity of attending a future hearing, or the ARO may recommend that the WSIB proceed with contempt proceedings against the witness. Such a decision shall be made in consultation with ASD management and the WSIB's General Counsel.

PRACTICE GUIDELINE: Hearing by Teleconference

Hearing by teleconference may be used instead of an oral hearing and may be useful in situations where a party is physically unable to travel, lives in an area where oral hearings are not generally held, where transportation is difficult, where an expedited decision is required, or where all parties and the ASD agree.

If a request for a hearing by teleconference is requested on the Appeal Readiness Form, the Registrar will review the criteria below and the circumstances of the case and will determine if hearing by teleconference is appropriate. If, after an oral hearing has been scheduled and assigned, the ARO determines that a hearing by teleconference is appropriate, they can consider presiding over the oral hearing by teleconference.

In order to approve a hearing by teleconference the ASD must ensure:

- there is agreement amongst the parties and the ARO that the case is clear and uncomplicated enough to be addressed without the personal attendance of one or more of the parties;
- a copy of the updated file and other relevant documents needed for the hearing are available to all parties prior to the teleconferenced hearing;
- the ARO has determined that proceeding in this manner will not result in any significant prejudice to a party; and
- if credibility issues can be addressed through a teleconference.

Parties must comply with the same disclosure and scheduling requirements as exist for an oral hearing.

PRACTICE GUIDELINE: Postponements

**Note: Hearings in this guideline include both oral hearings and hearings by teleconference.*

A postponement means the hearing will not go ahead on the date it was scheduled and will need to be re-booked for another date.

Both objecting parties and respondents are required to declare, when signing the Appeal Readiness Form and Respondent Form, that they are ready to attend a hearing within 90 days of the date it is determined a hearing is warranted. Hearings are scheduled in consultation with the WPPs, and the ASD is as flexible as possible in providing a number of potential dates to the workplace parties. Therefore, the ASD expects parties to be prepared for the hearing and ready to attend once a date is set.

Once a hearing date has been established, postponement requests should be made only in exceptional circumstances. The criteria set out below establish what is considered "exceptional", for the purposes of this guideline.

Pre-hearing Requests for Postponement – Exceptional Circumstances

The Coordinator will deal with all pre-hearing requests for postponements. The Coordinator has the authority to grant a postponement request where it meets one of the following criteria:

- sudden illness of the worker;
- sudden illness of the worker's representative where no replacement is reasonably available;
- sudden illness of the employer where the employer is to act as the representative and there is no one else who could reasonably represent the employer at the oral hearing;
- sudden illness of the employer's representative if no replacement is reasonably available;
- death of one of the parties or a member of his/her immediate family;
- death of the representative or a member of his/her immediate family if no replacement is reasonably available;
- unusual adverse weather conditions on the day of the hearing or an accident while en route to the hearing.

Where a postponement request just prior to the hearing is granted pursuant to the exceptional criteria set out above, the Coordinator will notify the WPPs and the relevant WSIB office(s), and will arrange for another hearing date. The objecting and/or responding party are required to inform their own witnesses that the scheduled hearing has been postponed.

When an oral hearing is postponed for any of the exceptional circumstances set out above, both the objecting party and the respondent, if there is one, are expected to be available for an oral hearing within 90 days of the date of the initial hearing.

At any stage of this process, requests for postponement must be made to the Coordinator.

For more information on the consequences of late participation/representation, **see PRACTICE GUIDELINE on LATE REPRESENTATION AND PARTICIPATION on page 13.**

Pre-hearing Requests for Postponement – Other than Exceptional Criteria

If either the objecting party or respondent requests a postponement at any time after the hearing date has been set, and the reason does not meet the exceptional criteria set out above, a postponement may be granted but the request must:

- be made in writing and forwarded directly to the Coordinator, by fax to 416-344-3600, or by mail to the WSIB address, Attention: Appeals Services Division;
- set out the compelling reason for the request; and
- be sent to the other party and/or representative, asking the other party to consent to the postponement.

**Please note a telephone call alone will not be sufficient. A telephone call must be followed by a written request.*

After reviewing the above, the Coordinator will decide if the postponement request will be granted or if the case will be withdrawn.

If a postponement request is granted for reasons other than the exceptional criteria set out above, the party requesting the postponement is expected to be available for an oral hearing date within 45 days of the date the postponement is approved.

If the objecting party requests the postponement, the case will be withdrawn if they are not available within 45 days of the postponement being approved. If the objecting party requests the postponement and is available within 45 days, but the respondent is not available within 45 days, the Coordinator will set the date on the basis of the availability of the objecting party.

If the respondent requests the postponement, and if a mutually convenient date within the 45-day period cannot be found, the Coordinator will set the date on the basis of the availability of the objecting party.

Postponement Requests at the Hearing

Postponement requests made at the hearing will be ruled on by the ARO after giving full opportunity to both parties/representatives to present arguments with respect to the request.

The reasons for granting or denying requests for postponement must be communicated to the parties orally at the time of the hearing.

The following criteria will be weighed by the ARO in determining whether to grant a postponement request. It should be noted that the consent of the other party does not, by itself, constitute sufficient reason to grant the postponement request:

- was adequate and sufficient notice of the hearing date provided to the parties seeking the postponement;
- was the hearing date arranged by mutual consent;
- are the facts giving rise to the request for the postponement compelling and reasonable;
- to what extent does the need for postponement arise out of the intentional actions or neglect of the party/representative requesting the postponement;
- what prejudice will result to both parties if the request is either allowed or denied;

- how long has the party requesting the postponement been aware of the facts giving rise to the request and what steps were taken prior to the hearing to remedy the situation and to inform the WSIB;
- can any procedural defects, such as the late receipt of written materials, be remedied through delaying the starting time of the hearing, or making any other direction that will minimize or eliminate the prejudice of not granting a postponement; and
- whether the party requesting the postponement has a history of previous postponements in this case or other cases dealt with in the ASD.

If the ARO denies the postponement request at the time of the hearing, the hearing will proceed. However, if the objecting party does not wish to proceed, the appeal will be withdrawn from the ASD, and all of the consequences set out in the **PRACTICE GUIDELINE on WITHDRAWALS on page 50**, will apply.

If a postponement is granted at the oral hearing, the party requesting the postponement is expected to be available for an oral hearing date within 45 days of the date the postponement is approved.

If the objecting party requests the postponement, the case will be withdrawn if they are not available within 45 days of the date the postponement is approved.

If the respondent requests the postponement, if a mutually convenient date within the 45-day period cannot be found, the Coordinator will set the date on the basis of the availability of the objecting party.

PRACTICE GUIDELINE: Conducting Oral Hearings

**It is important to note that the circumstances of each case will determine the extent to which all procedures will be followed.*

Receiving Evidence

Evidence will be received by the ARO at the time of the oral hearing according to the rules established in the **PRACTICE GUIDELINE on RULES OF DISCLOSURE AND WITNESSES on page 45.**

Oral Hearing Procedures

Purpose

The purpose of an oral hearing is to gather information in a thorough, fair and courteous manner. In doing so, every effort should be made to create and maintain a non-adversarial atmosphere.

Prior to Entering the Hearing Room

Prior to entering the hearing room, the ARO shall:

- determine the presence of and identify all individuals who will be participating in the hearing and ascertain their roles;
- explain that witnesses will be excluded from the hearing room until they are required to give testimony. This does not apply to the worker and/or an individual designated by the employer as its resource person. An employer is permitted to have one designated resource person. This individual is allowed to remain in the hearing room throughout the proceedings;
- decide whether or not observers will be permitted to be present at the hearing. As a general rule, ASD hearings are held "in camera", which means they are not open to the public. However, the ASD generally permits observers to attend where all parties consent, unless there are compelling reasons for excluding observers (i.e., sensitive factual issues, matters of space, potential security problems). The ARO will instruct observers that they are not entitled to participate in the hearing or record the hearing.

In the Hearing Room Prior to Going on the Record

Before going on the record, the ARO shall:

- outline the purpose of the hearing and how it will proceed (i.e., the order of presentations);
- discuss/confirm with the parties the issues to be dealt with and advise the parties of information or facts that are already established from the evidence and of the specific areas of enquiry which will be necessary in order to deal with the issues under objection;
- clarify with both parties which witnesses will be called and the nature of their testimony. The ARO should not hear from witnesses whose evidence is irrelevant to the issue under objection or relates to non-contentious matters of fact already accepted by the ARO;
- If multiple witnesses are being called to provide the same information, the ARO should seek agreement from the parties with respect to those facts;

- explain that the information received from the witnesses will be given under oath or affirmed, as the witnesses prefer;
- indicate that a recording device will be recording everything that is said during the course of the hearing, but that participants are not permitted to record hearings using cell phones or other personal recording devices; and
- if an interpreter is present, explain that the interpreter is not an employee of the WSIB, and explain how the interpreter will be used; and
- if both parties request the ARO engage in mediation (or agreement) discussions, the ARO must first advise that he/she will proceed to make a decision if a consensual outcome is not reached.

If a question arises as to whether or not the case should be returned to Operations, withdrawn, or postponed, the **PRACTICE GUIDELINES on RETURNS TO OPERATIONS on page 49**, **WITHDRAWALS on page 50**, and **POSTPONEMENTS on page 35** will apply.

The Oral Hearing

Opening the Hearing – Preliminary Matters

The oral hearing shall proceed in the following manner:

- the ARO shall state for the record the date and location of the oral hearing, the name of the ARO, the name of the worker, the claim or firm number, the date of decision being objected to and whose objection it is;
- the ARO will identify for the record all those in attendance at the hearing and their role;
- the issue(s) under objection will be confirmed;
- the ARO will determine if any additional written documents provided by the parties will be accepted. **SEE PRACTICE GUIDELINE on RULES OF DISCLOSURE AND WITNESSES ON page 45**;
- Any documents accepted will be marked as an exhibit. Exhibits are to be numbered and each will bear, in the case of a claims objection, the worker's name, claim number, date received and the initials of the ARO, and in the case of an employer account appeal, the employer's name, firm number, date received and the initials of the ARO.

The ARO will have to determine appropriate procedures to ensure fairness to the party receiving the additional documents at the oral hearing. This may include delaying the start of the hearing to give the representative an opportunity to review and discuss the documents with the party and/or witnesses. The ARO may also offer an opportunity to make post-hearing submissions on any of the documents submitted. The ARO may also consider postponing the hearing where the unfair disadvantage to the receiving party is so significant that no other procedure can overcome the disadvantage. This will constitute an exceptional reason for postponement. **See PRACTICE GUIDELINE on POSTPONEMENTS on page 35.**

The parties will be asked if there are any preliminary issues to be raised and the ARO will receive submissions and make rulings with respect to such matters. The ARO may also reserve ruling on any preliminary issues where a decision does not have to be made in order for the hearing to proceed. A request that a summons be issued, for example, may be deferred by the ARO until after all evidence has been heard, at which time the necessity of the information in question may be clearer. If a preliminary issue raised causes the ARO to conclude that it is not appropriate to proceed with the hearing, the hearing may be postponed. Since it is expected such matters should be presented prior to the date of the scheduled oral hearing, this would not

constitute an exceptional reason for postponement. **See PRACTICE GUIDELINE on POSTPONEMENTS on page 35.**

Presentations

In cases where the appeal participants are represented, the ARO will receive the presentations of the parties in the following order:

- each party/representative will be given an opportunity to make a brief opening statement which will be a summary of their respective positions, with the objecting party first, followed by the respondent party;
- the objecting party will be sworn/affirmed and give evidence through questioning by the representative, the responding representative and then the ARO. Following the ARO's questions, the respondent and the respondent's representative will have an opportunity to ask follow up questions. The respondent will ask questions which arise from the questions asked by the ARO while the party's representative will have an opportunity to ask questions arising from the questions of the ARO and the responding representative.
- if the objecting party is the worker and the worker's representative concludes that he/she does not wish to call the worker as a witness, the worker will be required to answer any questions posed by the respondent and the ARO; if the worker refuses to testify, the ARO may take a negative inference from that refusal;
- after the objecting party has testified, the other witnesses for the objecting party will be called, sworn/affirmed and questioned in the same order as above;
- the respondent will then be given an opportunity to present information through its witnesses. The respondent/representative will ask questions first, followed by the objecting party/representative, followed by the ARO, with follow up questions after that. It should be noted that for an employer's case, the decision on whether or not to call the resource person first is to be made by the employer's representative, but if that individual is not called first and remains in the hearing room while the other witnesses testify, the ARO should advise that their presence will be considered when weighing their testimony;
- in the case of a worker appeal, where the employer resource person is also going to provide testimony, the employer resource person will be asked to testify before the worker testifies. If the employer representative submits that the worker should testify first, the employer resource/witness will be allowed to remain in the room while the worker testifies but will be advised by the ARO that in the event that credibility is an issue, their presence will be considered when weighing their testimony;
- each witness should be sworn/affirmed when they enter the hearing room and before questions are asked;
- the ARO must ensure that the questions asked of witnesses are relevant to the issues under appeal and will refuse to permit questioning in relation to matters considered to be irrelevant. Cross-examination is not permitted although cross-questioning is allowed. The distinction between cross-examination and cross-questioning is discussed later in these guidelines;
- in appropriate cases, to be determined by the nature of the issue and the relative abilities of the representatives, the ARO may suggest to the parties that, having reviewed the contents of the file, the ARO wishes to clarify certain information in order to focus the enquiry. If parties agree to this approach, the ARO will question the worker/witnesses first. The parties/representatives will then follow with

additional questions as may be necessary. If the parties/representatives object to this approach, the ARO will follow the normal oral hearing protocol set out above;

- witnesses are dismissed from the hearing room (except worker and employer) after giving testimony;
- after all testimony has been received, the ARO will invite closing submissions from each representative/party with the objecting party first, followed by the respondent;
- each representative may want to respond to the other representative's closing submissions. This is permissible as long as the representatives do not rehash old ground and limit themselves to responding to the specific areas covered by the other side that were not addressed in their own final submissions. The objecting party has the last opportunity to respond to the submission of the respondent.

In circumstances of an unrepresented party(s), opening statements and closing submissions will be invited and the ARO will likely be the only one asking questions.

Recesses – Going off the Record

Where the hearing continues for more than 1 to 2 hours, it will likely be necessary to take a break.

Where possible, breaks should not occur in the middle of a witness' testimony. Where this is unavoidable, the ARO should advise the witness to refrain from discussing their testimony with anyone during the break.

Where, for any reason during the hearing, it becomes necessary to go off the record (turn off the recording device), the ARO should state at the outset the reason for going off the record and, when back on the record, disclose the nature of any discussions or activities that occurred off the record.

Closing the Hearing

The ARO will conclude the hearing as follows:

- explain that all evidence presented at the hearing as well as the information on file will be considered in reaching a decision;
- explain that a written decision will be made and sent to all parties and representatives;
- thank the parties for their attendance and advise them "the hearing is closed".

Cross Questioning vs. Cross Examination

It is a long-standing practice of the WSIB not to permit cross-examination at hearings. Cross- examination is an integral part of the adversarial approach relied upon in the court system, but is not consistent with the enquiry-based adjudication approach of the WSIB.

Rules of procedural fairness and the need to determine the merits and justice of the case require that an opposing party/representative be given an opportunity to question witnesses with adverse interests. The opposing party/representative is limited, however, to questions which seek to clarify information relevant to the case. The process of clarification is done through cross-questioning.

Cross-examination represents a more adversarial approach to questioning which is reflected in efforts to badger, attack or argue with the witness. This approach may intimidate parties and witnesses from coming forward with information and participating in the proceedings. It also creates an atmosphere which is more formal and more confrontational and can result in a significant disadvantage to individuals who are unrepresented.

Disruptive Behaviour

In cases where one or more of the parties or representatives conduct themselves in a disruptive manner that prevents the reasonable conduct of the hearing, the ARO shall put the individual(s) on notice that their behaviour is unacceptable and advise them of the ARO's authority to exclude them from the hearing room if the behaviour continues. If the behaviour does continue, the ARO has the authority to order the exclusion of the individual.

Where an exclusion order is made against one of the representatives, and to avoid prejudice to the affected party, the ARO has the authority to adjourn the oral hearing to a later date. It is up to the ARO to determine if this is necessary to permit the party whose representative has been excluded to obtain a new representative.

PRACTICE GUIDELINE: Failure to Attend an Oral Hearing

It is expected that WPPs and their representatives will arrive for the oral hearing and that the hearing will start at the time stated on the hearing notice.

If an unforeseen circumstance/emergency causes a WPP to arrive late for the oral hearing or not to be able to attend at all, the party is expected to contact the WSIB/ASD as soon as they are aware they will be late/absent and definitely prior to the time the hearing is scheduled to commence.

In Toronto, the party should contact the responsible Coordinator. For District Office oral hearings, the party should contact either the responsible Coordinator or personnel at the District Office. For oral hearings held outside of Toronto at non-WSIB offices, the party should contact the responsible Coordinator.

If telephone contact is made, it is at the ARO's discretion, after discussion with the party who is in attendance, to determine whether the oral hearing will be delayed or cancelled and then re-scheduled.

If the respondent has not contacted the relevant WSIB personnel by the time of the scheduled hearing, the ARO will wait another 15 minutes and then proceed with the oral hearing. If the respondent arrives after the start of the hearing, they will be permitted to join the hearing in progress but there will be no obligation on the part of the ARO to restart the proceedings.

If the objecting party has not contacted the relevant WSIB staff within 30 minutes of the scheduled time of the oral hearing, the hearing will be cancelled and the appeal will be withdrawn. The consequences set out in the **PRACTICE GUIDELINE on HEARING SCHEDULING on page 29** will apply, unless the party provides reasons in writing to the Coordinator, for both the failure to attend and the failure to contact the WSIB within 30 minutes of the scheduled time. If an explanation for the failure to attend is received, and if it is determined that one of the exceptional circumstances set out in the postponement criteria have been met, the Coordinator will reactivate the appeal and the hearing will be rescheduled within 90 days.

If the representative of either party arrives at the oral hearing with instructions to proceed without their client, the ARO will proceed.

PRACTICE GUIDELINE: Recordings/Transcripts

The WSIA does not require oral hearings to be recorded. However, the WSIB generally makes audio recordings of oral hearings. In case of technical difficulties with the digital recording equipment*, the hearing will continue despite the inability to record the proceedings.

Parties are not permitted to record oral hearings.

The *Workplace Safety and Insurance Act* does not require that the WSIB provide transcripts of hearings and the WSIB does not generally produce or use transcripts of its hearings.

Once a decision has been reached, parties to an appeal may request a copy of the audio recording of the oral hearing. In order to obtain a CD copy of the recording, a party to an appeal must contact 416-344-1014 to make the request.

A CD copy of the oral hearing is considered personal information under the F*reedom of Information and Protection of Privacy Act* (FIPPA) and the release and use of this information is governed by s.58 and s.59 of the WSIA.

Parties wishing to obtain a written transcript of the oral hearing will need to make their own arrangements to have this done, once they receive a CD copy of the recorded hearing.

**Digital recording equipment is now being used in the ASD. CD copies are not available for previous oral hearings that were recorded on cassette tapes.*

PRACTICE GUIDELINE: Rules of Disclosure and Witnesses

**Hearings in this guideline could include both oral hearings and hearings by teleconference.*

Section 131 of the WSIA allows the WSIB to determine its own practice and procedure.

Section 132 of the WSIA allows the WSIB to summon witnesses and requires parties to provide documents and items that the WSIB considers necessary to make a decision.

The purpose of the rules set out below is to ensure that all participants and the ARO have the same information so they can determine the issues under appeal, identify any additional information that may be required, and prepare for the oral hearing if that is the determined method of resolution.

Hearing in Writing

The objecting party is responsible for including all documentary information, including medical information at the time of the submission of the Appeal Readiness Form. Similarly, the respondent must include all documentary information with the Respondent Form.

When both parties request a hearing in writing, any submissions/arguments must be included on or attached to the Appeal Readiness Form/Respondent Form. There will be no further opportunity to argue the merits of the appeal with anyone in the ASD, before the file is referred to an Registrar to make a decision.

In these cases, the objecting party may be permitted 21 days (plus 5 days for mailing) to rebut the submission of the respondent only if the Registrar concludes, after reviewing the Respondent Form and any attached evidence or submissions, that the respondent's submission contains new evidence or argument that is so significant the objecting party should be granted time to rebut.

Once the disclosure process has been concluded, the Coordinator will assign the hearing in writing case to an ARO.

Alternatively, if one or both parties request an oral hearing, a decision on the method of resolution will be made by the Registrar. If the Registrar concludes the appeal will be resolved through a hearing in writing, both parties will be granted a further 30 days (plus 5 days for mailing) to make a detailed written submission. The objecting party may be permitted 21 days (plus 5 days for mailing) to rebut the submission of the respondent only if the Registrar concludes, after reviewing the Respondent Form and any attached evidence or submissions, that the respondent's submission contains new evidence or argument that is so significant the objecting party should be granted time to rebut.

Oral Hearing Stage

General

Once an appeal is at the oral hearing stage, the parties are responsible for taking appropriate steps to ensure that all approved witnesses will be available at the hearing and for dealing with any procedural issues that may arise prior to the hearing. Any enquiries should be made to the Registrar.

In determining whether or not the ASD will issue a summons, the criteria set out in the **PRACTICE GUIDELINE on SUMMONSES AND PRODUCTION OF DOCUMENTS on page 32**, will apply.

If, at the time of scheduling, the WSIB receives a written request to obtain outstanding information, the case will be withdrawn if it is the objecting party that makes such a request, as this would contradict the declaration of appeal readiness made when signing and sending in the Appeal Readiness Form. If it is the respondent making such a request, the case will proceed unless the outstanding information is so important that to proceed with the hearing would hinder the ability of the ARO to make a decision based on the real merits and justice of the case.

Documentary Evidence

Evidence that did not exist

There may be rare circumstances where, both for the objecting party and the respondent, relevant documentary evidence that did not exist, either at the time of the submission of the Appeal Readiness Form or the Respondent Form, or during the period of disclosure of submissions once a file has been registered in the ASD, is submitted for consideration by the ARO, either prior to the oral hearing or at the oral hearing. This evidence will only be accepted by the ARO if a reasonable argument is made about why such evidence was not available at the time of the submission of the Appeal Readiness Form.

Where documentary evidence is submitted prior to the oral hearing, and the other party has not been copied, the Registrar is responsible for ensuring that access to these documents is provided to the other party. While the overall responsibility for the provision of documents would still remain with the party forwarding the document(s), it is more important at this stage to ensure the other party has access to the documents in time to ensure they will not be prejudiced in the preparation and presentation of their case.

Evidence that did exist

For evidence that did exist at the time of the submission of the Appeal Readiness Form or Respondent Form, but was either missed by the representative(s) or was not provided to them by their client, such evidence will be accepted by the ARO, either before or at the oral hearing, if:

- it is found to be relevant by the ARO,
- both parties agree, if it is a two party oral hearing, and
- the hearing will be able to be completed within the timeframe scheduled.

Public Information

The ASD recognizes there is public reference material that an objecting party or respondent might discover in preparation for an oral hearing. For material such as:

- WSIB policies
- WSIAT decisions
- WSIAT Medical Discussion Papers
- Published decisions of other AROs,

The oral hearing participants can present the material at the time of the oral hearing. The party providing the public document(s) should ensure that a copy is provided to the ARO and to the participating party, if there is a party participating in the oral hearing.

Witnesses

The objecting party is expected to include in their Appeal Readiness Form a list of their witnesses, along with a "will say" document for each witness. The respondent is expected to provide this same information at the time they are providing their Respondent Form to the ASD regarding both the substance of the appeal as well as the method of resolution.

A "will say" document is essentially a brief summary of the evidence that each witness (other than the worker or employer) will provide at the hearing.

The WSIB takes the approach that only one witness is needed to testify on the same or similar evidence. If a party believes that more than one witness is necessary to address the same or similar evidence, they must advise why it is not sufficient for the other witness(es) to provide a written statement. A balanced approach will be taken on the number of witnesses for both the objecting party and respondent in both claims and employer account appeals.

No additional new witnesses not referenced on the Appeal Readiness Form/Respondent Form will be authorized once the Registrar has made a decision on the allowance of witnesses, unless the circumstances warrant it in relation to late participation, late representation, or a late change in representation **see PRACTICE GUIDELINE on LATE REPRESENTATION AND PARTICIPATION on page 13**, and **PRACTICE GUIDELINE on ROLE OF THE APPEALS COORDINATOR AND APPEALS REGISTRAR on page 24.**

Parties must advise the ASD and the opposing party of the removal of a witness from the witness list at least 7 days prior to the scheduled oral hearing date.

Surveillance Material

Video evidence must be submitted, in an acceptable format, to the WSIB by the objecting party at the time of the provision of the Appeal Readiness Form, and by the respondent at the time they provide their submission to the ASD regarding both the substance of the appeal as well as the method of resolution.

In exceptional circumstances, the respondent will be permitted to provide the video evidence at least 30 days prior to the scheduled oral hearing date. It must be provided to the objecting party at the same time it is provided to the ASD.

For more information on the use of surveillance material in the ASD, **see PRACTICE GUIDELINE on USE OF SURVEILLANCE MATERIAL IN THE APPEALS SERVICES DIVISION on page 58.**

Medical Reports/Records

In circumstances where a party or representative has provided an opinion medical report obtained on their own initiative, the individual is required to provide to the ASD the letter or memo sent by the requesting party or representative, to the doctor asking for his/her opinion, along with the medical report received.

The objecting party is required to provide/attach all medical reports they intend to rely on at the time they submit the Appeal Readiness Form. The respondent is expected to provide any medical reports they intend to rely on at the time they are providing their submission to the ASD regarding both the substance of the appeal as well as the method of resolution.

The ASD will allow the provision of medical reports/records by either the objecting party or the respondent either prior to or at the oral hearing if reports/records relate to medical assessments/procedures that

occurred between the date of submission of the Appeal Readiness Form/Respondent Form and the date of the oral hearing.

A medical report/record that does not relate to medical assessments/procedures that occurred between the date of submission of the Appeal Readiness Form/Respondent Form and the date of the oral hearing will be accepted by the ARO, either before or at the oral hearing, if:

- it is found to be relevant by the ARO,
- both parties agree, if it is a two party oral hearing, and
- the hearing will be able to be completed within the timeframe scheduled.

NOTE: For both documentary evidence and medical reports, it is crucial that the workplace parties provide new evidence as early in the process as possible so that the other side has a meaningful opportunity to consider the evidence and prepare their case.

Alternatively, if one or both parties request an oral hearing, a decision on the method of resolution will be made by the Registrar. If the Registrar concludes the appeal will be resolved through a hearing in writing, both parties will be granted a further 30 days (plus 5 days for mailing) to make a detailed written submission. The objecting party may be permitted 21 days (plus 5 days for mailing) to rebut the submission of the respondent only if the Registrar concludes, after reviewing the Respondent Form and any attached evidence or submissions, that the respondent's submission contains new evidence or argument that is so significant the objecting party should be granted time to rebut.

PRACTICE GUIDELINE: Returns to Operations

General

The Objection Intact Team (OIT) will return files to the original decision maker when the Appeal Readiness Form raises new issues or when significant new information is provided either in or attached to the Appeal Readiness Form.

Once an appeal has been registered in the ASD the file should only be returned to Operations in exceptional circumstances where activity occurring between the time of reconsideration in Operations and the date a case is assigned or an oral hearing occurs has:

- led to a situation where it is not possible for the ARO to conclude on the presenting issue(s) due to either a significant deficit in the information that cannot be reasonably overcome through testimony, or
- raised other issues that may reasonably impact the issue in dispute that have not yet been ruled on by Operations.

Procedures

A return will not be made without first discussing it with the parties. Where a return does occur, the ARO will complete a memo outlining the reasons for the return. The "return" memo will be sent to Operations and a copy will be sent to the parties/representatives. Returns will be routed through the Appeals Manager to OIT.

Where the action required to be taken by Operations is completed, but one or more issues remain in dispute, the case may re-enter the ASD once the objecting party completes and returns a new Appeal Readiness Form. A new Appeal Readiness Form is necessary because the appeal issues may have changed and it is necessary for both the objecting party and the participant if there is one, to have updated claim file information.

OIT must complete a new Appeals Referral Memo.

PRACTICE GUIDELINE: Withdrawals

General

Withdrawn cases may ultimately re-enter the ASD. Withdrawn cases occupy the resources of both the WPPs and the ASD and cause significant delays in the appeals process.

Given the flexibility given to the workplace parties to take as much time as is needed to prepare their case prior to submitting an Appeal Readiness Form, withdrawals from the ASD should be rare. When withdrawn appeals re-enter the ASD they will not be given priority status.

Consequences of Withdrawals

Registered in Appeals Services Division, but Objecting Party Withdraws Case	Consequence
1st Withdrawal	The case will be withdrawn and the party will have to wait 30 days to resubmit an Appeal Readiness Form through OIT.
2nd Withdrawal	The case will be withdrawn and the party will have to wait 90 days to resubmit an Appeal Readiness Form through OIT.
3rd Withdrawal	The party must write to the Vice-President of the ASD to ask to return to the ASD to have their appeal resolved.

NOTE: If an objecting party or respondent is temporarily unavailable to participate in the submission and disclosure process for reasons beyond their control, such as the sudden and serious illness of the party or the need to leave the country to deal with an emergency, the appeal will not be withdrawn immediately but will remain with the Coordinator, who will place the case on administrative hold until the situation has resolved. If the party is unavailable for more than 30 days, the ASD will determine whether to withdraw the case or proceed with the appeal.

PRACTICE GUIDELINE: Resolution Stage

Decisions

Decisions will be written in a clear and concise manner using plain language and will generally be written in an anonymized style.

Where findings are made on the basis of credibility, reasons must be given for accepting or rejecting the credibility of a statement made by an individual. Where findings are made on the basis of the weighing of medical evidence, reasons will be given for more weight being placed on one medical report as opposed to another.

Written decisions should follow formats appropriate to the case. In all cases, the decision must set out:

- the issues under objection;
- a brief description of how the issues arose;
- the applicable policy reference; the method of resolution;
- the evidence considered and how it was weighed; and
- the conclusion reached.

Decisions will not include lengthy summaries of information found in the file record and will focus instead on the information the ARO has found relevant to the issue(s) before them.

Once the decision has been signed, a copy will be sent to the parties. A copy will also be placed on the claim or firm file and sent to Operations.

In the covering letter sent with the decision, the parties will be advised of the relevant time limit for appeals to the WSIAT.

Agreements

Agreements are reached when the participating parties and the ARO agree on an outcome.

The parties will be advised at the time of the resolution that the agreement constitutes a final decision of the WSIB.

A document confirming the agreement will be prepared by the ARO. It will cover the same information as a decision (see paragraph #3 under "Decisions" above) and show how the agreement is consistent with the WSIA and WSIB policy.

In the covering letter sent with the confirming document, the parties will be advised of the relevant time limit for appeals to the WSIAT.

PRACTICE GUIDELINE: Reconsiderations in the Appeals Services Division

Authority

Section 121 of the WSIA states the WSIB may reconsider any decision made by it and confirm, amend or revoke the decision. WSIB Policy 11-01-14 confirms this authority and gives the decision maker and the decision maker's Manager the right to reconsider.

Principles

An ARO decision is the final decision of the WSIB. In an enquiry-based system, the information gathering activities leading up to the final decision engage the WPPs in the process. This allows every opportunity for the parties to provide information and evidence in support of their respective positions.

The reconsideration authority is not intended to be used to simply reargue the position of the WPPs or act as another level of appeal and is only applicable in certain circumstances.

In the ASD, the individuals who could be asked to undertake reconsideration are: the ARO, an Appeals Manager, and the Vice-President.

Requests for Clarification

There may be cases where an ARO decision is perceived by the WPPs or other WSIB staff to be unclear, incomplete or to have an obvious error (e.g., a typographical error that does not impact the decision).

The criteria surrounding the reconsideration of decisions do not prevent an ARO from issuing an addendum to clarify a decision, correct a date, or complete an incomplete decision. This may be done where the text of the decision did not correctly reflect the ARO's intent or include a decision on all the issues that were properly before them.

The clarification request must not be used as a disguised challenge of the decision or as a means of having the ARO decide an issue that was not part of the original appeal issue agenda.

The request for clarification must be made directly to the ARO who made the decision and must be made in writing. If the ARO is no longer in the ASD, the request should be sent to the Appeals Manager.

Standard of Review for Reconsideration

The criteria that would cause a decision to be reconsidered are:

- a substantive defect in the decision or the decision-making process that may reasonably affect the outcome;
- failure to properly apply the Act or approved WSIB policy;
- significant new evidence that did not exist at the time the ARO decision was made, and that is relevant to the issue(s) under appeal; or
- a typographical error that impacts the decision.

NOTE: *Exist vs. Available** – Material that was available but was not provided to the ASD at the time the ARO decision was made will not trigger the reconsideration process.

Application Procedure from Workplace Parties

An application for reconsideration from any of the WPPs must be submitted in writing, generally first to the ARO and if necessary, to the ARO's Manager, and finally, to the Vice-President of the ASD. The submission must state the reasons for the request and reference which standard of review criteria have been met. The party making the reconsideration request is expected to be detailed and comprehensive in their written submission.

Application Procedure from Operations/Business Unit

If Operations/Business Unit is submitting the request, it too must be made in writing, outlining clearly the reasons for the request and referencing which of the standard of review criteria have been met. The parties must also be advised of the internal reconsideration request, through the provision of a copy of the detailed reconsideration request memo at the same time it is being forwarded to the ASD. The internal reconsideration request memo must be signed by the Operations Director and must be forwarded to the Vice-President of the ASD.

Reconsideration Process in the ASD – General Rules

The process involves two steps. It must first be decided whether it is appropriate to reconsider a decision by determining if one of the standard of review criteria have been met. This is the threshold test. If the threshold has been met, the person reconsidering the decision must determine if, even though the threshold has been met, it results in the decision being changed in a substantive way. This is referred to as the substantive review. If no grounds are found to warrant reconsideration, that is, if the threshold test has not been met, the parties will be advised in writing, with rationale and explanation provided. If grounds appear to exist, the person undertaking the reconsideration will notify both parties that the threshold has been met, and establish the procedures to be followed in conducting the reconsideration. The person responsible for the reconsideration has the ultimate authority to determine how best to conduct the reconsideration. There will be no opportunity to request a concurrent reconsideration at the various levels of reconsideration (ARO, Appeals Manager or Vice-President) until both the process to be followed in the reconsideration and the reconsideration itself have been fully completed.

In most cases, a reconsideration may be addressed through written submissions. Generally, the ASD will provide 30 days to make a written submission.

Following reconsideration by the ARO, the Appeals Manager or Vice-President may also be asked to reconsider the decision. The additional levels of reconsideration will not be undertaken automatically. Whoever asks an Appeals Manager or the Vice-President to reconsider a decision must make the request in writing and outline the standard of review criteria that have been met and the reasons for the request. The ARO's Manager and the Vice-President have the authority to reconsider and change a decision on the same grounds as noted above and will follow the same procedures as the AROs for dealing with reconsideration requests. This is not an additional level of appeal and is not intended to be used simply to substitute management's judgment for the judgment of the ARO.

Regardless of who in the ASD is reconsidering a decision, at the completion of the reconsideration review, the WPPs, the representatives (if any), and Operations will be notified of the outcome in writing, with reasons provided.

For reconsiderations requested in the usual manner related to the criteria of significant new evidence, typographical error, failure to apply WSIB policy, or a defect in the decision or decision-making process, the ARO decision will:

- remain valid on its face,
- remain on the claim file, and
- will be implemented by the operating area, if the ARO has directed action.

If the reconsideration results in a full or partial overturning of the decision, implementation will be reversed.

De Novo Decisions

Where the WSIB recognizes that there has been a significant procedural flaw that has rendered the appeals process fundamentally unfair, the WSIB will consider the ARO decision voidable, which means the defect can be corrected.

Where an ARO decision is considered voidable, the WSIB will:

- remove the original ARO decision from the claim file temporarily and replace it only after a second ARO decision has been made and communicated to the workplace parties
- conduct a "de novo" oral hearing or hearing in writing by a second ARO
- take no steps to interfere with the implementation of the original ARO decision, pending the outcome of the de novo process.

An example of a case where an appeals decision is considered voidable is where a party who has returned a completed Participant Form is mistakenly excluded from the appeals process.

The original ARO decision will be implemented pending the outcome of the de novo reconsideration process, subject to exceptional circumstances.

In cases where a fundamental process flaw has occurred and a de novo process is initiated, the ASD is committed to resolving these cases in a timely manner. Based on this, the timelines associated with the appeals process will apply. This will include timelines for the provision of forms and submissions, as well as the scheduling of oral hearings.

Exceptional Circumstances

There may be certain exceptional cases where it may be advisable to either place the implementation of the original ARO decision on hold or reverse the implementation because failure to do so would be very detrimental to the worker or employer.

The worker or employer must submit a written request to the Director of the ASD outlining why the implementation of the original ARO decision should be put on hold or reversed. The submission should outline the following:

1) What is or will be the significant harm to the party if the implementation of the original ARO decision is not put on hold or reversed?
2) Is the significant harm immediate or likely to occur at some future date? Because the de novo process will be actioned on a priority basis, the ASD is not likely to consider this criterion an exceptional circumstance if the harm is likely to occur at a time where the de novo process is likely to have been completed.

3) Is the party prepared and ready to move expeditiously to participate in the de novo process? If not, why not?

Examples where the ASD may direct that the implementation of the original ARO decision be put on hold or reversed are:

- A worker is scheduled for a 1-2 year college program in the near future and a de novo reconsideration cannot be completed prior to the start of the college program,
- A worker is experiencing urgent financial issues, such as bank foreclosure or eviction proceedings, and
- A worker is scheduled for surgery in the near future and needs loss of earnings benefits, but the original ARO decision denied entitlement for surgery.

Limit on Reconsideration Requests

Generally, only one reconsideration request should be made by each party at each level of reconsideration (the ARO, the ARO's Manager and the Vice-President). The ASD will not grant a further request for reconsideration from the same party made to the same individual unless there are exceptional circumstances (e.g., the failure to grant a subsequent reconsideration would result in a serious procedural or substantive unfairness to a party).

Reconsideration Time Limit

The ASD will not reconsider a decision after more than two years have passed since the date of the decision. Reconsideration requests made after two years will be undertaken only in exceptional circumstances, with those circumstances determined by the Vice-President, ASD.

Examples of exceptional circumstances include:

- the party requesting the reconsideration provides compelling reasons why the two year time limit was not met,
- in the opinion of the Vice-President, significant new evidence has been provided, significant evidence was overlooked by the original decision-maker, or there was a significant jurisdictional error committed, that would likely have changed the outcome of the decision.

PRACTICE GUIDELINE: Oral Hearing Fees and Expenses

When an oral hearing occurs, the ARO considers requests for the payment of expenses for the worker, the worker's witnesses and any summoned witnesses. Travel, meal and accommodation expenses are paid to workers, their witnesses and summoned witnesses who are required to attend hearings outside their area of residence or employment. All witnesses who are not summoned by the ASD must have their attendance pre-authorized by the ASD if they wish to be paid. Such requests should be made on the Appeal Readiness Form/ Respondent Form.

Employers and their witnesses are not entitled to the payment of hearing fees and expenses.

Travel expenses are limited to the equivalent of travel within Ontario borders. The ASD may pay for a portion of travel costs outside of the province. Generally, the WSIB will pay only from Winnipeg in the west and Montreal in the east, to the location of the oral hearing. If travel is from destinations farther away than either of these two cities, the travel costs will be limited to the equivalent of: the actual travel costs, or the cost of a return flight from either Montreal or Winnipeg and the oral hearing location, whichever is less.

AROs will attend to the various potential expenses/payment requests either during the preliminary discussion at the oral hearing or once the oral hearing has been closed.

Travel and Related Expenses

Allowances for travel, meals and accommodation expenses are paid at the prevailing rates established in the WSIB policy 17-01-09, Travel and Related Expenses.

Non-Professional Witness Fees

A witness fee, if there are lost wages, will be paid at a rate authorized by the ASD; a set amount for a half day and a set amount for a full day. A witness fee will not be paid to workers or their witnesses if:

- the worker is entitled to full WSIB benefits for the same day; or
- the worker/witness has been paid for the lost time by the employer; or
- the worker/witness suffers no wage loss while attending the hearing.

The expenses shall be recorded on a standard expense form which is to be signed by the party requesting the expenses and the ARO.

Professional Witness Fees

Professional witnesses will be paid a set fee as prescribed by the ASD. Professional witnesses include, amongst others, medical doctors, psychologists and physiotherapists. It is generally sufficient for the above individuals to provide medical reports to the ARO, and they will only be approved to appear at an oral hearing in unique circumstances where the evidence they intend to bring forward can only be effective if it is provided in person.

Witness Fee Schedule

Non-Professional witnesses: $110.96 for a full day/ $55.48 for a half day
Professional Witnesses: $600 for a full day/$300 for a half day

Payment for Medical Reports

Medical reports will be paid for at the approved WSIB fee schedule, if the report is provided by a party or representative as an attachment to the Appeal Readiness Form, but only if the report is deemed by the ARO to be significant in the decision-making process.

The approved fee schedule is set out in 17-02-03, *Payment of Clinical Assessments/Reports Requested for Adjudication.*

PRACTICE GUIDELINE: Use of Surveillance Material in the Appeals Services Division

This document is meant to supplement WSIB policy 11-01-08, *Audio Visual Recordings and 22-01-09, Surveillance.*

When resolving an issue in dispute, the ASD may accept video evidence from the WPPs or from the WSIB Regulatory Services Division (RSD) if the evidence is relevant and provides new or more complete information than is already on file.

Video evidence must be submitted, in an acceptable format, to the WSIB by the objecting party at the time of the provision of the Appeal Readiness Form, and by the respondent at the time they provide their submission to the ASD regarding both the substance of the appeal as well as the method of resolution.

It must be provided to the other WPPs at the same time it is provided to the ASD.

In exceptional circumstances only, the respondent will be permitted to provide the video evidence at least 30 days prior to the scheduled oral hearing date, and will be required to ensure that the other WPPs have a copy of the evidence.

Video evidence may be accepted in a variety of media formats. Parties submitting video evidence are responsible for ensuring the evidence is in a format that is accessible to all parties to the appeal.

See PRACTICE GUIDELINE on RULES OF DISCLOSURE AND WITNESSES on page 45 for guidance on the disclosure timelines for surveillance material.

In all cases, the evidence must be authenticated, through a signed statement from the author confirming the date, time and location of the video, that it has not been altered, and that the video is a true representation of its subject. If the ASD receives evidence that is not accompanied by such a signed statement, the ASD will return the evidence and ask that it be authenticated and re-submitted.

If the decision is based in whole or in part on surveillance evidence but the identity of the subject of surveillance is contested, a detailed investigation by RSD can be undertaken at the request of the ASD.

If the video evidence is to be used in an oral hearing, the ARO should view the evidence in advance of the hearing and seek agreement with the parties about what sections of the video are most relevant. Consensus should be sought as to whether actual viewing of the video during the hearing is necessary and if so what sections will be viewed. Often, an agreement can be reached that if the parties have all viewed the video in advance it will not be necessary to view it again in the oral hearing.

When video evidence is to be used in an oral hearing the Coordinator must be advised at the time of booking the hearing that audio visual equipment will be required.

PRACTICE GUIDELINE: Experience Rating Adjustments – Exceptional Circumstances

Retroactive experience rating adjustments may be presented as a "stand alone" issue in an appeal after Second Injury and Enhancement Fund (SIEF) relief has been granted.

As a result, it is important for decision makers to have regard for the experience rating window when deciding if SIEF cost relief is to be applied.

However, there may be circumstances where retroactive adjustments to SIEF relief occur after the closure of the experience rating window.

WSIB policy outlines that adjustments outside of the experience rating window can occur if the WSIB has made an error. Errors are defined as:

- Clerical (typographical)
- Data processing (computer generated)
- Omission (decision made but not acted upon)

It is important to distinguish the above circumstances from delays that result from the appeals process. The fact that an ARO grants SIEF relief on appeal outside of the experience rating window does not in itself make it a WSIB "error" that would give rise to an experience rating adjustment.

The ASD has developed the following guideline when considering employer appeals where exceptional circumstances may exist.

Circumstances that may constitute "exceptional circumstances" include but are not limited to:

- Whether the employer pursued SIEF relief within a reasonable period after the employer knew or ought to have known the worker's recovery period was prolonged or enhanced by a pre-existing condition.
- Whether there was a delay in identifying a pre-existing condition.
- Whether undue delay in the decision-making process caused the decision to grant SIEF relief to fall outside the experience rating window.
- The length of time between the closure of the experience rating window and the SIEF decision. It would be expected that discretion be extended in cases where the period is relatively short (i.e., less than six months).

When an ARO is deciding on the experience rating adjustment as part of an SIEF appeal, the ARO must be aware of the appeal time limit for the experience rating adjustment, if a decision has been made by Operations relating to that issue. In cases where the above rule of practice is applied, a copy of the ARO decision should be sent to the Manager of Experience Rating.

PRACTICE GUIDELINE: Publication of ARO Decisions

Some ARO decisions are published on the website for the Canadian Legal Information Institute (CANLii) to enhance education as well as openness and transparency in the ASD decision-making process.

Published ARO decisions are anonymized and do not include any personal identifying details.

The ASD will not publish decisions in circumstances where a risk of identification exists or where the issues are of such a sensitive nature that it would not be appropriate to do so.

Please see www.canlii.org for published decisions.

PRACTICE GUIDELINE: Employer Account Appeals

This guideline is provided for the purposes of outlining any differences in the *Appeals Services Division Practice & Procedures* (P & P) document specifically related to employer account appeals. Unless differences are referenced specifically throughout the P & P, the regular guidelines will apply.

Adverse Decision

When an adverse decision regarding an employer account issue is made by a front- line decision maker, they will communicate that decision verbally, when possible, and in writing. The written decision will invite the WPP that received the adverse decision to provide any additional information that might alter the decision, and will also advise the party of the time limit to object to the decision. **SEE PRACTICE GUIDELINE on TIME LIMIT TO OBJECT on page 7.**

If concerns are raised about the decision, the front-line decision maker will review the concerns with the workplace party, explain the rationale for the decision and address any new information that may be provided. If the decision is not changed, the WPP can then proceed with their objection.

Objection Form

The WPP is required to complete an Objection Form that is issued to them by the front-line decision maker, and return it to the decision-maker if they choose to proceed with an objection.

Note: the Objection Form for employer account appeals is different than the Intent to Object Form used for other appeals.

The completed Objection Form must specify reasons why the decision is considered to be incorrect, any new information not considered by the decision-maker, and a summary of what is requested related to the Employer's account. If the Objection Form is not completed in full, the referral to the ASD may be delayed.

Once the Objection Form is completed, the front-line decision maker forwards an Appeals Referral Memo to the ASD.

Access

Firm file access is provided upon request through the firm file access area. **SEE THE PRACTICE GUIDELINE on INTENT TO OBJECT – HANDLING BY OPERATIONS on page 4.**

Appeal Registration and Review Stage

Once the appeal is registered in the ASD, the Coordinator will review for completeness and assign to an ARO to determine method of resolution.

Method of Resolution

For employer account appeals, the WSIB decision on method of resolution is an administrative decision made by the ARO. A request for reconsideration of this decision may be made to the ARO. There will be no opportunity to request reconsideration by an Appeals Manager, Director or the Vice-President. The ARO will contact the party to inform them of the method of resolution and, in the case of a hearing in writing, will provide the party a due date for any further submissions. The due date will be 30 days plus 5 days for mailing.

For more information on how employer account appeals are generally dealt with in terms of method of resolution, **SEE LISTS on page 21 and 22**.

Hearing in Writing:

An ARO will make a decision in these cases based on a review of the information contained in the record along with any new submissions provided. The ARO will generally complete the decision within 45 days once the submission due date has passed.

Oral Hearing:

If the WSIB determines that an oral hearing is required, it will generally be convened with 90 days. At the oral hearing, the WPP will have an opportunity to present their case. The ARO will generally complete the decision within 45 days from the date the hearing is completed.

APPENDIX A

APPLICATION OF TIME LIMIT EXTENSION CRITERIA

Criteria between January 1, 2008 and January 31, 2013 (For Employer Account Appeals this applies from January 1, 2008 to June 30, 2016)

- The length of the delay. Broad discretion to extend will be applied where appeals are brought within one year of the date of the decision. Additional criteria to be considered for longer delays include:
  - Serious health problems (experienced by the party or the party's immediate family) or the party leaving the province/country due to the ill health or death of a family member;
  - Whether there was actual notice of the time limit. This acknowledges that post '98 decisions specifically refer to the time limits but pre'98 decisions do not;
  - Whether there are other issues in the appeal which were appealed with the time limits and which are closely related to the issues not appealed within the time limits;
  - The significance of the issue in dispute;
  - Whether the party was able to understand the time limit requirements.
- All decisions to extend time limits will be based on the merits and justice of the case.

Criteria between February 1, 2013 and June 30, 2016

- Criteria to be considered for objections beyond the statutory time limit include:
- Whether there was actual notice of the time limit. This acknowledges that as of January 1, 1998, decisions specifically refer to the time limits but prior to that date, they do not;
- Serious health problems (experienced by the party or the party's immediate family) or the party leaving the province/country due to the ill health or death of a family member;
- An organic or non-organic condition that prevents the worker from understanding the time limit and/or meeting the time limit;
- Whether there are other issues in the appeal that were appealed within the time limit which are so intertwined that the issue being objected to within the time limit cannot reasonably be addressed without waiving the time limit to appeal on the closely related issue.

All decisions to extend the time limits will be based on the merits and justice of the case.

Criteria as of July 1, 2016 (including Employer Account Appeals)

Criteria to be considered for objections beyond the statutory time limit include:

- Whether there was actual notice of the time limit. This acknowledges that as of January 1, 1998, decisions specifically refer to the time limits but prior to that date, they do not;
- Serious health problems (experienced by the party or the party's immediate family) or the party leaving the province/country due to the ill health or death of a family member;
- An organic or non-organic condition that prevents the worker from understanding the time limit and/or meeting the time limit;
- Whether there is clear documentation in the claim file that the party was disputing the issue(s) in a particular decision even though a formal notice of objection was not filed (direct correspondence or memo outlining a telephone discussion about the particular issue);
- Whether there are other issues in the appeal that were appealed within the time limit which are so intertwined that the issue being objected to within the time limit cannot reasonably be addressed without waiving the time limit to appeal on the closely related issue.

APPENDIX B

KEY CHANGES TO PAST APPEALS SERVICES DIVISION PRACTICE AND PROCEDURES DOCUMENTS

Effective July 1, 2016

The Appeals Services Division (ASD) continues to enhance services for our clients. In 2016 our improved services include fewer touch points for clients and early, substantive decision making during the intake of an appeal. These service improvements have been accomplished through the implementation of two new roles within the Division: Appeals Coordinator and Appeals Registrar. By offering enhanced services to clients, the new positions will reduce downstream
impacts such as appeals being withdrawn or returned to Operations, and unrepresented workers and employers will have greater opportunity to discuss the appeals process with the Appeals Registrar at the beginning of the process.

The Division has also made updates to the *Appeals Services Division Practice & Procedures Document* to make it more accessible, and to include more detailed information about employer account appeals. The key changes to the Practice and Procedures Document are highlighted in the chart below:

Issue	Description	Page(s)
Overall document formatting	▪ The Practice and Procedures document is now formatted for increased accessibility purposes. As a result of these format changes, most page references are changed and the document is longer.	**All**
Role Change: Appeals Coordinator	▪ The Hearings Scheduler role has been expanded to a new role called Appeals Coordinator. This role update is explained on page 22 and is reflected throughout the document as appropriate.	**22 to 23**
Role Change: Appeals Registrar	▪ The Appeals Administrator role has been expanded to a new role called Appeals Registrar. This role update is explained on page 22 and is reflected throughout the document as appropriate.	**22 to 23**
Role Change: Executive Director	▪ The Executive Director role has changed. There is now both a Vice-President and a Director role within the Appeals Service Division. This role update is reflected throughout the document as appropriate.	**All**
Time Limit	▪ The Time Limit to Object to re-employment decisions has been clarified as being 30 days, not 6 months. ▪ Employer account appeals are now included, and noted as having a 6-month Time Limit to Object. ▪ An additional criterion has been added when considering objections beyond statutory time limits, that takes into account whether there is clear documentation of the party disputing the issue on the claim file. ▪ An Appeals Resolution Officer no longer makes decisions regarding time limits to object. These decisions are now made by an Appeals Registrar.	**7**

Issue	Description	Page(s)
Criteria for Hearings in Writing (HIW) vs Oral Hearings (OH)	• The Appeals Registrar will make a determination on HIW or OH when a party has requested an OH. • The Appeals Registrar will also make a determination on the number of witnesses to attend the OH.	**17, 22**
HIW list updated	• Employer account appeal issues are included. • Disablement with no factual dispute is included.	**19 to 20**
Hearing Scheduling	• The Appeals Coordinator replaces the Hearings Scheduler function. The Appeals Coordinator will be confirming any video evidence at the time of the OH booking.	**27 to 28**
Summonses and Production of Documents	• The Appeals Coordinator replaces the Appeals Administrator function.	**30 to 31**
Postponements	• The Appeals Registrar replaces the Appeals Administrator function. • The Appeals Coordinator replaces the Hearings Scheduler function.	**33 to 34**
Interpreters	• Requests for interpreters subsequent to submission of the Participant Form or the Respondent Form are now made through the Appeals Coordinator. • As interpreters hired by the WSIB carry professional status, they will no longer be sworn in during OH.	**29, 36**
Failure to Attend Oral Hearing	• The Appeals Registrar replaces the Appeals Administrator function.	**41**
Rules of Disclosure and Witnesses	• The Appeals Registrar replaces the Appeals Administrator function.	**43 to 45**
Withdrawals	• The Appeals Registrar replaces the Appeals Administrator function. • 3rd withdrawal requests must be in writing to the Vice President.	**48**
Reconsiderations	• Increased days for written submissions from 21 days to 30 days. De Novo Process changes are made.	**50 to 52**
Use of Surveillance Material	• Further clarity provided regarding requirement to share surveillance submissions with other WPPs at the same time it is provided to the ASD, and that only in exceptional cases will it be accepted within 30 days of a Hearing. • The Appeals Coordinator replaces the Hearings Scheduler function.	**56**
Employer Account Appeals	• Practice Guidelines for employer account appeals are now included, and are reflected throughout the document as appropriate.	**59**

Effective January 1, 2017

In this version we outlined important information regarding past decisions and the Time Limit to Appeal, and continued improvement of overall document formatting.

Issue	Description	Page(s)
Overall document formatting	• The Practice and Procedures document is now formatted for increased accessibility purposes. As a result of these format changes, many page references are changed, the document is longer and includes APPENDICES that reflect key past changes.	**All**
Time Limit to Appeal	• The criteria related to the extension of the time limit to object that were in place at the time of the operating area decision on the time limit, should be applied. Appendix A includes the criteria and relevant time frames associated with those criteria.	**7, APP. A, page 61**

TAB D

THIS IS EXHIBIT "D" REFERRED TO IN THE AFFIDAVIT OF LAURA J. FREITAG SWORN BEFORE ME THIS 9th **DAY OF** February**,** 2021**.**

A COMMISSIONER FOR TAKING AFFIDAVITS

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

Intent to Object Form

If you need assistance completing this form, see the instruction sheet or call the WSIB at 416-344-1000 or 1-800-387-0750.

1. Claim Identifiers

Worker's Name	Claim No.
Kelly Donovan	30505408

2. Objecting Party

☐ Worker ☐ Worker Representative ☒ Employer ☐ Employer Representative ☐ Transfer-of-Cost Employer

3. General Information

Is the worker/employer address and contact information the same as the decision letter? ☒ **Yes** ☐ **No, see changes below.**

Name: Waterloo Regional Police Service

Address	City/Town	Postal Code
200 Maple Grove Road	Cambridge	N3H 5M1

Telephone No.: (Day)	Telephone No.: (Evening)	Language
(519) 653-7700	( )	☒ English ☐ French ☐ Other

4. Representation

See Instruction Sheet for information on possible assistance available.

Please check one: ☐ **I will represent myself in the objection process, or I am currently seeking representation.** ☒ **I have a representative to handle my objection.**

If you are represented - A signed *Direction of Authorization* for this representative must be in the claim file.

Representative's Name	Organization
Donald B. Jarvis	Filion Wakely Thorup Angeletti LLP

Address	City/Town	Postal Code
333 Bay Street, Suite 2500	Toronto, Ontario	M5H 2R2

Telephone No.: (Day)	Telephone No.: (Evening)	FAX No.
(416) 408-5516	( )	(416) 408-4814

5. Intent to Object

I disagree with the following decision(s):

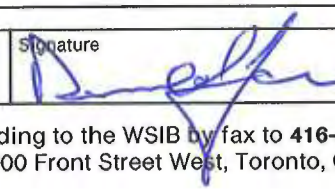
Date of Decision Letter(s) (dd/mmm/yyyy)	Issue(s) in Dispute
12/Jul/2017	Entitlement to healthcare and loss of earnings benefits

6. New Information/Reconsideration

This is an opportunity to provide any new information that the front-line decision maker may not have considered, based on the contents of the decision letter(s). The decision maker can reconsider the decision(s) and may be able to change the decision(s). You will be advised of the outcome of the reconsideration.

☐ **No, I have no additional explanation/information to submit.**

☒ **Yes, additional explanation/information is attached.**
(Please put the worker's name and claim number on each page.)

Name (please print)	Signature	Date
DONALD B. JARVIS		11 JAN 2018

Please print and sign the completed form before sending to the WSIB by fax to **416-344-4684 or 1-888-313-7373** or by mail to: Workplace Safety & Insurance Board, 200 Front Street West, Toronto, ON M5V 3J1

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

Intent to Object Form
(Optional Page)

Worker's Name	Claim No.
Kelly Donovan	**30505408**

7. Reasons for the Objection

Please explain why you disagree with the decision(s). Your explanation may bring out new information the front-line decision maker was not aware of. Be as specific as possible and refer to any new information you are attaching, where applicable. Please attach additional pages if you need additional space.

Please see attached Schedule "A".

	Number of pages attached
	15

SCHEDULE "A" TO INTENT TO OBJECT FORM

1. The Waterloo Regional Police Service (the "Service") disagrees with the decision because the worker's alleged injury did not arise out of or in the course of the worker's employment. The worker's diagnosis of PTSD was presumed to have arisen out of and in the course of her employment pursuant to Operational Policy Manual document 15-03-13 titled Posttraumatic Stress Disorder in First Responders and Other Designated Workers. It is the position of the Service that this presumption is clearly rebutted based on the events that occurred leading up to the worker's date of injury/illness of February 1, 2017. The decision indicates that the worker was diagnosed with Posttraumatic Stress Disorder (PTSD) on June 22, 2017.

BACKGROUND

2. The worker was employed by the Service as a police officer prior to her resignation effective on June 25, 2017.

3. On or about May 4, 2016, the worker made a "delegation" to the Waterloo Police Services Board (the "Board"). The worker's delegation to the Board related to the worker's belief that the Service was investigating alleged domestic violence inconsistently where members of the Service were involved, either as alleged victims or alleged perpetrators. Members of the public as well as the media were present during the worker's delegation to the Board in which she identified herself as a police officer, referred to confidential information contained in a confidential Crown Brief, criticized the Service and members of the Service, and suggested that police officers of the Service may have suppressed evidence in a criminal investigation.

4. Following the worker's delegation, the worker was advised that the Service would arrange for an external review of the substance of the worker's allegations. The worker was also advised that, subject to and following that review, the worker would be the subject of an investigation under the *Police Services Act* (the "*PSA*") to determine

whether her actions breached the *PSA* and constituted discreditable conduct, neglects of duty and/or breaches of confidence.

5. The worker was served with a Notice of Internal Investigation into Alleged Misconduct on May 9, 2016. The worker was also served with a Directive on May 9, 2016, which directed her not to appear before the Board without the permission of the Police Chief, and assigning her to administrative duties. The worker was assigned to administrative duties as of May 9, 2016 pending the conclusion of the PSA investigation. Nonetheless and despite the Directive, on May 9, 2016, the worker sent an email to members of the Board. On May 31, 2016, the worker was served with an additional Notice of Internal Investigation into Alleged Misconduct in respect of her email correspondence of May 9, 2016.

6. After learning that she would be investigated under the *PSA*, the worker filed an internal complaint on June 2, 2016. In that complaint, the worker alleged that she had been discriminated against and harassed contrary to the Ontario *Human Rights Code* by various members of the Service in connection with her delegation of May 4, 2016. The Service retained an independent third party investigator named Lauren Bernardi, of Bernardi Human Resource Law LLP, to investigate the worker's complaint of workplace harassment and discrimination. Ms Bernardi issued her report on October 31, 2016, which found that there had been no discrimination based on sex, and that no members of the service had engaged in any form of harassment.

7. The Service asked the York Regional Police ("YRP") to conduct an external review of one of the investigations that had been highlighted by the worker during her May 4, 2016 delegation. On August 18, 2016, the Service received the YRP's report, which found that there were no concerns or improprieties with the Service's criminal investigation.

8. Between November 29, 2016 and January 16, 2017, the Service also conducted an internal review of another investigation the worker alleged had been mishandled by the Service. This internal review similarly found that the Service had followed appropriate investigative procedures.

9. The Service deferred its *PSA* investigations of the worker pending the completion of the external and internal reviews of the worker's allegations of investigative misconduct by the Service, and pending the Bernardi investigation of the worker's claim that she had been subject to harassment and discrimination. Accordingly, following the Service's receipt of all of the foregoing investigative reports, the Service resumed its *PSA* investigation, and notified the worker on or about January 23, 2017 that it would be continuing with that investigation.

10. Then, very shortly thereafter, the worker commenced a medical leave of absence from work on or about February 27, 2017. Notably, the worker did not receive medical clearance to participate in the Service's *PSA* investigation, including attending for a *PSA* compelled interview where she would have been given the opportunity to respond to the allegations, prior to her resignation effective on June 25, 2017. As a result, the worker was never formally or informally disciplined and those matters ended, as a matter of law, upon her resignation.

SUBMISSIONS

11. First and foremost, the Service respectfully submits that the worker's employment was not a significant contributing factor in causing her alleged PTSD. Notably, the worker was assigned to the Service's Training Branch beginning in or around 2015. In that role, the worker trained other police officers, and did not perform any work "in the field" or in the community. Further, as noted above, the worker was then assigned to administrative duties beginning on or about May 11, 2016. These duties continued until the effective date of the worker's resignation, though the worker began an approved leave of absence from work due to sickness on or about February 27, 2017.

12. In the WSIB Decision, the date of injury/illness is identified as February 1, 2017. Again, as previously noted, the worker was performing only administrative duties at that time. Moreover, the worker had just been advised on January 23, 2017, that the Service would be resuming its investigation into whether the worker had engaged in misconduct under the *PSA*.

13. In all of the circumstances, even if the worker did genuinely suffer from PTSD, it is clear that the only work-related nexus was the Service's notice to the worker that it was about to resume its *PSA* investigation. As noted in Operational Policy 15-03-13, if a worker's PTSD was caused by his or her employer's decisions or actions that are part of the employment functions such as discipline, the worker will not be entitled to benefits for PTSD.

14. In summary, the worker's employment was not a significant contributing factor in causing her alleged PTSD and/or, in the alternative, such work-relatedness was rooted in decisions or actions of the Service that were part of the employment function.

15. For the foregoing reasons, the Service submits that the worker is not entitled to healthcare benefits or LOE benefits. The Service reserves the right to make further submissions upon receipt of the Claim File, including all applicable medical reports.

TAB E

THIS IS EXHIBIT "E" REFERRED TO IN THE AFFIDAVIT OF LAURA J. FREITAG SWORN BEFORE ME THIS 9th **DAY OF** February**,** 2021**.**

A COMMISSIONER FOR TAKING AFFIDAVITS

wsib cspaat ONTARIO

Head Office: 200 Front Street West Toronto, Ontario Canada M5V 3J1
Siège social : 200, rue Front Ouest Toronto, Ontario Canada M5V 3J1
Telephone / Téléphone : 416-344-1000 1 800 387 0750 TTY / ATS : 1-800-387-0050
Fax / Télécopieur : 416-344-4684 1 888 313 7373

August 3, 2018

DONALD B. JARVIS
333 BAY ST SUITE 2500
TORONTO ON M5H 2R2
CANADA

Claim No.: 30505408
Worker Name: KELLY DONOVAN
Date of Injury/Illness: 01/Feb/2017
Injury/Illness: Psychological Trauma

Dear Mr. B. Jarvis,

Subject: Review of Intent to Object Form and Reconsideration

I am writing in response to your January 11, 2018 Intent to Object form.

I would like to apologize for my delay in responding to your concerns.

Concerns Indicated:

You are objecting to initial entitlement in this claim. The letter attached to your Intent to Object form indicates the following concerns:

- On or around May 4, 2016, Ms. Donovan made a "delegation" to the Waterloo Police Services Board, which resulted in an external review of her allegations (regarding inconsistent police investigations into potential domestic violence, where Service members were involved), as well as an investigation into Ms. Donovan under the *Police Services Act* (*PSA*).
- Effective May 11, 2016 Ms. Donovan was assigned to administrative duties (pending *PSA* investigations). Previously, she was assigned to the Service's Training Branch beginning in or around 2015. As such, she did not perform work "in the field" or in the community.
- The date of injury/illness is identified as February 1, 2017, which occurred when Ms. Donovan was performing only administrative duties, and had recently been advised of the resumption of the Service's *PSA* investigation.
- On June 2, 2016, Ms. Donovan filed an internal complaint, alleging harassment and discrimination under the Ontario *Human Rights Code*. An independent third party investigator addressed this complaint and the October 31, 2016 report found there had been no discrimination or harassment.
- Both an external review (which was completed on August 18, 2016) and an internal review (conducted between November 29, 2016 and January 16, 2017) found that the Service had followed appropriate investigative procedures.
- On or around January 23, 2017, the Service notified Ms. Donovan that its *PSA* investigation would now continue.
- Effective February 27, 2017, Ms. Donovan commenced a medical leave of absence.
- Ms. Donovan's PTSD would seem to be caused by her employer's decisions or actions and her employment was not a significant contributing factor in causing her PTSD.

Criteria:

The WSIB's Policy 11-01-04 (*Determining the Date of Injury*) states:
In a gradual **onset disablement claim**, the date of injury is established using the date of first medical attention, which led to the diagnosis, or the date of diagnosis, whichever is earlier.

The WSIB's Policy 15-03-13 (*Posttraumatic Stress Disorder in First Responders and Other Designated Workers*) states:
If a first responder or other designated worker is diagnosed with posttraumatic stress disorder (PTSD) and meets specific employment and diagnostic criteria, the first responder or other designated worker's PTSD is presumed to have arisen out of and in the course of his or her employment, unless the contrary is shown.

The first responder must have been employed as a first responder for at least one day on or after April 6, 2014.

The first responder must have been diagnosed with PTSD by a psychologist or psychiatrist
- on or after April 6, 2014, and
- no later than 24 months after the day he or she ceases to be employed as a first responder if he/she ceases to be employed as a first responder on or after April 6, 2016.

The presumption may be rebutted if it is established that the employment was not a significant contributing factor in causing the first responder's PTSD.

Review and Reconsideration:

Date of Injury

In reviewing the information on file, I note that Ms. Donovan first sought medical attention due to work-related mental stress issues as early as March 11, 2016. However, she did not begin formal treatment with a psychologist until December 16, 2016. Ongoing treatment with the clinical psychologist led to the confirmed DSM-5 diagnosis of posttraumatic stress disorder (PTSD).

For these reasons, I am amending the date of injury to December 16, 2016 – the date Ms. Donovan first sought treatment with her psychologist.

Presumptive Allowance

With regard to your concerns about Ms. Donovan's exposures "in the field", you indicate Ms. Donovan was reassigned to the Service's Training Branch beginning in or around 2015. The relevant criterion of the WSIB's Policy 15-03-13 is that Ms. Donovan "must have been employed as a first responder for at least one day on or after April 6, 2014". This criterion has been met.

Regarding your concerns about Ms. Donovan's PTSD being closely related to the Service's *PSA* investigation, the medical information on file – from the treating psychologist, a consulting psychiatrist, and the family doctor – confirms that traumatic workplace exposure is the significant contributing factor to her PTSD condition.

While her layoff from work may coincide with notification of the resumption of the *PSA* investigation, this would be considered a trigger of increased symptoms. The medical evidence does not support that the

employer's actions or decisions were a significant contributor to her PTSD diagnosis. Also, the medical information supports an inability to work in any capacity due to PTSD symptoms from late February 2017.

Since I am unable to alter my prior decision, I will refer this file for Access on an urgent basis, so that you will receive a copy of the file. You will also receive an Appeals Readiness form. When this form is completed and returned, I will review any new information provided in order to reconsider my decision from July 12, 2017. If I am still unable to change my decision, I will refer this claim to the Appeals Services Division.

If you have any further questions or concerns, please contact me.

Yours sincerely,

Jane Drake
Case Manager, Mental Stress Injuries Program

Tel: 416-344-5205 or 1-800-387-0750

Copy To: Regional Municipality Of Waterloo
Kelly Donovan

3334A

TAB F

THIS IS EXHIBIT "F" REFERRED TO IN THE AFFIDAVIT OF LAURA J. FREITAG SWORN BEFORE ME THIS 9th **DAY OF** February**,** 2021**.**

A COMMISSIONER FOR TAKING AFFIDAVITS

Application under Section 34 of the *Human Rights Code* (Form 1)

(Disponible en français)

www.hrto.ca

How to Apply to the Human Rights Tribunal of Ontario

Before you start:

1. Read the questions and answers below to find out if the Human Rights Tribunal of Ontario (the Tribunal) has the ability to deal with your Application.
2. Download and read the **Applicant's Guide** from the Tribunal's web site www.hrto.ca. 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		
Website:	www.hrto.ca		

   The Tribunal has other guides and practice directions to help all parties to an Application understand the process Download copies from the Tribunal's website or contact us.
3. Complete each section of this Application form. As you fill out each section, refer to the instructions in the Applicant's Guide.

Getting help with your application

For free legal assistance with the application process, contact the Human Rights Legal Support Centre. Website: www.hrlsc.on.ca. Mail: 180 Dundas Street West, 8th floor, Toronto, ON M7A 0A1, Tel: 416-597-4900, Toll-free 1-866-625-5179, Fax: 416-597-4901, Toll-free 1-866-625-5180, TTY 416-597-4903, Toll-free 1-866-612-8627.

Questions About Filing an Application with the Tribunal

The following questions and answers are provided for general information. They should not be taken as legal advice or a determination of how the Tribunal will decide any particular application. For legal advice and assistance, contact the Human Rights Legal Support Centre.

Who can file an Application with the Tribunal?

You can file an Application if you believe you experienced discrimination or harassment in one of the five areas covered by the Ontario Human Rights Code (the Code). The Code lists a number of grounds for claiming discrimination and harassment. To find out if you have grounds for your complaint under the Code, read the Applicant's Guide.

What is the time limit for filing an Application?

You can file an Application up to one year after you experienced discrimination or harassment. If there was a series of events, you can file up to one year after the last event. In some cases, the Tribunal may extend this time.

Application under Section 34 of the Human Rights Code (Form 1)

The discrimination happened outside Ontario. Can I still apply?

In most cases, no. To find out about exceptions, contact the Human Rights Legal Support Centre.

My complaint is against a federal government department, agency, or a federally regulated business or service. Should I apply to the Tribunal?

No. Contact the Canadian Human Rights Commission. Web: http://www.chrc-ccdp.ca. Mail: 344 Slater Street, 8th Floor, Ottawa, Ontario K1A 1E1. Phone: (613) 995-1151. Toll-free: 1-888-214-1090. TTY: 1-888-643-3304. Fax: (613) 996-9661.

Should I use this form if I am applying because a previous human rights settlement has been breached?

No. If you settled a previous human rights application and the respondent did not comply with the settlement agreement, use the special application called **Application for Contravention of Settlement, Form 18.** For a paper copy, contact the Tribunal.

Can I file this Application if I am dealing with or have dealt with these facts or issues in another proceeding?

The Code has special rules depending on what the other proceeding is and at what stage the other proceeding is at. **Read the Applicant's Guide and get legal advice, if:**

1. You are currently involved in, or were previously involved in a civil court action based on the same facts and asked for a human rights remedy; **or**
2. You have ever filed a complaint with the Ontario Human Rights Commission based on the same subject matter; **or**
3. You are currently involved in, or were previously involved in another proceeding (for example, union grievance) based on the same facts.

How do I file an Application on behalf of another person?

To file an application on behalf of another person, you must complete and file this Application (Form 1) as well one other form:

- Form 4A if you are filing on behalf of a minor;
- Form 4B if you are filing on behalf of a mentally incompetent person; or
- Form 27 for all other situations where you are filing on behalf of someone else.

When completing this Application, you must check the box in Question 1 that indicates you are filing an Application on Behalf of Another Person. You must provide your name and contact information in Question 1.

The completed Form 4A, Form 4B or Form 27 can be attached to your Application or sent to the Tribunal separately by mail, fax or email. If sent separately, it must be sent within **five (5) days** following the filing of your Application.

For more information on applications on behalf of another person, please see the following Practice Directions:

- Practice Direction on filing application on behalf of another person under section 34(5) of the Code
- Practice Direction on Litigation Guardians before Social Justice Tribunals Ontario

Note: If you are a lawyer or other legal representative providing representation to the applicant, do not use the Form 4A, Form 4B or Form 27. Your details should be provided in section 3, "Representative Contact Information," of this Application (Form 1).

Learn more

To find out more about human rights in Ontario, visit **www.ohrc.on.ca** or phone 1-800-387-9080.

Application under Section 34 of the Human Rights Code (Form 1)

Instructions: Complete all parts of this form, using the **Applicant's Guide** for help. If your form is not complete, the Tribunal may return it to you. This will slow down the application process. At the end of this form, you will be required to read and agree to a declaration that the information in your Application is complete and accurate (if you are a lawyer or legal representative assisting an applicant with this Form 1, please see the **Practice Direction On Electronic Filing of Applications and Responses By Licensed Representatives**).

Contact Information for the Applicant

1. Personal Contact Information

☐ Check here if you are filing an Application on Behalf of Another Person. **Note:** you must *also* complete a Form 4A, Form 4B or Form 27, whichever is applicable, see Instructions above.

Please give us your personal contact information. This information will be shared with the respondent(s) and all correspondence from the Tribunal and the respondent(s) will go here. If you do not want the Tribunal to share this contact information, **you should complete section 2, below, but you must still provide your personal contact information for the Tribunal's records.**

*First Name	Middle Name	*Last Name
Kelly	Lynn	Donovan

Street #	Street Name	Apt/Suite
11	Daniel Place	

City/Town	Province	Postal Code	Email
Brantford	Ontario	N3R1K6	donovandih@gmail.com

Daytime Phone (e.g. 999-999-9999)	Cell Phone (e.g. 999-999-9999)	Fax (e.g. 999-999-9999)	TTY (e.g. 999-999-9999)
519-209-5721			

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

2. Alternative Contact Information

If you want the Tribunal and respondent(s) to contact you through another person, you must provide contact information for that person below. You should fill this section out if it will be difficult for the Tribunal to reach you at the address above or if you want the Tribunal to keep your contact information private. **If you complete this section, all of your correspondence will be sent to you in care of your Alternative Contact.**

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

Street #	Street Name	Apt/Suite

City/Town	Province	Postal Code	Email
	Ontario		

Daytime Phone (i.e. 999-999-9999)	Cell Phone (i.e. 999-999-9999)	Fax (i.e. 999-999-9999)	TTY (i.e. 999-999-9999)

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

3. Representative Contact Information

Complete this section only if you are authorizing a lawyer or another Representative to act for you.

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

My representative is:

☐ Lawyer	LSUC#	
☐ Paralegal	LSUC#	
☐ Legal Support Centre		
☐ Other- please specify the Nature of Exemption from licensing requirements in the text below:		

Nature of Exemption (e.g. family member, unpaid friend)

Please choose the type of Representative: (•) A) Organizational Representative ( ) B) Individual Representative

A) Organizational Representative

Full Name of Representative Organization
Waterloo Regional Police Service

Name of the Contact Person from the Organization

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

Street #	Street Name	Apt/Suite
200	Maple Grove Road	

City/Town	Province	Postal Code	Email
Cambridge	Ontario	N3H5M1	bryan.larkin@wrps.on.ca

Daytime Phone (i.e. 999-999-9999)	Cell Phone (i.e. 999-999-9999)	Fax (i.e. 999-999-9999)	TTY (i.e. 999-999-9999)

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

Contact Information for the Respondent(s)

4. Respondent Contact Information

Provide the name and contact information for any respondent against which you are filing this Application.

Please choose the type of respondent: (•) A) Organization Respondent ( ) B) Individual Respondent

A) Organization Respondent

Name the organization you believe discriminated against you. You should also indicate the contact person from the organization to whom correspondence can be addressed.

Full Name of Organization
Waterloo Regional Police Service

Name of the Contact Person from the Organization

First (or Given) Name	Last (or Family) Name	Title
Bryan	Larkin	Chief of Police

Street #	Street Name	Apt/Suite
200	Maple Grove Road	

City/Town	Province	Postal Code	Email
Cambridge	Ontario	N3H5M1	bryan.larkin@wrps.on.ca

Daytime Phone (i.e. 999-999-9999)	Cell Phone (i.e. 999-999-9999)	Fax (i.e. 999-999-9999)	TTY (i.e. 999-999-9999)
519-653-7700			

Are there any additional respondents? ○ Yes ◉ No

Grounds of Discrimination

5. Grounds Claimed

The Ontario Human Rights Code lists the following grounds of discrimination or harassment. Put an "X" in the box beside each ground that you believe applies to your Application. You can check more than one box.

- ☐ Race
- ☐ Colour
- ☐ Ancestry
- ☐ Place of Origin
- ☐ Citizenship
- ☐ Ethnic Origin
- ☐ Disability
- ☐ Creed
- ☒ Sex, including Sexual Harassment and Pregnancy
- ☐ Sexual Solicitation or Advances
- ☐ Sexual Orientation

- ☐ Gender Identity
- ☐ Gender Expression
- ☐ Family Status
- ☒ Marital Status
- ☐ Age
- ☐ Receipt of Public Assistance (Note: This ground applies only to claims about Housing)
- ☐ Record of Offences (Note: This ground applies only to claims about Employment)
- ☐ Association with a Person Identified by a Ground Listed Above
- ☐ Reprisal or Threat of Reprisal

Areas of Discrimination under the Code

6. Area of Alleged Discrimination

The Ontario *Human Rights Code* prohibits discrimination in five areas. Put an "X" in the box beside the area where you believe you have experienced discrimination (choose one). Read the Applicant's Guide for more information on each area.

- ◉ **Employment (Complete Form 1-A)**
- ○ **Housing (Complete Form 1-B)**
- ○ **Goods, Services and Facilities (Complete Form 1-C)**
- ○ **Contracts (Complete Form 1-D)**
- ○ **Membership in a Vocational Association (Complete Form 1-E)**

Does your Application involve discrimination in other areas? ○ Yes ◉ No

If "Yes", put an "X" in the box beside any other area where you believe you experienced discrimination:

☐ Employment ☐ Housing ☐ Goods, Services or Facilities ☐ Contracts ☐ Vocational Association

Facts that Support Your Application

7. Location and Date (see Applicant's Guide)

Please answer the following questions.

a) *Did these events happen in Ontario?	◉ Yes	○ No
b) In what city/town?	Cambridge	
c) *What was the date of the last event? (dd/mm/yyyy)	31/05/2016	
d) If you are applying more than one year from the last event, please explain why:		

8. What Happened

*In the space below, describe each event you believe was discriminatory.

For each event, be sure to say:

- **What** happened
- **Who** was involved
- **When** it happened (day, month, year)
- **Where** it happened

Be as complete and accurate as possible. Be sure to give details of every incident of discrimination you want to raise in the hearing.

On May 4, 2016, I presented a delegation to the Waterloo Regional Police Services Board on the topic of the police service's inconsistencies and lack of policy when investigation its own members. This meeting took place in the Police Services Board room at 200 Maple Grove Road in the City of Cambridge. I am a Constable with the Waterloo Regional Police Service. Before this day I was an exemplary officer, having won awards and been placed in the department's Training Branch after only serving for four and a half years. I presented this delegation because I believed there were serious issues of inconsistency during internal investigations, authorized by Chief Bryan Larkin. I researched avenues available to me, as a member of the police service, and the only legal chanel for me to voice my concerns and seek the help of the Board to order the service to create a policy and procedure on internal investigations was to present a delegation to the Board. I had researched service procedure and policy, the Police Services Act, and the Board By-Laws and did not locate anything from precluding me from making this delegation. I had requested time off to attend this meeting and been approved by my supervisor. During my delegation I did not disclose any information of which I have a duty to maintain in secrecy. The information presented was specific to four relevant issues. The information I presented was obtained outside of my work duties from the individual officers to whom the information pertains. I received permission from the individual officers to discuss their issues in my delegation. I was respectful to Board members and I was allowed to speak for the full ten minutes by the Board (the Board has the option to enter into a closed session if they believe the information is best kept from the public).

Following my presentation I was approached by a woman who identified herself as a reporter. The Chief's Executive Officer, Staff Sergeant Mike Haffner came up to me and stated "she's with the media, you can't talk to her." When this woman returned and began asking me questions I did not answer her questions, as I am precluded from doing so under service procedure and the PSA. The Chief's Executive Officer stood immediately beside me and stuck his head down into our conversation to hear what I was saying. There was an article in The Record (newspaper) covering my delegation in which I was misquoted and the article focused on the investigation of Sgt. Finucan, (this was one of four issues I mentioned in my delegation and the reporter had also covered this case originally). One of the four issues I discussed in my delegation involved a complaint of domestic violence being made by a female police officer and the complaint being dismissed. Another one of the four issues I discussed was a complaint of historical domestic violence being made by a female police officer and an arrest being made with little to no grounds for arrest. In this article, the Chief was quoted as saying "We take domestic violence very seriously and the complaint came from a policewoman." I was insulted by this comment because I felt that the Chief was insinuating that a female police officer is somehow more credible than a male police officer. I believe the Chief was stereotyping male police officers, that they are somehow dishonest versus female police officers. I do not believe the Chief of police should make any distinction of credibility based on gender, especially to local media.

The following day, (and every day since then), my work duties were restricted and I was restricted to working in the office only, as opposed to the training environment.

On May 9, 2016, I was called into the service's Professional Standards office at headquarters at 200 Maple Grove Road in

Cambridge, and met with my divisional Inspector (Inspector Thiel) and Acting Inspector Goodman. I was given a directive from the Chief to not appear before the Board without his permission and relegated to administrative duties (among other things). I was served a Notice of Investigation for six Police Services Act (PSA) charges regarding the lawful presentation of my delegation. Those charges included; Discreditable Conduct (x2), Neglect of Duty (x2), Breach of Confidence (x2). I had expected that I could be disciplined for the fact that the media were present, but only one of these charges had to do with the media. I was told by Inspector Thiel that all of the incidents I mentioned in my delegation would be reviewed independently. I asked Inspector Thiel for clarification as to which incidents would be reviewed and he confirmed it would be all of them (there were four major issues I specifically called attention to in my delegation). Inspector Thiel stated that the internal investigation into my conduct would largely weigh on the findings of the independent reviews. He stated if any of the information I presented turns out to be false, it would affect the investigation. I asked if the same is true if all of the information I presented turns out to be truthful would the service withdraw the charges and he stated that it would also affect the investigation. I believe that the Chief is upset that I brought a serious internal issue to the attention of the media and is using the PSA as a means of bullying and intimidating me. I did not sign the Directive forbidding me from appearing before the Board since I did not believe I could be prohibited from attending a meeting that shall be open to the public if I were not on duty and considered a member of the public. I was told by Inspector Thiel that the Chief can tell me to "whatever he wants." I was told by Inspector Thiel that I "had to sign" the directive. When I asked if I could have a lawyer present Acting Inspector Goodman stated that I did not have to sign. That evening, from home, I sent an email to the members of the Board to notify them of the internal investigation initiated due to my lawful attendance at the Board meeting. My delegation had focused on how the service treats its members and I felt I had a duty to report to the Board who is responsible for civilian oversight of the service and performance of the Chief.

On May 11, 2016, the Cambridge Times published an article regarding my delegation. The article featured exact wording from my delegation that I believe was given to them by the service (I did not disclose my delegation to the media). The article mentioned that I focused on four high profile cases, but the majority of the article focused once again on the case of Sgt. Finucan. The following is a quote from this article "the Chief assured the media following the meeting that the officer has a democratic right to vocalize her disapproval during the public session of the police board meeting." The article stated "Donovan, who referred to herself as a friend of Finucan, said she wanted to address the board on his behalf." I did state that I am friends with Sgt. Finucan, but not once did I ever stated I was addressing the board on his behalf. When I asked for Sgt. Finucan's permission to discuss some of the issues pertaining to his case he adamently advised against me presenting a delegation to the board. Sgt. Finucan stated his reasons for advising against my delegation was his knowledge of the service's tendency to punitively target members whose lawful actions question leadership decisions. Futher quotes from the Chief led me to believe that the angle this article was taking was determined by the Chief. The Chief is quoted as saying "Sometimes, when we're close to an issue we see it very differently than when we're not close to an issue." I took great offence to that comment because the Chief is insinuating that Sgt. Finucan and I are more than friends; based on the fact that I am a single female and he is male. I believe that if I were male or a married female, having presented the same delegation under the same circumstances, the Chief would never have made that statement. I believe the Chief was using my gender and marital status to discriminate against me and attempt to embarass me in local media and have my credibility called into question. The Chief was also quoted as saying "there are many mechanisms within the force and the union to call for change." After having extensively researched the mechanisms, or lack thereof, available to me to call for change, I believe the Chief's statement is deceitful and an attempt to have my conduct appear nefarious or vexatious when in fact my attendance at the Board meeting was lawful.

On May 18, 2016, the Training Branch held an event, because of Police Week, to put the Board members through Use of Force training. My directive stated I could not participate in the training of members yet I was excluded from training the Board members. My supervisor requested the attendance of a member from another location to attend headquarters and train in my place.

On May 31, 2016, I was escorted to Acting Inspector Goodman's office by Staff Sergeant Davis (my immediate supervisor). I was served a memorandum stating I am also under investigation for two additional PSA charges; Deceit and an additional count of Discreditable Conduct. I was also directed to not have any further contact directly or indirectly with members of the Police Services Board. The memorandum alleged that I was deceitful when I stated that had no personal interest in any of the four matters I brought to the Board's attention. I had stated in my delegation that I am friends with Sgt. Finucan and that is truthful. I can only conclude that once again the Chief has used the fact that I am a single female to make a connection between one of the male officers involved in one of the four issues I presented and my motivation to present my delegation. The charge of Deceit is a very serious offence, punishable by termination, and I am appauled that the Chief would consider that charge based solely on my marital status and gender. At that moment I verbally notified Acting Inspector Goodman and Staff Sergeant Davis that I would be filing a harassment complaint.

On June 2, 2016, I submitted an internal Workplace Harassment form to my supervisor Sergeant Prine.

The issues I discussed in my delegation pertained to the handling of internal investigations and the need for consistent practices and policies to oversee how these investigations are completed. Up until May 9th I had never been the subject of an internal investigation. I have never discussed any of my concerns with another member of the service, whether inside or outside of a training environment. My job as a training officer would not have been impacted by my delegation in any way. I chose to present my delegation because of internal turmoil, stress and depression I was experiencing after witnessing the manner in which the service handles internal investigations. My delegation was directed at the Board and I have not and don't intend to disseminate the information with anyone at the service.

Since being relegated to administrative duties only I have continued to be a hard worker. I diligently worked on the branch statistics and was assigned to complete the inaugural Use of Force Report that was presented to the Police Services Board on June 1, 2016. The report I prepared was very well received and even covered on CTV News. I also began an audit of the branch's training material for Staff Sergeant Davis, and spent most of my days writing lesson plans to complement the learning material available. Aside from being prevented from training I am doing my best to remain a diligent and hard worker and an exemplary police officer.

The Effect on You

9. How the Events You Described Affected You

*Tell us how the events you described affected you. What was the effect (e.g. were there financial, social, emotional or mental health, or any other)?

My mental health began to be affected by the internal dealings of the service around August, 2015. It was around that time that I started to experience a moral injury due to the inconsistent and unexplained manner in which our service handled internal investigations. One of the issues I discussed in my delegation was regarding a report of domestic violence that I had made against a member. (I did not disclose any names in my delegation). I had been disappointed that the service did not continue with the investigation despite my allegations. As time passed I spoke to other members of the service, Sgt. Finucan and Jeremy Snyder, who were both currently facing criminal charges as a result of internal investigations. The information I learned from these two men corroborated the inconsistent manner in which the service handled internal investigations. All of the information I obtained about the issues was obtain off-duty and in no way violated the secrecy which I am bound by Oath to maintain. I advised both Snyder and Finucan that I planned to address the issue with the service somehow and they both gave me persmission to discuss details of their cases if it would assist.

In the fall of 2015 I became depressed. I could not sleep and frequently came to work after only have 2 or 3 hours of sleep. I did not have much of an appetite and I had difficulty eating regularly. I did not exercise as often because it caused me stress to be in the headquarters gym alonside some Sergeants, Staff Sergeants, Inspectors and Superintendents (whom I knew had been involved in some of the internal investigations). In February, 2016, I visited my Doctor and he prescribed medication for depression and anxiety. The medication helped me to sleep and eat better but I still experienced stress and anxiety every day that I attended work. I did not miss any work days during this time for a personal illness (I may have taken one family day for a sick child).

I carefully prepared my delegation for the May 4th meeting and leading up to that date continued to experience heightened anxiety and stress. The meeting itself was very stressful. Upon entering the Police Services Board room I was greeted by the Chief who purposefully shoot my hand and greeted me by name. When I was called to the table I sat between the Chief and Deputy Chief Chalk. During the time that I spoke the Chief's cellphone continued to chime and he left his seat twice to speak to Gary Melanson who was seated on the east side of the room. I found the Chief's conduct to be disruptive while I was speaking. Upon conclusion of my delegation I returned to my seat until the conclusion of the meeting. I continued to feel a tremendous amount of stress and anxiety but I now felt a sense of relief for having exposed some issues I felt were imperative to improve the morale within the service and to improve the level of trust betwen the membership and leadership. When the meeting adjourned I was approached by Board Director Philip Huck who shook my hand and thanked me for making my presentation. Acting Board Chair Rosemary Smith also shook my hand and thanked me for my presentation. I advised Smith that I did not have enough time to conclude what I had prepared and she advised that I could email my entire delegation to be included in the minutes. I felt even more relieved to know that the Board received my information positively and were thankful that I attended.

When the Chief's Executive Officer Staff Sergeant Mike Haffner stood beside me in the Police Services Board room on May 4, 2016, and stuck his head into my conversation with the media I felt intimidated by his behaviour.

I was embarassed to read the comments made by the Chief in The Record article dated May 4, 2016, regarding the level of credibility of a complainant weighing on their gender. I was hurt that the Chief had taken anything I had said in my delegation and turned it into a credibility issue based on the gender of the complainant. I felt that this was an attempt by the Chief at deflecting the focus away from service policy and onto me more personally.

On May 9, 2016, when I was served with the Directive and Notice of Investigation by Inspector Thiel and Acting Inspector Goodman I experienced an overwhelming amount of stress and anxiety and I could not prevent myself from becoming emotional. I felt that the conduct of two officers were tyrannical and oppressive and using the PSA and authorities of the Chief to bully and intimidate me. When Inspector Thiel stated that the Chief can direct me to do "whatever he wants" I felt intimidated and bullied. When Inspector Thiel told me I had to sign the document and then Acting Inspector Goodman stated I did not have to sign (after I asked to have a lawyer present), I felt lied to by Inspector Thiel. I had to involve a lawyer, due to the nature of the PSA investigation, and I cannot afford to pay a lawyer. I am a single mother of three children and I own my own home in Brantford, Ontario. I do not receive support payments from my children's father. I will have to borrow money to have a lawyer represent me in a PSA proceeding. That night at home I had a difficult time dealing with my stress. I could not bring myself to be involved with my children, which is very unlike me. Due to my level of anxiety I only slept for 3 hours that evening.

On May 11, 2016, when the article was published to the Cambridge Times website I felt embarassed and upset that the Chief had publicly stated that I was not objective in my reasoning for my delegation due to being too "close" to "an issue." I felt discriminated against because I am a single female. I felt alienated and criticized by the Chief. It caused me a tremendous amount of stress to know that the service had taken a personal angle to attempt to deflect the attention away from the issues I presented in my delegation surrounding internal policies. I became fearful that the service would turn the investigation into something that would violate my personal life and could involve my children and my status in my community in Brantford. I was also confused that the Chief was quoted as saying I had a "democratic right" to make my delegation, knowing that he had authorized the directive and six PSA charges following my appearance. I felt the Chief was being deceitful to the media and therefore the public. The article also stated that the Chief respects Donovan for coming forward with her opinions about the force's handling of internal investigations." I feel this statement is manipulative because once again he has portrayed to the media that he has acknowledged my actions were lawful and democratic while continuing to take punitive and legal action against me. I continued to feel highly stressed and anxious.

On May 18, 2016, when I was excluded from the training event for the Board members this made me feel segregated and alienated. I felt as though I was burdening Cst. Zuliani for having to attend headquarters and work in place of me. I had been looking forward to the opportunity to show the Board members my abilities as a training officer and I was directed to spend the entire day in the office. I felt dismissed and I experienced tremendous anxiety that day. When the members of the Training Branch returned to the office and discussed the highlights from the day's event I felt excluded, saddened and demoralized.

On May 31, 2016, when I was served notice of the additional charges I was extremely upset. I felt an overwhelming amount of stress and anxiety. Not only had the service used my gender and marital status to embarass me in the media but new charges were now being investigated as a result of the allegation by the Chief that I somehow have a personal interest in having the 4 issues I raised in my delegation reviewed. I believe the only reason new charges were added was to include the clause that I be prohibited from contacting the Board members directly or indirectly (which was not stated on my original directive, and there is no lawful ability for the Chief to add that clause without additional charges). I believe the Chief did not want me to contact Board members for fear I would advise them of further tyrannical and oppressive conduct within the service leadership. Since the charge of Deceit is a very serious offence and can lead to termination I was very stressed and scared at the potential of losing my income. I am the sole provider in my household and my children live with me half of the time. The thought of being unemployed as a result of doing something lawful and within my rights left me feeling more disillusioned, disheartened and mistreated by the Chief, who has publicly stated I was within my rights and he respects me. In the days that followed I have been extremely stressed and depressed over the fact that I could be terminated from my employment.

Since being ordered to not participate in the training of any sworn members I have been relegated to the office in the basement of headquarters. This has made me feel dismissed, segregated, alienated, depressed and demoralized. Other

officers are treating me like I did something wrong and rumours have spread through the department that I am under criminal investigation. When officers attend the office and ask me why I am in the office I have a difficult time making up excuses because I do not want to discuss the issue at work. When I see members of the senior leadership team in the hallways I continue to be pleasant and respectful. Some members of the senior leadership team are now treating me differently for having come forward with my delegation. I have maintained a very high level of professionalism despite the treatment I am receiving from senior leadership at the service. I am experiencing the following mental health issues; anxiety, stress and depression. I am currently taking medication for depression and anxiety. I have not received a bill from my lawyer.

According to Inspector Thiel and Acting Inspector Goodman, the investigation into the PSA charges will not begin until a review by a Staff Sergeant at York Regional Police into the Sgt. Finucan case concludes. I understand that this review could take months before my investigation even begins.

The Remedy

10. The Remedy You are Asking For (see Applicant's Guide)

Put an "X" in the box beside each type of remedy you are asking the Tribunal to order. Explain why you are asking for this remedy in the space below.

☒ **Monetary Compensation**	Enter the Total Amount $201,751.12

Explain below how you calculated this amount:

$2,000.00 is what I estimate I owe my lawyer for the work he has done to date.
$10,000.00 is what I feel is the monetary value of the hurt and embarassment the Chief has caused me with the discriminatory comments he has made in the media.
$189,751.12 is two-times my salary. The Chief has shown his desire to terminate my employment for being honest and acting lawfully. I have a responsibility to my children to ensure I can continue to support them if I am terminated until I can update my education and seek alternative employment.

☐ **Non-Monetary Remedy-Explain below:**

☐ **Remedy for Future Compliance (Public Interest Remedy)-Explain below:**

Mediation

11. Choosing Mediation to Resolve Your Application

Mediation is one of the ways the Tribunal tries to resolve disputes. It is a less formal process than a hearing. Mediation can only happen if both parties agree to it. A Tribunal Member will be assigned to mediate your Application. The Member will meet with you to talk about your Application. The Member will also meet with the respondent(s) and will try to work out a solution that both sides can accept. If Mediation does not settle all the issues, a hearing will still take place and a different Member will be assigned to hear the case. Mediation is confidential.

Do you agree to try mediation? ☒ Yes

Other Legal Proceedings

12. Civil Court Action (see Applicant's Guide)

Note: If you answer "Yes" to any of these questions, you must send a copy of the statement of claim that started the court action.

*a) Has there been a court action based on the same facts as this Application?	○ Yes (Answer 12b)	◉ No (Go to 13)

13. Complaint Filed with the Ontario Human Rights Commission (see Applicant's Guide)

Note: If you answer "Yes", you must attach a copy of the complaint.

*Have you ever filed a complaint with the Commission based on the same facts as this Application?	○ Yes	◉ No

14. Other Proceeding - In Progress (see Applicant's Guide)

Note: If you answer "Yes" to question "14a" you must attach a copy of the document that started the other proceeding.

*a) Are the facts of this Application part of another proceeding that is still in progress?	◉ Yes (Answer 14b)	○ No (Go to 15)

b) Describe the other proceeding:

☐ A union grievance	Name of Union:	

☐ A claim before another board, tribunal or agency	Name of board, tribunal, or agency:	
☒ Other	Explain what the other proceeding is:	An internal Workplace Harassment and/or Discrimination Complaint Form filed with the Waterloo Regional Police Service on June 2, 2016.

*c) Are you asking the Tribunal to defer (postpone) your Application until the other proceeding is completed?	○ Yes	◉ No

15. Other Proceeding - Completed (see Applicant's Guide)

Note: If you answer is "Yes" to question "15a" you must attach a copy of the document that started the other proceeding and a copy of the decision from the other proceeding.

*a) Were the facts of this Application part of some other proceeding that is now completed?	○ Yes (Answer Question 15b)	◉ No (Go to 16)

b) Describe the other proceeding:

☐ A union grievance	Name of Union:	
☐ A claim before another board, tribunal or agency	Name of board, tribunal, or agency:	
☐ Other	Explain what the other proceeding is:	

c) Explain why you believe the other proceeding did not appropriately deal with the substance of this Application.

Documents that Support this Application

16. Important Documents You Have

If you have documents that are important to your Application, list them here. List only the most important. Indicate whether the document is privileged. See the Applicant's Guide.
Note: You are not required to send copies of these documents at this time. However, if you decide to attach copies of the documents you list below to your Application they will be sent to the other parties to the Application along with your Application.

Document Name	Why It Is Important to My Application

Add more Documents

17. Important Documents the Respondent(s) Have

If you believe the respondent(s) have documents that you do not have that are important to your Application, list them here. List only the most important.

Document Name	Why It Is Important To My Application	Name of Respondent Who Has It
Any and all surveillance documents, audio and video recordings, digital recordings, photographs, licence plate enquiries for BABJ834	These items show that the service is abusing its resources to support their efforts to discipline me and change the focus to my personal life.	Chief Bryan Larkin and any and all employees under his direction

Add more Documents

18. Important Documents Another Person or Organization Has

If you believe another person or organization has documents that you do not have that are important your Application, list them here. List only the most important.

Document Name	Why It Is Important to my Application	Name of Person or Organization who has it
Any and all notes, and interviews pertaining the Police Services Board meeting on May 4, 2016, and articles printed on same.	These will assist in determining if the Chief provided the discriminatory comments to the reporter	Liz Monteiro, The Record Lisa Rutledge, Cambridge Times

Add more Documents

Confidential List of Witnesses

19. Witnesses

Please list the witnesses that you intend to rely on in the hearing. **Note:** The Tribunal will not send this list to the respondent(s). (see Applicant's Guide)

Name of Witness	Why This Witness Is Important To My Application

Add more Witnesses

Other Important Information

20. Other Important Information the Tribunal Should Know

Is there any other important information you would like to share with the Tribunal?

This is my first time completing this form and I did not seek legal advice to assist me. Should there be errors or omissions they are done in error and will be corrected forthwith once I am advised.

Checklist of Required Documents

22. Other Documents from Questions 12 to 15

Confirm whether you are sending the Tribunal any of the following documents:

☐ A copy of a statement of claim (from Question 12)

☐ A copy of a complaint filed with the Ontario Human Rights Commission (from Question 13)

☒ A copy of a document that started another proceeding based on these facts (from Question 14 or 15)

☐ A copy of a decision from another proceeding based on these facts (from Question 15)

Application to the Human Rights Tribunal of Ontario
Area of Discrimination: Employment (Form 1-A)

Note: Complete this form if you believe you were harassed or discriminated against in the area of employment.

PART I

Questions About the Respondent(s)

A1. Put an "X" in the box beside each point that describes the respondent(s) in your case. Check all that apply.

- ☐ The respondent is the employer at a place where I wanted to work
- ☒ The respondent is my current employer
- ☐ The respondent is my former employer
- ☐ The respondent is an employment agency
- ☐ The respondent is a union or employee association
- ☒ The respondent is a supervisor, manager, or boss
- ☐ The respondent is another employee
- ☐ Other- Please describe the respondent(s):

Questions About the Job

Please answer these questions.

A2. What was the position or job where you felt there was discrimination?

Police Training Constable, Waterloo Regional Police

A3. What were the requirements (essential job duties) of the position?

Conduct, plan and analyze Use of Force training to all members of the service.

A4. Was it a volunteer position?	○ Yes	◉ No
A5. Were you employed in this position?	○ Yes	◉ No (Go to A6)
a) If you answered "Yes" to question A5, how long were you in the position? Please give the dates you started and finished.	From: (dd/mm/yyyy)	To: (dd/mm/yyyy)
b) If you answered answer "Yes" to question A5, what was the pay for the position? $		○ Hourly ○ Monthly ○ Weekly ◉ Yearly
A6. Are you working now?	◉ Yes	○ No (Go to A7)
a) If you answered "Yes" to question A6, what is your current pay?	$ 94,875.56	○ Hourly ○ Monthly ○ Weekly ◉ Yearly

Questions About Your Union

A7. Were you a member of a union or other occupational or professional association responsible for collective bargaining at the time of the alleged discrimination?

◉ Yes (Fill out details bellow) ○ No (Go to A8)

If you answered "Yes", the Tribunal will send them notice of this Application.

Full Name of Organization

Waterloo Regional Police Association

Name of Contact Person from the Organization

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

Street #	Street Name	Unit/Suite Number
1128	Rife Road	

City/Town	Province	Postal Code	Email
Cambridge	Ontario	N1R5S3	treparon@wrpa.org

Daytime Phone (i.e. 999-999-9999)	Cell Phone (i.e. 999-999-9999)	Fax (i.e. 999-999-9999)	TTY (i.e. 999-999-9999)
519-622-0771	519-577-5321		

Questions About What Happened

Alleged Discrimination Before Hiring

A8 Put an "X" in the box beside each point that describes how you believe you were discriminated against.

I experienced discrimination:

- ☐ As a result of in a job ad
- ☐ In an application form
- ☐ In a job interview
- ☐ In drug and alcohol testing before hiring
- ☐ In other kinds of pre-employment testing
- ☐ In a hiring decision
- ☐ Other- please explain:

Alleged Discrimination During Employment

A9. Put an "X" in the box beside each point that describes how you believe you were discriminated against.

I experienced discrimination:

- ☐ In my rate of pay, overtime, hours of work, or holiday
- ☐ In being denied a promotion
- ☐ In scheduling
- ☒ In discipline (such as suspensions or warning)
- ☐ In being fired
- ☒ In comments, displays, jokes, harassment, or a poisoned work environment
- ☐ In sexual harassment or solicitation or advances
- ☐ In being denied a workplace opportunity (such as a training opportunity) Please describe:
- ☐ In being denied employment benefits, including time off for medical or other reasons. Please describe:

☐ In drug testing or alcohol testing

☐ In being denied necessary accommodation or modified work in the workplace

☒ Other- please explain:

Comments made to public media

Workplace Policies or Practices

A10. Is your Application about a workplace policy? (for example, absenteeism accommodation or holiday policy)	○ Yes	○ No

a) If you answered "Yes" to A10, what is the policy? (Attach a copy if available)

Questions About Complaining to Your Employer

Complete this section only if you complained to someone in authority about the alleged harassment or discrimination.

A11. To whom did you complain?

Sgt. George Prine, Staff Sergeant Jen Davis, Acting Inspector Goodman

A12. Was there an investigation?	◉ Yes	○ No (Go to Part II)

a) If you answered "Yes" to A12, what was the outcome of the investigation?

Ongoing

PART II

The following Part asks you to answer how you believe you were harassed or discriminated against based on grounds you identified. If you believe that you were discriminated against or harassed based on more than one ground, fill out all the sections that apply.

Questions About Employment Discrimination on the Grounds of Sex, Pregnancy, Gender Identity or Gender Expression

Complete this section only if you believe that you have been discriminated against on the grounds of sex, pregnancy, gender identity or gender expression

A24. Is your Application about discrimination on the ground of pregnancy?	○ Yes	○ No

A25. Explain why you believe you were discriminated against based on your sex, pregnancy, gender identity.

A26. Please identify your sex or describe your gender identity or gender expression.

Question About Workplace Sexual Harassment

Complete this section only if you believe that you have been subjected to sexual harassment in the workplace.

A29. Tell us what happened.

Questions About Employment Discrimination on the Grounds of Family or Marital Status

Complete this section only if you believe that you have been discriminated against on the grounds of family or marital status.

A32. Explain why you believe you were discriminated against based on your family or marital status.

The Chief has made statements about me in the media being close to a male officer whom I alleged was a friend. The Chief has attempted to explain my behaviour in the media by insinuating I am more than friends with the person whose investigation I discussed in my delegation. The Chief has attempted to put my credibility and motivation into question by referencing my personal life only to deflect the focus away from the issues I raised in my delegation regarding the lack of service policy on internal investigations.

A33. Please describe your family or marital status.

I am a single mother. I have been a single mother since 2009. I began my employment with the Waterloo Regional Police Service in 2010.

Declaration and Signature

23. 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 is complete and accurate.

I understand that information about my Application 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 Application 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).

***Signature Date (dd/mm/yyyy)**

03/06/2016

☒ *Please check this box if you are filing your Application electronically. This represents your signature. You must fill out the date, above.

Accommodation Required

If you require accommodation of Code-related needs please contact the Registrar at:
Email: HRTO.Registrar@ontario.ca
Phone: 416-326-1519 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

Note: Only file your Application once. If the Tribunal receives your application more than once, it will only accept the first Application Form received.

Submit to Prod (GDC) | Print Form

TAB G

THIS IS EXHIBIT "G" REFERRED TO IN THE AFFIDAVIT OF LAURA J. FREITAG SWORN BEFORE ME THIS 9th **DAY OF** February**,** 2021**.**

A COMMISSIONER FOR TAKING AFFIDAVITS

Dated June 8, 2017

RESIGNATION AGREEMENT

BETWEEN:

The Regional Municipality of Waterloo Police Services Board

(the "Board")

-and-

The Waterloo Regional Police Association

(the "Association")

-and-

Kelly Donovan

("Donovan")

WHEREAS Donovan and the Board currently have an employer-employee relationship;

AND WHEREAS Donovan has notified the Board that she will be resigning her employment with the Board effective on or about June 25, 2017;

AND WHEREAS the Board wishes to recognize the past service and contributions of Donovan upon her resignation from the Board;

AND WHEREAS Donovan and the Board wish to fully resolve and settle the two outstanding matters between them, namely: (a) the application filed by Donovan with the Human Rights Tribunal of Ontario ("HRTO") on or about June 6, 2016 and having HRTO File No. 2016-24566-I (the "Application"); and (b) the Board's investigation into whether Donovan engaged in misconduct in or about May 2016 sufficient to warrant formal charges against Donovan under the *Police Services Act* (the "Potential *PSA* Charges");

NOW THEREFORE IN CONSIDERATION OF the above and the mutual covenants outlined below, the parties agree as follows in full and final settlement of all matters related to Donovan's

employment with or cessation of employment with the Board, and all other outstanding matters between them:

1. Donovan hereby confirms that she is freely and voluntarily resigning her employment with the Board effective on or about June 25, 2017. Donovan acknowledges and agrees that this employment resignation decision is irrevocable. Accordingly, without limiting the generality of the foregoing, the parties acknowledge and confirm that effective June 25, 2017, Donovan will cease to be an employee of the Board for any and all purposes at law whatsoever. Donovan further waives any and all seniority and recall rights she may have under the applicable Uniform Collective Agreement between the Board and the Association.

2. Between now and June 9, 2017, Donovan will continue to remain on approved and paid sick leave. Thereafter and until June 25, 2017, Donovan will continue to be paid by using outstanding Annual Leave and/or Statutory Holiday Leave credits. Subject to and in accordance with all applicable plan provisions, terms and policies, Donovan will continue to receive her current employment benefits and participate in the OMERS Pension Plan up to and including June 25, 2017.

3. By no later than July 15, 2017, the Board will pay to Donovan all outstanding Annual Leave pay, Statutory Holiday pay and Overtime pay, if any, accrued and still owing to Donovan as of the date of her employment resignation.

4. Donovan hereby withdraws and discontinues her Application. Donovan further undertakes to forthwith file with the HRTO any documentation necessary for the HRTO to close its file in respect of the Application.

5. The Board hereby confirms that, as a result of Donovan's employment resignation effective June 25, 2017 and consistent with section 90(1) of the *Police Services Act*, it will take no further action in respect of the Potential *PSA* Charges.

6. Subject to the terms herein, this Resignation Agreement is without prejudice or precedent in any other matter. Further, this Resignation Agreement is entered into by the Board without admission of any contravention of the Uniform Collective Agreement or any

statute (including, without limitation, the *Police Services Act* and/or the *Human Rights Code*), and all such allegations are specifically denied.

7. The Board will reimburse Donovan for legal expenses incurred in respect of the Application and/or the Potential *PSA* Charges in the amount of inclusive of HST or other applicable taxes. By her signature to this Resignation Agreement, Donovan confirms that she has incurred legal expenses of at least this amount.

8. No later than July 15, 2017 and subject to the Board's receipt of proof that the HRTO has closed its file in respect of the Application, the Board will pay to Donovan a gross lump sum payment equivalent to less all applicable deductions and remittances required by law.

9. Donovan hereby authorizes and directs the Board to allocate all monies payable to Donovan under the terms of this Resignation Agreement as directed by her legal counsel, Machado Law Professional Corporation.

10. Donovan will execute and return to the Board a Full and Final Release in the form of the attached Appendix "A" to this Resignation Agreement. Without limiting the generality of the foregoing, Donovan also undertakes and confirms, without time limitation, that she will not commence any future proceeding against the Board of any kind whatsoever (whether by way of human rights application, grievance, OCPC or OIPRD complaint under the *Police Services Act*, or otherwise) that in any way relates to or arises out of the period prior to June 26, 2017.

11. The Board will execute and return to Donovan a full and final Release in the form of the attached Appendix "B" to this Resignation Agreement. Without limiting the generality of the foregoing, the Board also undertakes and confirms, without time limitation, that it will not commence any future proceeding against Donovan of any kind whatsoever that in any way relates to or arises out of the period prior to June 26, 2017, except where such proceeding relates to the prohibited and/or unlawful disclosure of operational police information acquired by Donovan in the course of her employment.

12. Without limiting the generality of the foregoing, Donovan also undertakes and confirms, without time limitation, that she will not commence any future proceeding against the Association of any kind whatsoever (whether by human rights application, grievance, OCPC, or OIPRD complaint under the *Police Services Act*, or otherwise) that in any way relates to or arises out of the period prior to June 26, 2017.

13. On or before the date of her employment resignation, Donovan confirms that she will return to the Board any and all property, documents, or copies thereof (whether in an electronic form or otherwise), in her possession belonging to the Board. Such police property includes, without limitation, her equipment, uniform, badge and police identification.

14. To assist Donovan in her search for alternative employment, the Board agrees to permit Donovan to seek employment reference letters, without time limitation, from Staff Sergeant Jen Davis and Sergeant George Prine. The decision to provide such letters will be entirely within their own discretion, but the letters (if provided) will contain no references to the matters resulting in this settlement.

15. If any undertaking, provision or clause contained in this Resignation Agreement is found to be void or unenforceable, in whole or in part, it shall not affect or impair the validity or enforceability of any other undertaking, provision or clause contained herein.

16. 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.

DATED at the City/Town of Cambridge **Ontario this** 8TH **day of June, 2017.**

SIGNED AND WITNESSED
in the presence of:

Witness Signature
Print Name: Molly Kimpel

KELLY DONOVAN

DATED at the City/Town of Cambridge, **Ontario this** 8th **day of June, 2017.**

SIGNED AND WITNESSED
in the presence of:

Witness Signature
Print Name: GARY V. MELANSON

THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD
Per: Bryan Larkin, Chief of Police

DATED at the City/Town of **Ontario this** **day of June, 2017.**

SIGNED AND WITNESSED
in the presence of:

Witness Signature
Print Name: Tim Regalbuto V.P.

THE WATERLOO REGIONAL POLICE ASSOCIATION
Per: Mark Egers, President

APPENDIX "A"
FULL AND FINAL RELEASE

I, **KELLY DONOVAN**, in consideration of the terms and conditions set out in the attached Resignation Agreement dated June 6th, 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, under any terms of employment, whether express or implied, and demands whatsoever, whether arising at common law, by contract, including pursuant to the applicable Uniform Collective Agreement between **THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD** and **THE WATERLOO REGIONAL POLICE ASSOCIATION**, by statute, including without limitation, the *Human Rights Code*, R.S.O. 1990, c. H.19, the *Labour Relations Act, 1995*, S.O. 1995, c. 1, Sch. A, the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1, the *Pension Benefits Act*, R.S.O. 1990, c. P.8, the *Police Services Act*, R.S.O. 1990, c. P. 15 or the *Employment Standards Act, 2000*, S.O. 2000, c. 41, and any amended or successor statutes and sections, or otherwise, which I have ever had, now have or which my heirs, executors, administrators and assigns, or any of them hereafter can, shall or may have by reason of my employment with or the resignation of my employment with **THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD** effective on or about June 25, 2017, or which arises out of or in any way relates to the matters giving rise to my HRTO Application No. **2016-24566-I**.

AND FOR THE SAID CONSIDERATION, I further agree not to commence, maintain, or continue any action, cause of action, claim, request, complaint, demand or other proceeding, against any person, corporation or entity in which any claim could arise against the Releasees or any one of them for contribution or indemnity.

AND IT IS FURTHER AGREED that, while I do not retract my allegations pursuant to the Ontario *Human Rights Code*, in the event that I should hereafter make any claim or demand or commence or threaten to commence any action, claim or proceeding, or make 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 my HRTO Application No. **2016-24566-I**, this document may be raised as an estoppel and complete bar to any such claim, demand, action, proceeding or complaint. Further, I acknowledge and agree that, in light of this settlement, any complaint filed under the *Human Rights Code*, the *Police Services Act* or *Employment Standards Act, 2000*, or any other legislation, which in any way relates to my employment would be frivolous, vexatious and an abuse of process. Subject to the terms of the attached Resignation Agreement, I further agree that I have no claim for disability benefits and I will not institute any action against any carrier or the Releasees which relates to said benefits. I further agree that this settlement can be relied upon as a complete bar to any such action or complaint.

AND IT IS FURTHER AGREED that for the aforesaid consideration, I will pay the appropriate authorities any taxes or any Employment Insurance repayments or any interest, fines, penalties or other charges of any kind whatsoever under any statutory provision, federal or provincial, that may be claimed or levied against me as a result of the payment of the amounts referred to in the attached Resignation Agreement dated June 8th, 2017, and I hereby agree to indemnify and save harmless the Releasees from any and all claims or demands under the *Income Tax Act* of Canada, the *Employment Insurance Act* of Canada, and/or the *Income Tax Act* of the Province of Ontario, and/or under any other statute, federal or provincial, for or in respect of any failure on the part of the Releasees to withhold income tax, or any other source deductions, or remit Employment Insurance repayments from all or any part of the said consideration and any interest or penalties relating thereto and any costs or expenses incurred in defending such claims and demands.

AND I HEREBY DECLARE that I fully understand the terms of settlement as set out in the attached Resignation Agreement dated June 8th, 2017, that the terms thereof constitute the sole consideration for this Release and that I voluntarily accept the amounts stated therein for the purpose of making full and final compromise, adjustment and settlement of all claims aforesaid.

AND I HEREBY CONFIRM that I have obtained independent legal advice with respect to the details of the attached Resignation Agreement dated June 8th, 2017, and this Release, and I confirm that I am executing this Release freely and voluntarily. .

IN WITNESS WHEREOF I have hereunto set my hand and seal this 8th day of June, 2017, in the City of Cambridge, Ontario.

SIGNED AND WITNESSED
in the presence of:

M. Kimpel
Witness Signature
Print Name: Molly Kimpel

KELLY DONOVAN

APPENDIX "B"
FULL AND FINAL RELEASE

THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD, in consideration of the terms and conditions set out in the attached Resignation Agreement dated June 8th 2017, does hereby release and forever discharge **KELLY DONOVAN** ("**DONOVAN**") from any and all actions, causes of action, complaints, applications, appeals, requests covenants, contracts, claims, grievances, under any terms of employment, whether express or implied, and demands whatsoever, whether arising at common law, by contract, including pursuant to the applicable Uniform Collective Agreement between **THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD** and **THE WATERLOO REGIONAL POLICE ASSOCIATION**, by statute, including without limitation, the *Human Rights Code*, R.S.O. 1990, c. H.19, the *Labour Relations Act, 1995,* S.O. 1995, c. 1, Sch. A, the *Occupational Health and Safety Act*, R.S.O. 1990, c.O.1, the *Pension Benefits Act*, R.S.O. 1990, c. P.8, the *Police Services Act*, R.S.O. 1990, C. P.15 or the *Employment Standards Act, 2000,* S.O. 2000, c. 41, and any amended or successor statutes and sections, or otherwise, which it has ever had, now has or which it hereafter can, shall or may have reason of **DONOVAN's** employment with or the resignation of her employment with **THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD** effective on or about June 25, 2017, or which arises out of or in any way relates to the matters giving rise to **DONOVAN'S** HRTO Application No. 2016-24566-I.

AND FOR THE SAID CONSIDERATION, THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD further agrees not to commence, maintain, or continue any action, cause of action or claim, request, complaint, demand or other proceeding, against any person, corporation or entity in which any claim could arise against **DONOVAN** for contribution or indemnity.

AND IT IS FURTHER AGREED that, in the event that **THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD** should hereafter make any claim or demand or commence or threaten to commence any action, claim or proceeding, or make any complaint against **DONOVAN** for or by reason of any cause, matter or thing relating to **DONOVAN'S**

employment or resignation, including the matters arising out of or in any way relating to **DONOVAN'S** HRTO Application No. 2016-24566-I, this document may be raised as an estoppel and complete bar to any such claim, demand, action, proceeding or complaint. Further, **THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD** agrees that, in light of this settlement, any complaint filed under the *Human Rights Code*, the *Police Services Act*, or *Employment Standards Act, 2000*, or any other legislation, which in any way relates to **DONOVAN'S** employment would be frivolous, vexatious and an abuse of process.

THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD further declares that it fully understands the terms of settlement as set out in the attached Resignation Agreement dated June 8th, 2017, that the terms thereof constitute the sole consideration for this Release and that **THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD** voluntarily accepts the terms therein for the purpose of making full and final compromise, adjustment and settlement of all claims aforesaid.

IN WITNESS WHEREOF THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD have hereunto set their hand and seal this 8th day of June, 2017, in the City of Cambridge, Ontario.

SIGNED AND WITNESSED
in the presence of:

Gary V. Melanson
Witness Signature

Print Name: GARY V. MELANSON

THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD
Per: Bryan Larkin, Chief of Police

TAB H

THIS IS EXHIBIT "H" REFERRED TO IN THE AFFIDAVIT OF LAURA J. FREITAG SWORN BEFORE ME THIS 9th **DAY OF** February**,** 2021**.**

A COMMISSIONER FOR TAKING AFFIDAVITS

Court File No. CV-17-2346-00

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

ANGELINA RIVERS, SHARON ZEHR,
and BARRY ZEHR

Plaintiffs

and

WATERLOO REGIONAL POLICE SERVICES BOARD and
WATERLOO REGIONAL POLICE ASSOCIATION

Defendants

AFFIDAVIT OF BRYAN LARKIN

I, **BRYAN LARKIN**, of the City of Kitchener, in the Regional Municipality of Waterloo, **MAKE OATH AND SAY**:

1. I make this Affidavit as a Reply Affidavit to the material filed by the Plaintiffs with respect to the Jurisdiction Motion, and as a Responding Affidavit to the Plaintiff's Certification Motion, and for no improper purpose.

2. I am the Chief of Police of the Waterloo Regional Police Services (WRPS). I am employed and report to the Defendant, the Waterloo Regional Police Services Board (WRPSB), and, as such, have knowledge of the matters and facts contained in this my affidavit. Unless I indicate to the contrary, these facts are within my personal knowledge and are true. Where I

have indicated that I have obtained from information from other sources, I verily believe those facts to be true.

PERSONAL BACKGROUND

3. I am 47 years of age. I began my policing career with the WRPS in 1991, as a Constable. While with the WRPS from 1991 until 2011, I progressed through the ranks from Constable to Superintendent. During that time and in addition to patrol/operational assignments, I have worked in Human Resources, been the Chief of Police's Executive Officer and Media Relations Officer, lead the largest Division in our Service. I left WRPS in 2011 to become the Deputy Chief of Police with the Guelph Police Service and then became Chief of the Guelph Police Services from 2012 to 2014, returning in August of 2014 to assume my role as Chief of Police of WRPS.

4. I am currently the President of the Ontario Association of Chiefs of Police, and participate in the Canadian Association of Chiefs of Police Working Groups on Diversity and Inclusion. During my career, including in my role in senior management with the WRPS, I have had training, attended and/or helped to arrange symposiums, conferences and seminars on Diversity, Gender Equality and Sexual Harassment (including through the Ontario Police College, internally and at a provincial and international level (International Association of Chiefs of Police- Women in Policing).

STATEMENT OF DEFENCE AND ATTORNMENT TO JURISDICTION ISSUE

5. I have reviewed the Statement of Claim in these proceedings. The Defendant, WRPSB, denies or has no knowledge of many of the allegations made in the Statement of Claim. On the

advice of counsel, we have not entered a Statement of Defence due to the fact that we would be attorning to the jurisdiction of the Superior Court of Justice by doing so in circumstances where our position has been clearly stated, in our Motion Record and Factum brought under Rule 21 of the *Rules of Civil Procedure*, that the Plaintiff's Action should be dismissed on the grounds that the Superior Court of Justice has no jurisdiction to hear the matter based on the Collective Bargaining Agreements, which govern the employment relationship between the Plaintiffs and the Defendants. I have also been advised by our counsel that they would need particulars with respect to many of the allegations in the Statement of Claim in order to properly plead to it and prepare a proper Statement of Defence should the preliminary Jurisdiction Motion be dismissed.

6. My counsel was served yesterday with new and extensive Affidavit material purporting to be Responding Affidavits to the Defendant's Jurisdiction Motion, but which contains many new, unfounded, and unchallenged allegations, to bolster the previous Affidavits filed by the Plaintiffs. My not addressing these new allegations in this Affidavit should not be taken as a concession or admission with respect to those unfounded allegations.

COLLECTIVE BARGAINING AGREEMENT AND ITS GOVERNING THE EMPLOYMENT RELATIONSHIP BETWEEN THE WRPSB AND ITS EMPLOYEES

7. I have reviewed the Affidavit of Fillipe Mendes, sworn September 14, 2017, contained in the Motion Record, dated September 15, 2017, filed with respect to the Jurisdiction Motion. I confirm the accuracy of the information contained in that Affidavit.

8. In addition, there is a separate Collective Bargaining Agreement in force between the WRPSB and the Waterloo Regional Police Association (WRPA) which governs the employment relationship between the employer and its civilian employees. Attached hereto and marked as "Exhibit A" to this my Affidavit, is a true copy of this Collective Bargaining Agreement, and which is currently in force.

9. There is also a Collective Bargaining Agreement which exists between the WRPSB and the Senior Officers Association (SOA), which consists of 31 employees comprised of uniform officers above the rank of Staff Sergeants, being Inspectors, Superintendents, as well as civilian Managers and Supervisors, and all other employees who are in a position to receive confidential information, such as our in-house lawyers. It is unclear to me whether the class action purports to represent the members of the SOA bargaining unit. Attached hereto and marked as "Exhibit B" to this my Affidavit, is a true copy of this Collective Bargaining Agreement.

10. Attached hereto and marked as "Exhibit C" to this my Affidavit is a breakdown of the male/female ratio of the senior management positions in the SOA bargaining unit, and which contradicts the erroneous information in the Plaintiff's materials that woman have not been promoted to senior management positions within the WRPS, and which I had requested be prepared for the purpose of this affidavit.

INTERNAL PROCEDURES, PROTOCOLS AND POLICIES OF WRPS TO DEAL WITH SEXUAL HARASSMENT, SEXUAL ASSAULT AND GENDER DISCRIMINATION

11. Our Policy and Procedures Development Unit was asked to compile the following list of written policies and procedures in place that deal directly or indirectly with the issue of and processes for employees to follow regarding sexual harassment sexual assault, and/or gender

discrimination, as well as the historical Procedures dealing specifically with Harassment and Discrimination :

(a) Harassment and Discrimination Procedures – Historical:

(i) By-law 11 and 12 from 1983 Rules and Regulations;
(ii) Harassment Policy (Order 13-90; February 12, 1990);
(iii) Harassment Policy (67-93; December 20, 1993);
(iv) Harassment Policy 1996;
(v) Harassment and Discrimination Procedure (April 11, 2007);
(vi) Harassment and Discrimination Procedure (June 21, 2010); and
(vii) Harassment and Discrimination Procedure (October 21, 2014)

(b) Harassment and Discrimination Procedure – Current (August 2, 2017) – Attached hereto and marked as **"Exhibit D"**;

(c) Promotional Procedures:

(i) Promotions Senior Officer; and
Promotions – Sergeant and Staff Sergeant; and

(d) Other Procedures that reference or deal with harassment or discrimination, gender equity, etc. related issues (e.g., workplace violence free obligations):

(i) Auxiliary Police Procedure;
(ii) Bias Neutral Policing Procedure;
(iii) Emergency and Personal Safety Procedure;
(iv) Field Development (formerly Coach Officer) Procedure;
(v) Performance Management – Civilian Procedure;
(vi) Relationships in the Workplace Procedure;
(vii) Skills Development and Learning Plan Procedure;
(viii) Supervision Procedure;
(ix) Workplace Accidents Procedure; and
(x) Workplace Violence Procedure.

12. These specific policies and procedures have worked well in allowing most complaints to have been handled and resolved internally, but with the option for any employee to proceed with a complaint to the Human Rights Tribunal of Ontario, or a formal grievance under the applicable

Collective Bargaining Agreement and/or dealing with misconduct of a police officer under the Code of Conduct found in the *Police Services Act*. Attached hereto and marked as "Exhibit E" to this my Affidavit is a chart which I requested that the Human Resources Division of the WRPS prepare for sexual harassment/discrimination complaints for the last 9 years, with non-identifying particulars with respect to the parties and the resolution of those complaints in order to comply with the applicable legislation and respect the individuals' privacy.

13. 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, Angelina Cea, (aka Rivers), 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 WRPS with the full support of the Defendant, the WRPSB, has taken proactive steps in recent years to properly deal with the issues of sexual discrimination, gender diversity, sexual harassment and to encourage and promote women to senior management positions. Attached hereto and marked as "Exhibit G" to this my Affidavit, is a true copy of the text of a recent article from the Ottawa Citizen newspaper, dated November 28, 2017, outlining steps taken by the Ottawa Police Services arising out of a settlement of a Human Rights complaint from 2015. The WRPS had already launched similar initiatives prior to the issuance of the Statement of Claim in this action. WRPS, in January of 2017, had established an Inclusion and Equity Officer with the full support of the WRPSB. Donna Mancuso, was the first Inclusion and Equity Officer, and is now been promoted to an Inspector of the WRPS. Sergeant Julie Sudds has

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replaced Inspector Mancuso. Her mandate, and the mission statement of her office, is that every member is responsible for promoting inclusivity within the organization and community.

15. In addition and since 2005, the WRPS Diversity Committee has served as a steering group for a wide variety of Service initiatives that promote the Core Value of *Diversity* within our Service and throughout Waterloo Region. Over 30 WRPS uniform and civilian members are divided equally among its 5 sub-committees, including Education (assist in coordinating Service educational programs and initiatives that promote Diversity awareness and inclusion):

16. In 2015, a program was implemented, where every female Staff Sergeant has been sent to the Women Leadership Institute, hosted by the International Association of Chiefs of Police, which is a five day, 40 hour program. This initiative has now also been expanded to include all female Sergeants.

17. In 2016, WRPS sponsored a Women's Leadership Day Forum. Ironically, the Plaintiff, Barry Zehr, advocated that men should attend this forum and was overruled by senior management on the basis that there was a consensus that the women needed a safe space as a first step to move forward, and to then subsequently involve men as part of the ongoing process. Attached hereto and marked as "Exhibit I" to this my Affidavit is the on-line Registration form for the Women's Leadership Forum scheduled for January 18, 2018

18. The internal policies referred to in Barry Zehr's Affidavit, at paragraph 42, and Exhibit B, are outdated versions of the Harassment and Discrimination Procedure, which current version is attached to this Affidavit as "Exhibit D" described above. Contrary to the allegation made by the Plaintiff, Barry Zehr, about the briefing note "highlighting the inherent ineffectiveness" of the current policies, changes made to the wording of the internal policies was simply to reflect the

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new legislation and requirements of Bill 132, which had an effect on numerous other policies of the WRPS, which were also changed to be in compliance.

19. In addition, all new employees (including probationary constables) are required, as part of new employee orientation to receive training on Workplace Conduct, that includes specific lesson plan on appropriate workplace conduct and harassment and discrimination and those key and applicable Procedures. This was developed following the Service-wide training on "Ontario Human Rights – Accommodation and Harassment and Discrimination" from June to September 2007. In addition, Field Development Officer (formerly, Training Officers) have specific training dealing with harassment and discrimination and are required to address the issues with their probationary constables.

20. The Service has kept its procedures up to date and revised them as amendments to legislation have been introduced (e.g., Bill 168 (Workplace Violence and Harassment) updates and later Bill 132 (Sexual Violence and Harassment Action Plan)— which is what Ms. Penny Smiley was referring to in her report to the Senior Leadership Team). Attached hereto and marked as "Exhibit I" is the Senior Leadership Team Briefing Note dated March 2, 2017 entitled, "Bill 132 Harassment and Discrimination Procedure Changes" and as "Exhibit J" is the accompanying PowerPoint presentation entitled "Harassment and Discrimination Procedure- Bill 132 Updates".

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EXTERNAL PROCEDURES/PROCESSES AVAILABLE TO EMPLOYEES OF WRPS TO DEAL WITH COMPLAINTS OF SEXUAL HARASSMENT, SEXUAL/GENDER DISCRIMINATION, OR SEXUAL ASSAULT

21. The internal policies and procedures of the WRPS, while not perfect are continually progressing appropriately and provide remedies for female officers and civilian employees when they have complaints with respect to sexual/gender discrimination, sexual harassment or sexual assault to be handled either informally on an internal basis. But they also contemplate and allow for other external remedies available by way of Complaints to the Human Rights Tribunal, or under the Collective Bargaining Agreements, or the *Police Services Act* or SIU complaints and investigations.

22. Any employee who has a complaint, with respect to harassment or discrimination, sexual or otherwise, is specifically permitted to suspend or by-pass any proceedings under our internal procedures and/or any interim solutions by commencing proceedings before the Ontario Human Rights Tribunal, or a grievance under the Collective Bargaining Agreement/*Police Services Act*, or commencing a criminal prosecution.

23. In fact, if there is any concern that a potential crime may have been committed during the course and scope of a police officer's employment with the WRPS, a complaint to and investigation will be initiated by the Special Investigations Unit ("SIU"), which is a separate and independent body mandated to investigate police officers in Ontario (whether they active or retired as long as the allegation of sexual assault occurred while they were police officers and it arose out of or related to their duties or position as a police officer). The mandate of the SIU is to maintain confidence in Ontario's police services by assuring the public that police actions resulting in serious injury, death, or

allegations of sexual assault are subjected to rigorous, independent investigations. Incidents which fall within this mandate must be reported to the SIU by the police service involved and/or may be reported by the complainant or any other person.

24. As well, the *Police Services Act* explicitly provides for misconduct in the Code of Conduct (Regulation 268/10) that are designed or can be used to address matters of sexual harassment and/or discrimination in the workplace, including but not limited to:

> 2. (1) Any chief of police or other police officer commits misconduct if he or she engages in,
>
> (a) Discreditable Conduct, in that he or she,
>
> > (i) **fails to treat or protect persons equally without discrimination** with respect to police services because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, **sex, sexual orientation**, age, marital status, family status or disability,
> > (ii) uses profane, abusive or insulting language that relates to a person's race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, **sex, sexual orientation,** age, marital status, family status or disability,
> > (iii) **is guilty of oppressive or tyrannical conduct towards an inferior in rank,**
> > (iv) **uses profane, abusive or insulting language to any other member of a police force,**
> > (vii) **assaults** any other member of a police force,
> > (viii) **withholds or suppresses a complaint** or report against a member of a police force or about the policies of or services provided by the police force of which the officer is a member,
> > (ix) is guilty of a **criminal offence** that is an indictable offence or an offence punishable upon summary conviction, or
> > (xi) **acts in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the police force** of which the officer is a member;
>
> (b) Insubordination, in that he or she,
>
> > (i) is **insubordinate by word, act or demeanor**, or
> > (ii) without lawful excuse, **disobeys, omits or neglects to carry out any lawful order [note: Procedures are considered orders of the Chief]**;
>
> (c) Neglect of Duty, in that he or she,

(i) without lawful excuse, neglects or omits promptly and diligently to perform a duty as,

(A) a member of the police force of which the officer is a member, if the officer is a member of an Ontario police force as defined in the *Interprovincial Policing Act, 2009*, or

(iii) **fails to work in accordance with orders**, or leaves an area, detachment, detail or other place of duty, without due permission or sufficient cause,

(vi) **fails to report a matter that it is his or her duty to report**,

[Emphasis Added]

25. As noted above, all police officers are also subject to that Code of Conduct in the *Police Services Act*. While members of a Service are not permitted to bring a "public complaint" against an officer from their same Service, there are other mechanisms by which a formal complaint and, if substantiated and of a serious nature, a public hearing can be commenced. The Chief can initiate a Chief's complaint under the *Police Services Act*. In fact, this is something that is explicitly contemplated in the Service's Harassment and Discrimination Procedure at "Exhibit D").

26. Lastly and notwithstanding that a member of a Police Service cannot directly bring a public complaint, the *Police Services Act* also provides at section 25 for Ontario Civilian Police Commission, on its own motion (and if a member brings an issue to their attention), the power to investigate, inquire into and report on, *inter alia,*

(a) the conduct or the performance of duties of a police officer, a municipal chief of police, an auxiliary member of a police force, a special constable, a municipal law enforcement officer or a member of a board;

(b) the administration of a municipal police force...

27. As such, there are a host of avenues that a complainant in a harassment or discrimination related matter can, and have at our Service, pursue.

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THE PLAINTIFF'S PURPORTED EXPERT, KATHY HOGARTH

28. I am advised by my counsel that the report and alleged expert opinion of Ms. Hogarth, set forth in the Supplementary Motion Record of the Plaintiffs, is improperly before the Court in this proceeding, in that Ms. Hogarth is unqualified, biased, and that her opinions are not made in a report served in accordance of the provisions of Rule 53 of the *Rules of Civil Procedure.*

29. I specifically deny the allegations made in paragraphs 12 and 13 of Ms. Hogarth's Affidavit that she discussed with me, issues of systematic sexual harassment and practices of the WRPS dealing with sexual harassment and discrimination. My recollection of my meetings and conversations with Ms. Hogarth was that they were based on racism issues and race based interactions, such as racial profiling and the larger inclusion and diversity issue and not related to gender equity/diversity specifically.

30. I had first met Ms. Hogarth through the Waterloo Region Well-Being Working Group as part of planning on building healthier communities. I had appointed Barry Zehr to this Working Group. Ironically, it was myself that gave her name to the Plaintiff Barry Zehr, Penny Smiley, and Staff Sergeant Allison Bevington, to request that she speak at the Women and Leadership Forum, which she refers to in her Affidavit and report.

31. I recall Ms. Hogarth being critical of the appointment of Donna Mancuso, as WRPS first Inclusion and Equity Officer, saying that she was a "disciple of other senior officers" and may not be the best candidate. At the time I thought that this was a very strange comment and it now seems clear to me that she was receiving information from the Plaintiff, Barry Zehr, since she would not have known the identity of these other senior

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officers, and their relationship to Donna Mancuso. Again, the context of any discussions about the Inclusion and Equity Officer was centered around racial diversity issues. The education and training assistance that was offered by Ms. Hogarth, as set out in paragraph 14 of her Affidavit, was related to systematic discrimination based on racial discrimination, not gender discrimination. In any event, given the apparent lack of support of Kathy Hogarth to the appointment of Donna Mancuso as the Inclusion and Equity officer, I did not follow up with Ms. Hogarth following that conversation and made the decision that Inspector Mancuso would be better to deal with these issues internally, and based on her own initiatives.

32. The allegation in paragraph 15 of Ms. Hogarth's Affidavit, that there were only two women in the large senior management team of the WRPS is simply wrong, and I don't know where she got that information. As seen by the charts attached as "Exhibit C" to my Affidavit, there is significant progress being made in gender diversity in our Senior Management Team.

THE REPRESENTATIVE PLAINTIFF, ANGELINA RIVERS (CEA)

33. Ms. Rivers, under the name Cea, made a complaint of sexual discrimination and sexual harassment in August of 2015, to the human resources division of WRPS, which was taken very seriously and prompted an internal investigation in accordance with our policies and procedures. The WRPS hired an independent lawyer, Lauren Bernardi, of Bernardi Human Resource Law LLP, to conduct an external and independent investigation. As a result of this independent investigation, the individual male officer that was the subject of the complaint was found guilty of a charge of discredible conduct,

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pursuant to the *Police Services Act*, and disciplined under our normal policies and procedures. The WRPS would have had a meeting with Ms. Rivers to discuss the findings set out in the Bernardi report and to resolve her complaint (including advising her of the discipline imposed on the subject of her complaint), but when she was contacted (in October of 2016) so that a meeting could be scheduled with the Director of Human Resources, Lauren Bernardi and Shirley Hilton (the then Inspector of Professional Standards), Ms. Rivers refused, citing that she was sick and that for medical reasons, she could not meet. Ms. Rivers' has been on 100% employer paid sick leave from WRPS since July 29, 2015.

34. Contrary to the allegations set out in paragraph 28 of Ms. Rivers' Affidavit, she does in fact have a copy of the Bernardi report and in fact has quoted from it in this proceeding and publicly, which my counsel advises me is in complete breach of what is referred to as, the Deemed Undertaking Rule.

35. Ms. Rivers filed a complaint with the Human Rights Tribunal of Ontario in 2016. The mediation for Ms. Rivers' complaint was scheduled for December 18, 2017, but at the request of Ms. Rivers and her counsel, they cancelled the mediation and are now seeking to have the hearing cancelled or stayed until it is determined if she can proceed with her claims as a Representative Plaintiff in the class action. The WRPS is opposing this request to stay the HRT. Attached hereto as "Exhibit K" to this my Affidavit is the email chain dated December 15, 2017, to the HRTO from Ms. Rivers' counsel in that proceeding and the counsel of the WRPSB in that proceeding.

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36. It is the position of the Defendant, WRPSB, that the Plaintiff, Angelina Rivers (aka Cea), with her HRTO outstanding and in fact now refusing to proceed with the scheduled hearing of her Complaint before the HRTO which is a preferable procedure for the resolution of any issues, which are identical to the issues raised in the Statement of Claim, and is therefore not a proper Representative Plaintiff, completely separate and apart from the jurisdiction of the Superior Court of Justice to deal with the proposed class action.

THE REPRESENTATIVE PLAINTIFF, SHARON ZEHR

37. The allegations made by Ms. Zehr of gender based discrimination and sexual harassment and bullying are at least 26 years old, and there is no evidence that she ever complained about any of these incidents or issues while in the employ of the WRPS, or at any time subsequent to the issuance of the current Statement of Claim.

38. I note that in paragraph 17(c) and (d) of Ms. Zehr's Affidavit, that when she subsequently had complaints with respect to sexual harassment and gender discrimination, following her leaving her employment at Wilfred Laurier University in 2006, she made a specific complaint to the Human Rights Tribunal of Ontario and had her complaint successfully resolved at that time by way of a settlement.

39. When the WRPS received a copy of the Statement of Claim, issued May 30, 2017, on the basis that the allegations in paragraph 52 of that claim potentially disclosed sexual assaults, the WRPS, as they are mandated to do, reported these incidents to the Special Investigations Unit of the Ministry for investigation. I am advised by Staff Sergeant David MacMillian, of our Professional Standards Branch, that on June 2, 2017, he

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emailed the Statement of Claim to Oliver Gordon, at the Special Investigations Unit ("SIU"), specifically drawing his attention to paragraph 52. He was subsequently contact by Mr. Gordon on June 5, 2017, and advised that the SIU had sent a letter to Plaintiff's counsel in this action inquiring if they wished to speak to them, and whether or not they were alleging sexual assaults in the Statement of Claim. In a subsequent follow up by Staff Sergeant MacMillian to Mr. Gordon, on October 2, 2017, he was advised that the SIU had not received any response from Plaintiff's counsel to their proceeding to investigate the alleged sexual assaults, and had therefore closed their file.

40. For whatever reason, Ms. Zehr does not seem to want to pursue other preferable and available remedies to deal with the issues set out in the Statement of Claim.

THE REPRESENTATIVE PLAINTIFF, BARRY ZEHR

41. The Plaintiff, Barry Zehr, is an alleged *Family Law Act* Plaintiff, whose claims are derivative from any claims of his spouse, Sharon Zehr.

42. It is correct that Mr. Zehr was employed by the WRPS from April 12, 1987 to April 16, 2017, when he retired from his position as Superintendent. He had previously been a Superintendent of Human Resources from November 2008 to November 2013.

43. There are many allegations and statements made by Mr. Zehr in his Affidavit, and alleged in the Statement of Claim, which are incorrect and will be denied in an eventual Statement of Defence if this action proceeds.

44. It is not correct that Mr. Zehr brought forward issues about gender equality while part of the Senior Management Team. I certainly recall him speaking to him on occasion,

speaking about racial diversity, but I never recall him raising a gender issue at a Senior Leadership team meeting. We had assigned a female acting Inspector for Mr. Zehr to mentor his feedback was not positive of her abilities. He was also critical of his only female Inspector when he was serving as the Neighbourhood Policing Superintendent.

45. I have specifically reviewed paragraphs 11, 12, and 13, of Mr. Zehr's Affidavit dealing with the alleged "Lamport" issue. I was not the Chief of Police at the time, but having reviewed the files I can confirm that Greg Lamport was disciplined for substantiated misconduct, but which had nothing to do with the gender issues or any issues raised in this current action. Upon Greg Lamport subsequently being promoted, contrary to the allegations contained in Mr. Zehr's Affidavit, a female officer was promoted to be the first female Staff Sergeant of the Emergency Responsive Unit (ERU) and that individual has subsequently been promoted to be an Inspector.

46. I do not understand the relevance of the Lamport issue since it has nothing to do with the issues raised in this litigation. It now appears from my review of Mr. Zehr's most recent Affidavit, where he has included portions of the Investigative Report dealing with Greg Lamport, that he was improperly and illegally taken this Report from the WRPS and produced it along with the other information in his Affidavit in direct violation of S.95 of the *Police Services Act*, which provides:

> *"Confidentiality*
>
> *95. Every person engaged in the administration of this Part shall preserve secrecy with respect to all information obtained in the course of his or her duties under this Part and shall not communicate such information to any other person except,*

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(a) As may be required in connection with the administration of this Act and the regulations;
(b) To his or her counsel;
(c) As may be required for law enforcement purposes; or
(d) With the consent of the person, if any, to whom the information relates."

47. Contrary to the allegations in Mr. Zehr's Affidavit, rather than being a champion of women's rights, and taking steps to deal with gender equality and sexual harassment, he admits that he encouraged Sharon Zehr not to come forward to pursue any complaints with respect to her allegations of discrimination and sexual harassment.

48. In January of 2017, prior to his retirement in April of 2017, I recall being approached by Barry Zehr, asked whether I was going to approach the Defendant, WRPSB, with respect to an early buyout and retirement package for Senior Staff such as himself. I told Mr. Zehr that as a Senior Officer he was doing a good job, but that there was no justification or reason to request an early retirement and buyout. Certainly, Mr. Zehr did not communicate to me in any way the allegations set forth in paragraph 39(b) of his Affidavit, that he was demoralized. I recall him saying, I have "boulders on my shoulders", but when I pressed him to elaborate he did not want to and would not share any information or explain. He did not take early retirement as he eludes to in paragraph 40 of his Affidavit, but retired with a full unreduced pension, at 30 years of service, as almost all officers in the employ of WRPS do.

49. Unfortunately, serious issues were uncovered by the WRPS surrounding Mr. Zehr's departure from our employment which constituted a serious breach of his employment contract, his fiduciary duties as a police officer, and a contravention of his Oath of Office.

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50. Upon leaving his employment, Mr. Zehr completely erased all files on the hard drive of his computer. He also recalled, from storage, all of his police notebooks, which are the property of Waterloo Regional Police Services, and took them from the premises. Attached hereto and marked as "Exhibit L" to this my Affidavit is a true copy of the letter sent by counsel for the WRPSB to Plaintiff's counsel, dated October 17, 2017. Similarly, Ms. Rivers' had also improperly taken her notebooks and provided them to Plaintiff's counsel.

51. The original notebooks and other files taken by Mr. Zehr were only returned directly to the WRPS by courier on October 31, 2017, but there remains a serious problem in that, as requested, Plaintiff's counsel has refused to return all copies of the notebooks that were made. Certain pages from the notebooks were also removed. This causes a serious problem with respect to the confidential contents of the police notebooks, and the chain of their custody, since they contain protected and confidential information in no way connected to the class action, such as confidential informants, past and/or ongoing investigations, references to young persons, all of which is in contravention of the legislative provisions of the *Youth Criminal Justice Act*, *Police Services Act*, *Municipal Freedom and Information and Protection of Privacy Act* and/or *The Personal Health Information Protection Act*. It may be that by improperly copying and reviewing all of the notebooks, Plaintiff's counsel has put themselves in a conflict of interest and the Defendant, WRPSB, is currently considering whether it will become necessary to bring a Motion to have them removed as the Lawyers of Record for the Plaintiffs in this proceeding and for a Court Order to be obtained to compel the return of all copies made of the notebooks.

SWORN BEFORE ME at the City of Kitchener, in the Regional Municipality of Waterloo on ... December 21st 2017

Commissioner for Taking Affidavits
(or as may be)

BRYAN LARKIN

RCP-E 4D (July 1, 2007)

This is Exhibit "F" referred to in the Affidavit of Bryan Larkin sworn December 21, 2017

Commissioner for Taking Affidavits (or as may be)

JAMES H. BENNETT
LSUC #20848Q

Police Officer Initiated Ontario Human Rights Complaints

NAME	GROUNDS FOR DISCRIMINATION	RESOLUTION
Angie Cea (a.k.a. Rivers)	• Disability • Sex, including sexual harassment & Pregnancy • Sexual solicitation or advances	ON GOING
Female Constable	• Sex, including sexual harassment and pregnancy • Marital status	SETTLED • monetary settlement • withdrawal of OHRT application • voluntary resignation
Female Constable	• employment (rate of pay, denied promotion, discipline) • sexual harassment (comments, displays, jokes, poisoned work environment, denied accommodation or modified work in the workplace)	WITHDRAWN • Tribunal directed Summary Hearing to determine if application should be dismissed on basis there was no reasonable prospect that Application would be successful – withdrawn prior to hearing)

Female Sergeant	• Disability • Sex including sexual harassment, pregnancy, gender identity • Reprisal or threat of Reprisal • Discrimination in employment on basis of sex and disability • Discrimination in discipline • Discrimination in comments, displays, jokes, harassment, poison environment, sex harassment, solicitation or advances • Denied workplace opportunity • Denied employment benefits • Denied necessary accommodation or modified work	SETTLED • monetary settlement • withdrawal of Application

TAB I

THIS IS EXHIBIT "I" REFERRED TO IN THE AFFIDAVIT OF LAURA J. FREITAG SWORN BEFORE ME THIS 9th DAY OF February, 2021.

A COMMISSIONER FOR TAKING AFFIDAVITS

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

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

Follow these steps to respond:

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

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

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

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

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

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

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

First (or Given) Name	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	

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
Donald	Jarvis

Organization (if applicable)	LSUC No. (if applicable)
Filion Wakely Thorup Angeletti LLP	28483C

Street Number	Street Name	Apt/Suite
333	Bay Street	Suite 2500

City/Town	Province	Postal Code	Email
Toronto	ON	M5H 2R2	djarvis@filion.on.ca

Daytime Phone	Cell Phone	Fax	TTY
416-408-5516		416-408-4814	

What is the best way to send information to your representative? ○ Mail ◉ Email ○ Fax

(If you check email, you are consenting to the delivery of documents by email.)

3. Contact Information for the Other Parties to the Settlement

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

a) Organization

Full Name of Organization
Waterloo Regional Police Association

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

First (or Given) Name	Last (or Family) Name	Title
Caroline V. (Nini)	Jones	Solicitor

Street Number	Street Name	Apt/Suite
155	Wellington Street	35th Floor

City/Town	Province	Postal Code	Email
Toronto	ON	M5V 3H1	nini.jones@paliareroland.com

Daytime Phone	Cell Phone	Fax	TTY
416.646.7433		416.646.4301	

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	ON	N3R 1K6	kelly@fit4duty.ca

Daytime Phone	Cell Phone	Fax	TTY
519-209-5721			

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

Ongoing. (dd/mm/yyyy)

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

See Schedule "A".

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

See Schedule "A".

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

See Schedule "A".

8. Declaration and Signature

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

Declaration:

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

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

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

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

Name: Donald B. Jarvis	
Signature: Donald Jarvis (DBJ)	Date: (dd/mm/yyyy) 28/06/2018

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

Freedom of Information and Privacy

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

SCHEDULE "A" TO FORM 18
(CONTRAVENTION OF SETTLEMENT)

BETWEEN:

THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD

Applicant

- and -

KELLY DONOVAN

Respondent

TABLE OF CONTENTS

I. INTRODUCTION

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

II. THE PARTIES

2. The WRPSB is an agency created under the *Police Services Act*, RSO 1990, c P-15 ("*PSA*") that is responsible for the provision of adequate and effective police services to The Regional Municipality of Waterloo (including the cities of Kitchener, Waterloo and Cambridge).

3. Kelly Donovan commenced employment with the WRPSB in or around 2010. She was, at all material times, represented by The Waterloo Regional Police Association in respect of her employment with the WRPSB.

III. BACKGROUND

A. *The HRTO Application*

4. On or about June 6, 2016, Ms Donovan filed the HRTO Application alleging that she was discriminated against on the basis of sex and marital status. A copy of the HRTO Application is attached at **Tab 1**.

5. The foundation for Ms Donovan's claim of alleged discrimination was a series of events that began with Ms Donovan's delegation (or presentation) to the WRPSB on or about May 4, 2016.

6. The WRPSB is a civilian board that oversees the Waterloo Regional Police Service (the "WRPS" or the "Service"). The WRPSB is tasked with ensuring that the community is policed effectively, and that any and all policing standards are complied with.

7. Ms Donovan's delegation to the Board on or about May 4, 2016 was regarding Ms Donovan's belief that the Service was investigating domestic violence inconsistently

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

8. Ms Donovan's delegation was predominantly focused on the Service's investigation of allegations against Sergeant Bradley Finucan, though Ms Donovan also referred to the Service's investigation of a complaint she made on behalf of an unnamed friend relating to alleged criminal harassment by an unnamed officer of the WRPS, as well as the Service's criminal investigations of Constable Jeremy Snyder.

9. Ms Donovan's actions in making a delegation to the Board at its open and public meeting and with media present on May 4, 2016, without prior notice or approval from the WRPS Chief of Police (or an appropriate delegate in the chain of command), and the serious allegations made against other members of the Service (including the investigators of the Finucan matter that ended in a criminal guilty plea) and potentially accessing a protected Crown Brief in the Finucan matter may have constituted misconduct under the *PSA*. Further, because of the extremely serious nature of the allegations Ms Donovan had made regarding the Service's investigations of domestic violence, the WRPS determined that it would be appropriate to ask another police service to conduct an independent review of the Service's investigation of Sergeant Finucan.

10. Ms Donovan also made it clear, due to the fact that her time for making her deputations ran out, that she would be re-attending the next Board meeting in June to complete her delegation.

11. On or about May 11, 2014, Ms Donovan met with Inspector Doug Thiel and Acting Inspector John W. Goodman, Professional Standards. At that meeting, Inspector Thiel issued a Directive to Ms Donovan directing that:

- Ms Donovan not appear before the Board without the permission of the Chief of Police;
- Ms Donovan notify the Board's secretary via email that she would be cancelling her appearance at the July 2016 Board meeting;
- Ms Donovan cooperate with the external review process by participating in interviews and providing information in support of her allegations to investigators; and
- Ms Donovan be assigned to administrative duties (unless she preferred to be transferred to Patrol duties), and would not participate in the direct training of any Service members during the external review and during any pending *PSA* investigation.

11. At the same meeting, Ms Donovan was also issued a formal Notice of Investigation by Acting Inspector Goodman advising that, subject to and following an external review of the substance of Ms Donovan's allegations, Ms Donovan's conduct on May 4, 2016 would be investigated to determine whether her actions breached the *PSA* and constituted discreditable conduct, neglects of duty, and/or breaches of confidence. In her HRTO Application, Ms Donovan characterized the *PSA* Investigation as "bullying" and intimidation in response to her delegation.

12. Notably, despite Ms Donovan's meeting with Inspector Thiel and Acting Inspector Goodman during which she had been expressly directed not to appear before the Board, Ms Donovan subsequently sent an email to members of the Board advising that she had been served with a Directive and a Notice of Investigation. Ms Donovan also asserted that her actions were above reproach and that she had no personal interest in any of the matters she brought to the Board's attention. Ms Donovan was subsequently served with a second Notice of Investigation on May 31, 2016 in relation to her email to members of the Board. This notice indicated that an investigation would be conducted to determine whether Ms Donovan's actions constituted deceit and/or discreditable conduct under the *PSA*. Once again, the Notice of Investigation ordered Ms Donovan not to have any contact with members of the Board without the permission of the Chief of Police.

13. On or about June 2, 2016, Ms Donovan filed an internal complaint alleging that she had been discriminated against and harassed contrary to the *Human Rights Code* and WRPS

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

14. In response to Ms Donovan's delegation to the Board and subsequent discrimination and harassment complaints, the WRPS took the following steps:

(a) On or about May 25, 2016, Chief Larkin requested York Regional Police ("YRP") review the criminal investigation of Sergeant Finucan to ensure that the incident had been properly investigated. The YRP's external review was completed on or about August 12, 2016. The YRP investigator concluded that the Service had conducted a full, fair and transparent criminal investigation against Sergeant Finucan, and that the Service had reasonable grounds to arrest and charge Sergeant Finucan.

(b) On or about July 12, 2016, the Board retained Lauren Bernardi of Bernardi Human Resource Law LLP to conduct an independent, third party investigation into Ms Donovan's internal harassment and discrimination complaint.

15. On consent, by letter dated July 25, 2016, the HRTO placed the HRTO Application in abeyance pending the conclusion the internal investigation processes.

16. During the period of deferral, the WRPS took the following additional steps in response to Ms Donovan's delegation to the Board and subsequent internal discrimination and harassment complaint:

(a) On or about November 29, 2016, the Service commenced an internal review of the allegation Ms Donovan had made during her delegation to the Board in respect of the Service's investigation of a reported harassment incident relating to a friend of Ms Donovan and a member of the Service. In April 2015, Ms Donovan reported that her friend was being repeatedly contacted by a member of the Service with whom her friend had previously been in a romantic relationship. Ms Donovan's report was investigated at that time, though Ms Donovan's friend did not wish to make a complaint. In any event, an internal review of the April 2015 report was conducted by Investigator Sergeant Greg Fiss of the Domestic Violence Unit commencing on or about November 29, 2016. Investigator Fiss

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

(b) As a result of a law suit commenced by Constable Jeremy Snyder arising out of his acquittal following a criminal trial for sexual assault, the Board had already had a review done and received an independent report, subject to solicitor-client privilege and litigation privilege – the existence of which was well-known to Constable Snyder. In addition, Constable Snyder was actively involved in another criminal prosecution (this time for domestic assault, mischief and threats) that resulted in a withdrawal of charges and peace bond, but was still outstanding at the time of Ms Donovan's deputations to the Board. On January 10, 2017, Constable Snyder pleaded guilty to Discreditable Conduct under the *PSA* arising out of the underlying incidents of the criminal charges.

(c) The independent, third-party investigation into Ms Donovan's internal harassment and discrimination complaint was concluded in October 2016. Ms Bernardi's report was issued on October 31, 2016, and was shared with counsel for Ms Donovan on or about November 27, 2016. Ms Bernardi found that there had been no discrimination based on sex, and that no members of the Service had engaged in any form of harassment. What is more, Ms Bernardi noted that it was reasonable in the circumstances for the Service to take the position that an investigation into Ms Donovan's conduct in making a delegation to the Board was warranted.

17. On or about December 14, 2016, Ms Donovan requested that her HRTO Application be reactivated.

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

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

19. The Service had reasonable and demonstrable grounds to investigate Ms Donovan's conduct on and following May 4, 2016 and to determine whether charges under the *PSA* were necessary and appropriate. This investigation, by consent of Ms Donovan's counsel, was deferred pending the completion of the internal Harassment and Discrimination investigation and the final report regarding the independent review conducted by the YRP of the Finucan matter.

20. A *PSA* investigation is a statutorily mandated employment misconduct and discipline system. In this case, it was to cover the same facts and underlying allegations made by Ms Donovan in her HRTO Application under the *Code*. In addition, the determination of whether Ms Donovan had engaged in misconduct under the *PSA* would have borne directly upon the Tribunal's assessment of the actions of the Service and the outcome of the HRTO Application.

21. Furthermore, should the *PSA* allegations of misconduct have been considered of a serious nature or had Ms Donovan refused an informal resolution, the *PSA* mandated a hearing to take place that is subject to the *Statutory Powers and Procedures Act*. Such hearing is a public proceeding wherein all evidence filed, transcripts, and the decision itself are all public and may be filed in any subsequent proceeding.

22. The WRPSB, therefore, requested that the Tribunal defer the HRTO Application pending the conclusion of the *PSA* investigation and, in the event that charges were laid against Ms Donovan, any resulting disciplinary proceeding under the *PSA*.

23. By decision dated February 17, 2017, the HRTO found that the issues "while not co-extensive, significantly overlap such that all of the concerns with duplicative concurrent litigation are in play". Accordingly, the HRTO deferred the HRTO Application for 60 days or such shorter time period in which a decision was made as to whether or not more charges ought to be brought against Ms Donovan under the *PSA*.

24. However, the WRPSB was not able to reach a final decision regarding whether to bring charges against Ms Donovan within the 60 day period due to a necessary interview with

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

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

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

26. During the period of deferral, the parties successfully negotiated a Resignation Agreement to "fully resolve and settle the two outstanding matters between them, namely: (a) the application filed by Donovan with the Human Rights Tribunal of Ontario ("HRTO") on or about June 6, 2016 and having HRTO File No. 2016-245566-I (the "Application"); and (b) the Board's investigation into whether Ms Donovan engaged in misconduct in or about May 2016 sufficient to warrant formal charges against Donovan under the *Police Services Act* (the "Potential *PSA* Charges")".

27. Pursuant to the Resignation Agreement, Ms Donovan expressly confirmed that "she is freely and voluntarily resigning her employment with the Board effective on or about June 25, 2017" and that this resignation was "irrevocable".

28. Not only did the parties expressly agree that Ms Donovan resigned but the parties agreed to strict confidentiality provisions pursuant to which the parties undertook to keep the terms of the Resignation Agreement in absolute and strict confidence. The Resignation Agreement provided that "[i]f asked, the parties .... will indicate only that all outstanding matters between the parties were settled to their mutual satisfaction, the terms of which settlement are strictly confidential".

29. The Resignation Agreement also included a Full and Final Release pursuant to which Ms Donovan released and forever discharged "the Regional Municipality of Waterloo Police Services Board ...from any and all ...complaints...claims....which I have ever had...by reason of my employment with or the resignation of my employment with the Regional Municipality of Waterloo Police Services Board... or which arises out of or in any way relates to the matters giving rise to my HRTO Application". Pursuant to the Full and Final Release, Ms Donovan further agreed that the Release could be raised as a complete bar to "any complaint against any of the Releasees or anyone connected with the

Releasees for or by reason of any cause, matter or thing, including the matters arising out of or in any way relating to my HRTO Application".

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

30. Notwithstanding that two of the clear terms of the Resignation Agreement were that Ms Donovan freely resigned and she was prohibited from any further "complaints" against the WRPSB, Ms Donovan has engaged in a continuing series of violations of the Resignation Agreement by (a) stating that she was constructively dismissed contrary to the agreement that she resigned, (b) complaining about the Service and repeating the allegations giving rise to her HRTO Application, and (c) violating the confidentiality provisions.

31. Ms Donovan's violations of the Resignation Agreement appear to be part of a scheme to advertise and generate business for Fit4Duty, a business established by Ms Donovan, to provide:

(a) training to police services boards regarding such matters as human rights, systemic racism and ethical leadership;

(b) speaking engagements regarding Ms Donovan's allegations, accountability, transparency, and ethics;

(c) engagement strategies;

(d) policy development and review services; and

(e) workplace investigations.

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

32. Put simply, notwithstanding that she fully and finally resolved her HRTO Application and the allegations therein and notwithstanding the undertakings of confidentiality, Ms Donovan is seeking to profit from her allegations without regard to either the undertakings in the Resignation Agreement or the deleterious impact of her actions on the reputation of the WRPS.

33. The particulars of Ms Donovan's ongoing series of violations of the Resignation Agreement commenced with the publication of a 93-page book entitled "*Report of*

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

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

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

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

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

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

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

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

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

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

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

Donovan filed workplace harassment and human rights complaints immediately.

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

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

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

...

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

....

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

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

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

37. In addition to her personal complaints and the public repetition of the allegations and factual underpinnings of her HRTO Application, Ms Donovan outlined in the Book various complaints about the treatment of others, including:

(a) At page 11, Ms Donovan wrote that in her policing career she "saw very qualified, confident and intelligent women come and go because they refused to remain in the toxic environment, impenetrable to change; that is policing".

(b) Commencing at page 36, Ms Donovan complained about the conduct of the Chief of the WRPS in respect of his release of a personal email sent by Constable Craig Markham.

(c) At pages 54-55, Ms Donovan set out complaints against the WRPS in respect of matters regarding Constable Jeremy Snyder and Sergeant Bradley Finucan.

(d) At pages 57-58, Ms Donovan complained about the treatment of Rajiv Sharma by the WRPS.

38. Ms Donovan's Book generated media attention, including the following:

(a) In an interview with 570 News, Ms Donovan is recorded as saying that the WRPS is attacking her credibility and failing to acknowledge the problems that exist. A copy the inquiry from 570 News is attached at **Tab 4**. A copy of the 570 News article dated July 17, 2017 is attached at **Tab 5**.

(b) A CBC report dated July 18, 2017 is attached at **Tab 6** and records Ms Donovan as alleging that she was subject to reprisals for raising issues with the WRPS regarding its handling of internal investigations.

39. Subsequent to the publication of her Book, Ms Donovan continued to make public complaints about the WRPS, repeating both the allegations giving rise to her HRTO Application and the Potential *PSA* Charges and alleging that she was constructively dismissed. These complaints and allegations have been made in various public speaking engagements, communications with government and the media, and through social media (including her website, her LinkedIn account, her twitter account, Facebook (at fit4dutycanda) and YouTube). The particulars of this ongoing series of contraventions of the Resignation Agreement include the following.

40. In or about June 2017, Ms Donovan established a twitter account (https://twitter.com/fit4duty_ethics?lang=en), which she has used as a forum to advertise

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

41. In September 2017, Ms Donovan appeared before the WRPSB asking them to hire her to help train board members. In a CBC report regarding her presentation, Ms Donovan was reported as saying "officers who complain are treated unfairly and targeted by their superiors". A copy of the CBC report is attached at **Tab 8**.

42. On or about November 14, 2017, Ms Donovan attended the Ryerson Forum on Police Oversight accountability and Public Consent at which she gave a video interview. During the interview, Ms Donovan stated that she addressed the Board about "corrupt practices", "favoritism" and "abuse of power" which resulted in the Service taking "punitive action" against her and imposing discipline and she was "ultimately silenced". A copy of the interview can be found on YouTube at https://www.youtube.com/watch?v=PYEPmH4wV5U.

43. On or about December 11, 2017, Ms Donovan presented to the Durham Regional Police Services Board regarding gender diversity and the services she provides through Fit4Duty. During her presentation, she alleged that when she raised allegations of "internal corruption" during her time as a police officer, she was "silenced and disciplined as a result". Her presentation is available on YouTube at https://www.youtube.com/watch?v=VPllMYKa5Ag.

44. By letter dated January 8, 2018, Ms Donovan wrote to the Honorable Yasir Naqvi, the Attorney General, alleging that she has "personal knowledge of the issues at WRPS" and holding him responsible for ensuring that "this misfeasance does not continue, and that those committing these unethical and illegal acts are held accountable". Attached to her letter is a detailed complaint against the WRPS repeating the allegations giving rise to her HRTO Application. A copy of Ms Donovan's letter is attached to her submissions to the Standing Committee on Justice Policy in respect of Bill 175, An Act to implement measures with respect to policing, coroners and forensic laboratories and to enact, amend

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

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

> "**Ms. Kelly Donovan:** Thank you. My name is Kelly Donovan and up until June 2017, I was a police officer with Waterloo Regional Police....
>
> **During my time at Waterloo, I witnessed misfeasance during internal investigations of other police officers at the service; more specifically, unlawful arrest of members, corrupt investigations and criminal allegations being overlooked**. Waterloo only allows members of the public to make a complaint of misconduct, and the OIPRD does not accept complaints from police officers. Therefore, I made a lawful delegation to my police services board to disclose the misconduct of several high ranking members of the service and, as a result, I was disciplined and silenced.
>
> Chief Bryan Larkin ordered me to have no further contact with members of the board. I was relegated to administrative duties and I was put under investigation for eight Police Services Act charges. There was never a complaint from a member of the public; this was the result of a chief's complaint. **Over the next 14 months, I was constructively dismissed. Chief Larkin used the Police Services Act to silence me so that I could no longer disclose to the board the unethical conduct happening within the service**.
>
> Following my delegation to the board, another police service was contracted to conduct an impartial review of a recent internal criminal investigation. That review was negligent and biased, and is irrefutable evidence that when police investigate police, there is bias.
>
> During my constructive dismissal, I wrote a 93-page report citing cases that show just how systemic misfeasance is in Ontario police services and how often police chiefs and ineffective oversight bodies are able to silence police whistleblowers. This report is contained in tab A of my submission. I made complaints to all of

> the applicable police oversight bodies and none of them chose to enforce their legislated authorities.
>
> ....
>
> The lack of consultation prior to the release of Bill 175 shows a continued reluctance by government to accept the gravity of internal corruption that exists within our police services.
>
> **I am living proof that internal corrupt practices are eliminating good, honest people from the profession. I was an exemplary police officer until Chief Larkin used internal discipline to constructively dismiss me**. Nothing in Bill 175 would prevent what happened to me from happening again to another honest police officer. In fact, after I was diagnosed with post-traumatic stress disorder last February, I could have faced termination under part VII of schedule 1."
>
> [emphasis added]

46. On or about March 1, 2018, Ms Donovan again addressed the Standing Committee on Justice Policy about Bill 175. At this presentation, Ms Donovan presented on behalf of Angie Rivers and repeated various complaints and allegations against the WRPS. Without limitation, she alleged that she reported "internal corruption" and, as a result, the Chief "targeted" her, she faced *PSA* charges, and she was "constructively dismissed". She later elaborated that she reported corruption to her Board and instead of listening they allowed the Service to come after her "punitively". She further stated that the Human Rights Tribunal did not help her. A copy of the transcripts is attached at **Tab 11** (see pages JP-718 to JP-720).

47. On or about March 5, 2018, Ms Donovan sent an email to various members of the WRPS attaching a link to her YouTube channel and her presentation to the Standing Committee on Justice Policy regarding Bill 175. A copy of her email is attached at **Tab 12**.

48. On or about March 7, 2018, Ms Donovan published an article on her LinkedIn account entitled "Perception of Bias? Or, Blatant, Advertised Bias". The same article was posted on the Fit4Duty blog on March 10, 2018 (a copy of the article is attached at **Tab 13**). In the Article, Ms Donovan complained of corruption at the WRPS and alleged that she was constructively dismissed. She wrote, *inter alia*:

> "If you follow my material, you'll know that in 2016 I reported to my police services board that corruption existed during internal investigations. As a result of that report, I faced constructive dismissal. In 2017, I resigned and published a research paper to bring those systemic issues to light....
>
> ...
>
> Now, police chiefs can use internal discipline, criminal charges AND the officer's disability as a means to dismiss them. I know this; because it happened to me."

49. In addition to the above, Ms Donovan has engaged in numerous speaking engagements across the country repeating her allegations of corruption, lack of integrity and constructive dismissal.

50. In addition to her linkedin and twitter accounts, Ms Donovan maintains a website "fit4duty.ca" and a blog (https://fit4duty.ca/kelly-donovan). She continues to use these to post complaints about the WRPSB, the particulars of which include.

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

> "Fit4Duty Founder & President, Kelly Donovan, had been a police officer for 5 years when she witnessed corruption within her police service when conducting internal investigations. In May, 2016, Kelly addressed her Police Services Board since they are the oversight body responsible for the effective management of the police service.
>
> The issues Kelly addressed were not objectively or impartially investigated and she became the subject of the very corrupt internal investigation process she had originally addressed.
>
> Over the next 14 months, Kelly contacted every government agency responsible for police oversight to draw attention to the reprisal she was now facing and no agency was willing to intervene. Kelly was forced to resign from policing, after facing a protracted and corrupt discipline proceeding that would have lasting effects on her career. She released a report to the media detailing the corruption in policing, and later published her first book."

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

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

...

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

(c) On February 4, 2018, Ms Donovan posted a blog entry entitled "Are all Whistleblower Programs created equal?" in which she implied that the WRPS suppresses complaints and punishes complainants.

(d) On or about March 10, 2018, Ms Donovan posted the above mentioned blog entitled "Perceived Bias? or Blatant advertised Bias?"

(e) On April 5, 2018, in a blog entry entitled "The $1.27M "Bad Apple?"", Ms Donovan accused the WRPS of misfeasance and wasting taxpayer funds and "ineffective management". She also referred to policing as "one of the most toxic work environments".

(f) On May 11, 2018 in a blog entry entitled, "What Policing Culture is Doing to Good People" Ms Donovan alleged that the WRPS knowingly tolerated unprofessional and sexual interactions in the workplace:

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

51. Ms Donovan also has a YouTube Channel (Fit4Duty – the Ethical Standard) in which she regularly posts videos including allegations of impropriety by the WRPS and complaints of constructive dismissal, the particulars of which include:

(a) On July 9, 2017, Ms Donovan published a video entitled "Fit4Duty Intro" in which Ms Donovan alleged that maintaining her integrity and following her internal morals and ethics cost her her career as a police officer.

(b) On November 24, 2017, Ms Donovan published a video entitled "Fit4Duty Founder Kelly Ms Donovan's Story" in which she alleged that she was silenced, charged and lectured as a result of having raised issues of impropriety in the Service.

(c) On December 11, 2017, Ms Donovan published a video of her presentation to the Durham Regional Police Services Board in which she stated, *inter alia*, that she "tried to address internal corruption with my police services board and I was silenced and disciplined as a result".

(d) On February 23, 2018, Ms Donovan published a video of herself speaking at the public consultation hosted by Justice Tulloch during the Independent Police Oversite Review in October 2016 as well as a video of her presentations to the Standing Committee on Justice Policy about Bill 175.

(e) On March 2 and 5, 2018, Ms Donovan published various videos including portions of her presentations to the Standing Committee on Justice Policy about Bill 175.

(f) On March 5, 2018, Ms Donovan also published a series of video clips collectively entitled "Why we need Whistleblower Programs for Police", in which she stated, *inter alia*, that her allegations were not taken seriously and she became the subject of an investigation. She stated when she spoke up she was subject to discipline and removed from her position at the Service and she was "made an example of".

(g) On May 19, 2018, Ms Donovan published a video entitled "About my Book", in which she says 100s of officers across Ontario have "tried to do the right thing" and "been silenced by the system".

(h) On June 21, 2018, Ms Donovan published a video entitled "Kelly Donovan at One Woman International Fearless Women's Summit in St. John's Newfoundland", in which she says that internal investigations at WRPS were "corrupt" and "negligent". The complaints in the video include the following. She said there were cases of evidence being withheld and allegations being "swept under the rug". Ms Donovan described how she went to the Board to report "systemic corruption" and a "web of people who are willing to cover it up because they all want to see their next promotion". She said that as a result she was told that the Chief did not want her to communicate with the Board any more, she was removed from her office and put in a basement, and she was put under

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

V. SUBMISSIONS

52. Section 45.9(1) of the *Code* provides that the settlement of an application under the *Code* that is agreed to in writing and signed by the parties is "binding on the parties".

53. Not only are settlements legally binding, but adherence to settlements promotes essential *Code* values. The Tribunal has repeatedly recognized that a contravention of a settlement can undermine the administration of justice, discredit the human rights system, and create adverse incentives in respect of dispute resolution. In *Saunders v. Toronto Standard Condominium Corp.* No. 1571 2010 HRTO 2516, the Tribunal stated:

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

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

54. In determining the meaning of contractual settlement provisions, the primary goal is to give effect to the parties' intentions.

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

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

56. She has further violated the provisions of the Full and Final Release, which forms an integral part of the Resignation Agreement, by raising new "complaints" against the WRPSB and/or the WRPS. This is a clear violation of the Full and Final Release, pursuant to which Ms Donovan released and forever discharged "the Regional Municipality of Waterloo Police Services Board ...from any and all ...complaints...claims....which I have ever had...by reason of my employment with or the resignation of my employment with the Regional Municipality of Waterloo Police Services Board... or which arises out of or in any way relates to the matters giving rise to my HRTO Application". Pursuant to the Full and Final Release, Ms Donovan also expressly agreed that the Release could be raised as a complete bar to "any complaint against any of the Releasees or anyone connected with the Releasees for or by reason of any cause, matter or thing, including the matters arising out of or in any way relating to my HRTO Application". As such, the Release specifically provides that it is a bar against **all** complaints against the Releasees or anyone connected with them. The Release covers but is not limited to those allegations giving rise to the HRTO Application.

57. In addition, Ms Donovan has violated the confidentiality undertakings in the Resignation Agreement. Specifically, paragraph 16 of the Resignation Agreement requires the parties to "keep the terms and existence of this Resignation Agreement in absolute and strict confidence at all times, without time limitation, and not disclose its contents to any third party, person or entity". Read in context, it is clear that the parties intended this confidentiality undertaking to apply broadly. The parties specifically included a clarity note confirming that the parties will not "publicize, discuss, disclose or communicate in any way without any person, entity or organization, in any form whatsoever, the contents or terms of all or any part of this Resignation Agreement. If asked, the parties... will indicate only that all outstanding matters between the parties were settled to their mutual satisfaction, the terms of which settlement are strictly confidential". Ms Donovan has not restricted her comments to the agreed upon statement that her complaints were resolved to the parties' mutual satisfaction but has persistently and publicly repeated her allegations.

58. Finally, while the Resignation Agreement provides that "Ms Donovan hereby confirms that she is freely and voluntarily resigning her employment" and that this resignation is "irrevocable", Ms Donovan has publicly stated that she was constructively dismissed. Publicly alleging constructive dismissal is incompatible with and directly contradicts her agreement that she freely and voluntarily resigned her employment.

59. Subsection 45.9(8) of the *Code* gives the Tribunal broad powers to remedy contraventions of such settlements. Specifically, the Tribunal may make "any order that it considers appropriate to remedy the contravention".

60. The Tribunal has recognized that it has broad remedial authority to remedy any contravention of a settlement and that this power includes both common law remedies and "innovative remedial action". In *Saunders v. Toronto Standard Condominium Corp.* No. 1571, 2010 HRTO 2516, the Tribunal stated at paragraph 39:

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

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

> For the purposes of this case, I find it appropriate to ask the following questions in order to determine the appropriate remedy:
>
> □ What is the nature of the breach – does it go to the heart of the MOS?
>
> □ Does anything need to be done to fulfil the terms of the MOS? If so, what?
>
> □ Were the applicant's contractual expectations adversely affected?
>
> □ Did the applicant suffer any quantifiable harm or material loss as a result of the breach?

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

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

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

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

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

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

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

67. Alternatively, the WRPSB states that the Tribunal ought to assess damages with reference to the revenue generated by Ms Donovan through her ongoing breaches of the Resignation Agreement which are being undertaking to generate work for her business.

68. In addition to significant damages, the WRPSB requests an order directing Ms Donovan to cease violating the terms of the Resignation Agreement, to redact allegations against the WRPSB from her Book and to remove from the public domain any other allegations she has made against the WRPSB. To the extent that allegations have been made by Ms Donovan and publicly been posted by others, Ms Donovan ought to be directed to make best efforts to have those public allegations removed from the public domain.

69. Notably, section 45.9(4) of the *Code* permits a party to make a Contravention of Settlement Application more than six months after the alleged violation where the delay as "incurred in good faith and no substantial prejudice will result to any person affected by the delay". In the present case, the WRPSB has delayed the instant Application in the good faith hope that Ms Donovan would move on and cease making accusations and complaints. Unfortunately, her conduct is persistent and can no longer be tolerated. Her ongoing accusations are tantamount to slander and defamation. Indeed the triggering event is her filing of a Statement of Claim seeking to enforce the Resignation Agreement in response to the WRPSB's good faith attempt to defend itself against a proposed class action. In support of its defence, the WRPSB referred to the Donovan case on a completely no-names basis. While the reference was consistent with the requirements of the Resignation Agreement, Ms Donovan objected by commencing a civil action. In effect, while Ms Donovan has completely disregarded the obligations of the Resignation Agreement, she is using the Agreement to try to limit the ability of the WRPS to defend itself in the proposed class action. A copy of the Statement of Claim is attached at **Tab 14**.

70. In any event, quite apart from the fact that any delay was incurred in good faith with no substantial prejudice to Ms Donovan, her actions form "a series of contraventions". Section 45.9(3) of the *Code* expressly permits an application to enforce a settlement where there is a series of contraventions and the application is made to the Tribunal within six months of the last contravention in the series. As set out above, Ms Donovan

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

VI. CONCLUSION

71. The WRPSB and Ms Donovan concluded her HRTO Application in good faith with a comprehensive Resignation Agreement. While the WRPSB has, at all times, honoured its obligations as set out in the Resignation Agreement, Ms Donovan has willfully and flagrantly disregarded her corresponding commitments.

72. Rather than accepting the Resignation Agreement as the agreed upon resolution of her HRTO Application, Ms Donovan has publicly repeated the allegations giving rise to her HRTO Application in order to promote her business and profit from her experiences. Her actions are willful, deliberate and in bad faith. Rather, than accepting the resolution of all issues, Ms Donovan has simply moved her allegations from the HRTO to the public domain. These actions breach the fundamental purpose of the Resignation Agreement -- namely, to resolve the HRTO Application. Her actions further violate her confidentiality obligations.

73. Not only has she repeated the allegations giving rise to her HRTO Application but she has made complaints against the WRPSB of misfeasance, corruption and other improprieties. These complaints violate the clear undertaking the Full and Final Release to not make any complaints against the Releasees.

74. Her inappropriate actions are compounded by the fact that the WRPSB is bound by confidentiality provisions which limit its ability to defend against her accusations.

75. In addition to making complaints barred by the Resignation Agreement, Ms Donovan has persistently characterized her employment as having been constructively dismissed which characterization completely contradicts her agreement in the Resignation Agreement to freely and voluntarily resign.

76. The WRPSB respectfully states that the ongoing, persistent and willful nature of the violations of the Resignation Agreement demand a severe remedial response so as to not

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

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

(a) declare that Ms Donovan has engaged in an ongoing series of contraventions of the Resignation Agreement;

(b) direct Ms Donovan to cease and desist from any further violations of the Resignation Agreement;

(c) direct Ms Donovan to redact allegations against the WRPSB from her Book and to remove from the public domain any other allegations she has made against the WRPSB contrary to the Resignation Agreement;

(d) direct Ms Donovan to make best efforts to have those public allegations that are under the control of other parties removed from the public domain; and

(e) order Ms Donovan to pay significant damages to remedy the ongoing damage to the WRPS's reputation in the context of intentional and repeated violations of the most fundamental nature. In the alternative, the WRPSB states that the Tribunal ought to assess damages with reference to the revenue generated by Ms Donovan through her ongoing breaches which are being undertaking to generate work for her business.

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

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

TAB J

THIS IS EXHIBIT "J" REFERRED TO IN THE AFFIDAVIT OF LAURA J. FREITAG SWORN BEFORE ME THIS 9th **DAY OF** February**,** 2021**.**

A COMMISSIONER FOR TAKING AFFIDAVITS

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

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

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.

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.

TAB K

THIS IS EXHIBIT "K" REFERRED TO IN THE AFFIDAVIT OF LAURA J. FREITAG SWORN BEFORE ME THIS 9th **DAY OF** February**,** 2021**.**

A COMMISSIONER FOR TAKING AFFIDAVITS

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

Table of Contents

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.

TAB L

THIS IS EXHIBIT "L" REFERRED TO IN THE AFFIDAVIT OF LAURA J. FREITAG SWORN BEFORE ME THIS 9th **DAY OF** February**,** 2021**.**

A COMMISSIONER FOR TAKING AFFIDAVITS

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

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"

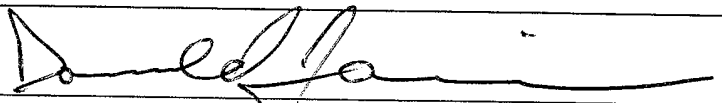
10. Do the other parties agree with your choice for how the Tribunal should deal with your Request?

○ 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, but not the common law.
>
> [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.

B. The Application is Not in Bad Faith or an Abuse of Process

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 M

THIS IS EXHIBIT "M" REFERRED TO IN THE AFFIDAVIT OF LAURA J. FREITAG SWORN BEFORE ME THIS 9th **DAY OF** February**,** 2021**.**

A COMMISSIONER FOR TAKING AFFIDAVITS

Rules of Procedure

Applications under the *Human Rights Code*, Part IV, R.S.O. 1990, c.H.19 as amended

Disponible en français

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- Rule 24: Contravention of settlements
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Rules of Procedure

The Human Rights Tribunal of Ontario (HRTO) has the authority to make rules to govern its practices under the Ontario Human Rights Code ("*Code*"). There are two parts to the HRTO Rules. Part I is the Social Justice Tribunals Ontario (SJTO) Common Rules, which also apply in other tribunals within SJTO. Part II is the Human Rights Tribunal of Ontario Specific Rules which apply only within the HRTO. Both parts should be read together.

I) SOCIAL JUSTICE TRIBUNALS ONTARIO COMMON RULES

INTRODUCTION

Social Justice Tribunals Ontario (SJTO) is a cluster of eight adjudicative tribunals with a mandate to resolve applications and appeals under statutes relating to child and family services oversight, youth justice, human rights, residential tenancies, disability support and other social assistance, special education and victim compensation.

The SJTO is committed to providing quality dispute resolution across the cluster including ensuring that its procedures are transparent and understandable. Identifying common procedures and values across the SJTO and, where appropriate, harmonizing those procedures improves access to justice and fosters consistency in the application of fundamental principles of fairness.

These Common Rules are grounded in the core adjudicative values and principles of the SJTO which govern the work of the cluster. The Common Rules provide a consistent overarching framework of common procedures that will continue to evolve.

HOW TO USE THESE RULES

a. The SJTO Common Rules apply to all cases in any SJTO tribunal and form part of the rules and procedures of each tribunal.
b. For more specific rules please refer to the rules and procedures of:
    - Child and Family Services Review Board
    - Criminal Injuries Compensation Board
    - Custody Review Board
    - Human Rights Tribunal
    - Landlord and Tenant Board
    - Ontario Special Education Tribunal - English
    - Ontario Special Education Tribunal - French
    - Social Benefits Tribunal

PART A - ADJUDICATIVE VALUES AND INTERPRETIVE PRINCIPLES

A1 APPLICATION

The Common Rules apply to the proceedings of the SJTO. The Common Rules form part of the rules of each SJTO tribunal.

A2 DEFINITIONS

"rules and procedures" includes rules, practice directions, policies, guidelines and procedural directions;

"tribunal" means any SJTO tribunal or board.

A3 INTERPRETATION

A3.1 The rules and procedures of the tribunal shall be liberally and purposively interpreted and applied to:

a. promote the fair, just and expeditious resolution of disputes,
b. allow parties to participate effectively in the process, whether or not they have a representative,
c. ensure that procedures, orders and directions are proportionate to the importance and complexity of the issues in the proceeding.

A3.2 Rules and procedures are not to be interpreted in a technical manner.

A3.3 Rules and procedures will be interpreted and applied in a manner consistent with the *Human Rights Code*.

A4 TRIBUNAL POWERS

A4.1 The tribunal may exercise any of its powers at the request of a party, or on its own initiative, except where otherwise provided.

A4.2 The tribunal may vary or waive the application of any rule or procedure, on its own initiative or on the request of a party, except where to do so is prohibited by legislation or a specific rule.

A5 ACCOMMODATION OF *HUMAN RIGHTS CODE*-RELATED NEEDS

A5.1 A party, representative, witness or support person is entitled to accommodation of Human Rights Code-related needs by the tribunal and should notify the tribunal as soon as possible if accommodation is required.

A6 LANGUAGE

A6.1 Individuals may provide written materials to the tribunal in either English or French.

A6.2 Individuals may participate in tribunal proceedings in English, French, American Sign Language (ASL) or Quebec Sign Language (QSL).

A6.3 A person appearing before the tribunal may use an interpreter. Interpretation services will be provided, upon request, in accordance with tribunal policy.

A7 COURTESY AND RESPECT

A7.1 All persons participating in proceedings before or communicating with the tribunal must act in good faith and in a manner that is courteous and respectful of the tribunal and other participants in the proceeding.

A8 ABUSE OF PROCESS

A8.1 The tribunal may make such orders or give such directions in proceedings before it as it considers proper to prevent abuse of its processes.

A8.2 Where the tribunal finds that a person has persistently instituted vexatious proceedings or conducted a proceeding in a vexatious manner, the tribunal may find that person to be a vexatious litigant and dismiss the proceeding as an abuse of process for that reason. It may also require a person found to be a vexatious litigant to obtain permission from the tribunal to commence further proceedings or take further steps in a proceeding.

A9 REPRESENTATIVES

A9.1 Parties may be self-represented, represented by a person licensed by the Law Society of Upper Canada or by an unlicensed person where permitted by the Law Society Act and its regulations and by-laws.

A9.2 Individuals representing a party before a tribunal have duties to both the tribunal and the party they are representing. Representatives must provide contact information to the tribunal and be available to be contacted promptly. Representatives are responsible for conveying tribunal communications and directions to their client. Representatives should be familiar with tribunal rules and procedures, communicate the tribunal's expectations to their client, and provide timely responses to the other parties and the tribunal.

A9.3 Where a representative begins or ceases to act for a client, the representative must immediately advise the tribunal and the other parties in writing, and provide up-to-date contact information for the party and any new representative. Where a representative ceases to act for a client the tribunal may issue directions to ensure fairness to all parties and to prevent undue delay of proceedings.

A9.4 The tribunal may disqualify a representative from appearing before it where the representative's continued appearance would lead to an abuse of process.

A10 LITIGATION GUARDIANS

A10.1 This Rule applies where a person seeks to be a litigation guardian for a party. It does not apply where no litigation guardian is required as a result of the nature of the proceeding.

A10.2 Persons are presumed to have the mental capacity to manage and conduct their case and to appoint and instruct a representative.

Litigation Guardian Declarations

A10.3 A litigation guardian for a minor under the age of 18 is required to file a signed declaration in the form designated by the tribunal, confirming:

a. the litigation guardian's consent to serve in this role;
b. the minor's date of birth;
c. the nature of the relationship to the minor;
d. that any other person with custody or legal guardianship of the minor has been provided with a copy of the materials in the proceeding and a copy of the SJTO practice direction on litigation guardians;
e. that the litigation guardian has no interest that conflicts with those of the person represented;
f. an undertaking to act in accordance with the responsibilities of a litigation guardian as set out in Rule A10.8; and
g. that the litigation guardian is at least 18 years of age and understands the nature of the proceeding.

A10.4 A litigation guardian for a person who lacks mental capacity to participate in the tribunal proceeding must file a signed declaration in the form designated by the tribunal, confirming:

a. the litigation guardian's consent to serve in this role;
b. the nature of the litigation guardian's relationship to the person represented;
c. reasons for believing that the person is not mentally capable of participating in the proceeding;
d. the nature and extent of the disability causing the mental incapacity;

e. that no other person has authority to be the person's litigation guardian in the proceeding;
f. that any person who holds power of attorney or guardianship for the person for other matters has been provided with a copy of the materials in the proceeding and a copy of the SJTO practice direction on litigation guardians;
g. that the litigation guardian has no interest that conflicts with the interests of the person represented;
h. an undertaking to act in accordance with the responsibilities of a litigation guardian as set out in Rule A10.8; and
i. that the litigation guardian is at least 18 years of age and understands the nature of the proceeding.

Naming and Removing a Litigation Guardian

A10.5 Upon the filing of a complete declaration as required by this Rule and unless refused or removed by the Tribunal, the person may act as litigation guardian for the party.

A10.6 The Tribunal will review the declaration and may direct submissions by the parties on whether the litigation guardian should be refused pursuant to Rule A10.7.

A10.7 Upon review of the declaration, or at any later time in the proceeding, the Tribunal may refuse or remove a litigation guardian on its own initiative or at the request of any person because:

a. the litigation guardian has an interest that conflicts with the interests of the person represented;
b. the appointment conflicts with the substitute decision making authority of another person;
c. the person has capacity to conduct or continue the proceeding;
d. the litigation guardian is unable or unwilling to continue in this role;
e. a more appropriate person seeks to be litigation guardian; or
f. no litigation guardian is needed to conduct the proceeding.

Responsibilities of Litigation Guardians

A10.8 A litigation guardian shall diligently attend to the interests of the person represented and shall take all steps necessary for the protection of those interests including:

a. to the extent possible, informing and consulting with the person represented about the proceedings;
b. considering the impact of the proceeding on the person represented;
c. deciding whether to retain a representative and providing instructions to the representative; and
d. assisting in gathering evidence to support the proceeding and putting forward the best possible case to the tribunal.

A10.9 No one may be compensated for serving as a litigation guardian unless provided for by law or a pre-existing agreement.

A10.10 When a minor who was represented by a litigation guardian turns 18, the role of the litigation guardian will automatically end.

II) HUMAN RIGHTS TRIBUNAL OF ONTARIO SPECIFIC RULES

RULE 1 GENERAL RULES

Application and Interpretation of Rules

1.1 Removed and replaced. Please see SJTO Common Rules.

1.2 The Chair of the Tribunal may also issue Practice Directions to provide further information about the Tribunal's practices or procedures.

Forms

1.3 The Tribunal may establish forms to be used in its proceedings. In these Rules, where a form is referred to by number, the reference is to the form with that number that is described in the List of Forms ("Forms") at the end of these Rules. The Forms are not part of these Rules.

Definitions

1.4 In these Rules:

"affected person" means a person, organization, trade union or other occupational or professional association identified in an Application or Response as being affected by a proceeding and entitled to notice of the proceeding;

"bargaining agent" means a union or association of employees which has the right to represent employees in a workplace;

"case conference" means an in-person, telephone conference call or electronic meeting of all the parties to an application, convened by the Tribunal;

"Code" means the Ontario *Human Rights Code*;

"Commission" means the Ontario Human Rights Commission;

"Confirmation of Hearing" means a notice sent by the Tribunal to the parties setting out dates for the parties to complete a step in the hearing process;

"file" means file with the Tribunal and a "filing" is anything that is filed;

"holiday" means any Saturday, Sunday, or other day on which the Tribunal's offices are closed;

"Legal Support Centre" means the Human Rights Legal Support Centre established under Part IV.1 of the Code;

"member" means a member of the Tribunal;

"party" means any person or organization entitled to participate in a proceeding as a party under s. 36 of the Code and the Commission if added with the consent of the Applicant under s. 37(2), and includes any other person or organization added by the Tribunal as a party or intervenor, with or without terms, including the Commission under s. 37(1).

"proceedings" before the Tribunal include all processes of the Tribunal at any time following the filing of an Application until the Application is finally determined;

"rules" means the specific Rules of Procedure for the Human Rights Tribunal of Ontario and the Social Justice Tribunals Ontario Common Rules;

"Tribunal" means the Human Rights Tribunal of Ontario; and "vice-chair" means a vice-chair of the Tribunal.

Powers of the Tribunal

1.5 Removed and replaced. Please see SJTO Common Rules.

1.6 The Tribunal will determine how a matter will be dealt with and may use procedures other than traditional adjudicative or adversarial procedures.

1.7 In order to provide for the fair, just and expeditious resolution of any matter before it the Tribunal may:

a. lengthen or shorten any time limit in these Rules;
b. add or remove a party;
c. allow any filing to be amended;
d. consolidate or hear Applications together;
e. direct that Applications be heard separately;
f. direct that notice of a proceeding be given to any person or organization, including the Commission;
g. determine and direct the order in which issues in a proceeding, including issues considered by a party or the parties to be preliminary, will be considered and determined;
h. define and narrow the issues in order to decide an Application;
i. make or cause to be made an examination of records or other inquiries, as it considers necessary;
j. determine and direct the order in which evidence will be presented;
k. on the request of a party, direct another party to adduce evidence or produce a witness when that person is reasonably within that party's control;
l. permit a party to give a narrative before questioning commences;
m. question a witness;
n. limit the evidence or submissions on any issue;
o. advise when additional evidence or witnesses may assist the Tribunal;
p. require a party or other person to produce any document, information or thing and to provide such assistance as is reasonably necessary, including using any data storage, processing or retrieval device or system, to produce the information in any form;
q. on the request of a party, require another party or other person to provide a report, statement, or oral or affidavit evidence;
r. direct that the deponent of an affidavit be cross-examined before the Tribunal or an official examiner;
s. make such further orders as are necessary to give effect to an order or direction under these Rules;
t. attach terms or conditions to any order or direction;
u. consider public interest remedies, at the request of a party or on its own initiative, after providing the parties an opportunity to make submissions;
v. notify parties of policies approved by the Commission under s. 30 of the Code, and receive submissions on the policies; and
v.1) removed and replaced. Please see SJTO Common Rules;
w. take any other action that the Tribunal determines is appropriate.

Calculation of Time

1.8 Where an order of the Tribunal or a Rule refers to a number of days, the reference is to calendar days.

1.9 Where an action is to be done within a specified number of days, the days are counted by excluding the first day and including the last day.

1.10 When the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

Communications with the Tribunal and other Parties

1.11 Individuals are entitled to communicate with the Tribunal in either English or French.

1.12 All written communications with the Tribunal, including e-mail correspondence, must be addressed to the Registrar, with a copy delivered to all other parties.

1.12.1 Removed and replaced. Please see SJTO Common Rules.

1.13 A party must notify the Tribunal and all parties and their representatives, in writing, of any change in their contact information, as soon as possible.

1.14 Removed and replaced. Please see SJTO Common Rules.

1.15 Removed and replaced. Please see SJTO Common Rules.

Filing Documents with the Tribunal

1.16 When filing any document with the Tribunal, except for documents filed with an Application (Form 1), a Response (Form 2) or a Reply (Form 3), a party or any other person must include the following information:

a. name of the Applicant and Respondent in the Application;
b. name of the person filing the document and, if applicable, his/her representative's name;
c. mailing address, telephone number and, if available, e-mail address and facsimile number of the person filing the document or his/her representative; and
d. Application file number, if available.

1.17 Documents may be filed with the Tribunal by:

a. facsimile transmission (fax) to the Tribunal's fax number;
b. hand delivery, courier, or regular, registered or certified mail to the Human Rights Tribunal of Ontario at its mailing address;
c. e-mail - HRTO.Registrar@ontario.ca, with attachments not greater than 10mb in one e-mail;
d. as directed by the Tribunal.

1.18 Notwithstanding Rule 1.17, Applications filed by the Commission or by the Legal Support Centre must be filed electronically in accordance with the Practice Directions of the Tribunal.

1.19 Documents received after 5 p.m. by fax or e-mail will be deemed to have been received on the next business day.

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

1.20 A party filing any document, other than an Application (Form 1) or a Response (Form 2) under ss. 34(1) or 34(5) of the *Code*, including by e-mail, must deliver a copy of the document to all other parties to the Application and must verify that s/he has done so by filing a Statement of Delivery in Form 23 or by confirming the delivery to the other parties on the cover letter or e-mail.

Delivery of Documents to Parties or other Persons

1.21 Documents must be delivered in one of the following ways:

a. hand delivery;
b. regular, registered or certified mail;
c. courier;

d. fax, but only if the document is less than 20 pages in length or, if longer, with consent;
e. e-mail where the person or parties receiving the document has consented to e-mail delivery; or
f. any other way agreed upon by the parties or directed by the Tribunal.

1.21.1 When a party has a representative, documents must be delivered to the representative.

1.22 Where a document is delivered by a party or sent by the Tribunal, receipt is deemed to have occurred when delivered or sent:

a. by mail, on the fifth day after the postmark date;
b. by fax, when the person sending the document receives a fax confirmation receipt, but if the fax confirmation receipt indicates a delivery time after 5 p.m., delivery will be deemed to have occurred the next day;
c. by courier, on the second day after it was given to the courier;
d. by e-mail, on the day sent or if sent after 5 p.m., delivery will be deemed to have occurred the next day;
e. by hand, when given to the party or when left with a person at the party's last known address.

Verifying delivery

1.23 A party responsible for delivering a document under these Rules must file a Statement of Delivery in Form 23 with the Tribunal or confirm delivery to the other parties on the cover letter or e-mail. The Statement of Delivery must be filed:

a. with the document, when the document is filed with the Tribunal; or
b. no later than two days after the deemed date of delivery, if the document is not being filed with the Tribunal.

RULE 2 Removed and replaced. Please see SJTO Common Rules.

RULE 3 TRIBUNAL PROCEEDINGS

Summonses

3.1 On the request of a party, the Tribunal will provide a summons to witness in blank form, dated and signed by the Tribunal adjudicator, and the party may complete the summons and insert the name of the witness.

3.2 Delivery of a summons to a witness and payment of the attendance money is the responsibility of the party who obtained the summons.

Confidentiality of Documents Disclosed Under These Rule

3.3 Parties and their representatives may not use documents obtained under these Rules for any purpose other than in the proceeding before the Tribunal.

Setting Dates in a Proceeding

3.4 The Tribunal may schedule hearing dates, or other dates in a proceeding, with or without consultation with the parties, as the Tribunal considers appropriate.

Form of Proceedings

3.5 The Tribunal may conduct hearings in person, in writing, by telephone, or by other electronic means, as it considers appropriate. However, no Application that is within the jurisdiction of the Tribunal will be finally disposed of without affording the parties an opportunity to make oral submissions in accordance with these Rules.

3.5.1 An Application will not be finally disposed of without written reasons.

3.6 The location of in-person hearings will be determined by the Registrar, in accordance with the Tribunal's policies.

Recording of Proceedings

3.7 The Tribunal does not normally record or transcribe its proceedings. Where a hearing is recorded the recording does not form part of the Tribunal's record of proceedings including any record filed in respect of an application made under the *Judicial Review Procedures Act*.

3.8 Removed and replaced. Please see SJTO Common Rules.

3.9 Removed and replaced. Please see SJTO Common Rules.

Public Proceedings

3.10 The Tribunal's hearings are open to the public, except when the Tribunal determines otherwise.

3.11 The Tribunal may make an order to protect the confidentiality of personal or sensitive information where it considers it appropriate to do so.

3.11.1 Unless otherwise ordered, the Tribunal will use initials in its decisions to identify children under age 18 and the next friend of children under 18. It may use initials to identify other participants in the proceeding if necessary to protect the identity of children.

3.12 All written decisions of the Tribunal are available to the public.

Non-Attendance at a Hearing

3.13 Where a party has been notified of a hearing and fails to attend, the Tribunal may:

a. proceed in the party's absence;
b. determine that the party is not entitled to further notice of the proceedings;
c. determine that the party is not entitled to present evidence or make submissions to the Tribunal;
d. decide the Application based solely on the materials before it;
e. take any other action it considers appropriate.

Participation of Affected Persons or Organizations

3.14 Where a person or organization is identified in an Application or in a Response as an affected person as defined in these Rules, that person or organization may file a Request to Intervene under Rule 11 within 35 days of delivery of the Application or the Response, failing which the Tribunal may proceed without further notice to the person or organization.

RULE 4 NOTICE OF CONSTITUTIONAL QUESTION

4.1 Where a party intends to question the constitutional validity or applicability of any law, regulation, by-law or rule or where a party claims a remedy under s. 24(1) of the Charter of Rights and Freedoms, in relation to an act or omission of the Government of Canada or the Government of Ontario, a Notice of Constitutional Question must be delivered to the Attorneys General of Canada and Ontario and all other parties and filed with the Tribunal as soon as the circumstances requiring the notice become known and, in any event, at least 15 days before the question is to be argued.

RULE 5 NON-COMPLIANCE WITH THE RULES

5.1 Removed and replaced. Please see SJTO Common Rules.

5.2 Removed and replaced. Please see SJTO Common Rules.

5.3 The Tribunal may decide not to deal with an Application that is not filed in compliance with these Rules.

5.4 The Tribunal may finally determine an Application without further notice to any person who cannot be contacted by the Tribunal according to the contact information provided to the Tribunal by that person.

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.

5.6 Where a party fails to deliver material to another party or person as required by these Rules, the Tribunal may refuse to consider the material, or may take any other action it considers appropriate.

5.7 Where a party seeks to present evidence or make submissions with respect to a fact or issue that was not raised in the Application, Response, Reply, or in the materials filed under Rule 16 or 17, the Tribunal may refuse to allow the party to present evidence or make submissions about the fact or issue unless satisfied that there would be no substantial prejudice and no undue delay to the proceedings.

RULE 6 APPLICATIONS: SECTIONS 34(1) or 34(5) OF THE *CODE*

6.1 An Application under ss. 34(1) or 34(5) of the Code must be filed in Form 1, Application, and must include the related supplemental form(s) and Form 4A, 4B or 27, if applicable. These documents need not be delivered to the other parties.

6.2 A complete Application must provide the information requested in every section of the Application form and the related supplemental form(s) and Form 4A, 4B or 27 (if applicable), and must set out all the facts that form the substance of the allegations of discrimination including the circumstances of what happened, where and when it happened, and the names of person(s) or organization(s) alleged to have violated the Applicant's rights under the *Code*.

6.3 An Applicant who has commenced a civil proceeding in a court seeking an order under s. 46.1 with respect to any of the allegations in the Application must include a copy of the statement of claim with the Application.

6.4 Upon receiving an Application, the Tribunal will determine whether it complies sufficiently with these Rules to allow it to be processed. An Application filed under Rule 6.1 that is not sufficiently complete:

a. may be sent back to the Applicant with an explanation as to how the Application is incomplete;

b. may be re-submitted not later than 20 days after the date that the Application was sent back; and
c. may be closed as not accepted, pursuant to Rule 5.3, if it is not completed.

6.5 If the Tribunal determines a re-submitted Application can be processed, it will be dealt with as if complete on the day it was originally filed with the Tribunal for the purposes of s. 34(1).

6.6 An Application accepted by the Tribunal for processing:

a. will be sent by the Tribunal to the Respondent(s), and to any trade union, occupational or professional organization identified in the Application, at the addresses provided in the Application; or
b. will not be dealt with in respect of a Respondent or a trade union, occupational or professional organization that cannot be contacted in accordance with paragraph (a) above, and the Applicant will be so advised; or
c. will be dealt with according to Rule 13, where the Tribunal determines that the Application is arguably outside of the Tribunal's jurisdiction.

6.7 The Application sent by the Tribunal to the Respondent and to any trade union or occupational or professional organization, will not include the confidential list of witnesses and the related witness information provided in that part of the Application Form.

6.8 An Application filed on behalf of another person under s. 34(5) of the *Code* must be filed together with the signed Consent in Form 27 of the person on whose behalf the Application is brought.

RULE 7 APPLICATION WITH REQUEST TO DEFER CONSIDERATION

7.1 An Applicant may file an Application under Rule 6.1 and, at the same time, ask the Tribunal to defer consideration of the Application in accordance with Rule 14 if there are other legal proceedings dealing with the subject-matter of the Application.

7.2 A request for deferral will only be considered by the Tribunal where the other legal proceeding does not fall within the scope of s. 34(11) of the *Code*.

7.3 Where an Application is filed with a request for a deferral, the Applicant must include the following additional information with the Form 1:

a. identifying information about the other legal proceeding dealing with the subject matter of the Application; and
b. a copy of the document that commenced the other legal proceeding.

7.4 The Tribunal will not defer consideration of an Application without first giving all the parties, and any affected persons or organizations identified in the Application or Response, an opportunity to make submissions on the request for deferral.

7.5 Where an Applicant wants the Tribunal to proceed with an Application that was deferred pending completion of another legal proceeding, the Applicant must make a request, in accordance with Rules 14.3 and 14.4, no later than 60 days after completion of the other proceeding.

RULE 8 RESPONSE TO APPLICATION UNDER SECTIONS 34(1) OR 34(5) OF THE *CODE*

8.1 To respond to an Application under ss. 34(1) or 34(5) of the Code, a Respondent must file a complete Response in Form 2 not later than 35 days after a copy of the Application was sent to the Respondent by the Tribunal. The Response need not be delivered to the other parties.

8.2 A complete Response must provide the information requested in each section of the Form 2, respond to each allegation set out in the Application and must also include any additional facts and allegations on which the Respondent relies. Where a Respondent alleges the issues in dispute in the Application are the subject of:

a. a full and final signed release between the parties; or
b. a civil court proceeding requesting a remedy based on the alleged human rights infringement; or
c. a complaint filed with the Ontario Human Rights Commission; or
d. exclusive federal jurisdiction,

the Respondent need not respond to the allegations in the Application, but must attach a copy of the applicable release, or statement of claim or court decision, or complaint filed with the Ontario Human Rights Commission or its decision and must include with the Response complete argument in support of its position that the Application should be dismissed. Notwithstanding anything else in Rule 8.2, the Tribunal may direct a Respondent to file a complete Response where the Tribunal considers it appropriate.

8.2.1 Where a Respondent alleges the issues in dispute are the subject of an ongoing grievance or arbitration brought pursuant to a collective agreement, the Respondent need not respond to the allegations in the Application but must provide its contact information, attach a copy of the document which commenced the grievance, confirm that the grievance or arbitration is ongoing and include argument in support of its position that the Application should be deferred pending the conclusion of the grievance or arbitration. The Tribunal may direct a Respondent to file a complete Response where the Tribunal considers it appropriate.

8.3 A Response that is not complete:

a. may be sent back to the Respondent with an explanation of how the Response is incomplete; and
b. may be re-submitted no later than 20 days after the Response was sent back.

8.4 A Response that is accepted by the Tribunal for processing, including a Response that is accepted after being re-submitted in accordance with Rule 8.3(b), will be sent by the Tribunal to:

a. the Applicant;
b. any trade union, occupational or professional association identified in the Application; and,
c. any other Respondent or affected person identified in the Response, at the addresses identified.

8.5 A Response that has been re-submitted in accordance with Rule 8.3(b) will be dealt with as if complete on the day that it was originally filed with the Tribunal.

8.6 The Response sent by the Tribunal to the Applicant and to any other person or organization will not include the confidential list of witnesses and any related witness information included in that part of the Response.

RULE 9 REPLY

9.1 An Applicant who intends to prove a version of the facts different from those set out in a Response must deliver and file a Reply in Form 3 setting out the different version, unless it is already contained in the Application. An Applicant may also reply to any other matter raised in the Response.

9.2 The Reply must deal only with new matters that are raised in the Response.

9.3 The Applicant must deliver a copy of the Reply to the other parties and any trade union or occupational or professional organization and other person or organization identified as an affected person in the Application or Response and file it with the Tribunal not later than 21 days after the Response was sent to the Applicant.

RULE 10 WITHDRAWAL OF AN APPLICATION

10.1 Except where the withdrawal forms part of the terms of a settlement of an Application, an Applicant wishing to withdraw an Application must deliver a completed Request to Withdraw in Form 9 to:

a. all other parties;
b. any trade union or occupational or professional organization identified in the Application; and
c. any other person or organization identified as an affected person before filing it with the Tribunal.

10.2 Where the Application was filed on behalf of another person under s. 34(5) of the *Code*, the Request to Withdraw must also include a completed Consent.

10.3 Where a Respondent or other person or organization receiving notice under Rule 10.1 wishes to respond to a Request to Withdraw, the response must be in Form 11, Response to Request, and must be filed no later than two days after the Request to Withdraw was delivered.

10.4 A copy of the Response to Request under Rule 10.3, if any, must be delivered to the other parties and any other person or organization that received notice under Rule 10.1, before it is filed with the Tribunal.

10.5 Where a Response to the Application has already been filed, an Application may be withdrawn only with the permission of the Tribunal and upon such terms as the Tribunal may determine.

RULE 11 REQUEST TO INTERVENE

11.1 The Tribunal may allow a person or organization to intervene in any case at any time on such terms as the Tribunal may determine. The Tribunal will determine the extent to which an intervenor will be permitted to participate in a proceeding.

Intervention by a Person or Organization other than the Commission

11.2 A request to intervene by a person or organization, other than a request by the Commission, must be made in Form 5, Request to Intervene, and must be delivered to all parties and any affected persons or organizations identified in the Application or the Response and filed with the Tribunal.

11.3 A Request to Intervene must include an answer to each question in Form 5 and must:

a. describe the issue(s) that the person or organization wants to address;
b. explain the proposed intervenor's interest in the issue(s) and its expertise, if any, regarding the issue(s);
c. set out the proposed intervenor's position, if any, on each of the issues raised in the Application and the Response; and
d. set out all the material facts upon which the proposed intervenor will rely.

11.4

Where a party wishes to respond to a Request to Intervene, the response must be in Form 11, Response to Request, and must be filed with the Tribunal no later than 21 days after the Request to Intervene was delivered.

11.5 A copy of the Response to Request under Rule 11.4, if any, must be delivered to the proposed intervenor, all other parties and any identified affected persons or organizations and filed with the Tribunal.

Intervention by Commission Without Consent of Applicant

11.6 The Commission may, in accordance with s. 37(1) of the *Code*, intervene in an Application under s. 34 of the *Code* on such terms as the Tribunal considers appropriate.

11.7 Where the Applicant has not consented to the Commission intervening in the Application, the Commission shall complete a Request to Intervene in Form 5 and deliver it to the other parties and to any identified affected persons and file it with the Tribunal.

11.8 A Commission Request to Intervene filed under Rule 11.6 must:

a. include a statement of the issues that the Commission wants to address;
b. explain how the issues relate to the Commission's role, mandate and the public interest;
c. set out the Commission's position, if any, on each of the issues raised in the Application and the Response;
d. set out all of the material facts upon which the Commission will rely;
e. set out the remedies that the Commission is seeking; and,
f. set out the terms on which the Commission seeks to intervene.

11.9 A response to a Commission Request to Intervene must be in Form 11, Response to Request, and must be filed with the Tribunal no later than 21 days after the Request to Intervene was delivered.

11.10 A copy of the Response to Request under Rule 11.9, if any, must be delivered to the Commission and to all the other parties and to any identified affected person, and filed with the Tribunal.

Intervention by Commission with Consent of Applicant

11.11 The Commission may intervene in an Application with the consent of the Applicant by filing a Notice of Commission Intervention in Form 6, with a Consent completed by the Applicant.

11.12 The Commission must deliver copies of the Form 6 with the completed Consent, to the other parties and to any identified affected persons, before filing with the Tribunal.

11.13 A Notice of Commission Intervention in Form 6 must be complete and must:

a. include a statement of the issues that the Commission wants to address;
b. set out the Commission's position, if any, on each of the issues raised in the Application and the Response;
c. set out all of the material facts upon which the Commission will rely;
d. set out the remedies that the Commission is seeking; and
e. set out the terms on which the Commission seeks to intervene.

Intervention by a Bargaining Agent

11.14 The bargaining agent for an applicant who has filed an Application about his or her employment

may intervene in the Application by filing a Notice of Intervention by Bargaining Agent in Form 28.

11.15 A request to remove a bargaining agent as an intervenor shall be made as a Request for Order During Proceedings in accordance with Rule 19.

RULE 12 COMMISSION APPLICATIONS UNDER SECTION 35 OF THE *CODE*

Commission Application

12.1 A Commission Application under s. 35 of the *Code* must be in Form 7, Application by Commission and must be complete. The Application must be delivered to the Respondents and any affected persons identified in Form 7 and filed with the Tribunal.

12.2 A complete Commission Application under s. 35 of the *Code* must:

a. include a statement why, in the opinion of the Commission, the Application is in the public interest;
b. set out the issues the Commission wants to address;
c. set out all the material facts upon which the Commission intends to rely; and
d. set out the remedies the Commission is seeking.

Response of Respondents and Affected Persons Identified in the Commission Application

12.3 A Respondent or an identified affected person who wishes to respond to the Commission Application must deliver a completed Response to Commission Application in Form 8 to the Commission and any other party or identified affected person named in the Commission Application, and file the Response with the Tribunal, not later than 60 days after delivery of the Form 7.

12.4 A complete Response to a Commission Application must:

a. include a statement setting out the position of the Respondent or affected person in respect of each of the issues and material facts set out in the Commission Application;
b. set out all of the material facts upon which the Respondent or affected person intends to rely; and,
c. include a response to the remedies requested by the Commission.

Case Conference

12.5 Within 45 days of filing the Response(s) the Tribunal will convene a Case Conference with all the parties and affected persons to discuss the conduct of the proceeding under s. 35 of the *Code*.

RULE 13 DISMISSAL OF AN APPLICATION OUTSIDE THE TRIBUNAL'S JURISDICTION

13.1 The Tribunal may, on its own initiative or at the request of a Respondent, filed under Rule 19, dismiss part or all of an Application that is outside the jurisdiction of the Tribunal.

Tribunal-Initiated Preliminary Consideration of Jurisdiction

13.2 Where it appears to the Tribunal that an Application is outside the jurisdiction of the Tribunal, the Tribunal shall, prior to sending the Application to the Respondent(s), issue a Notice of Intention to Dismiss the Application. The Notice will:

a. be sent to the Applicant only;
b. set out reasons for the intended dismissal; and,
c. require the Applicant to file written submissions within 30 days.

13.3 Where the Tribunal dismisses the Application under Rule 13.1 the decision will be sent to the Applicant. At the same time the Tribunal will send the decision to the Respondent(s), and any trade union or occupational or professional organization identified in the Application, at the addresses provided in the Application, and include a copy of the Application, the Applicant's submissions and all correspondence between the Tribunal and the Applicant on the jurisdictional issue.

13.4 Where, after considering the Applicant's Rule 13.2 submissions, the Tribunal decides to continue to deal with an Application, the Tribunal will send the Application to Respondent(s), and any trade union or occupational or professional organization identified in the Application, at the addresses provided in the Application, and include a copy of the Application, its Rule 13.1 decision, the Applicant's Rule 13.2 submissions and all correspondence between the Tribunal and the Applicant on the jurisdictional issue.

13.5 A decision by the Tribunal under Rule 13.4 to continue to deal with an Application is not a final decision regarding the Tribunal's jurisdiction in respect of the Application.

RULE 14 DEFERRAL OF AN APPLICATION BY THE TRIBUNAL

14.1 The Tribunal may defer consideration of an Application, on such terms as it may determine, on its own initiative or at the request of any party.

14.2 Where the Tribunal intends to defer consideration of an Application under Rule 14.1, it will first give the parties, any identified trade union or occupational or professional organization and any identified affected persons, notice of its intention to consider deferral of the Application and an opportunity to make submissions.

14.3 Where a party wishes the Tribunal to proceed with an Application which has been deferred the request must be made in accordance with Rule 19.

14.4 Where an Application was deferred pending the outcome of another legal proceeding, a request to proceed under Rule 14.3 must be filed no later than 60 days after the conclusion of the other proceeding, must set out the date the other legal proceeding concluded and include a copy of the decision or order in the other proceeding, if any.

14.5 The Tribunal may, on its own motion, require a deferred Application to proceed in appropriate circumstances.

RULE 15 MEDIATION

15.1 At any time after an Application is filed, mediation assistance may be offered by the Tribunal or requested by a party.

15.2 Parties and their representatives who participate in mediation under Rule 15.1 must sign a confidentiality agreement before the mediation commences.

15.3 The Tribunal may direct that a party or a person with authority to settle on the party's behalf be present at the mediation.

15.4 All matters disclosed during mediation are confidential and may not be raised before the Tribunal or in other proceedings, except with the permission of the person who gave the information.

15.5 The Tribunal may determine that affected persons or organizations should receive notice of mediation and should be entitled to participate.

15.6 Where the terms of any settlement are in writing and signed by the parties the parties may request that the Tribunal dispose of the matter in accordance with their agreement by filing a confirmation of settlement using Form 25 (Settlement). Parties may also ask the Tribunal to issue a consent order in accordance with s. 45.9 of the *Code*. A completed Form 25 must be filed within ten (10) days of the date of the agreement.

RULE 15A MEDIATION-ADJUDICATION WITH AGREEMENT OF THE PARTIES

15.1A With the agreement of the parties, the Tribunal member hearing an Application may act as mediator. In such circumstances, the mediator may continue to hear the matter as adjudicator.

15.2A Where the parties agree to mediation-adjudication, they must sign a mediation-adjudication agreement before the mediation commences.

RULE 16 DISCLOSURE OF DOCUMENTS

16.1 Not later than 21 days after the Tribunal sends a Confirmation of Hearing to the parties, each party must deliver to every other party (and file a Statement of Delivery):

a. a list of all arguably relevant documents in their possession. Where a privilege is claimed over any document the party must describe the nature of the document and the reason for making the claim; and,
b. a copy of each document contained on the list, excluding any documents for which privilege is claimed.

16.2 Unless otherwise ordered by the Tribunal, not later than 45 days prior to the first scheduled day of hearing, each party must deliver to every other party (and file a Statement of Delivery):

a. a list of documents upon which the party intends to rely; and
b. a copy of each document on the list or confirmation that each document has already been provided to the other parties in accordance with Rule 16.1.

16.3 Unless otherwise ordered by the Tribunal, not later than 45 days prior to the first scheduled day of hearing, each party must file with the Tribunal:

a. a list of documents upon which the party intends to rely; and
b. a copy of each document contained on the list.

16.4 No party may rely on or present any document not included on a document list and provided to other parties in accordance with Rule 16.1 and 16.2, and filed with the Tribunal under Rule 16.3, except with the permission of the Tribunal.

RULE 17 DISCLOSURE OF WITNESSES

17.1 Unless otherwise ordered by the Tribunal, not later than 45 days prior to the first scheduled day of hearing, each party must deliver a witness list to every other party and file it with the Tribunal, along with a Statement of Delivery. The witness list must include the name of every witness, including expert witnesses, the party intends to present to the Tribunal.

17.2 The witness list must include a brief statement summarizing each witness' expected evidence.

17.3 A copy of an expert witness' written report, or full summary of proposed evidence, and curriculum vitae must accompany the witness list.

17.4 No party may present a witness whose name and summary of evidence was not included in a witness list and delivered and filed in accordance with Rules 17.1 and 17.2 or present an expert witness if material has not been delivered and filed in accordance with Rule 17.3, except with the permission of the Tribunal.

RULE 18 CASE ASSESSMENT DIRECTION

18.1 The Tribunal may prepare and send the parties a Case Assessment Direction where it considers it appropriate. The Case Assessment Direction may address any matter that, in the opinion of the Tribunal, will facilitate the fair, just and expeditious resolution of the Application and may include directions made in accordance with any of its powers in Rule 1.6 and 1.7.

18.2 At the hearing parties must be prepared to respond to any issues identified in the Case Assessment Direction and to proceed in accordance with the directions set out in the Case Assessment Direction.

RULE 19 REQUEST FOR AN ORDER DURING PROCEEDINGS

19.1 A party may request that the Tribunal make an order at any time during a proceeding by oral submission in the course of the hearing or by written request.

19.2 Where a request is made in writing, it must be made in Form 10, Request for Order during Proceedings ("Request for Order") and must be delivered to all parties and any person or organization who may have an interest in the request and filed with the Tribunal.

19.3 A request for an order that a non-party provide a report, statement or oral or affidavit evidence in accordance with Rule 1.7(r), must be in writing and must be delivered to the non-party in addition to the other parties to the proceeding.

19.4 A Request for Order (Form 10) must:

a. describe the order requested;
b. contain reasons for the request, including any facts relied on and submissions in support of the request;
c. where the order requested is for production of a document(s) a copy of the party's written request for the document(s) and the responding party's response, if any, must be attached to the Form 10;
d. include the documents relied on in support of the request, if any;
e. indicate whether the requesting party wishes the Tribunal to deal with the matter in writing, in person, or electronically; and,
f. indicate whether the consent of another party has been obtained as to any term of the order sought or as to the manner in which the request should be dealt with.

19.5 If the requesting party wants the Request for Order dealt with on an urgent basis, it must provide supporting reasons.

19.6 Unless the Tribunal directs otherwise, parties responding to the written Request for Order, must complete the Response to Request for Order ("Response to Request") in Form 11 and deliver a copy to all other parties and file it with the Tribunal not later than 14 days after the Request for Order was delivered. The Response to Request must include:

a. the responding party's position on the order(s) requested and the whether the Request for Order should be dealt with in writing, in person, or electronically;

b. identify which facts in the Request for Order are accepted and which are disputed. Where the order requested is for production of documents the responding party must attach the written response to the request, if any;
c. reasons and any submissions in support of the responding party's position;
d. any additional facts relied on by the responding party; and,
e. include any documents not included in the Request for Order upon which the responding party intends to rely.

19.7 The Tribunal will determine whether a Request for Order will be heard in writing, in person, or electronically and, where necessary, will set a date for the hearing of the Request.

RULE 19A SUMMARY HEARINGS

19.1A The Tribunal may hold a summary hearing, on its own initiative or at the request of a party, on the question of whether an Application should be dismissed in whole or in part on the basis that there is no reasonable prospect that the Application or part of the Application will succeed.

19.2A Rules 16 and 17 do not apply to summary hearings. The Tribunal may give directions about steps the parties must take prior to the summary hearing, including disclosure or witness statements.

19.3A When a party requests that an Application be dismissed pursuant to this Rule, it shall deliver to the other parties and file with the Tribunal a Request for Summary Hearing (Form 26), which includes full argument in support of the Request that the Application be dismissed. The party making the Request shall also deliver to the other parties a copy of the Practice Direction: Summary Hearing Requests.

19.4A A party may respond to the Request for Summary Hearing by completing Form 11, delivering a copy to all parties and filing it with the Tribunal not later than 14 days after the Request for Summary Hearing was delivered.

19.5A Upon review of the Request and any Response to the Request, the Tribunal will determine whether to hold a summary hearing on the question of whether the Application should be dismissed, in whole or in part, on the basis that there is no reasonable prospect that the Application will succeed. The Tribunal need not give reasons for a decision to hold or not to hold a summary hearing following a party's request.

19.6A Where the Tribunal decides not to dismiss an Application following a summary hearing, it need not give reasons.

RULE 20 TRIBUNAL-ORDERED INQUIRIES

20.1 A party may request an Order from the Tribunal to appoint a person to conduct an inquiry under s. 44(1) of the Code. A Request for a Tribunal-Ordered Inquiry must be made in Form 12, delivered to the other parties and filed with the Tribunal. The Request must be made promptly after the party becomes aware of the need for an inquiry.

20.2 A Request for Tribunal-Ordered Inquiry under Rule 20.1 must:

a. describe the evidence or nature of the evidence to be obtained;
b. explain why the evidence is necessary to achieve a fair, just and expeditious resolution of the Application;
c. describe the efforts already made to obtain the evidence;
d. provide reasons why an inquiry is necessary to obtain the evidence; and,

e. propose terms of reference for the inquiry.

20.3 The other parties must deliver their response, if any, in Form 13, Response to Request for Inquiry, to all other parties and file it with the Tribunal not later than 14 days after the request was delivered.

20.4 A Response to Request for Inquiry must include complete submissions in support of the party's position.

20.5 An order made under s. 44(1) of the Code will include terms of reference for the inquiry.

20.6 A person conducting an inquiry will prepare a written report and submit it to the Tribunal and the parties in accordance with the terms of reference established by the Tribunal.

20.7 A report submitted to the Tribunal under s. 44(14) of the Code is not evidence in a proceeding, unless:

a. its author testifies in the proceeding and the parties are given an opportunity to question him or her;
b. the parties otherwise agree to the admission of the report as evidence in the proceeding; or,
c. the Tribunal otherwise directs

RULE 21 EXPEDITED PROCEEDINGS

21.1 An Applicant may request that the Tribunal deal with an Application on an expedited basis in circumstances which require an urgent resolution of the issues in dispute. A Request to Expedite an Application must be made in Form 14 and filed with the Application in accordance with Rule 6.1 or 24.1.

21.2 A Request to Expedite an Application made under Rule 21.1 must include:

a. a detailed description of the requested changes to the Tribunal's normal process, including timelines;
b. one or more declarations signed by persons with direct first-hand knowledge detailing all the facts upon which the Applicant relies in support of the request to expedite; and
c. submissions that explain:
    a. why there are urgent circumstances that may affect the fair and just resolution of the merits of the Application if the Application proceeds in accordance with the Tribunal's regular process;
    b. the harm that would result if the Request is denied; and,
    c. why the Application should be given priority for Tribunal resources over other matters.

21.2.1 Where the Tribunal denies a Request to Expedite, it need not give reasons.

21.3 A response to a Request to Expedite an Application must be in Form 15, Response to Request to Expedite an Application, delivered to all other parties and any affected persons identified in the Application and filed with the Tribunal not later than seven days after the request was sent or as the Tribunal directs.

RULE 22 WHERE THE SUBSTANCE OF AN APPLICATION HAS BEEN DEALT WITH IN ANOTHER PROCEEDING

22.1 The Tribunal may dismiss part or all of the Application where it determines, under s. 45.1 of the

Code, that another proceeding has appropriately dealt with the substance of part or all of an Application.

22.2 The parties will have the opportunity to make oral submissions before the Tribunal dismisses an Application under Rule 22.1.

RULE 23 INTERIM REMEDIES

23.1 An Applicant may request that the Tribunal order an interim remedy in an Application. A Request for an Interim Remedy must be made in Form 16. If the Request is made at the same time the Application is filed, it need not be delivered to the other parties. If it is made at a later stage, it must be delivered to the other parties and filed with the Tribunal.

23.2 The Tribunal may grant an interim remedy where it is satisfied that:

a. the Application appears to have merit;
b. the balance of harm or convenience favours granting the interim remedy requested; and,
c. it is just and appropriate in the circumstances to do so.

23.3 A Request for an Interim Remedy must include:

a. a detailed description of the order sought;
b. one or more declarations signed by persons with direct first-hand knowledge detailing all of the facts upon which the Applicant relies; and,
c. submissions with respect to the merits of the Application, the balance of harm or convenience and why an interim remedy would be just and appropriate in the circumstances, in accordance with the Rule 23.2.

23.4 The other parties must file their response, if any, in Form 17, Response to Request for Interim Remedy, not later than seven days after the Form 16 was delivered. The Form 17 must be delivered to the other parties and any affected persons identified in the Application and filed with the Tribunal not later than seven days after the request was sent or as the Tribunal directs.

23.5 A Response to Request for Interim Remedy must be delivered to all other parties and filed with the Tribunal and must include:

a. one or more declarations signed by persons with direct first-hand knowledge detailing all of the facts upon which the Respondent relies; and,
b. submissions with respect to the merits of the Application, the balance of harm or convenience and why an interim remedy would not be just and appropriate in the circumstances, in accordance with the Rule 23.2.

RULE 24 CONTRAVENTION OF SETTLEMENTS

24.1 An application under s. 45.9(3) of the Code alleging contravention of a settlement must be filed in Form 18, Application for Contravention of Settlement, delivered to the other parties to the settlement and filed with the Tribunal.

24.2 The Application for Contravention of Settlement must include an answer to each question in Form 18 and include a copy of the settlement alleged to have been contravened.

24.3 The other parties must deliver and file their response, if any, in Form 19, Response to Application for Contravention of Settlement, not later than 14 days after the Form 18 was delivered.

RULE 25 REQUEST TO AMEND CLERICAL ERRORS

25.1 Within 30 days from the date of a decision or order, a party may request that the Tribunal correct a typographical error, error of calculation, or similar error made in the decision or order. The Tribunal may, at any time, make similar corrections.

25.2 The request shall be considered by the same panel that rendered the original decision or order, unless the Tribunal Chair determines otherwise.

RULE 26 REQUEST FOR RECONSIDERATION

26.1 Any party may request reconsideration of a final decision of the Tribunal within 30 days from the date of the decision.

26.2 A Request for Reconsideration must be made in Form 20 and be delivered to all parties and filed with the Tribunal.

26.3 A Request for Reconsideration must include:

a. reasons for the request, including the basis upon which the Tribunal is asked to grant the request for reconsideration;
b. submissions in support of the request; and,
c. remedy or relief sought.

26.4 A party who has been served with a Request for Reconsideration need not file a response with the Tribunal unless the Tribunal directs that a response is required. Where a party is directed to file a response to the request, it must be in Form 21, Response to Request for Reconsideration, and must include complete written submissions in support of its position.

26.5 A Request for Reconsideration will not be granted unless the Tribunal is satisfied that:

a. there are new facts or evidence that could potentially be determinative of the case and that could not reasonably have been obtained earlier; or
b. the party seeking reconsideration was entitled to but, through no fault of its own, did not receive notice of the proceeding or a hearing; or
c. the decision or order which is the subject of the reconsideration request is in conflict with established jurisprudence or Tribunal procedure and the proposed reconsideration involves a matter of general or public importance; or
d. other factors exist that, in the opinion of the Tribunal, outweigh the public interest in the finality of Tribunal decisions.

26.5.1 A Request for Reconsideration made more than 30 days following the Decision will not be granted unless the Tribunal determines that the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay.

26.6 The Tribunal shall not grant a Request for Reconsideration without providing the parties an opportunity to make submissions.

26.7 The determination of the Request for Reconsideration shall be conducted by written submissions unless the Tribunal decides otherwise.

26.7.1 Where a Request for Reconsideration has been determined, the Tribunal will not consider a subsequent Request for Reconsideration of the same decision, absent exceptional

circumstances. The Tribunal need not give reasons for a decision not to consider a subsequent Request.

Where Reconsideration Request Granted

26.8 Where the Tribunal considers it appropriate to reconsider its decision it may:

a. make a decision on the substance of the Request without further submissions from the parties, or
b. determine a procedure for rehearing all or part of the matter.

Reconsideration at the Initiative of the Tribunal

26.9 The Tribunal may reconsider a decision on its own initiative where it considers it advisable and appropriate to do so.

26.10 Where the Tribunal decides to reconsider a decision on its own initiative, it will determine a procedure for rehearing all or part of the matter, which will include an opportunity for the parties to make submissions.

RULE 27 STATED CASE TO DIVISIONAL COURT

27.1 Where the Tribunal has made a final decision or order in a proceeding in which the Commission was a party or intervenor, the Commission may, under s. 45.6 of the *Code*, apply to the Tribunal to have the Tribunal state a case to the Divisional Court.

27.2 An application under Rule 27.1 shall be delivered to all the parties to the proceeding in which the decision or order was issued and filed with the Tribunal no later than 60 days after the date of the decision or order. The application shall be in Form 22, Commission Application to Request Stated Case and shall:

a. identify the Commission policy, approved under s. 30 of the *Code*, that is the subject of the application under Rule 27.1;
b. include a statement setting out the reasons why the Commission believes that the decision or order is not consistent with the Commission-approved policy; and,
c. state why the Commission believes that the application under Rule 27.1 relates to a question of law and that it would be appropriate for the Tribunal to state a case for the opinion of the Divisional Court on the question of law.

27.3 Any party who supports the Commission Application to Request Stated Case may, not later than 20 days after the Form 22 was delivered, deliver their submissions to all other parties and the Commission and file the submissions at the Tribunal.

27.4 Any party who opposes the Application to Request Stated Case may, not later than 30 days after the Form 22 was delivered, deliver submissions to all other parties and the Commission and file their submissions at the Tribunal.

27.5 The Commission may, not later than ten (10) days from delivery of opposing submissions, if any, deliver reply submissions to all other parties and file them at the Tribunal.

27.6 A Commission Application to Request Stated Case does not operate as a stay of the final decision or order at issue, unless otherwise ordered by the Tribunal or the Court.

LIST OF FORMS REFERRED TO IN RULES

Form	Title	Rule
1	Application	6
2	Response	8
3	Reply	9
4A	Litigation Guardian on Behalf of a Minor	A10
4B	Litigation Guardian: Mental Incapacity	A10
5	Request to Intervene	11
6	Notice of Commission Intervention (with Consent)	11
7	Application by Commission	12
8	Response to Commission Application	12
9	Request to Withdraw	10
10	Request for Order During Proceedings	19
11	Response to a Request for Order During Proceedings	19
12	Request for Tribunal-ordered Inquiry	20
13	Response to Request for Tribunal-ordered Inquiry	20
14	Request to Expedite Proceeding	21
15	Response to Request to Expedite Proceeding	21
16	Request for Interim Remedy	23
17	Response to Request for Interim Remedy	23
18	Application for Contravention of Settlement	24
19	Response to Application for Contravention of Settlement	24
20	Request for Reconsideration	26
21	Response to Request for Reconsideration	26
22	Commission Application to Request Stated Case	27
23	Statement of Delivery	1.23
24	Summons to Witness	3.1
25	Settlement	15
26	Request for Summary Hearing	19A

27	Application under Section 34(5) of the HRC on Behalf of Another Person	6
28	Notice of Intervention by Bargaining Agent	11

TAB N

THIS IS EXHIBIT "N" REFERRED TO IN THE AFFIDAVIT OF LAURA J. FREITAG SWORN BEFORE ME THIS 9th DAY OF February, 2021.

A COMMISSIONER FOR TAKING AFFIDAVITS

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

655, rue Bay, 14e étage
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

TAB O

THIS IS EXHIBIT "O" REFERRED TO IN THE AFFIDAVIT OF LAURA J. FREITAG SWORN BEFORE ME THIS 9th DAY OF February, 2021.

A COMMISSIONER FOR TAKING AFFIDAVITS

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
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

TAB P

THIS IS EXHIBIT "P" REFERRED TO IN THE AFFIDAVIT OF LAURA J. FREITAG SWORN BEFORE ME THIS 9th **DAY OF** February**,** 2021**.**

A COMMISSIONER FOR TAKING AFFIDAVITS

Donald B. Jarvis

From: Balaskanthan, Krishi (MAG) <Krishi.Balaskanthan@ontario.ca> on behalf of HRTO-Registrar (MAG) <hrto.registrar@ontario.ca>
Sent: September 4, 2018 12:34 PM
To: Donald B. Jarvis
Cc: Kelly@fit4duty.ca; Nini.Jones@paliareroland.com
Subject: RE: The Regional Municipality of Waterloo Police Services Board ("WRPSB") v. Kelly Donovan; HRTO File No. 2018-33237-S

Good Afternoon,

The Human Rights Tribunal of Ontario (HRTO) is in receipt of a request for an extension of time, from the respondent received by e-mail on August 22, 2018, to respond to the Applicant's Request for Order During Proceedings (Form 10) for HRTO File **2018-33237-S.**

The HRTO has considered the respondent's request and reasons. Pursuant to Rule A3.1 and 1.7(a) of the HRTO's Rules of Procedure the request for an extension of time is granted.

The Respondent is granted until **September 28, 2018** to complete and deliver the Response to a Request for Order During Proceedings (Form 11) to all parties and any affected persons named in the Application and file it, with a Statement of Delivery (Form 23), with the HRTO.

Pursuant to Rule 1.12 of the HRTO's Rules of Procedure, all written communications with the HRTO, including e-mail correspondence, must be addressed to the Registrar at hrto.registrar@ontario.ca, with a copy delivered to all other parties.

Krishi Balaskanthan
Case Processing Officer
Social Justice Tribunals Ontario
Tel: 416-326-1312 | hrto.registrar@ontario.ca

Social Justice Tribunals Ontario
Providing fair and accessible dispute resolution

http://www.sjto.gov.on.ca

From: Donald B. Jarvis [mailto:DJarvis@filion.on.ca]
Sent: August-22-18 3:50 PM
To: HRTO-Registrar (MAG)
Cc: Fit4Duty (Kelly@fit4duty.ca); Nini.Jones@paliareroland.com
Subject: The Regional Municipality of Waterloo Police Services Board ("WRPSB") v. Kelly Donovan; HRTO File No. 2018-33237-S

Mr. Georgios Fthenos
Registrar, HRTO

Dear Sir:

As you are aware, we act as counsel for the Applicant, WRPSB, in the above-noted matter. Further to the below email of Respondent Donovan, the WRPSB states as follows.

The WRPSB filed an RFOP (Form 10) with the Tribunal on July 30th, 2018. Respondent Donovan's Response to RFOP (Form 11) was due on August 13th, 2018. On August 2nd, 2018 the WRPSB consented to granting Respondent Donovan a filing extension to today's date, **August 22, 2018.** We note that Respondent Donovan now seeks a further filing extension in excess of two months to **October 26, 2018.**

The WRPSB will defer to the discretion of the Registrar/HRTO regarding what additional filing extension, if any, is reasonable in all of the circumstances. The WRPSB does submit, however, that a further filing extension of in excess of two months—especially when one extension has already been granted for a matter that is normally expected to be filed within two weeks—is excessive and not appropriate.

In assessing this matter, the WRPSB would also ask that the Tribunal note the following:

- Respondent Donovan appears to be fit and capable of participating in other human rights proceedings. For example, as recently as July 27, 2018 Respondent Donovan filed her own Application for Contravention of Settlement (see HRTO File No. 2018-33503-S);
- According to her website (Fit4Duty), Respondent Donovan is currently scheduled to present Webinars before the Human Resources Professionals Association (HRPA) on both Sept. 18 and Oct. 4, 2018; and
- Respondent Donovan has not provided the Tribunal with any objective supporting documentation—medical or otherwise—to substantiate that she is currently incapable of filing the necessary documents/pleadings in a timely manner.

Thank you in advance for your consideration of the foregoing.

Yours truly,

Donald B. Jarvis
Partner
*Practising as a professional corporation

Filion Wakely Thorup Angeletti LLP
management labour and employment law

Bay Adelaide Centre
333 Bay Street
Suite 2500 Box 44
Toronto, Ontario
Canada M5H 2R2

djarvis@filion.on.ca
t: 416·408·5516
f: 416·408·4814
www.filion.on.ca

From: Fit4Duty [mailto:Kelly@fit4duty.ca]
Sent: August 20, 2018 10:11 AM
To: HRTO-Registrar

Cc: Christa Ambrose; Donald B. Jarvis; nini.jones@paliareroland.com
Subject: HRTO File No. 2018-33237-S & 2018-33503-S

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
Fit4Duty - The Ethical Standard
kelly@fit4duty.ca
+1.519.209.5721
www.fit4duty.ca

TAB Q

THIS IS EXHIBIT "Q" REFERRED TO IN THE AFFIDAVIT OF LAURA J. FREITAG SWORN BEFORE ME THIS 9th DAY OF February, 2021.

A COMMISSIONER FOR TAKING AFFIDAVITS

From: Radisic, Radovan (MAG) [mailto:Radovan.Radisic@ontario.ca] **On Behalf Of** HRTO-Registrar (MAG)
Sent: September 7, 2018 10:52 AM
To: Kelly@fit4duty.ca; Donald B. Jarvis
Cc: HRTO-Registrar (MAG)
Subject: RE: Kelly Donovan v. The Regional Municipality of Waterloo Police Services Board and Bryan Larkin; HRTO File No. 2018-33503-S

Hello,

The Human Rights Tribunal of Ontario (HRTO) is in receipt of a request for an extension of time, from the applicant, received by e-mail on August 20, 2018, to respond to the letter as issued by the Registrar of the HRTO, "Notice of Intent to Dismiss", dated August 10, 2018, for HRTO File **2018-33503-S.**

The HRTO has considered the applicant's request and reasons. The HRTO also acknowledges the respondent's communication on August 23, 2018, as shown below.

Pursuant to Rule A3.1 and 1.7(a) of the HRTO's Rules of Procedure the request for an extension of time is granted.

The applicant is granted until **October 26, 2018,** to complete and deliver submissions to the "Notice of Intent to Dismiss" to all parties and any affected persons named in the Application for Contravention of Settlement and file it, with a Statement of Delivery (Form 23), with the HRTO.

Pursuant to Rule 1.12 of the Rules of Procedure, all correspondence must be directed to the Registrar at hrto.registrar@ontario.ca, and copied to the others.

Conformément à la Règle 1.12 (Règles de Procédure), toute communication, y compris les courriels, doit être adressée au greffier à hrto.registrar@ontario.ca et copie aux autres parties avant d'être déposés avec le TDPO

Thank you / Cordialement,

Radovan Radisic
Case Processing Officer/
Agent de traitement des cas
Human Rights Tribunal of Ontario/
Tribunal des droits de la personne de l'Ontario
416-326-7674 | hrto.registrar@ontario.ca

Social Justice Tribunals Ontario

Providing fair and accessible justice

From: Donald B. Jarvis [mailto:DJarvis@filion.on.ca]
Sent: August-22-18 5:29 PM
To: HRTO-Registrar (MAG)
Cc: Fit4Duty (Kelly@fit4duty.ca); Nini.Jones@paliareroland.com
Subject: Kelly Donovan v. The Regional Municipality of Waterloo Police Services Board and Bryan Larkin; HRTO File No. 2018-33503-S

Mr. Georgios Fthenos
Registrar, HRTO

Dear Sir:

As you are aware, we act as counsel for the Respondents in the above-noted matter. Further to the below email of the Applicant (Kelly Donovan), the Respondents state as follows.

The Applicant filed the instant Application on July 27th, 2018. On August 10th, 2018, you issued a Notice of Intent to Dismiss and directed the Applicant to file written submissions in response to the matters raised in the Notice of Intent to Dismiss by **September 7, 2018.** We note that the Applicant now seeks a further filing extension in excess of six weeks to **October 26, 2018.**

The Respondents will defer to the discretion of the Registrar/HRTO regarding what additional filing extension, if any, is reasonable in all of the circumstances. The Respondents do submit, however, that a filing extension of in excess of six weeks is excessive.

In assessing this matter, the Respondents would also ask that the Tribunal note the following:

- The Applicant appears to have been sufficiently fit to file the instant Application just over three weeks ago;
- According to her website (Fit4Duty), the Applicant is currently scheduled to present Webinars before the Human Resources Professionals Association (HRPA) on both Sept. 18 and Oct. 4, 2018; and
- The Applicant has not provided the Tribunal with any objective supporting documentation—medical or otherwise—to substantiate that she is currently incapable of filing the necessary documents/pleadings in a timely manner.

Thank you in advance for your consideration of the foregoing.

Yours truly,

Donald B. Jarvis
Partner
*Practising as a professional corporation

Filion Wakely LLP
Thorup Angeletti
management labour and employment law

Bay Adelaide Centre
333 Bay Street
Suite 2500 Box 44
Toronto, Ontario
Canada M5H 2R2

djarvis@filion.on.ca
t: 416·408·5516
f: 416·408·4814
www.filion.on.ca

From: Fit4Duty [mailto:Kelly@fit4duty.ca]
Sent: August 20, 2018 10:11 AM
To: HRTO-Registrar
Cc: Christa Ambrose; Donald B. Jarvis; nini.jones@paliareroland.com
Subject: HRTO File No. 2018-33237-S & 2018-33503-S

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

Fit4Duty - The Ethical Standard
kelly@fit4duty.ca
+1.519[illegible]9.5721
www.fi[illegible]uty.ca

TAB R

THIS IS EXHIBIT "R" REFERRED TO IN THE AFFIDAVIT OF LAURA J. FREITAG SWORN BEFORE ME THIS 9th DAY OF February, 2021.

A COMMISSIONER FOR TAKING AFFIDAVITS

HUMAN RIGHTS TRIBUNAL OF ONTARIO

B E T W E E N:

The Regional Municipality of Waterloo Police Services Board

Applicant

-and-

Kelly Donovan

Respondent

A N D B E T W E E N:

Kelly Donovan

Applicant

-and-

The Regional Municipality of Waterloo Police Services Board and Bryan Larkin

Respondent

INTERIM DECISION

Adjudicator: Laurie Letheren

Date: February 20, 2019

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

Citation: 2019 HRTO 308

Indexed as: **Waterloo Police Services Board v. Donovan**

APPEARANCES

Kelly Donovan, Applicant on 2018-33503-S and Respondent to 2018-33237-S	)	Self-Represented
The Regional Municipality of Waterloo Police Services Board and Bryan Larkin, Respondent to 2018-33503-S and Applicant on 2018-33237-S	)	Donald B. Jarvis and Cassandra Ma, Counsel
Waterloo Regional Police Association, Interested Party	)	Nini Jones, Counsel

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

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

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

[4] Prior to the Board and Larkin filing their Response to Application 2018-33503-S. 2018, the Tribunal issued a Notice of Intent to Dismiss ("NOID") Application 2018-33503-S. The NOID raised the issue of the Tribunal's jurisdiction to hear the Application because it had been filed more than 6 months after the date of the last alleged incident of contravention of the settlement.

[5] Donovan was directed to provide her submissions in response to the NOID on or before September 7, 2018. The Tribunal provided Donovan with an extension to October 26, 2018 to file those submissions. Donovan was warned that if she did not respond and file written submissions by the deadline, the HRTO will consider the failure to respond as an abandonment of Application 2018-33503-S and could dismiss the Application for that reason. Donovan was again directed to provide a response by February 15, 2019. She has not provided those submissions to date.

[6] It is the Tribunal's understanding that Donovan also filed an action in Superior Court for breach of the Resignation Agreement. The Board has brought a motion to dismiss that action. That motion heard on February 13, 2019. The respondent has advised that a decision on this motion is expected by mid-March 2019.

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

[8] According to the Tribunal's Rules, Donovan was to file a Response to this Request by August 13, 2018. To date, Donovan has not filed a Response to this Request.

[9] The hearing of Application 2018-33237-S is scheduled for February 22, 2019.

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

[11] A case management conference call was convened on February 19, 2019.

DECISION

[12] Tribunal file numbers 2018-33237-S and 2018-33503-S shall be processed and heard together.

[13] The hearing of file 2018-33237-S that is scheduled for February 22, 2019 is adjourned.

NEXT STEPS AND DIRECTIONS

[14] The Registrar will canvass the parties for their availability to schedule a full-day mediation in Toronto.

Direction to Donovan

[15] Should Tribunal file numbers 2018-33237-S and 2018-33503-S not be resolved through mediation, then **on or before May 17, 2019** Donovan shall file her submissions in response to the NOID that was issued on August 10, 2018 **and** her submissions in

response to the Request for Order During Proceedings filed by the Board on July 30, 2019**.**

ORDER

[16] Tribunal file numbers 2018-33237-S and 2018-33503-S shall be processed and heard together.

[17] The hearing of file 2018-33237-S that is scheduled for February 22, 2019 is adjourned.

[18] If these Applications are not both resolved through mediation, then on or before May 17, 2019 Donovan shall file her submissions in response to the NOID that was issued on August 10, 2018 and her submissions in response to the Request for Order During Proceedings filed by the Board on July 30, 2019. Should Donovan 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.

Dated at Toronto, this 20th day of February, 2019.

"Signed by"

_____

Laurie Letheren
Vice-chair

TAB S

THIS IS EXHIBIT "S" REFERRED TO IN THE AFFIDAVIT OF LAURA J. FREITAG SWORN BEFORE ME THIS 9th DAY OF February, 2021.

A COMMISSIONER FOR TAKING AFFIDAVITS

HUMAN RIGHTS TRIBUNAL OF ONTARIO

B E T W E E N:

The Regional Municipality of Waterloo Police Services Board

Applicant

-and-

Kelly Donovan

Respondent

A N D B E T W E E N:

Kelly Donovan

Applicant

-and-

The Regional Municipality of Waterloo Police Services Board and Bryan Larkin

Respondents

INTERIM DECISION

Adjudicator: Laurie Letheren

Date: September 30, 2019

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

Citation: 2019 HRTO 1326

Indexed as: **The Regional Municipality of Waterloo Police Services Board v. Donovan**

APPEARANCES

Kelly Donovan, Applicant on 2018-33503-S and Respondent to 2018-33237-S	)	Self-Represented
The Regional Municipality of Waterloo Police Services Board and Bryan Larkin, Respondent to 2018-33503-S and Applicant on 2018-33237-S	)	Donald B. Jarvis and Cassandra Ma, Counsel
Waterloo Regional Police Association, Interested Party	)	Caroline Jones, Counsel

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

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

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

[4] Prior to the Board and Larkin filing their Response to Application 2018-33503-S, the Tribunal issued a Notice of Intent to Dismiss ("NOID") Application 2018-33503-S to Donovan. The NOID raised the issue of the Tribunal's jurisdiction to hear Application 2018-33503-S because it had been filed more than 6 months after the date of the last alleged incident of contravention of the settlement.

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

[6] On May 1, 2019 Donovan filed her submissions in response to the NOID that was issued on August 10, 2018 and her submissions in response to the Request for Order During Proceedings filed by the Board on July 30, 2018**.**

[7] On May 7, 2019 Donovan filed a Notice of Constitutional Question ("Notice") in which she indicated that she intends to question the constitutional validity of Section 137.1 of the *Courts of Justice Act*, ("*CJA*") R.S.O. 1990, c.C. 43.

[8] In her Response to Application 2018-33237-S and in her submissions, Donovan also raised issues of whether the Board's Application for Breach of Settlement violates her rights as protected under the *Canadian Charter of Rights and Freedoms ("Charter").*

[9] On July 3, 2019 the Attorney General of Ontario advised that they did not intend to become involved at this point in the proceeding.

[10] The Attorney General of Canada has not responded to this Notice.

[11] Donovan has also made a Request for Production.

[12] On May 16, 2019 the Board filed its reply submissions to the submissions filed by Donovan on May 1, 2019.

CONSTITUTIONAL CHALLENGE TO *CJA* AND BREACH OF DONOVAN'S *CHARTER RIGHTS*

[13] The Tribunal consistently has held that it does not have the authority to decide stand-alone constitutional issues such as claims that the Board has violated Donovan's rights as protected under the *Charter* or the constitutional validity of Section 137.1 of the *CJA*. See *MacLennan v. Ontario (Transportation),* 2013 HRTO 714 at paras. 10-11; *Barber v. South East Community Care Access Centre*, 2010 HRTO 581 at para. 7; *Wilson v. Toronto Catholic District School Board*, 2011 HRTO 1040 at para. 19; *Hendershott v. Ontario (Community and Social Services)*, 2011 HRTO 482 at para. 8; and *Kostiuk v. Toronto Community Housing Corporation*, 2012 HRTO 388 at para. 18.

[14] This conclusion flows directly from the Supreme Court of Canada's jurisprudence on the issue of a tribunal's authority to apply the *Charter*. A tribunal with power to decide questions of law has the power to decide the constitutional validity of provisions that are relevant to decisions it must make (*Nova Scotia (Workers' Compensation Board) v. Martin,* 2003 SCC 54 (CanLII) at para. 36), and to "grant *Charter* remedies in relation to

Charter issues arising in the course of carrying out its statutory mandate" (*R. v. Conway*, 2010 SCC 22 (CanLII) at para. 22).

[15] In order to claim that her *Charter* rights have been violated by the Board or that the *CJA* is unconstitutional, Donovan must bring a civil claim in court.

[16] The Tribunal does not have jurisdiction to address Donovan's allegation that the Board violated her *Charter* rights or to determine whether Section 137.1 of the *CJA* is unconstitutional and will therefore not address those issues any further.

DELAY AND REQUEST TO AMEND APPLICATION 2018-33503-S

[17] The May 1, 2019 document filed by Donovan included her submissions in response to the Tribunal's Notice of Intent to Dismiss Application 2018-33503-S on the basis that it is outside the Tribunal's jurisdiction because it was filed more the 6 months after the alleged incidents of breach of settlement.

[18] The Board has filed Reply to her submissions on May 16, 2019.

[19] The Tribunal has held in numerous decisions that if an applicant seeks to rely upon an untimely allegation, he or she must satisfy the Tribunal that the delay in raising the allegations was incurred in good faith pursuant to section 34(2) of the *Code*. The Tribunal has set a fairly high onus on applicants to provide a reasonable explanation for the delay, while recognizing that there will be legitimate circumstances that justify exercising the discretion under section 34(2). See *Miller v. Prudential Lifestyles Real Estate*, 2009 HRTO 1241.

[20] In determining requests to amend applications, the Tribunal generally considers the nature of the proposed amendments, the reasons for the amendments, the timing of the request to amend, and the prejudice to the respondent. See, for example, *Odell v.*

TTC, [2001] OHRBID No. 2, *Dube v. Canadian Career College*, 2008 HRTO 336, and *Wozenilek v. 7-Eleven Canada Inc*., 2009 HRTO 926. The Tribunal will also consider whether the allegations that the applicant wishes to include are within the Tribunal's jurisdiction see: *Shiao v. Toronto Police Services Board,* 2019 HRTO 535 and or whether they have no reasonable prospect of success see: *Johl v. ArcelorMittal Dofasco*, 2017 HRTO 923.

REQUEST FOR ORDER DURING PROCEEDINGS THAT APPLICANT BE DEEMED TO HAVE ACCEPTED ALLEGATION SET OUT IN 2018-33272-S

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

[22] Donovan provided her submissions in response to this Request at paragraphs 83-133 of the submissions she filed on May 1, 2019. Although Donovan does not appear to dispute the facts alleged in the Board's Application, she makes arguments as to why the facts alleged do not amount to breaches of the settlement.

[23] The Board has asked that the Tribunal move to determine remedy. The Tribunal would not be in a position to determine remedy until it determines that the facts alleged do amount to a breach of the settlement. This will need to be determined following the hearing on the merits of Application 2018-33237-S.

[24] The Board may file a Reply in Application 2018-33237-S within 40 days of the of date this Interim Decision, if it deems that necessary.

PRODUCTION REQUEST

[25] Donovan has made a Request for production.

[26] The Board takes the position that the documents requested have no relevance to the issues to be determined in these Applications; and are protected by legal privilege.

[27] This issue will be determined after the Tribunal has heard the parties' oral submission during a telephone conference to be scheduled by the Registrar.

CODE OF CONDUCT AND CONFLICT OF INTEREST VIOLATIONS BY TRIBUNAL REGISTRAR AND VICE-CHAIR

[28] In the submissions that Donovan filed on May 1, 2019 she makes statements about the "repeated ignorance of the HRTO to consider the 33237 vexatious and an abuse of process". She makes no formal Request as to what if anything she is asking the Tribunal to do as a result of its "repeated ignorance".

[29] In addition, at paragraphs 199 to 216 of her May 1, 2019 submissions, Donovan makes allegations of Code of Conduct and Conflict of Interest violations by Georgios Fthenos and Vice-Chair Letheren. She does not appear to be making any formal Request of the Tribunal in relation to these allegations.

[30] It is not clear what jurisdiction the Tribunal has to make findings about code of conduct or conflict of interest violations committed by the Registrar of a Vice-chair. However, the Tribunal may consider Donovan to be abusing the Tribunal's process if she continues to make statements that the Tribunal is ignorant; or that in making directions to her that she is to comply with its Rules and directions it is violating codes of conduct; or that this is discrimination or favouritism.

[31] Should Donovan continue to make such statements, the Tribunal may consider whether her Application 2018-33503-S should be dismissed and whether she should be barred from any further participation in Application 2018-33237-S as a result of her abuse of the Tribunal's process.

RECORDING OF TRIBUNAL PROCEEDINGS WITHOUT CONSENT OR KNOWLEDGE

[32] It is clear from Donovan's submissions filed on May 1, 2019 that she recorded the Case Management Conference Call on February 19, 2019. Donovan had not made a request for permission to record this proceeding and she did not advise the Tribunal of her intention to record this proceeding.

[33] This raises the issue of whether Donovan has abused the Tribunal's process in making this recording.

[34] The Tribunal will hear the parties submissions on whether Donovan's Application 2018-33503-S should be dismissed and whether she should be barred from any further participation in Application 2018-33237-S as a result of her abuse of the Tribunal's process. See: *Taylor Estate v. Royal Canin Canada Company*, 2017 HRTO 1600.

DIRECTIONS AND NEXT STEPS

[35] The Registrar will schedule a full-day preliminary hearing held by conference call. The parties will receive a notice of hearing, setting out the time, and date for the hearing and instructions on how to connect to the conference call.

[36] During this conference call, the parties will be expected to present their submissions on:

- The issue of the Tribunal's jurisdiction to hear Application 2018-33503-S
- Donovan's Request to Amend Application 2018-33503-S
- Donovan's Production Request
- Whether Donovan's Recording of the February 19, 2019 should be determined to be an abuse of the Tribunal's process and the consequences of such a determination

[37] After this hearing and the Tribunal's determination of the issues outlined above, the Tribunal will provide further direction on the hearing of the merits of these Applications.

[38] The Board may file a Reply in Application 2018-33237-S within 40 days of the of date this Interim Decision if it deems that necessary.

Dated at Toronto, this 30th day of September, 2019.

"Signed by"

_____

Laurie Letheren
Vice-chair

TAB T

THIS IS EXHIBIT "T" REFERRED TO IN THE AFFIDAVIT OF LAURA J. FREITAG SWORN BEFORE ME THIS 9th **DAY OF** February**,** 2021**.**

A COMMISSIONER FOR TAKING AFFIDAVITS

Court File No.:
CV-18-00001928-0000

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
M. Watford
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 U

THIS IS EXHIBIT "U" REFERRED TO IN THE AFFIDAVIT OF LAURA J. FREITAG SWORN BEFORE ME THIS 9th **DAY OF** February**,** 2021**.**

A COMMISSIONER FOR TAKING AFFIDAVITS

Court File No. CV-18-00001938-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

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
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)

TAB V

THIS IS EXHIBIT "V" REFERRED TO IN THE AFFIDAVIT OF LAURA J. FREITAG SWORN BEFORE ME THIS 9th **DAY OF** February**,** 2021**.**

A COMMISSIONER FOR TAKING AFFIDAVITS

Amended this 16 day
of JAN, 2019
Pursuant to Rule 26.02(a)
A. Drew

Court File No.: CV18-00001938-0000

Ontario

SUPERIOR COURT OF JUSTICE

BETWEEN:

KELLY LYNN DONOVAN

Plaintiff

- and -

WATERLOO REGIONAL POLICE SERVICES BOARD, and

BRYAN LARKIN

Defendants

AMENDED

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 ~~JAN 16 2018~~ Issued by: 'C. DAVIES'

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 agreement also contained a release signed by chief Bryan Larkin which stated:
    a. "THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD [...] does hereby release and forever discharge KELLY DONOVAN ("DONOVAN") from any and all actions, causes of action, complaints, applications, appeals..."
    b. "AND FOR THE SAID CONSIDERATION, THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD further agrees not to commence, maintain, or continue any action, cause of action or claim, request, complaint, demand or other proceeding, against

any person, corporation or entity in which any claim could arise against DONOVAN for contribution or indemnity."

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

Plaintiff's health

8. 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.
9. In December 2015, the plaintiff was diagnosed with post-traumatic stress disorder ("PTSD").
10. 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.
11. In April, 2017, the plaintiff applied to the Workplace Safety and Insurance Board ("WSIB") for benefits as a result of her workplace injury. The plaintiff's claim was approved, claim number 30505408.
12. 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

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

14. 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."*

15. 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."

16. 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. Following the plaintiff's resignation, she continued to receive benefits from WSIB in the form of psychological treatment by Dr. Kathy Lawrence. Since the plaintiff voluntarily resigned, her salary was no longer being paid by WSIB.

20. In August, 2018, the plaintiff was made aware by WSIB that on January 11, 2018, the defendant Board submitted an appeal of the plaintiff's claim number 30505408. The appeal was prepared by counsel for the defendant, the same counsel who represented the defendants when the resignation agreement was prepared and signed.

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

Ontario Superior Court of Justice

PROCEEDING COMMENCED AT Brampton

Amended 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 W

THIS IS EXHIBIT "W" REFERRED TO IN THE AFFIDAVIT OF LAURA J. FREITAG SWORN BEFORE ME THIS 9th **DAY OF** February**,** 2021**.**

A COMMISSIONER FOR TAKING AFFIDAVITS

CITATION: Donovan v. Waterloo Regional Police Services Board, 2019 ONSC 1212
COURT FILE NO.: CV-18-1938
DATE: 2019 02 21

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:	)	
	)	
KELLY LYNN DONOVAN	)	Self-Represented
	)	
	)	
	)	
Plaintiff	)	
	)	
- and -	)	
	)	
	)	
WATERLOO REGIONAL POLICE SERVICES BOARD and BRYAN LARKIN	)	Donald Jarvis and Cassandra Ma, for the Defendants
	)	
	)	
Defendants	)	
	)	
	)	**HEARD:** February 13, 2019

REASONS FOR JUDGMENT

DOI J.

Introduction

[1] This is an action for breach of contract. The Plaintiff claims that the Defendants appealed her claim for workers' compensation benefits and thereby

breached the terms of a release under a Resignation Agreement they executed with her. She also claims that the Defendants delivered an affidavit in a separate court proceeding which identified her, contrary to the confidentiality terms of the Resignation Agreement.

[2] The Defendants brought this motion under Rules 21.01(1)(b), 21.01(3)(a) and 21.01(3)(d) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended, to strike the Amended Statement of Claim issued May 4, 2018. For the reasons that follow, the pleading is struck under Rule 21.01(1)(b) without leave to amend.

Background

[3] The Amended Statement of Claim discloses the following.

[4] The Plaintiff is a former police officer who resigned her position with the Defendant Waterloo Regional Police Services Board ("Board") after executing a Resignation Agreement on June 8, 2017 with the Board and her collective bargaining agent, the Waterloo Regional Police Association.

[5] The Amended Statement of Claim refers to the Resignation Agreement and pleads, among other things, the following provisions:

> 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.
>
> […]
>
> THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD […] does hereby release and forever discharge KELLY DONOVAN ("DONOVAN") from any and all actions, causes of action, complaints, applications, appeals
>
> […]
>
> AND FOR THE SAID CONSIDERATION, THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD further agrees not to commence, maintain, or continue any action, cause of action or claim, request, complaint, demand or other proceeding, against any person, corporation or entity in which any claim could arise against DONOVAN for contribution or indemnity.

[6] After the Resignation Agreement was executed, the pleading alleges that the Defendants breached the terms of the contract.

The Claim

[7] On May 9, 2018, the Plaintiff commenced this action. Her Amended Statement of Claim seeks damages against the Board and the personally-named Defendant, Bryan Larkin, Chief of the Waterloo Regional Police Service, and her reinstatement as a police officer with the Board, for the Defendants' alleged breach of the Resignation Agreement by: (i) appealing her claim (Claim No. 30505408) for statutory care and benefits to the Workplace Safety and Insurance Board ("WSIB") arising from a workplace incident; and (ii) delivering an affidavit

sworn by Chief Larkin on December 21, 2017 in a separate court proceeding that contained information that is said to have disclosed her identity in breach of the confidentiality terms under the Resignation Agreement.[1]

[8] The Defendants responded to the claim by delivering a Notice of Motion dated June 7, 2018 to strike the claim.

The Test under Rule 21.01(1)(b)

[9] Under Rule 21.01(1)(b), a party may strike all of part of a claim for failing to disclose a reasonable cause of action. The framework for a Rule 21.01(1)(b) motion is well established. There is no evidence on a Rule 21.01(1)(b) motion. The material facts pleaded are deemed to be proven or true, except to the extent that the alleged facts are patently ridiculous or manifestly incapable of being proven. The court is entitled to read and rely on the terms of any document pleaded or incorporated by reference in the claim. As the facts pleaded are the basis for evaluating the claim's possibility of success, a claimant is not entitled to rely on the possibility that new facts may turn up as the case progresses. The novelty of the cause of action is of no concern at this stage of the proceeding, and the statement of claim must be read generously to allow for drafting deficiencies. If the claim has some chance of success, it must be permitted to

[1] On or about May 30, 2017, the Board was named as a defendant in a class action. The putative class members in the class action were current and former employees of the Board and their family members. The Plaintiff was not a putative class member in the proceeding. On July 13, 2018, Baltman J. dismissed the class action; *Rivers v. Waterloo Regional Police Services Board*, 2018 ONSC 4307.

proceed; *R. v. Imperial Tobacco*, 2011 SCC 42 at para. 22; *Castrillo v. Workplace Safety and Insurance Board*, 2017 ONCA 121 at paras. 14 and 15.

[10] To strike a claim under Rule 21.01(1)(b), it must be plain and obvious on a generous reading that the claim discloses no reasonable cause of action; *Conway v. L.S.U.C.*, 2016 ONCA 72 at para. 7; *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959 at 980. In *Imperial Tobacco*, the rationale for this test was explained (at paras. 17 and 19 to 21):

> The Test for Striking Out Claims
>
> A claim will only be struck if it is plain and obvious, assuming the facts pleaded to be true, that the pleading discloses no reasonable cause of action. Another way of putting the test is that the claim has no reasonable prospect of success. Where a reasonable prospect of success exists, the matter should be allowed to proceed to trial.
>
> […]
>
> The power to strike out claims that have no reasonable prospect of success is a valuable housekeeping measure essential to effective and fair litigation. It unclutters the proceedings, weeding out the hopeless claims and ensuring that those that have some chance of success go on to trial.
>
> This promotes two goods — efficiency in the conduct of the litigation and correct results. Striking out claims that have no reasonable prospect of success promotes litigation efficiency, reducing time and cost. The litigants can focus on serious claims, without devoting days and sometimes weeks of evidence and argument to claims that are in any event hopeless. The same applies to judges and juries, whose attention is focused where it should be — on claims that have a reasonable chance of success. The efficiency gained by weeding out unmeritorious claims in turn contributes to better justice. The more the evidence and arguments are trained on the real issues, the more likely it is that the trial process will successfully come to grips with the parties' respective positions on those issues and the merits of the case.
>
> Valuable as it is, the motion to strike is a tool that must be used with care. The law is not static and unchanging. Actions that yesterday were deemed hopeless may tomorrow succeed. […] The history of our law reveals that often new developments in the law first surface on motions to strike or similar preliminary motions, like the one at issue in *Donoghue v. Stevenson*.

> Therefore, on a motion to strike, it is not determinative that the law has not yet recognized the particular claim. The court must rather ask whether, assuming the facts pleaded are true, there is a reasonable prospect that the claim will succeed. The approach must be generous and err on the side of permitting a novel but arguable claim to proceed to trial. [citations omitted]

[11] Leave to amend a claim will not be permitted when it is plain and obvious that no tenable cause of action is possible on the facts alleged: *Conway v. L.S.U.C.,* 2016 ONCA 72 at para. 16.

Position of the Parties

[12] The Defendants submit that the Amended Statement of Claim fails to plead the requisite elements to support a breach of contract claim against them. Their argument is two-fold. First, they submit that the Board's effort to seek a review of the Plaintiff's initial entitlement decision by the Workplace Safety and Insurance Board ("WSIB") (i.e., by filing an Intent to Object) under the *Workplace Safety and Insurance Act, 1997*, S.O. 1997, c.17, Sch. A, as amended ("WSIA"), was not a breach of contract because the WSIA expressly prohibits parties from contracting out of the statutory scheme. They further submit that Chief Larkin's affidavit cannot form the basis of a claim for breach of contract as it was prepared for use in a court proceeding and is subject to absolute privilege.

[13] The Plaintiff relies on the Resignation Agreement as the contractual basis for her claim. By commencing a review or appeal of her initial entitlement decision by the WSIB for statutory workplace insurance benefits, the Plaintiff

claims that the Defendants breached the terms of their settlement agreement with her. She further alleges that Chief Larkin's affidavit was made without regard to the confidentiality term under the Retirement Agreement as pleaded in the Amended Statement of Claim, and relies on this in further support of her breach of contract claim.

Analysis

[14] As the Plaintiff's action is for a breach of contract, the claim must prove: (i) the existence of a contract with the Defendants; and (ii) a breach of the contract; *Mars Canada Inc. v. Bemco Cash & Carry Inc.*, 2018 ONCA 239 at para. 32.

[15] The Amended Statement of Claim pleads the Resignation Agreement as the underlying basis for the claim. Paragraph 5 of the claim pleads the confidentiality clause under the Resignation Agreement, and paragraph 6(a) pleads an excerpt of the Resignation Agreement by which the Board broadly agreed to release and forever discharge the Plaintiff "*from any and all actions, causes of action, complaints, applications and appeals …*" Paragraph 6(b) pleads a further provision of the Resignation Agreement by which the Defendants agreed "*not to commence, maintain or continue any action, cause of action, claim, request, complaint, demand or other proceeding, against any person,*

corporation or entity in which any claim could arise against DONOVAN for contribution or indemnity."

Claim for breach of contract by commencing a proceeding under the WSIA

[16] I am persuaded that the release executed by the Board under the Resignation Agreement did not preclude it from participating in the WSIB proceedings. I also find that it is plain and obvious that the claim arising from the Board's effort to review the Plaintiff's initial entitlement decision by the WSIB has no reasonable prospect of succeeding.

[17] The Amended Statement of Claim pleads that the terms of the Resignation Agreement include a release in favour of the Plaintiff against "*any and all actions, causes of action, complaints, applications, [and] appeals,*" among other things, as well as a further agreement "*not to commence any action, cause of action or claim, request, complaint, demand or other proceeding against any person corporation or entity in which any claim could arise against the Plaintiff for contribution or indemnity.*" The Plaintiff relies on these terms under the Resignation Agreement for her breach of contract claim against the Defendants for submitting an appeal of her initial entitlement decision by the WSIB on January 11, 2018.

[18] The Defendants submit that the Board's review of the Plaintiff's initial entitlement decision by the WSIB could not have led to any kind of finding of

liability or obligation owed by the Plaintiff. Absent any fraud or misrepresentation, which is not alleged here, the Defendants submit that the WSIB will not pursue a recovery of benefits from a worker if it reverses a previous decision that granted the worker entitlement to benefits; WSIB Policy 19-08-04: Recovery of Benefit-Related Debts, at pp. 1, 3 and 4; Decision No. 1658/02, 2002 WSIA 2718 at para. 20. Accordingly, the Defendants submit that the Board's review of the initial entitlement decision did not implicate the term under the Resignation Agreement by which the Board agreed to not commence a proceeding in which a claim could arise against the Plaintiff for contribution or indemnity.

[19] Assuming that the Defendants' view accurately reflects the policy intent of the above-mentioned WSIB Policy and its interpretation by the appeals tribunal, it still remains uncertain (albeit in a remote sense) as to whether the Plaintiff may, at some future time, incur a potential claim for contribution or indemnity based on some aspect of the Board's review of her initial entitlement decision. To definitively say otherwise would necessarily call for speculation as to future events and cause the decision to fall outside the plain and obvious test.

[20] Moreover, the Amended Statement of Claim also pleads a much broader release by the Board under the Resignation Agreement to release the Plaintiff from "*any and all … complaints, applications and appeals*." On a plain reading of this term on its face, it seems at least arguable that it captures the Board's review of the WSIB's initial entitlement decision, as the Plaintiff's submits. She also

notes that the Board sought a review of her initial entitlement decision by the WSIB several months after it executed the Resignation Agreement.

[21] Despite the foregoing, I accept that the Resignation Agreement cannot prevent the parties from participating in proceedings before the WSIB as parties cannot contract out from their rights and obligations under the legislative scheme governing workers' compensation in Ontario. As explained by Juriansz J.A. for the Court of Appeal for Ontario, workplace parties cannot waive their rights and obligations under the WSIA as a matter of law:

> I recognize that the courts should exercise extreme caution in interfering with the freedom to contract on the grounds of public policy. Considering the sweeping overriding of the common law made by workers' compensation legislation and the broad protection it is designed to provide to workers in the public interest, it would be contrary to public policy to allow employers and workers to contract out of its regime, absent some contrary legislative indication.

[22] *Fleming v. Massey*, 2016 ONCA 70 at para. 34; leave to appeal to the SCC dismissed with costs, 2016 CanLII 33997; citing *Ontario (Human Rights Commission) v. Etobicoke (Borough)*, [1982] 1 S.C.R. 202 at 214.

[23] The finding by the Court of Appeal in Fleming makes is abundantly clear that the release provision under the Resignation Agreement cannot operate to preclude the Board, or the Plaintiff for that matter, from exercising rights and discharging obligations under the WSIA. As a matter of law, parties cannot contract out of the scheme under the WSIA. Accordingly, it is plain and obvious

that the Plaintiff's claim for breach of contract based on the Board's effort to seek a review of her initial entitlement decision by the WSIB simply fails to disclose a reasonable cause of action.

[24] In arriving at this finding, I also am mindful of ss. 118(1), (2), (3) and (4) of the WSIA which provide the WSIB with exclusive statutory jurisdiction that cannot be restrained by a proceeding in court:

> 118 (1) the Board has exclusive jurisdiction to examine, hear and decide all matters and questions arising under this Act, except where this Act provides otherwise.
>
> (2) Without limiting the generality of subsection (1), the Board has exclusive jurisdiction to determine the following matters:
>
> […]
>
> 2. Whether personal injury or death has been caused by an accident.
>
> 3. Whether an accident arose out of and in the course of an employment by a Schedule 1 of Schedule 2 employer;
>
> […]
>
> (3) An action or decision of the Board under this Act is final and is not open to question or review in a court.
>
> (4) No proceeding by or before the Board shall be restrained by injunction, prohibition or other process or procedure in a court or be removed by application for judicial review or otherwise in a court. [emphasis added]

[25] Of particular note is the strongly worded privative clause at s.118(4) of the WSIA that precludes a party from restraining proceedings before the WSIB by pursuing a claim or remedy in court; *Rodrigues v. Ontario (Workplace Safety and Insurance Appeals Tribunal)*, 2008 ONCA 719 at para. 22. While the legislature cannot completely oust the jurisdiction of the Superior Court, which is

derived under s. 96 of the *Constitution Act, 1867*, I find that s. 118(4) precludes the Plaintiff from pursuing her breach of contract claim to restrain the Board from taking part in proceedings before the WSIB involving her workers' compensation claim under the WSIA; *Castrillo v. Workplace Safety and Insurance Board*, 2017 ONCA 121 at paras. 54-56, 59 and 66.

Claim for breach of contract by filing affidavit

[26] The Defendants argue that it is plain and obvious that the Plaintiff's claim based on Chief Larkin's affidavit has no reasonable prospect of success. I agree with this.

[27] The Amended Statement of Claim pleads that Chief Larkin swore an affidavit on December 21, 2017 to defend a class action lawsuit (Court File No. CV-17-2346-00) which made allegations alleged of systemic and institutional gender-based discrimination and harassment. Specifically, the claim pleads that Chief Larkin attached to his affidavit a chart prepared by the Human Resources Division of the police service to show complaints to the Human Rights Tribunal that female employees had made in the last five years, together with their status or resolution. The affidavit expressly states that this chart provides non-identifying information to preserve the identities of the complainants, with the exception of the representative class action plaintiff whose complaint to the Human Rights Tribunal remained outstanding when the affidavit was sworn.

[28] The claim pleads that the attached chart to Chief Larkin's affidavit is titled "*Police Officer initiated Ontario Human Rights Complaints*" and lists four (4) female officers who are identified as follows:

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."

[29] Of the two unnamed "Constables" who are mentioned in the chart, the Amended Statement of Claim pleads that one complaint is shown as having had been resolved in the following manner:

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

[30] The claim pleads that only one female officer is listed on the chart as having "voluntarily" resigned. By process of elimination, the claim asserts that Chief Larkin's affidavit has the effect of identifying the Plaintiff as she is the only female constable employed by the Board over the past five years who had filed a human rights complaint and voluntarily resigned.

[31] In pleading a breach of contract, the Amended Statement of Claim states that Chief Larkin's public disclosure was not required by law, contained sufficient information to identify the Plaintiff, and violated the terms of the Resignation Agreement.

[32] The Defendants submit that Chief Larkin's affidavit does not disclose information in breach of the confidentiality term of the Resignation Agreement, and thus does not give rise to a reasonable cause of action for breach of contract. According to the Defendants, the Plaintiff's claim that the affidavit contains sufficient information for the plaintiff to be identified is wholly speculative and remote at law. In any event, as Chief Larkin's affidavit was delivered for use in court proceedings, the Defendants submit that it is covered by absolute privilege and cannot form the basis of the Plaintiff's claim for breach of contract. They rely on a body of jurisprudence which supports the proposition that statements made in the course of a judicial proceeding, including statements in pleadings and other documents made for the proceeding, are subject to absolute privilege and cannot ground a cause of action.

[33] From the information pleaded in the Amended Statement of Claim, I recognize that Chief Larkin's affidavit, on its face, does not directly identify the Plaintiff or the other complainants who are mentioned in it. I accept that the references in the affidavit to the four (4) female complainants are oblique and anonymized to some degree. However, given that the pool of female complainants is fairly small and features only four members, with one member apparently named given her known role as a representative plaintiff in the class action, it is unclear to me just how anonymous the remaining three complainants actually are to those with some knowledge of the police service. This may be

particularly true in the case of one complainant who is identified in the affidavit as having the rank of sergeant. In the circumstances, it seems less than clear whether Chief Larkin's affidavit sufficiently preserves the Plaintiff's confidentiality. Accordingly, I find that the issue of whether the unnamed reference in Chief Larkin's affidavit is sufficiently capable of identifying the Plaintiff and breaches the confidentiality term of the Resignation Agreement remains an open question.

[34] Regardless of the foregoing, however, it is clear that Chief Larkin's affidavit was prepared and used in a court proceeding. Accordingly, I find that the affidavit is covered by absolute privilege and cannot support the Plaintiff's claim in breach of contract.

[35] Brown J.A. for the Court of Appeal has explained that, "*The doctrine of absolute privilege contains several basic elements: no action lies, whether against judges, counsel, jury, witnesses or parties, for words spoken in the ordinary course of any proceedings before any court or judicial tribunal recognized by law; the privilege extends to documents properly used and regularly prepared for use in the proceedings;*" *Salasel v. Cuthbertson*, 2015 ONCA 115 at para. 35, citing *Amato v. Welsh*, 2013 ONCA 258 at para. 34. In determining whether absolute privilege applies to a communication, the analysis necessarily focuses on the occasion that the communication is made, not its content; *Salasel* at para. 46. This immunity extends to any and all causes of action, however framed, and is not limited to actions for defamation; *Salasel* at

para. 38, and *Samuel Manu-Tech Inc. v. Redipac Recycling Corp.*, [1999] O.J. No. 3242 (C.A.) at para. 20. A claim based on communications which take place during, incidental to, and in the furtherance of a court proceeding is subject to absolute immunity; *Cook v. Milborne*, 2018 ONSC 419 at paras. 17-19. The existing doctrine of absolute privilege affords a fulsome immunity that is broadly applied to all matters done *coram judice,* and is unaffected by whether the evidence was given in bad faith and actual malice or without justification or excuse; *Cook* at paras. 19-21; *Fabian v. Margulies* (1985), 53 O.R. (2d) 380 (C.A.) at para. 9, *Lincoln v. Daniels*, [1962] 1 Q.B. 237 (C.A.) at 257-8.

[36] In view of the foregoing, it is plain and obvious that the Plaintiff's claim for breach of contract arising from Chief Larkin's affidavit discloses no reasonable cause of action. His affidavit clearly was used in defending a class action in court, which the Amended Statement of Claim expressly acknowledges. To the extent that the claim rests on this affidavit, it has no reasonable chance of success in law and should not continue; *Cook* at paras. 21, 32-33 and 57; see also *Gray Investigations Inc. v. Mitchell*, [2007] O.J. No. 1936 (S.C.J.) at paras. 17-20, and *Dooley v. C.N. Weber Ltd.* (1994), 19 O.R. (3d) 779 (Gen.Div.).

[37] From my review of the Amended Statement of Claim, I further find that the pleading is insufficient to establish an independent cause of action against the personally-named defendant, Bryan Larkin. The pleading identifies him as the Chief of the police service and an employee of the Board. The claim gives no

indication that he acted outside the scope of his employment duties. While recognizing that he swore the affidavit that the Board relied upon in defending the class action, the claim does not set out separate facts against him or personal interests that are independent from the breach of contract claim against the Board. Rather, the claim against both Defendants is essentially the same. It was the Board, and not Chief Larkin, which was party to the Resignation Agreement, although he signed the agreement on behalf of the Board. As such, and in the circumstances of this case, I find that he is protected from personal liability; *Lussier v. Windsor-Essex Catholic District School Board*, [1999] O.J. No. 4303 (Div. Ct.) at paras. 17-18, citing *Normart Management Ltd. v. West Hill Redevelopment Co.* (1998), 37 O.R. (3d) 97 (C.A.) at 104.

No Leave to Amend

[38] I recognize that leave to amend a pleading should not lightly be withheld; *Conway v. L.S.U.C.,* 2016 ONCA 72 at paras. 16-18. However, given the context of this case, it is plain and obvious that no tenable cause of action supporting a breach of contract claim under the Resignation Agreement is possible. The Amended Statement of Claim essentially frames a tandem breach of contract claim by relying on the Defendant's effort to review the Plaintiff's initial entitlement decision by the WSIB, and by also relying on Chief Larkin's affidavit to defend the class action proceeding. As explained above, it is plain and obvious that these material facts cannot possibly give rise to a breach of contract

given the parties' inability to contract out of the WSIA and the absolute privilege that attached to the affidavit. No opportunity to amend the pleading could alter this and realistically preserve the action. Accordingly, leave to amend is denied.

Conclusion

[39] The Amended Statement of Claim is struck under Rule 21.01(1)(b) without leave to amend.

[40] The Defendants' motion to strike was also brought under Rules 21.01(3)(a) and 21.01(3)(d), respectively. For the reasons set out above, I am satisfied that this motion is fairly and fully disposed of under Rule 21.01(1)(b) without the need for recourse to these other grounds.

[41] I strongly encourage the parties to agree on costs. If they are unable, the Defendants may deliver cost submissions not to exceed three (3) pages (excluding any cost outline and offer(s) to settle) within fifteen (15) days from this judgment, followed by the Plaintiff's cost submissions on the same terms within a further fifteen (15) days. No reply submissions are permitted without leave.

_____

Doi J.

Released: February 21, 2019

CITATION: Donovan v. Waterloo Regional Police Services Board, 2019 ONSC 1212
COURT FILE NO.: CV-18-1938
DATE: 2019 02 21

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

KELLY LYNN DONOVAN

Plaintiff

- and -

WATERLOO REGIONAL POLICE SERVICES BOARD and BRYAN LARKIN

Defendants

REASONS FOR JUDGMENT

Doi J.

Released: February 21, 2019

TAB X

THIS IS EXHIBIT "X" REFERRED TO IN THE AFFIDAVIT OF LAURA J. FREITAG SWORN BEFORE ME THIS 9th **DAY OF** February**,** 2021**.**

A COMMISSIONER FOR TAKING AFFIDAVITS

COURT OF APPEAL FOR ONTARIO

CITATION: Donovan v. Waterloo Regional Police Services Board, 2019 ONCA 845
DATE: 20191025
DOCKET: C66718

Hoy A.C.J.O., van Rensburg and Roberts JJ.A.

BETWEEN

Kelly Lynn Donovan

Plaintiff/Responding Party (Appellant)

and

Waterloo Regional Police Services Board and Bryan Larkin

Defendants/Moving Parties (Respondents)

Kelly Lynn Donovan, acting in person

Donald B. Jarvis and Cassandra Ma, for the respondents

Heard: October 11, 2019

On appeal from the order of Justice Michael T. Doi of the Superior Court of Justice, dated March 20, 2019, with reasons reported at 2019 ONSC 1212.

REASONS FOR DECISION

I. OVERVIEW

[1] The appellant appeals from the motion judge's order dismissing her action against the respondents under r. 21.01(1)(b) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, without leave to amend, and ordering her to pay costs to the respondents. For the reasons that follow, we allow the appeal, set aside the

order of the motion judge, and grant the appellant leave to further amend her Amended Statement of Claim in respect of the claim against Bryan Larkin.

II. BACKGROUND

[2] In her Amended Statement of Claim, the appellant alleges that the respondents breached the terms of a Release and of a confidentiality provision contained in a settlement agreement (the "Agreement"), dated June 8, 2017. Under the Agreement, the appellant resigned her employment in June 2017, as a police officer with the respondent Waterloo Regional Police Services Board (the "Board"). She seeks damages against the Board and Bryan Larkin, the Chief of the Waterloo Regional Police Service.

[3] The appellant alleges that the respondents (1) breached the Release by appealing her claim for benefits to the Workplace Safety and Insurance Board ("WSIB") arising from a workplace injury; and (2) breached the confidentiality provisions of the Agreement by delivering an affidavit sworn by Chief Larkin, containing information about the Agreement, in defence of a class proceeding against the Board.

[4] The motion judge struck the claim related to the WSIB appeal on the basis that an employer cannot contract out of the *Workplace Safety and Insurance Act, 1997*, S.O. 1997, c. 16, Sched. A ("WSIA"). Pursuant to the Release, the Board, among other things, "release[s] and forever discharge[s] [the appellant] from any

and all…appeals". The appellant pleads that she applied to the WSIB in April 2017, before signing the Release, for benefits related to post-traumatic stress disorder ("PTSD"). After the Board signed the Release, it submitted an appeal of the WSIB's decision.

[5] The motion judge accepted that it was at least arguable that the Release captured the Board's review of the WSIB's initial entitlement decision: at para. 20. His decision that it was plain and obvious that the Amended Statement of Claim failed to disclose a cause of action in respect of the alleged breach of the Release was based on his conclusion that the result was governed by this court's decision in *Fleming v. Massey*, 2016 ONCA 70, 128 O.R. (3d) 401, leave to appeal refused, [2016] S.C.C.A. No. 113. The motion judge concluded that *Fleming* made it abundantly clear that the Release "cannot operate to preclude the Board, or the [appellant] …from exercising rights and discharging obligations under the WSIA", because "as a matter of law, parties cannot contract out of the scheme under the WSIA": at para. 23. The motion judge also concluded that the privative clause in s. 118(4) of the WSIA, which provides, in relevant part, that an action or decision of the WSIB under the Act cannot be restrained by a court process or procedure, would preclude the appellant's claim for breach of the Release in relation to the WSIB proceedings: at paras. 24-25.

[6] The motion judge struck the claim related to the breach of confidentiality because he concluded that it could not be based solely on an affidavit prepared

for a court proceeding. The Agreement required the parties, except where required by law, to "keep the terms and existence of [the Agreement] in absolute and strict confidence at all times". While the motion judge found, at para. 33, that "it seems less clear whether Chief Larkin's affidavit sufficiently preserves the [appellant's] confidentiality", he concluded that because his affidavit was used in defending a class action in court, it was covered by absolute privilege. Accordingly, the motion judge concluded that the appellant's claim had no reasonable chance of success.

[7] The motion judge further concluded that the pleading contained insufficient allegations to establish an independent cause of action against Bryan Larkin with respect to either of the appellant's claims.

III. ANALYSIS

[8] We are not persuaded that it is plain and obvious that the appellant's claims against the Board cannot succeed. We agree with the motion judge that the appellant did not plead a tenable claim against Chief Larkin, but in the circumstances of the case we would allow the appellant leave to amend this claim.

(1) The Breach of Release Claim

[9] As already indicated, the motion judge made his order dismissing the appellant's action without leave to amend under r. 21.01(1)(b). As a result, and

as he acknowledged in his reasons, he could not consider anything extrinsic to the Amended Statement of Claim which was not referenced in the claim. Moreover, he had to accept the pleaded facts as true for the purpose of the r. 21 motion.

[10] On a generous reading of the Amended Statement of Claim, the appellant had applied for and had been receiving WSIB benefits at the time the Agreement containing the Release was signed. She pleads, at paras. 9-10, that she was diagnosed with PTSD in December 2015, and that, starting in February 2017, she could not attend work due to the severity of her PTSD symptoms. She pleads that in April 2017 she applied to the WSIB for benefits and that her claim was approved: at para. 11. Indeed, she pleads at para. 19 that after her resignation she "continued to receive benefits from WSIB in the form of psychological treatment". The appellant pleads, at para. 20, that in August 2018 she was made aware by WSIB that on January 11, 2018 the Board submitted an appeal of her claim.

[11] *Fleming* was a case that involved uninsured employment under Part X of the WSIA. At issue was the enforceability of a waiver signed by Fleming, who was injured in a go-kart race in which he was the race director. The waiver purported to release all of the respondents from liability for all damages associated with participation in the event. This court concluded that Fleming was an employee, and that the waiver contravened s. 114 of the WSIA, which

provides specifically that workers who are not insured under the workers' compensation scheme, like Fleming, are permitted to sue their employers for workplace accidents. The court concluded that enforcement of the waiver would constitute a contracting out of the protections of the WSIA, and that contracting out of this protection would be contrary to public policy. At para. 34, Juriansz J.A. wrote the passage that the motion judge relied on:

> Considering the sweeping overriding of the common law made by workers' compensation legislation and the broad protection it is designed to provide to workers in the public interest, it would be contrary to public policy to allow employers and workers to contract out of its regime, absent some contrary legislative indication. [Emphasis added.]

[12] However, Juriansz J.A. also wrote, at para. 45, that, "[r]eading the WSIA as a whole, it is apparent its objective is to ensure injured workers have access to compensation".

[13] The Release is not plainly contrary to the WSIA's objective, as identified by Juriansz J.A. Nor have the respondents identified any express statutory provision that the Release would contravene.

[14] Respectfully, it is not plain and obvious that *Fleming* would stand in the way of the appellant's claim in this case. Again, on the facts pleaded by the appellant, following her resignation, she continued to receive benefits from the WSIB in the form of psychological treatment, and it was not until several months after the parties signed an Agreement in respect of her resignation, which

included the Release, that the Board initiated an appeal to the WSIB, to challenge her entitlement to benefits. This is very different from the *Fleming* case where the waiver signed by the employee violated a provision of the WSIA specifically providing for the employee's right of action.

[15] And with respect to the motion judge's conclusion based on the privative clause in s. 118(4) of the WSIA, in our view it is not plain and obvious that the appellant's action in respect of the Release would contravene the WSIB's exclusive jurisdiction to determine matters set out in s. 118 of the WSIA and the privative clause contained in that section.

(2) The Breach of Confidentiality Claim

[16] Nor is it plain and obvious that Chief Larkin's affidavit is subject to absolute privilege and that, accordingly, the appellant's claim has no reasonable prospect of success.

[17] There is arguably an important competing interest at stake that weighs against absolute privilege: there is a confidentiality provision that is part of a settlement agreement. There is an overriding public interest in favour of settlement; promoting settlements contributes to the effective administration of justice in this province: *Sable Offshore Energy Inc. v. Ameron International Corp.*, 2013 SCC 37, [2013] 2 S.C.R. 623, at para. 11. This is not a situation where a party seeks to rely on the provisions of a confidentiality agreement to shield itself

from claims. Moreover, the statement at issue was not made by counsel and it is not apparent that it was necessary for the respondents to include the information that allegedly breached the Agreement in the affidavit for the Board to defend against the certification motion.

[18] We conclude, as this court did in *Amato v. Welsh*, 2013 ONCA 258, 305 O.A.C. 155, at paras. 68-69, 97, that because this matter arguably involves competing interests and privileges, it should be decided with an evidentiary record and not on a pleadings motion.

(3) The Claim against Chief Larkin

[19] The appellant's claim against him is pleaded in contract and is based only on the fact that he swore the affidavit and signed the Release and Agreement on behalf of the Board. The appellant did not plead any facts showing that the Chief's actions were tortious: see e.g., *Odhavji Estate v. Woodhouse*, 2003 SCC 69, [2003] 2 S.C.R. 263.

[20] However, the appellant represents herself in this matter. Having concluded that the motion judge erred in striking her claims against the Board, we would grant her leave to amend her claim against Chief Larkin to plead how his actions were tortious.

IV. DISPOSITION

[21] Accordingly, we would allow the appeal and set aside the order of the motion judge. If the appellant seeks costs of this appeal and of the motion before the motion judge, she shall, within 14 days, serve on the respondents and file with this court brief written submissions, including proof of any disbursements she has incurred and seeks to recover. The respondents shall serve on the appellant and file with this court their responding submissions within 10 days thereafter.

"Alexandra Hoy A.C.J.O."
"K. van Rensburg J.A."
"L.B. Roberts J.A."

TAB Y

THIS IS EXHIBIT "Y" REFERRED TO IN THE AFFIDAVIT OF LAURA J. FREITAG SWORN BEFORE ME THIS 9th **DAY OF** February**,** 2021**.**

A COMMISSIONER FOR TAKING AFFIDAVITS

Amended this 29 day of January 2020

Pursuant to the order of the Honourable Justice Roberts and Justice VanRensburg

Dated this 25 day of October, 2019

Per: .....

Court File No.: CV18-00001938-0000

Ontario

SUPERIOR COURT OF JUSTICE

SUPERIOR COURT OF JUSTICE * BRAMPTON * COUR SUPÉRIEURE DE JUSTICE

B E T W E E N:

KELLY LYNN DONOVAN

Plaintiff

- and -

WATERLOO REGIONAL POLICE SERVICES BOARD, and

BRYAN LARKIN

Defendants

AMENDED

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: "May 9, 2018" Issued by: "C. Davies"

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

c/o Waterloo Regional Police Services Board

200 Maple Grove Road

Cambridge, Ontario

N0B 1M0

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.

2. The Plaintiff, Kelly Lynn Donovan, claims against the Defendant Bryan Larkin, the following relief:

    a. Damages for misfeasance in public office, in the amount of Fifty Thousand Dollars ($50,000.00);

    b. Punitive, exemplary and/or aggravated damages in the amount of Ten

Thousand Dollars ($10,000.00);

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

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

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

II. Parties

3. 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").

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

III.Facts

Class action lawsuit

5. 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

6. 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."

7. The agreement also contained a release signed by chief Bryan Larkin which stated:
    a. "THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD [...] does hereby release and forever discharge KELLY DONOVAN ("DONOVAN") from any and all actions, causes of action, complaints, applications, appeals..."
    b. "AND FOR THE SAID CONSIDERATION, THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD further agrees not to commence, maintain, or continue any action, cause of action or claim, request, complaint, demand or other proceeding, against any person, corporation or entity in which any claim could arise against DONOVAN for contribution or indemnity."
8. The Resignation Agreement was signed by the defendant Bryan Larkin on behalf of the defendant board.
9. The plaintiff agreed to resign from her career in order to recover from her workplace injury and establish comparable employment as a single mother supporting her three children in exchange for the contractual and statutory obligations placed upon the defendants; a public body and a public officer.

Plaintiff's health

10. 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.

11. In December 2015, the plaintiff was diagnosed with post-traumatic stress disorder ("PTSD").

12. In May, 2016, the plaintiff made a disclosure of internal misconduct to the defendant board, her disclosure included allegations that the defendant Bryan Larkin had authorized unlawful arrests of police officers and had failed to properly investigate criminal allegations against police officers.

13. The defendant Bryan Larkin retaliated against the plaintiff by removing her from her position of employment, putting her under investigation by the police service's professional standards branch and she was ordered to have no contact with members of the defendant board.

14. It was defendant Bryan Larkin's retaliation against the plaintiff that caused the plaintiff's health to worsen drastically. These abuses of power, as the plaintiff saw them, became significant triggers of a workplace injury she sustained in February, 2011.

15. 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.

16. In April, 2017, the plaintiff applied to the Workplace Safety and Insurance Board

("WSIB") for benefits as a result of her workplace injury. The plaintiff's claim was approved, claim number 30505408.

17. 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

18. On January 6, 2016, defendant Bryan Larkin was interviewed by Craig Norris, of the CBC News, about the need to prevent PTSD in police. An excerpt from the article reads;
    a. "More can be done to prevent first responders from getting post-traumatic stress disorder, rather than waiting until treatment is necessary."
19. On July 5, 2017, the defendant board received the provincially mandated "PTSD Prevention Plan" prepared by members of the service under the direction of defendant Bryan Larkin. The defendant board's minutes for that meeting show that a Power Point presentation was made to the board that states:
    a. "All PTSD diagnoses in Police Officers and communicators are presumptive;" and
    b. "Plan outlines our commitment to Employees by documenting what we are currently doing and committed to doing for the Prevention, Intervention and recovery from PTSD."
20. On July 17, 2017, the plaintiff published a research paper titled "Misfeasance in

Ontario Policing and the Coordinated Suppression of Whistleblowers." The defendant board received this paper directly from the plaintiff by email. The paper detailed the way the plaintiff was treated when she made a disclosure of misconduct to the defendant board as well as other cases from across Canada of 'whistleblower' retaliation by police chiefs. An excerpt from page 8 of the report reads:

a. "What the public do not know is that at times it is the operational stress an officer is facing that causes them to deal with PTSD symptoms. In some cases, the internal issues created by management can leave effects that last far longer than the difficult calls for service."

21. Defendant Bryan Larkin submitted a statement to CBC News on July 17, 2017, that he was aware of the plaintiff's report.

22. On December 21, 2017, defendant Bryan Larkin swore an affidavit in defense of the class action lawsuit, to support a motion to dismiss the class action lawsuit and advance his position as chief of police employed by the defendant board, and the document was submitted to record. The affidavit was published on the public website of the law firm advancing the class action lawsuit.

23. 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."

24. 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."

25. 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."*

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

27. 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.

28. The information disclosed by defendant Bryan Larkin was sufficient to identify the plaintiff and caused her a great deal of humiliation, mental distress and anger. The plaintiff was used by defendant Larkin to attempt to stop the efforts of the plaintiff's female colleagues in their fight for justice.

29. 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.

30. The defendant Bryan Larkin knew the content of his affidavit was inappropriate because the Waterloo Regional Police Association, (the bargaining agent for current members of the police service), filed a grievance against the defendant board for the violation of several female members' privacy in this same affidavit.

31. Defendant Bryan Larkin was aware of the terms contained in the Resignation Agreement, in that he knew that the plaintiff was contractually barred from participating in the class action lawsuit, and the terms of the Resignation Agreement were to be kept confidential, yet he unnecessarily requested the Human Resources Division of the police service prepare an additional chart that included the plaintiff in his affidavit.

32. Defendant Bryan Larkin has an advanced level of knowledge about police officers who have been diagnosed with PTSD.

33. Defendant Bryan Larkin knew, or ought to have known, the triggers that were responsible for the rapid decline of the plaintiff's health between 2016 and 2017. More specifically, the plaintiff was healthy and actively working until after defendant Larkin retaliated against her for making a disclosure to the defendant board.

34. Defendant Bryan Larkin, who is the chief of police of a large regional municipality and swore an oath to discharge his duties according to law, deliberately involved the plaintiff in the class action lawsuit and violated the terms of the Resignation

Agreement knowing this would injure the plaintiff by impeding her recovery and worsening her PTSD symptoms.

35. 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.

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

37. Following the plaintiff's resignation, she continued to receive benefits from WSIB in the form of psychological treatment by Dr. Kathy Lawrence. Since the plaintiff voluntarily resigned, her salary was no longer being paid by WSIB.

38. In August, 2018, the plaintiff was made aware by WSIB that on January 11, 2018, the defendant Board submitted an appeal of the plaintiff's claim number 30505408. The appeal was prepared by counsel for the defendant, the same counsel who represented the defendants when the resignation agreement was prepared and signed.

39. The plaintiff therefore claims the relief as set out in paragraph 1 of the Statement of Claim for two distinct and separate breaches of the resignation agreement by the defendant Board and individual defendant.

40. The plaintiff therefore claims the relief as set out in paragraph 2 of the Amended Statement of Claim for the deliberate and unlawful conduct by defendant Bryan Larkin.

41. 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

Ontario Superior Court of Justice

PROCEEDING COMMENCED AT Brampton

Amended STATEMENT OF CLAIM

KELLY DONOVAN
14 Laurie Ann Lane
Paris, Ontario
N3L 4H4
Phone: 519-209-5721
Email: kelly@fit4duty.ca

RCP-E 4C (May 1, 2016)

TAB Z

THIS IS EXHIBIT "Z" REFERRED TO IN THE AFFIDAVIT OF LAURA J. FREITAG SWORN BEFORE ME THIS 9th DAY OF February, 2021.

A COMMISSIONER FOR TAKING AFFIDAVITS

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

February 19, 2020

SENT VIA E-MAIL & COURIER

Justice Michael T. Doi
Ontario Superior Court of Justice
A. Grenville & William Davis Court House
7755 Hurontario Street, Suite 100
Brampton, ON L6W 4T6

Dear Mr. Justice Doi:

Re: Kelly Lynn Donovan v. Waterloo Regional Police Services Board and Bryan Larkin (Court File No. CV-18-1938)

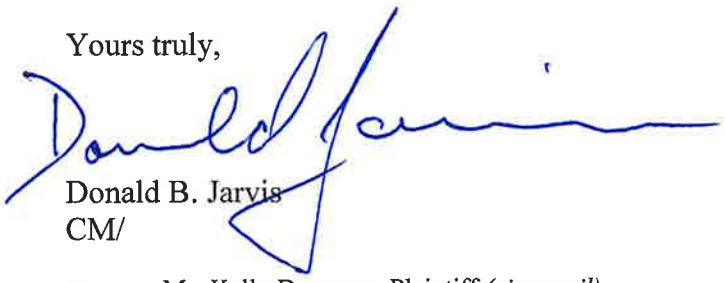
The Plaintiff's appeal in this matter was heard by the Court of Appeal for Ontario on October 11, 2019. For your reference, the Court of Appeal's decision is attached hereto at **Tab A**.

We are writing to seek your direction on the appropriate next step in this proceeding. As you will recall, the Defendants' Rule 21 Motion raised, *inter alia*, the issue of whether the subject matter of the Plaintiff's Amended Statement of Claim was within the jurisdiction of the Ontario courts pursuant to Rule 21.01(3)(a). The parties made full submissions in respect of this jurisdiction issue when the Motion was heard by this Honourable Court on February 13, 2019. In your Reasons for Judgment issued on February 21, 2019 (see **Tab B**), you found that the Motion was fairly and fully disposed of under Rule 21.01(1)(b) without need for recourse to the Defendants' Motion under Rule 21.01(3)(a). Notably, the Court of Appeal did **not** address the jurisdiction issue during the hearing of the Plaintiff's appeal or in its decision. In short, the Defendants' jurisdiction motion remains undecided and the Defendants are entitled to a decision on this issue (see *Sun Oil Co. v. City of Hamilton and Veale*, [1961] O.R. 209 (C.A.) at p. 6 (see **Tab C**)).

Given the fact that you did not rule on the Defendants' jurisdiction motion in your Reasons for Judgment, are you still seized with this matter or should the Defendants' jurisdiction motion be reargued before another judge? If you advise that you remain seized of the Defendants' jurisdiction motion, we respectfully ask that you provide the parties with an approximate time frame for the release of your decision in respect of the Defendants' jurisdiction motion.

Thank you for your immediate attention to this matter. We look forward to your earliest reply.

Yours truly,



Donald B. Jarvis
CM/

cc Ms. Kelly Donovan, Plaintiff *(via email)*
Ms. Virginia Torrance, Regional Municipality of Waterloo Police Services Board *(via email)*

TAB A

COURT OF APPEAL FOR ONTARIO

CITATION: Donovan v. Waterloo Regional Police Services Board, 2019 ONCA 845
DATE: 20191025
DOCKET: C66718

Hoy A.C.J.O., van Rensburg and Roberts JJ.A.

BETWEEN

Kelly Lynn Donovan

Plaintiff/Responding Party (Appellant)

and

Waterloo Regional Police Services Board and Bryan Larkin

Defendants/Moving Parties (Respondents)

Kelly Lynn Donovan, acting in person

Donald B. Jarvis and Cassandra Ma, for the respondents

Heard: October 11, 2019

On appeal from the order of Justice Michael T. Doi of the Superior Court of Justice, dated March 20, 2019, with reasons reported at 2019 ONSC 1212.

REASONS FOR DECISION

I. OVERVIEW

[1] The appellant appeals from the motion judge's order dismissing her action against the respondents under r. 21.01(1)(b) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, without leave to amend, and ordering her to pay costs to the respondents. For the reasons that follow, we allow the appeal, set aside the

order of the motion judge, and grant the appellant leave to further amend her Amended Statement of Claim in respect of the claim against Bryan Larkin.

II. BACKGROUND

[2] In her Amended Statement of Claim, the appellant alleges that the respondents breached the terms of a Release and of a confidentiality provision contained in a settlement agreement (the "Agreement"), dated June 8, 2017. Under the Agreement, the appellant resigned her employment in June 2017, as a police officer with the respondent Waterloo Regional Police Services Board (the "Board"). She seeks damages against the Board and Bryan Larkin, the Chief of the Waterloo Regional Police Service.

[3] The appellant alleges that the respondents (1) breached the Release by appealing her claim for benefits to the Workplace Safety and Insurance Board ("WSIB") arising from a workplace injury; and (2) breached the confidentiality provisions of the Agreement by delivering an affidavit sworn by Chief Larkin, containing information about the Agreement, in defence of a class proceeding against the Board.

[4] The motion judge struck the claim related to the WSIB appeal on the basis that an employer cannot contract out of the *Workplace Safety and Insurance Act, 1997*, S.O. 1997, c. 16, Sched. A ("WSIA"). Pursuant to the Release, the Board, among other things, "release[s] and forever discharge[s] [the appellant] from any

and all...appeals". The appellant pleads that she applied to the WSIB in April 2017, before signing the Release, for benefits related to post-traumatic stress disorder ("PTSD"). After the Board signed the Release, it submitted an appeal of the WSIB's decision.

[5] The motion judge accepted that it was at least arguable that the Release captured the Board's review of the WSIB's initial entitlement decision: at para. 20. His decision that it was plain and obvious that the Amended Statement of Claim failed to disclose a cause of action in respect of the alleged breach of the Release was based on his conclusion that the result was governed by this court's decision in *Fleming v. Massey*, 2016 ONCA 70, 128 O.R. (3d) 401, leave to appeal refused, [2016] S.C.C.A. No. 113. The motion judge concluded that *Fleming* made it abundantly clear that the Release "cannot operate to preclude the Board, or the [appellant] ...from exercising rights and discharging obligations under the WSIA", because "as a matter of law, parties cannot contract out of the scheme under the WSIA": at para. 23. The motion judge also concluded that the privative clause in s. 118(4) of the WSIA, which provides, in relevant part, that an action or decision of the WSIB under the Act cannot be restrained by a court process or procedure, would preclude the appellant's claim for breach of the Release in relation to the WSIB proceedings: at paras. 24-25.

[6] The motion judge struck the claim related to the breach of confidentiality because he concluded that it could not be based solely on an affidavit prepared

for a court proceeding. The Agreement required the parties, except where required by law, to "keep the terms and existence of [the Agreement] in absolute and strict confidence at all times". While the motion judge found, at para. 33, that "it seems less clear whether Chief Larkin's affidavit sufficiently preserves the [appellant's] confidentiality", he concluded that because his affidavit was used in defending a class action in court, it was covered by absolute privilege. Accordingly, the motion judge concluded that the appellant's claim had no reasonable chance of success.

[7] The motion judge further concluded that the pleading contained insufficient allegations to establish an independent cause of action against Bryan Larkin with respect to either of the appellant's claims.

III. ANALYSIS

[8] We are not persuaded that it is plain and obvious that the appellant's claims against the Board cannot succeed. We agree with the motion judge that the appellant did not plead a tenable claim against Chief Larkin, but in the circumstances of the case we would allow the appellant leave to amend this claim.

(1) The Breach of Release Claim

[9] As already indicated, the motion judge made his order dismissing the appellant's action without leave to amend under r. 21.01(1)(b). As a result, and as he acknowledged in his reasons, he could not consider anything extrinsic to the

Amended Statement of Claim which was not referenced in the claim. Moreover, he had to accept the pleaded facts as true for the purpose of the r. 21 motion.

[10] On a generous reading of the Amended Statement of Claim, the appellant had applied for and had been receiving WSIB benefits at the time the Agreement containing the Release was signed. She pleads, at paras. 9-10, that she was diagnosed with PTSD in December 2015, and that, starting in February 2017, she could not attend work due to the severity of her PTSD symptoms. She pleads that in April 2017 she applied to the WSIB for benefits and that her claim was approved: at para. 11. Indeed, she pleads at para. 19 that after her resignation she "continued to receive benefits from WSIB in the form of psychological treatment". The appellant pleads, at para. 20, that in August 2018 she was made aware by WSIB that on January 11, 2018 the Board submitted an appeal of her claim.

[11] *Fleming* was a case that involved uninsured employment under Part X of the WSIA. At issue was the enforceability of a waiver signed by Fleming, who was injured in a go-kart race in which he was the race director. The waiver purported to release all of the respondents from liability for all damages associated with participation in the event. This court concluded that Fleming was an employee, and that the waiver contravened s. 114 of the WSIA, which provides specifically that workers who are not insured under the workers' compensation scheme, like Fleming, are permitted to sue their employers for workplace accidents. The court concluded that enforcement of the waiver would constitute a contracting out of the

protections of the WSIA, and that contracting out of this protection would be contrary to public policy. At para. 34, Juriansz J.A. wrote the passage that the motion judge relied on:

> Considering the sweeping overriding of the common law made by workers' compensation legislation and the broad protection it is designed to provide to workers in the public interest, it would be contrary to public policy to allow employers and workers to contract out of its regime, absent some contrary legislative indication. [Emphasis added.]

[12] However, Juriansz J.A. also wrote, at para. 45, that, "[r]eading the WSIA as a whole, it is apparent its objective is to ensure injured workers have access to compensation".

[13] The Release is not plainly contrary to the WSIA's objective, as identified by Juriansz J.A. Nor have the respondents identified any express statutory provision that the Release would contravene.

[14] Respectfully, it is not plain and obvious that *Fleming* would stand in the way of the appellant's claim in this case. Again, on the facts pleaded by the appellant, following her resignation, she continued to receive benefits from the WSIB in the form of psychological treatment, and it was not until several months after the parties signed an Agreement in respect of her resignation, which included the Release, that the Board initiated an appeal to the WSIB, to challenge her entitlement to benefits. This is very different from the *Fleming* case where the

waiver signed by the employee violated a provision of the WSIA specifically providing for the employee's right of action.

[15] And with respect to the motion judge's conclusion based on the privative clause in s. 118(4) of the WSIA, in our view it is not plain and obvious that the appellant's action in respect of the Release would contravene the WSIB's exclusive jurisdiction to determine matters set out in s. 118 of the WSIA and the privative clause contained in that section.

(2) The Breach of Confidentiality Claim

[16] Nor is it plain and obvious that Chief Larkin's affidavit is subject to absolute privilege and that, accordingly, the appellant's claim has no reasonable prospect of success.

[17] There is arguably an important competing interest at stake that weighs against absolute privilege: there is a confidentiality provision that is part of a settlement agreement. There is an overriding public interest in favour of settlement; promoting settlements contributes to the effective administration of justice in this province: *Sable Offshore Energy Inc. v. Ameron International Corp.*, 2013 SCC 37, [2013] 2 S.C.R. 623, at para. 11. This is not a situation where a party seeks to rely on the provisions of a confidentiality agreement to shield itself from claims. Moreover, the statement at issue was not made by counsel and it is not apparent that it was necessary for the respondents to include the information that allegedly

breached the Agreement in the affidavit for the Board to defend against the certification motion.

[18] We conclude, as this court did in *Amato v. Welsh*, 2013 ONCA 258, 305 O.A.C. 155, at paras. 68-69, 97, that because this matter arguably involves competing interests and privileges, it should be decided with an evidentiary record and not on a pleadings motion.

(3) The Claim against Chief Larkin

[19] The appellant's claim against him is pleaded in contract and is based only on the fact that he swore the affidavit and signed the Release and Agreement on behalf of the Board. The appellant did not plead any facts showing that the Chief's actions were tortious: see e.g., *Odhavji Estate v. Woodhouse*, 2003 SCC 69, [2003] 2 S.C.R. 263.

[20] However, the appellant represents herself in this matter. Having concluded that the motion judge erred in striking her claims against the Board, we would grant her leave to amend her claim against Chief Larkin to plead how his actions were tortious.

IV. DISPOSITION

[21] Accordingly, we would allow the appeal and set aside the order of the motion judge. If the appellant seeks costs of this appeal and of the motion before the motion judge, she shall, within 14 days, serve on the respondents and file with this

court brief written submissions, including proof of any disbursements she has incurred and seeks to recover. The respondents shall serve on the appellant and file with this court their responding submissions within 10 days thereafter.

Alexander M ACJ

K. van Rensburg JA

I.B. Ralfe JA.

TAB B

CITATION: Donovan v. Waterloo Regional Police Services Board, 2019 ONSC 1212
COURT FILE NO.: CV-18-1938
DATE: 2019 02 21

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:	)	
	)	
KELLY LYNN DONOVAN	)	Self-Represented
	)	
Plaintiff	)	
	)	
- and -	)	
	)	
WATERLOO REGIONAL POLICE SERVICES BOARD and BRYAN LARKIN	)	Donald Jarvis and Cassandra Ma, for the Defendants
	)	
Defendants	)	
	)	
	)	**HEARD:** February 13, 2019

REASONS FOR JUDGMENT

DOI J.

Introduction

[1] This is an action for breach of contract. The Plaintiff claims that the Defendants appealed her claim for workers' compensation benefits and thereby

breached the terms of a release under a Resignation Agreement they executed with her. She also claims that the Defendants delivered an affidavit in a separate court proceeding which identified her, contrary to the confidentiality terms of the Resignation Agreement.

[2] The Defendants brought this motion under Rules 21.01(1)(b), 21.01(3)(a) and 21.01(3)(d) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended, to strike the Amended Statement of Claim issued May 4, 2018. For the reasons that follow, the pleading is struck under Rule 21.01(1)(b) without leave to amend.

Background

[3] The Amended Statement of Claim discloses the following.

[4] The Plaintiff is a former police officer who resigned her position with the Defendant Waterloo Regional Police Services Board ("Board") after executing a Resignation Agreement on June 8, 2017 with the Board and her collective bargaining agent, the Waterloo Regional Police Association.

[5] The Amended Statement of Claim refers to the Resignation Agreement and pleads, among other things, the following provisions:

> 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.
>
> [...]
>
> THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD [...] does hereby release and forever discharge KELLY DONOVAN ("DONOVAN") from any and all actions, causes of action, complaints, applications, appeals
>
> [...]
>
> AND FOR THE SAID CONSIDERATION, THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD further agrees not to commence, maintain, or continue any action, cause of action or claim, request, complaint, demand or other proceeding, against any person, corporation or entity in which any claim could arise against DONOVAN for contribution or indemnity.

[6] After the Resignation Agreement was executed, the pleading alleges that the Defendants breached the terms of the contract.

The Claim

[7] On May 9, 2018, the Plaintiff commenced this action. Her Amended Statement of Claim seeks damages against the Board and the personally-named Defendant, Bryan Larkin, Chief of the Waterloo Regional Police Service, and her reinstatement as a police officer with the Board, for the Defendants' alleged breach of the Resignation Agreement by: (i) appealing her claim (Claim No. 30505408) for statutory care and benefits to the Workplace Safety and Insurance Board ("WSIB") arising from a workplace incident; and (ii) delivering an affidavit

sworn by Chief Larkin on December 21, 2017 in a separate court proceeding that contained information that is said to have disclosed her identity in breach of the confidentiality terms under the Resignation Agreement.[1]

[8] The Defendants responded to the claim by delivering a Notice of Motion dated June 7, 2018 to strike the claim.

The Test under Rule 21.01(1)(b)

[9] Under Rule 21.01(1)(b), a party may strike all of part of a claim for failing to disclose a reasonable cause of action. The framework for a Rule 21.01(1)(b) motion is well established. There is no evidence on a Rule 21.01(1)(b) motion. The material facts pleaded are deemed to be proven or true, except to the extent that the alleged facts are patently ridiculous or manifestly incapable of being proven. The court is entitled to read and rely on the terms of any document pleaded or incorporated by reference in the claim. As the facts pleaded are the basis for evaluating the claim's possibility of success, a claimant is not entitled to rely on the possibility that new facts may turn up as the case progresses. The novelty of the cause of action is of no concern at this stage of the proceeding, and the statement of claim must be read generously to allow for drafting deficiencies. If the claim has some chance of success, it must be permitted to

---

1 On or about May 30, 2017, the Board was named as a defendant in a class action. The putative class members in the class action were current and former employees of the Board and their family members. The Plaintiff was not a putative class member in the proceeding. On July 13, 2018, Baltman J. dismissed the class action; *Rivers v. Waterloo Regional Police Services Board*, 2018 ONSC 4307.

proceed; *R. v. Imperial Tobacco*, 2011 SCC 42 at para. 22; *Castrillo v. Workplace Safety and Insurance Board*, 2017 ONCA 121 at paras. 14 and 15.

[10] To strike a claim under Rule 21.01(1)(b), it must be plain and obvious on a generous reading that the claim discloses no reasonable cause of action; *Conway v. L.S.U.C.*, 2016 ONCA 72 at para. 7; *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959 at 980. In *Imperial Tobacco*, the rationale for this test was explained (at paras. 17 and 19 to 21):

> The Test for Striking Out Claims
>
> A claim will only be struck if it is plain and obvious, assuming the facts pleaded to be true, that the pleading discloses no reasonable cause of action. Another way of putting the test is that the claim has no reasonable prospect of success. Where a reasonable prospect of success exists, the matter should be allowed to proceed to trial.
>
> [...]
>
> The power to strike out claims that have no reasonable prospect of success is a valuable housekeeping measure essential to effective and fair litigation. It unclutters the proceedings, weeding out the hopeless claims and ensuring that those that have some chance of success go on to trial.
>
> This promotes two goods — efficiency in the conduct of the litigation and correct results. Striking out claims that have no reasonable prospect of success promotes litigation efficiency, reducing time and cost. The litigants can focus on serious claims, without devoting days and sometimes weeks of evidence and argument to claims that are in any event hopeless. The same applies to judges and juries, whose attention is focused where it should be — on claims that have a reasonable chance of success. The efficiency gained by weeding out unmeritorious claims in turn contributes to better justice. The more the evidence and arguments are trained on the real issues, the more likely it is that the trial process will successfully come to grips with the parties' respective positions on those issues and the merits of the case.
>
> Valuable as it is, the motion to strike is a tool that must be used with care. The law is not static and unchanging. Actions that yesterday were deemed hopeless may tomorrow succeed. [...] The history of our law reveals that often new developments in the law first surface on motions to strike or similar preliminary motions, like the one at issue in *Donoghue v. Stevenson*.

> Therefore, on a motion to strike, it is not determinative that the law has not yet recognized the particular claim. The court must rather ask whether, assuming the facts pleaded are true, there is a reasonable prospect that the claim will succeed. The approach must be generous and err on the side of permitting a novel but arguable claim to proceed to trial. [citations omitted]

[11] Leave to amend a claim will not be permitted when it is plain and obvious that no tenable cause of action is possible on the facts alleged: *Conway v. L.S.U.C.*, 2016 ONCA 72 at para. 16.

Position of the Parties

[12] The Defendants submit that the Amended Statement of Claim fails to plead the requisite elements to support a breach of contract claim against them. Their argument is two-fold. First, they submit that the Board's effort to seek a review of the Plaintiff's initial entitlement decision by the Workplace Safety and Insurance Board ("WSIB") (i.e., by filing an Intent to Object) under the *Workplace Safety and Insurance Act, 1997*, S.O. 1997, c.17, Sch. A, as amended ("WSIA"), was not a breach of contract because the WSIA expressly prohibits parties from contracting out of the statutory scheme. They further submit that Chief Larkin's affidavit cannot form the basis of a claim for breach of contract as it was prepared for use in a court proceeding and is subject to absolute privilege.

[13] The Plaintiff relies on the Resignation Agreement as the contractual basis for her claim. By commencing a review or appeal of her initial entitlement decision by the WSIB for statutory workplace insurance benefits, the Plaintiff

claims that the Defendants breached the terms of their settlement agreement with her. She further alleges that Chief Larkin's affidavit was made without regard to the confidentiality term under the Retirement Agreement as pleaded in the Amended Statement of Claim, and relies on this in further support of her breach of contract claim.

Analysis

[14] As the Plaintiff's action is for a breach of contract, the claim must prove: (i) the existence of a contract with the Defendants; and (ii) a breach of the contract; *Mars Canada Inc. v. Bemco Cash & Carry Inc.*, 2018 ONCA 239 at para. 32.

[15] The Amended Statement of Claim pleads the Resignation Agreement as the underlying basis for the claim. Paragraph 5 of the claim pleads the confidentiality clause under the Resignation Agreement, and paragraph 6(a) pleads an excerpt of the Resignation Agreement by which the Board broadly agreed to release and forever discharge the Plaintiff "*from any and all actions, causes of action, complaints, applications and appeals ...*" Paragraph 6(b) pleads a further provision of the Resignation Agreement by which the Defendants agreed "*not to commence, maintain or continue any action, cause of action, claim, request, complaint, demand or other proceeding, against any person,*

corporation or entity in which any claim could arise against DONOVAN for contribution or indemnity."

Claim for breach of contract by commencing a proceeding under the WSIA

[16] I am persuaded that the release executed by the Board under the Resignation Agreement did not preclude it from participating in the WSIB proceedings. I also find that it is plain and obvious that the claim arising from the Board's effort to review the Plaintiff's initial entitlement decision by the WSIB has no reasonable prospect of succeeding.

[17] The Amended Statement of Claim pleads that the terms of the Resignation Agreement include a release in favour of the Plaintiff against "*any and all actions, causes of action, complaints, applications, [and] appeals,*" among other things, as well as a further agreement "*not to commence any action, cause of action or claim, request, complaint, demand or other proceeding against any person corporation or entity in which any claim could arise against the Plaintiff for contribution or indemnity.*" The Plaintiff relies on these terms under the Resignation Agreement for her breach of contract claim against the Defendants for submitting an appeal of her initial entitlement decision by the WSIB on January 11, 2018.

[18] The Defendants submit that the Board's review of the Plaintiff's initial entitlement decision by the WSIB could not have led to any kind of finding of

liability or obligation owed by the Plaintiff. Absent any fraud or misrepresentation, which is not alleged here, the Defendants submit that the WSIB will not pursue a recovery of benefits from a worker if it reverses a previous decision that granted the worker entitlement to benefits; WSIB Policy 19-08-04: Recovery of Benefit-Related Debts, at pp. 1, 3 and 4; Decision No. 1658/02, 2002 WSIA 2718 at para. 20. Accordingly, the Defendants submit that the Board's review of the initial entitlement decision did not implicate the term under the Resignation Agreement by which the Board agreed to not commence a proceeding in which a claim could arise against the Plaintiff for contribution or indemnity.

[19] Assuming that the Defendants' view accurately reflects the policy intent of the above-mentioned WSIB Policy and its interpretation by the appeals tribunal, it still remains uncertain (albeit in a remote sense) as to whether the Plaintiff may, at some future time, incur a potential claim for contribution or indemnity based on some aspect of the Board's review of her initial entitlement decision. To definitively say otherwise would necessarily call for speculation as to future events and cause the decision to fall outside the plain and obvious test.

[20] Moreover, the Amended Statement of Claim also pleads a much broader release by the Board under the Resignation Agreement to release the Plaintiff from "*any and all ... complaints, applications and appeals.*" On a plain reading of this term on its face, it seems at least arguable that it captures the Board's review of the WSIB's initial entitlement decision, as the Plaintiff's submits. She also

notes that the Board sought a review of her initial entitlement decision by the WSIB several months after it executed the Resignation Agreement.

[21] Despite the foregoing, I accept that the Resignation Agreement cannot prevent the parties from participating in proceedings before the WSIB as parties cannot contract out from their rights and obligations under the legislative scheme governing workers' compensation in Ontario. As explained by Juriansz J.A. for the Court of Appeal for Ontario, workplace parties cannot waive their rights and obligations under the WSIA as a matter of law:

> I recognize that the courts should exercise extreme caution in interfering with the freedom to contract on the grounds of public policy. Considering the sweeping overriding of the common law made by workers' compensation legislation and the broad protection it is designed to provide to workers in the public interest, it would be contrary to public policy to allow employers and workers to contract out of its regime, absent some contrary legislative indication.

[22] *Fleming v. Massey*, 2016 ONCA 70 at para. 34; leave to appeal to the SCC dismissed with costs, 2016 CanLII 33997; citing *Ontario (Human Rights Commission) v. Etobicoke (Borough)*, [1982] 1 S.C.R. 202 at 214.

[23] The finding by the Court of Appeal in Fleming makes is abundantly clear that the release provision under the Resignation Agreement cannot operate to preclude the Board, or the Plaintiff for that matter, from exercising rights and discharging obligations under the WSIA. As a matter of law, parties cannot contract out of the scheme under the WSIA. Accordingly, it is plain and obvious

that the Plaintiff's claim for breach of contract based on the Board's effort to seek a review of her initial entitlement decision by the WSIB simply fails to disclose a reasonable cause of action.

[24] In arriving at this finding, I also am mindful of ss. 118(1), (2), (3) and (4) of the WSIA which provide the WSIB with exclusive statutory jurisdiction that cannot be restrained by a proceeding in court:

> 118 (1) the Board has exclusive jurisdiction to examine, hear and decide all matters and questions arising under this Act, except where this Act provides otherwise.
>
> (2) Without limiting the generality of subsection (1), the Board has exclusive jurisdiction to determine the following matters:
>
> [...]
>
> 2. Whether personal injury or death has been caused by an accident.
>
> 3. Whether an accident arose out of and in the course of an employment by a Schedule 1 of Schedule 2 employer;
>
> [...]
>
> (3) An action or decision of the Board under this Act is final and is not open to question or review in a court.
>
> (4) No proceeding by or before the Board shall be restrained by injunction, prohibition or other process or procedure in a court or be removed by application for judicial review or otherwise in a court. [emphasis added]

[25] Of particular note is the strongly worded privative clause at s.118(4) of the WSIA that precludes a party from restraining proceedings before the WSIB by pursuing a claim or remedy in court; *Rodrigues v. Ontario (Workplace Safety and Insurance Appeals Tribunal)*, 2008 ONCA 719 at para. 22. While the legislature cannot completely oust the jurisdiction of the Superior Court, which is

derived under s. 96 of the *Constitution Act, 1867*, I find that s. 118(4) precludes the Plaintiff from pursuing her breach of contract claim to restrain the Board from taking part in proceedings before the WSIB involving her workers' compensation claim under the WSIA; *Castrillo v. Workplace Safety and Insurance Board*, 2017 ONCA 121 at paras. 54-56, 59 and 66.

Claim for breach of contract by filing affidavit

[26] The Defendants argue that it is plain and obvious that the Plaintiff's claim based on Chief Larkin's affidavit has no reasonable prospect of success. I agree with this.

[27] The Amended Statement of Claim pleads that Chief Larkin swore an affidavit on December 21, 2017 to defend a class action lawsuit (Court File No. CV-17-2346-00) which made allegations alleged of systemic and institutional gender-based discrimination and harassment. Specifically, the claim pleads that Chief Larkin attached to his affidavit a chart prepared by the Human Resources Division of the police service to show complaints to the Human Rights Tribunal that female employees had made in the last five years, together with their status or resolution. The affidavit expressly states that this chart provides non-identifying information to preserve the identities of the complainants, with the exception of the representative class action plaintiff whose complaint to the Human Rights Tribunal remained outstanding when the affidavit was sworn.

[28] The claim pleads that the attached chart to Chief Larkin's affidavit is titled "*Police Officer initiated Ontario Human Rights Complaints*" and lists four (4) female officers who are identified as follows:

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."

[29] Of the two unnamed "Constables" who are mentioned in the chart, the Amended Statement of Claim pleads that one complaint is shown as having had been resolved in the following manner:

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

[30] The claim pleads that only one female officer is listed on the chart as having "voluntarily" resigned. By process of elimination, the claim asserts that Chief Larkin's affidavit has the effect of identifying the Plaintiff as she is the only female constable employed by the Board over the past five years who had filed a human rights complaint and voluntarily resigned.

[31] In pleading a breach of contract, the Amended Statement of Claim states that Chief Larkin's public disclosure was not required by law, contained sufficient information to identify the Plaintiff, and violated the terms of the Resignation Agreement.

[32] The Defendants submit that Chief Larkin's affidavit does not disclose information in breach of the confidentiality term of the Resignation Agreement, and thus does not give rise to a reasonable cause of action for breach of contract. According to the Defendants, the Plaintiff's claim that the affidavit contains sufficient information for the plaintiff to be identified is wholly speculative and remote at law. In any event, as Chief Larkin's affidavit was delivered for use in court proceedings, the Defendants submit that it is covered by absolute privilege and cannot form the basis of the Plaintiff's claim for breach of contract. They rely on a body of jurisprudence which supports the proposition that statements made in the course of a judicial proceeding, including statements in pleadings and other documents made for the proceeding, are subject to absolute privilege and cannot ground a cause of action.

[33] From the information pleaded in the Amended Statement of Claim, I recognize that Chief Larkin's affidavit, on its face, does not directly identify the Plaintiff or the other complainants who are mentioned in it. I accept that the references in the affidavit to the four (4) female complainants are oblique and anonymized to some degree. However, given that the pool of female complainants is fairly small and features only four members, with one member apparently named given her known role as a representative plaintiff in the class action, it is unclear to me just how anonymous the remaining three complainants actually are to those with some knowledge of the police service. This may be

particularly true in the case of one complainant who is identified in the affidavit as having the rank of sergeant. In the circumstances, it seems less than clear whether Chief Larkin's affidavit sufficiently preserves the Plaintiff's confidentiality. Accordingly, I find that the issue of whether the unnamed reference in Chief Larkin's affidavit is sufficiently capable of identifying the Plaintiff and breaches the confidentiality term of the Resignation Agreement remains an open question.

[34] Regardless of the foregoing, however, it is clear that Chief Larkin's affidavit was prepared and used in a court proceeding. Accordingly, I find that the affidavit is covered by absolute privilege and cannot support the Plaintiff's claim in breach of contract.

[35] Brown J.A. for the Court of Appeal has explained that, "*The doctrine of absolute privilege contains several basic elements: no action lies, whether against judges, counsel, jury, witnesses or parties, for words spoken in the ordinary course of any proceedings before any court or judicial tribunal recognized by law; the privilege extends to documents properly used and regularly prepared for use in the proceedings;*" *Salasel v. Cuthbertson*, 2015 ONCA 115 at para. 35, citing *Amato v. Welsh*, 2013 ONCA 258 at para. 34. In determining whether absolute privilege applies to a communication, the analysis necessarily focuses on the occasion that the communication is made, not its content; *Salasel* at para. 46. This immunity extends to any and all causes of action, however framed, and is not limited to actions for defamation; *Salasel* at

para. 38, and *Samuel Manu-Tech Inc. v. Redipac Recycling Corp.*, [1999] O.J. No. 3242 (C.A.) at para. 20. A claim based on communications which take place during, incidental to, and in the furtherance of a court proceeding is subject to absolute immunity; *Cook v. Milborne*, 2018 ONSC 419 at paras. 17-19. The existing doctrine of absolute privilege affords a fulsome immunity that is broadly applied to all matters done *coram judice,* and is unaffected by whether the evidence was given in bad faith and actual malice or without justification or excuse; *Cook* at paras. 19-21; *Fabian v. Margulies* (1985), 53 O.R. (2d) 380 (C.A.) at para. 9, *Lincoln v. Daniels*, [1962] 1 Q.B. 237 (C.A.) at 257-8.

[36] In view of the foregoing, it is plain and obvious that the Plaintiff's claim for breach of contract arising from Chief Larkin's affidavit discloses no reasonable cause of action. His affidavit clearly was used in defending a class action in court, which the Amended Statement of Claim expressly acknowledges. To the extent that the claim rests on this affidavit, it has no reasonable chance of success in law and should not continue; *Cook* at paras. 21, 32-33 and 57; see also *Gray Investigations Inc. v. Mitchell*, [2007] O.J. No. 1936 (S.C.J.) at paras. 17-20, and *Dooley v. C.N. Weber Ltd.* (1994), 19 O.R. (3d) 779 (Gen.Div.).

[37] From my review of the Amended Statement of Claim, I further find that the pleading is insufficient to establish an independent cause of action against the personally-named defendant, Bryan Larkin. The pleading identifies him as the Chief of the police service and an employee of the Board. The claim gives no

indication that he acted outside the scope of his employment duties. While recognizing that he swore the affidavit that the Board relied upon in defending the class action, the claim does not set out separate facts against him or personal interests that are independent from the breach of contract claim against the Board. Rather, the claim against both Defendants is essentially the same. It was the Board, and not Chief Larkin, which was party to the Resignation Agreement, although he signed the agreement on behalf of the Board. As such, and in the circumstances of this case, I find that he is protected from personal liability; *Lussier v. Windsor-Essex Catholic District School Board*, [1999] O.J. No. 4303 (Div. Ct.) at paras. 17-18, citing *Normart Management Ltd. v. West Hill Redevelopment Co.* (1998), 37 O.R. (3d) 97 (C.A.) at 104.

No Leave to Amend

[38] I recognize that leave to amend a pleading should not lightly be withheld; *Conway v. L.S.U.C.,* 2016 ONCA 72 at paras. 16-18. However, given the context of this case, it is plain and obvious that no tenable cause of action supporting a breach of contract claim under the Resignation Agreement is possible. The Amended Statement of Claim essentially frames a tandem breach of contract claim by relying on the Defendant's effort to review the Plaintiff's initial entitlement decision by the WSIB, and by also relying on Chief Larkin's affidavit to defend the class action proceeding. As explained above, it is plain and obvious that these material facts cannot possibly give rise to a breach of contract

given the parties' inability to contract out of the WSIA and the absolute privilege that attached to the affidavit. No opportunity to amend the pleading could alter this and realistically preserve the action. Accordingly, leave to amend is denied.

Conclusion

[39] The Amended Statement of Claim is struck under Rule 21.01(1)(b) without leave to amend.

[40] The Defendants' motion to strike was also brought under Rules 21.01(3)(a) and 21.01(3)(d), respectively. For the reasons set out above, I am satisfied that this motion is fairly and fully disposed of under Rule 21.01(1)(b) without the need for recourse to these other grounds.

[41] I strongly encourage the parties to agree on costs. If they are unable, the Defendants may deliver cost submissions not to exceed three (3) pages (excluding any cost outline and offer(s) to settle) within fifteen (15) days from this judgment, followed by the Plaintiff's cost submissions on the same terms within a further fifteen (15) days. No reply submissions are permitted without leave.

(Original signed by Justice Doi)

Doi J.

Released: February 21, 2019

CITATION: Donovan v. Waterloo Regional Police Services Board, 2019 ONSC 1212
COURT FILE NO.: CV-18-1938
DATE: 2019 02 21

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

KELLY LYNN DONOVAN

Plaintiff

- and -

WATERLOO REGIONAL POLICE SERVICES BOARD and BRYAN LARKIN

Defendants

REASONS FOR JUDGMENT

Doi J.

Released: February 21, 2019

TAB C

Sun Oil Co. v. City of Hamilton and Veale

[1961] O.R. 209

ONTARIO
[COURT OF APPEAL]
PORTER, C.J.O. MACKAY
AND MORDEN, JJ.A.
25TH JANUARY 1961

Municipal Corporations IV B -- Motions & Orders -- Whether validity of by-law determinable on originating motion or motion to quash -- Municipal Act (Ont.), s. 296 -- R. 604 (Ont.) -- Whether by-law an "instrument".

After a municipal by-law has been duly passed, its validity cannot be determined upon an originating motion nor can the Court entertain a motion to quash. The effect of s. 296 of the Municipal Act, R.S.O. 1950, c. 243 cannot be avoided by bringing an originating motion to have a by-law declared inapplicable to a business covered thereby, on the ground of want of power to enact it. Assuming that a by-law is an "instrument" within R. 604 (Ont.), the only jurisdiction on an originating motion is to interpret the by-law and not to determine its validity. Held, on appeal, in so far as the Judge below purported to interpret an "automobile service station" licensing by-law, he was wrong in concluding that it did not apply to a proposed gasoline service station business and it was also clear that a separate licence was required to each location.

[Re Clements & Toronto, 20 D.L.R. (2d) 497, [1960] O.R. 18; Rigden v. Whitstable Urban Dist. Council, [1959] Ch. 422, folld; City of Toronto v. Can. Oil Companies Ltd., 45 O.L.R. 225, apld; City of Windsor v. Dapco Ltd., 19 D.L.R. (2d) 688,

[1959] O.W.N. 238, refd to]

APPEAL from an order of Stewart, J., on a motion respecting the applicability and validity of a by-law. Reversed.

J.T. Weir, Q.C., for appellants; R.C. Sharp, Q.C., and David Pozer, for applicant, respondent.

The judgment of the Court was delivered by

MORDEN, J.A.:-- This is an appeal by the City of Hamilton and its Building Commissioner from an order made by Mr. Justice Stewart on May 13, 1960.

Sun Oil Company Ltd., the respondent to this appeal, moved by originating notice for an order of mandamus directing the appellants to issue permits for the erection and operation of a gasoline service station upon certain lands fronting on Aberdeen Ave. in Hamilton. Before this motion was heard, the applicant served a further notice stating that it would also move "for a declaration that by-law 3022 of the Corporation of the City of Hamilton does not apply for the purpose of licensing and regulating owners of Gasoline Service Stations or alternatively if the said by-law does apply, that such an owner is not required to obtain more than one licence to carry on the business of a Service Station Operator in the City of Hamilton at different locations". By-law 3022 is the city's general licensing by-law.

The learned Judge of first instance, after hearing the motion on March 15, 1960, reserved his judgment until May 13th when he made a declaration "that By-law Number 3022, being a by-law of the Corporation of the City of Hamilton, does not apply for the purpose of licensing and regulating owners of gasoline service stations". In view of this declaration the learned Judge was not required to deal with the relief asked alternatively to it. No reasons were given. No disposition was made of first notice asking for mandamus.

The appellants base their appeal to this Court upon two grounds -- (1) the learned Judge lacked jurisdiction to make the declaration and (2) he misdirected himself as to the meaning and effect of the by-law.

The view I take of the law applicable to the procedure taken by the applicant and of the effect of the Judge's failure to dispose of the motion for mandamus renders much of the argument we heard irrelevant. It is to be regretted that our decision on this appeal will not settle of the important issues between the parties. In my opinion, neither the learned Judge of first instance nor this Court can in these proceedings pass upon the validity of the whole or of any part of By-law 3022.

The paragraphs of the by-law dealing with automobile service stations were passed in 1951. Their validity cannot now be determined upon an originating motion: Re Clements & Toronto, 20 D.L.R. (2d) 497, [1960] O.R. 18. The Court cannot at this late date entertain a motion to quash any part of the by-law.

The effect of s. 296 of the Municipal Act, R.S.O. 1950, c. 243, cannot be avoided by bringing an originating motion for an order declaring that any part of the by-law is inapplicable to a particular trade or business, purportedly governed by it, on the ground that the city lacked the legislative power to enact that part. Nor can R. 604 be invoked where the validity of an instrument is the issue to be decided: Rigden v. Whitstable Urban Dist. Council, [1959] Ch. 422. To obtain a decision upon the validity of the by-law or any part of it, the applicant should have instituted proceedings by writ of summons. In proceedings as now constituted we are bound, as was Mr. Justice Stewart, to assume that the by-law is valid and for this reason we cannot consider and express our opinion upon many interesting submissions advanced by Mr. Sharp. For instance, he argued that in 1951, the city had no legislative power to pass a by-law licensing and regulating gasoline service stations and in support of this contention he cited the decision of LeBel J. (as he then was) in Can. Oil Companies Ltd. v. City of London, 5 D.L.R. (2d) 230, [1956] O.R. 878. In my opinion, it is unnecessary, in fact it would be improper,

for this Court upon this appeal to decide whether that case and City of Toronto v. Can. Oil Companies Ltd. (1919), 45 O.L.R. 225, were correctly decided. For the same reason we can not express our opinion whether or not the by-law is invalid because it does not contain a series of rules governing the issue of licences.

Upon the assumption that By-law 3022 is valid in all respects then the only possible jurisdiction Mr. Justice Stewart had was to interpret it. This can only be found in R. 604 which reads: "Where the rights of any person depend upon the construction of any deed, will or other instrument, he may apply by originating notice, upon notice to all persons concerned, to have his rights declared and determined." This Court has recently on two occasions expressed grave and serious doubts whether a municipal by-law is an "instrument" within the meaning of the rule: City of Windsor v. Dapco Ltd., 19 D.L.R. (2d) 688, [1959] O.W.N. 238; and Re Clements & Toronto, supra. The appellants' counsel made no submissions upon this point. Counsel for the respondent argued that the doubts expressed by this Court were obiter dicta and that they should give way to the contrary practice of single Judges beginning in Blainey v. Toronto, [1935], 4 D.L.R. 328, O.R. 476. However, because I have concluded that if the learned Judge of first instance did in fact interpret the by-law, he was incorrect in his interpretation and should have refused to make the declaration he did, I am not compelled to decide whether or not R. 604 empowers the Court to interpret municipal by-laws.

The relevant parts of By-law 3022 are as follows:

1. The charges hereinafter set forth are hereby fixed and shall be levied and collected from all persons obtaining licences for the several trades, businesses or objects hereinafter mentioned.....

(36) For a licence for

Automobile Service Station

(c) A building or place where gasoline and oils are stored

or kept for sale. Where only one service hose for supply of gasoline or motor fuel oil to motor vehicles,

-- an annual fee of $10.00

for each additional service hose,

-- an annual fee of $7.50

2. No person shall carry on in the City of Hamilton any trade, business, calling or affairs, mentioned in this By-law without first obtaining a licence therefor, and paying the fee for such licence required by this By-law.

(2) No such licence shall authorize any person to carry on any such trade, business, calling or affairs at any premises, other than those identified in the licence certificate issued.

(3) No licence issued pursuant to a by-law of the City Council shall be transferred either from the licencee to any other such person or corporation, or so as to authorize the carrying on of any such trade, business, calling or affairs at any building or place other than that for which the licence was issued, save upon application in writing filed with the City Clerk, together with a fee of one dollar.

It is plain to me that the applicant's proposed business comes within the ordinary meaning of "a building or place where gasoline and oils are stored or kept for sale". Very similar words were held by Masten, J., in City of Toronto v. Can. Oil Companies Ltd., 45 O.L.R. 225, to comprehend a gasoline service station. Mr. Sharp argued that the by-law should be interpreted as applying only to public garages as defined by s. 388(1) (121) (a) (before it was amended by 1958, c. 64, s. 29(7) of the Municipal Act and not to "automobile service stations" as defined by s. 388(1)(122)(a) of the Act which he submitted the city had in 1951 no power to license or regulate generally. This contention, in effect, raises the issue of the validity of s. 1(36) of the by-law which, for reasons I have endeavoured to state, cannot be decided in these proceedings.

The respondent's counsel further argued that the by-law did not require an owner to obtain more than one licence to operate several service stations in the city. From the fact that he advanced this argument, I infer that the respondent already holds at least one licence granted by the City of Hamilton. The extracts I have quoted from the by-law require, in my view, a separate licence for each location. Here again Mr. Sharp challenges the power of the City Council to enact a by-law requiring more than one licence from the same person which he submits is beyond the powers conferred upon the city by s. 388(1) (121). This raises an issue of validity and not one of interpretation.

Fianlly, on the assumption that the by-law is valid and applies to service stations and requires a separate licence for each location, counsel for the respondent urged this Court to send the matter back to the City Council for reconsideration because the Council in refusing the licence "took into account matters which were not proper for the guidance of its discretion and further that the Council did not exercise its discretion honestly, impartially and in good faith". This is a matter we assume was argued before Mr. Justice Stewart. However, he did not decide it; the order he made does not determine it; and it is still open to the respondent to pursue. In the circumstances no appeal was taken or could be taken upon this part of the case and this Court has no original jurisdiction which would empower it to decide it.

For these reasons, I would allow the appeal with costs, set aside the order below and I would dismiss the motion, but only insofar as ti relates to the matters raised by the second notice, with costs.

Appeal allowed.

TAB AA

THIS IS EXHIBIT "AA" REFERRED TO IN THE AFFIDAVIT OF LAURA J. FREITAG SWORN BEFORE ME THIS 9th DAY OF February, 2021.

A COMMISSIONER FOR TAKING AFFIDAVITS

Court File No.: CV18-00001938-0000

Ontario

SUPERIOR COURT OF JUSTICE

B E T W E E N:

KELLY LYNN DONOVAN

Plaintiff

- and -

WATERLOO REGIONAL POLICE SERVICES BOARD, and

BRYAN LARKIN

Defendants

SUBMISSIONS AS TO OUTSTANDING ISSUES AND DELAYS

It is the Plaintiff's position that the issue of jurisdiction raised by the Defendants should be dismissed with costs, for the reasons that follow, and are explained in detail in this submission:

A. The issue of jurisdiction of the Plaintiff's amended statement of claim was addressed, considered and decided on in Justice Doi's decision dated February 21, 2019.
B. The issue of jurisdiction of the Plaintiff's amended statement of claim was confirmed by the Court of Appeal in their analysis and ultimate ruling.
C. The Defendants are now estopped from raising the issue of jurisdiction again.
D. Justice Doi is *functus officio* and does not have jurisdiction to make any further decision that would change the original order made on March 20, 2019.
E. Attempting to re-litigate the issue of jurisdiction is an abuse of process.

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A - The Issue of Jurisdiction was Decided by Justice Doi

1. A critical issue in the Defendants' motion was whether or not court had jurisdiction to hear the Plaintiff's amended statement of claim. Without jurisdiction, Justice Doi could not rule on any argument raised by the Defendants, including the argument that the amended pleading disclosed no reasonable cause of action.
2. It is the Plaintiff's position that Justice Doi decided the jurisdiction issue at para. 40 of *Donovan vs. Waterloo Regional Police Services Board*, 2019 ONSC 1212, (provided in the Defendants' submission at Tab B):

   "For the reasons set out above, I am satisfied that this motion is fairly and fully disposed of under Rule 21.01(1)(b) without the need for recourse to these other grounds."
3. On March 20, 2019, Justice Doi signed an order of the court, seizing the substance of the critical issues in question (jurisdiction). The Defendants did not appeal this order.
4. In *R. v. R.E.M.,* [2008] 3 S.C.R. 3, 2008 SCC 51, (attached at **Appendix A**), the Chief Justice wrote at para. 55:

   "The appellate court, proceeding with deference, must ask itself whether the reasons, considered with the evidentiary record, the submissions of counsel and the live issues at the trial, reveals the basis for the verdict reached. It must look at the reasons in their entire context. It must ask itself whether, viewed thus, the trial judge appears to have seized the substance of the critical issues on the trial. If the evidence is contradictory or confusing, the appellate court should ask whether the trial judge appears to have recognized and dealt with the contradictions. If there is a difficult or

novel question of law, it should ask itself if the trial judge has recognized and dealt with that issue."

B - The Issue of Jurisdiction was Confirmed by Court of Appeal

5. When the matter came before the appellate court on October 11, 2019, the Defendants did not raise a critical outstanding issue of allegedly undecided jurisdiction in either their written or oral submissions.
6. The Court of Appeal set aside the order of Justice Doi and ruled that the case at bar "should be decided with an evidentiary record and not on a pleadings motion", (see para. 18 of *Donovan vs. Waterloo Regional Police Services Board*, 2019 ONCA 845, provided by the Defendants at Tab A).
7. On January 28, 2020, the Defendants approved a draft order of the Court of Appeal and have not appealed this decision.
8. When the question of jurisdiction of breaches of the Plaintiff's resignation agreement came before Justice Favreau, in *Donovan v. (Waterloo) Police Services Board*, 2019 ONSC 818, (attached at **Appendix B**), Justice Favreau wrote at para. 51:

   "The Board 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. Evidently, there were many issues between the parties that led to the Resignation Agreement."

C - The Defendants are Estopped from Raising the Issue of Jurisdiction

9. The Defendants seek to re-litigate a claim that was decided or could have been raised in an earlier proceeding.
10. In *Minott v. O'Shanter Development Co.*, 42 O.R. (3d) 321 [1999] O.J. No. 5, (attached at **Appendix C**), Justice Laskin wrote at p. 329:

"Res judicata itself is a form of estoppel and embraces both cause of action estoppel and issue estoppel. Cause of action estoppel prevents a party from relitigating a claim that was decided or *could have been raised in an earlier proceeding*. [Emphasis added.]"

11. The Defendants failed to raise the allegedly outstanding issue of jurisdiction in their submissions made on the following dates:
    i. On March 8, 2019, the Defendants filed their costs submission to Justice Doi.
    ii. On April 15, 2019, the Defendants approved the draft order of Justice Doi.
    iii. On June 24, 2019, the Defendants filed their responding appeal material which did not contain any written arguments regarding the alleged outstanding issue of jurisdiction of Justice Doi to make the order dated March 20, 2019.
    iv. On October 11, 2019, the Plaintiff's appeal was heard and the Defendants neglected to make any oral arguments regarding an alleged outstanding question of jurisdiction.
12. In *Authorson v. Canada (Attorney General)*, 2003 CanLII 11223 (ON SC), (attached at **Appendix D**), at para. 22, Justice Brockenshire wrote:

    "In the normal course of litigation, once a motions court or trial court has delivered a judgment and the matter is appealed, the motion or trial court has no further jurisdiction in the matter unless the appellate court should send the matter back."

13. In para. 43 of *Kendall v. Sirard*, 2007 ONCA 468, (attached at **Appendix E**), *Ward v. Dana G. Colson Management Ltd.* (1994), 24 C.P.C. (3d) 211 (Gen. Div.) at 218, aff'd. [1994] O.J. No. 2792 (C.A.) E. Macdonald J. noted:

    "A decision in an interlocutory application is binding on the parties, at least with respect to other proceedings in the same action. I agree with the submission that the general principle is that it is not open for the court, in a case of the same question arising between the same parties, to review a previous decision not open to appeal. If the decision was wrong, it ought to have been appealed within the appropriate time frames."

14. That same, para. 43, of *Kendall v. Sirard*, 2007 ONCA 468, quotes *Fidelitas Shipping Co. v. V/O Exportchleb*, [1966] 1 Q.B. 630 (C.A.) (hereinafter "*Fidelitas*"), Lord Denning comments on page 640:

    "And within one issue, there may be several points available which go to aid one party or the other in his efforts to secure a determination of the issue in his favour. The rule then is that each party must use reasonable diligence to bring forward every point which he thinks would help him. If he omits to raise any particular point, from negligence, inadvertence, or even accident (*which would or might have decided the issue in his favour*), he may find himself shut out from raising that point again, at any rate in any case where the same issue arises in the same or subsequent proceedings."

15. The Defendants did not use reasonable diligence to bring forward the issue of jurisdiction of the motions court forward and now seek disposition of all of the action. It is the Plaintiff's position that the Defendants are now shut out from raising that point again in this same or subsequent proceeding.

16. At para. 24, in *Danyluk v. Ainsworth Technologies Inc.,* 2001 SCC 44 (CanLII), [2001] 2 SCR 460, (attached at **Appendix F**), Justice Binnie wrote:

    "…Dickson J. (later C.J.), speaking for the majority in Angle, supra, at p. 255, subscribed to the more stringent definition for the purpose of issue estoppel. "It will not suffice" he said, "if the question arose collaterally or incidentally in the earlier proceedings or is one which must be inferred by argument from the judgment." The question out of which the estoppel is said to arise must have been "fundamental to the decision arrived at" in the earlier proceeding. In other words, as discussed below, the estoppel extends to the material facts and the conclusions of law or of mixed fact and law ("the questions") that were necessarily (even if not explicitly) determined in the earlier proceedings."

17. In *Penner v. Niagara (Regional Police Services Board)*, 2013 SCC 19 (CanLII), [2013] 2 SCR 125, (attached at **Appendix G**), at p. 129, the Supreme Court of Canada wrote:

    "The twin principles which underlie the doctrine of issue estoppel — that there should be an end to litigation and that the same party shall not be harassed twice for the same cause — are core principles which focus on achieving fairness and preventing injustice by preserving the finality of litigation. The ultimate

goal of issue estoppel is to protect the fairness of finality in decision-making and the avoidance of the relitigation of issues already decided by a decision-maker with the authority to resolve them."

18. The issue of jurisdiction was fundamental to Justice Doi's decision rendered February 21, 2019, and estoppel extends to the conclusions of law that were not explicitly determined by Justice Doi.

D - Justice Doi is *functus officio*

19. Further action by Justice Doi would amount to a breach of the principle of *functus officio*.

20. It is stated at para. 79 of *Doucet-Boudrea v. Nova Scotia (Minister of Education)*, 2003 SCC 62 (CanLII), [2003] 3 SCR 3, (attached at **Appendix H**), that:

> "If a court could continually hear applications to vary its decisions, it would assume the function of an appellate court and deny litigants a stable base from which to launch an appeal."

21. In the case at bar, the Defendants have asked Justice Doi to make a ruling as to whether or not court has jurisdiction to hear the Plaintiff's amended claim, after a final judgment has been made on the issue and that issue was subject to appeal.

22. The definition of *fuctus officio* is stated in *Doucet-Boudrea*, *supra*, at para. 115:

> "[TRANSLATION] Qualifies a court or tribunal, a public body or an official that is no longer seized of a matter because it or he or she has discharged the office. E.g. A judge who has pronounced a final judgment is *functus officio*."

23. Justice Doi finds himself in a similar position as that of the trial judge in *Doucet-Boudrea, supra,* whose position was articulated by Justices Iacobucci and Arbour, at para. 119, as follows:

> "As we noted above, the trial judge equivocated on the question of whether his purported retention of jurisdiction empowered him to make further orders. Regardless of which position is taken, the separation of powers was still breached. On the one hand, if he did purport to be able to make further orders, based on the evidence presented at the reporting hearings, he was *functus officio*. We find it difficult to imagine how any subsequent order would not have resulted

in a change to the original final order. This necessarily falls outside the narrow exceptions provided by *functus officio*, and breaches that rule."

E - Abuse of Process

24. In *Re: Mid-Bowline Group Corp*, 2016 ONSC 669, (attached at **Appendix I**), Justice Newbould wrote, at para. 59:

    "…To lie in the weeds until the hearing of the application and assert such a right to stop the plan of arrangement is troubling indeed and not acting in good faith. Waiting and seeing how things are going in the litigation process before springing a new theory at the last moment is not to be encouraged."

25. In *Canam Enterprises Inc. v. Coles,* 2000 CanLII 8514 (ON CA), (attached at **Appendix J**), the appeal was dismissed with costs because the proceeding was an abuse of process. At para. 34, Justice Finlayson wrote:

    "Maintaining open and ready access to the courts by all legitimate suitors is fundamental to our system of justice. However, to achieve this worthy purpose, the courts must be vigilant to ensure that our system does not become clogged with unnecessary, repetitious litigation. To allow the defendant to retry the issue of misrepresentation would be a classic example of abuse of process and a waste of the time and resources of the litigants and the court. The retrying of the issues in this case would also erode the principle of finality that is crucial to the proper administration of justice."

26. There is no new evidence, special circumstances or equitable reasons for the Defendants to be entitled to retry the issue of jurisdiction of the Plaintiff's amended statement of claim.

27. It is the Plaintiff's position that Defendants' letter to Justice Doi dated February 19, 2020, one-day after the end of their twenty-days to file their statement of defence, is "at the last moment," was done in bad faith, and is an abuse of process.

Response to Defendants' Submissions

28. *Sun Oil v. City of Hamilton* (Tab C, of Defendants' submissions), surrounded the issue of determining validity of a by-law. A decision was made on first instance, and it was not until appeal, that the parties raised the issue of the jurisdiction of court to decide

the validity of by-law 3022. It was for this reason, that the Ontario Court of Appeal granted the respondent the right to pursue the matter following appeal, stating that neither the Judge of first instance nor the Ontario Appeal Court have jurisdiction to determine validity of a by-law by way of originating motion.

29. This is not at all similar to the case at bar, and does not entitle the Defendants a right to be heard on what they believe is an outstanding issue of jurisdiction of the Plaintiff's amended statement of claim, an issue that was fully argued and decided on.

Remedy

30. The Plaintiff agrees with the Court of Appeal decision, that it is time for these matters to be decided with an evidentiary record, (*Donovan v. Waterloo Regional Police Services Board*, 2019 ONCA 845, para. 18, Tab A of the Defendants' submission).
31. The Plaintiff is entitled to the Defendants' statement of defence, that was due February 18, 2020, or for the Defendants to be noted in default, in accordance with rules 18 & 19 of the *Civil Rules of Procedure*. The Defendants have not requested more time to file their statement of defence.
32. The Plaintiff does not believe there are any outstanding issues in this matter, however, if Justice Doi agrees to consider the issues raised in the February 19, 2020, letter from the Defendants, the Plaintiff requests the opportunity to make full oral submissions if Justice Doi seeks to hear them.

Costs

33. The Defendants acknowledge in their February 19, 2020, letter that full submissions in respect of this jurisdiction issue had been made when the motion was heard and fairly and fully disposed of in February, 2019.
34. The Defendants did not raise any outstanding issues regarding jurisdiction on appeal, or in any other submission made to Justice Doi or the Court of Appeal prior to February 19, 2020.
35. The Defendants have already been ordered to pay the Plaintiff's costs for the appeal and the originating motion, and now the Defendants seek to re-litigate the issues raised at the originating motion. The Plaintiff had to seek legal advice to prepare this submission, and as a result some of her costs associated with the originating motion have now been duplicated.

36. The Defendants acted in bad faith by choosing to "lie in the weeds" on the issue of jurisdiction until the twenty-days to file their statement of defence had expired, and unnecessarily delay this proceeding.
37. Should Justice Doi dismiss the issues raised by the Defendants in their February 19, 2020, letter, the Plaintiff seeks substantial indemnity costs associated with the preparation of this submission and such further and other relief as this Honourable Court deems just for the unnecessary delay of this proceeding and abuse of process.
38. In a recent Superior Court of Justice decision against the Hamilton Police Services Board, the issue of delays without good reason was noted by Master P. Tamara Sugunasiri, in *Manning v. Hamilton Police Services Board*, 2019 ONSC 5528, (attached at **Appendix K**), at para. 8, as follows:

> "Justice Skarica ordered that the Plaintiffs could cross-examine a representative of the HPSB Defendants on their sworn Affidavit of Documents and that their defence would be struck if they did not comply. Justice Skarica also ordered the HPSB Defendants to pay costs of $20,000 and cautioned them that further delays without good reason would not be tolerated."

TAB BB

THIS IS EXHIBIT "BB" REFERRED TO IN THE AFFIDAVIT OF LAURA J. FREITAG SWORN BEFORE ME THIS 9th DAY OF February, 2021.

A COMMISSIONER FOR TAKING AFFIDAVITS

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

April 3, 2020

SENT VIA E-MAIL

Justice Michael T. Doi
Ontario Superior Court of Justice
A. Grenville & William Davis Court House
7755 Hurontario Street, Suite 100
Brampton, ON L6W 4T6

Dear Mr. Justice Doi:

Re: Kelly Lynn Donovan v. Waterloo Regional Police Services Board and Bryan Larkin (Court File No. CV-18-1938)

Further to our office's email correspondence dated March 17, 2020 to Ms. Snaza Velanovski, Judicial Secretary, please find enclosed the Defendants' response submissions regarding the processing of the outstanding preliminary jurisdiction issue before the Court.

In light of the ongoing COVID-19 pandemic and the corresponding suspension of regular operations at the Ontario Superior Court of Justice, we have delivered the Defendants' submissions by email only. If, however, you wish to receive a hard-copy version of the enclosed materials, please let us know and we will arrange to have a hard copy delivered to the Court.

Thank you for your attention to this matter and we look forward to receiving your decision at your earliest opportunity.

Yours truly,

Donald B. Jarvis
CM/

Enclosure

cc Ms. Kelly Donovan, Plaintiff *(via email)*
Ms. Virginia Torrance, Regional Municipality of Waterloo Police Services Board *(via email)*

Court File No. CV-18-00001938-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

KELLY LYNN DONOVAN

Plaintiff

- and -

WATERLOO REGIONAL POLICE SERVICES BOARD
and BRYAN LARKIN

Defendants

RESPONSE SUBMISSIONS OF THE DEFENDANTS REGARDING THE PRELIMINARY ISSUE OF JURISDICTION

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Plaintiff

TABLE OF CONTENTS

PART I - OVERVIEW

1. These submissions are filed by the Defendants, Waterloo Regional Police Services Board and Bryan Larkin, in response to the submissions filed by the Plaintiff on March 17, 2020 (the Plaintiff's "Submissions").

2. The Defendants disagree with the entirety of the Plaintiff's Submissions. Put simply, no judge has ruled on whether the Ontario courts exercise jurisdiction over the subject matter of the Amended Statement of Claim (and, now, the Amended Amended Statement of Claim). Until this issue is decided, it would be improper for the instant action to continue. The doctrines of *res judicata* and *functus officio* do not apply and do not preclude the Court's determination of the outstanding jurisdiction issue.

3. In addition to the submissions herein, the Defendants repeat and rely on the submissions contained in their February 19, 2020 correspondence to the Court, including their request to have a decision rendered on the outstanding jurisdiction issue.

PART II - LAW AND ANALYSIS

A. No Court Has Rendered a Final Decision on the Defendants' Jurisdiction Motion. As a Result, Whether the Court Has Jurisdiction Over the Amended Statement of Claim Remains an Open Question

4. Contrary to the Plaintiff's allegations, neither this Honourable Court nor the Court of Appeal for Ontario has rendered any decision on the issue of the Court's jurisdiction over the Amended Statement of Claim. That issue remains open for determination.

i. Mr. Justice Doi Did Not Rule on the Jurisdiction Issue. Rather, Mr. Justice Doi Expressly Refrained from Making Any Such Ruling

5. On June 7, 2018, the Defendants filed a Notice of Motion raising a number of critical preliminary issues in the instant proceeding — namely, whether:

   (a) The subject matter of the Plaintiff's Amended Statement of Claim was beyond the jurisdiction of the Ontario courts (the "Jurisdiction Issue");

   (b) The Amended Statement of Claim failed to disclose a reasonable cause of action against one or both of the Defendants (the "Pleadings Issue"); and

   (c) The Plaintiff's action was frivolous, vexatious and/or an abuse of process as against one or both of the Defendants.

6. On February 13, 2019, the parties appeared before this Honourable Court and made submissions on all issues raised by the Motion, including the Jurisdiction Issue. The Court struck the Amended Statement of Claim in its entirety without leave to amend.

Donovan v. Waterloo Regional Police Services Board, 2019 ONSC 1212 (**Tab 1**) [*Donovan ONSC*].

7. In his reasons for judgment, Mr. Justice Doi disposed of the Motion under Rule 21.01(1)(b) of the *Rules of Civil Procedure*, but provided only the following comment in respect of the Jurisdiction Issue:

> **The Defendants' motion to strike was also brought under Rules 21.01(3)(a)** and 21.01(3)(d), respectively. For the reasons set out above, I am satisfied that this motion is fairly and fully disposed of under Rule 21.01(1)(b) **without the need for recourse to these other grounds**.
>
> [Emphasis added]

Donovan ONSC, *supra*, (**Tab 1**) at para. 40.
Rules of Civil Procedure, R.R.O. 1990, Reg. 194, r. 21.01(1)(b) [*Rules*].

8. The Plaintiff appealed the Order arising from Mr. Justice Doi's decision. On October 25, 2019, the Court of Appeal for Ontario granted the Plaintiff's appeal, finding that it was **not** plain and obvious that the Amended Statement of Claim disclosed no reasonable cause of action. Nowhere in its decision, however, did the Court of Appeal address the Jurisdiction Issue or Rule 21.01(3)(a).

Donovan v. Waterloo Regional Police Services Board, 2019 ONCA 845 (**Tab 2**) [*Donovan ONCA*].

9. At Part A of her Submissions, the Plaintiff alleges that the above-quoted statement of Mr. Justice Doi (see paragraph 7, above) is tantamount to a decision on the Jurisdiction Issue. With respect, this allegation is incorrect and wholly nonsensical.

10. The Court's silence on the Jurisdiction Issue cannot constitute a decision on that issue. Indeed, it is trite law to say that a legal 'decision' arises only where a court or tribunal expressly answers a question submitted to it:

> **DECISION.** In practice. A judgment or decree **pronounced** by a court in settlement of a controversy submitted to it and **by way of authoritative answer to the questions raised before it**.

> "Decision" is not synonymous with "opinion." **A decision of the court is its judgment; the opinion is the reasons given for that judgment**.
>
> [Emphasis added; citations omitted]

Black's Law Dictionary, 2nd ed., (**Tab 3**) *sub vero* "decision" [*Black's*].

11. In the Motion before him, Mr. Justice Doi provided an authoritative answer to only the Pleadings Issue and concluded that the other Motion questions, including the Jurisdiction Issue, did not need to be addressed. Put plainly: while the Pleadings Issue was finally decided, the Jurisdiction Issue was not addressed at all, let alone decided or authoritatively answered.

12. The Plaintiff quotes from *R v. R.E.M.* to support her allegation that the Jurisdiction Issue was decided by the Court. The Defendants respectfully submit that this case has no relevance to the instant matter. In *R v. R.E.M.*, the Supreme Court of Canada determined whether the British Columbia Court of Appeal improperly substituted its own factual findings when overturning a criminal verdict by Supreme Court of British Columbia. The quotation at paragraph 4 of the Plaintiff's Submissions simply describes the principles guiding appellate review in the Canadian judicial system. These principles are not applicable to the Defendants' request that a decision on the Jurisdiction Issue be rendered by the same level of court that heard the Defendants' Motion.

R v. R.E.M., 2008 SCC 51 (**Appendix "A" to the Plaintiff's Submissions**).

13. In any event, the prevailing law confirms that an issue is not *decided* by a court if the court does not authoritatively answer the questions raised by that issue. In *Sun Oil Co. v. City of Hamilton and Veale*, the respondent brought a motion for an order of *mandamus* directing the appellants to issue permits for the execution and operation of certain gasoline service stations. Before this motion was heard, the respondent served further notice that it would move for a declaration that the by-law in question did not apply for the purposes of licensing and regulating gasoline service stations. The motions Judge granted the second declaration sought and, as a result, no disposition was made in respect of the *mandamus* motion. At appeal, the motion Judge was found to have erred in his interpretation of the by-law and the respondent, *inter alia*, attempted to raise its alternative argument that the appellants' refusal to issue necessary licenses was an improper exercise of discretion. The

Court of Appeal expressly held that this issue was still live and open for the respondent to pursue before the lower court:

> This is a matter we assume was argued before Mr. Justice Stewart. **However, he did not decide it; the order he made does not determine it; and it is still open to the respondent to pursue**. In the circumstances no appeal was taken or could be taken upon this part of the case and this Court has no original jurisdiction which would empower it to decide it.
>
> [Emphasis added]

Sun Oil Co. v. City of Hamilton and Veale, [1961] O.R. 209 (C.A.) (**Tab 4**) at p. 6.

14. The mere reference to an issue, without more, does not amount to a judicial decision. In *Celebija v. Cooperators*, the Ontario Court of Justice dismissed the defendant's motion for summary judgment after identifying three triable issues in the proceeding, including whether the plaintiff's claim was barred by a contractual limitations period. Subsequent to this decision, the plaintiff moved for a declaration that the defendants be estopped from arguing that the claim was not commenced within the contractual limitations period. Mr. Justice Somers dismissed this second motion after holding that, although the first motions Judge had identified the limitations issue, "he did not deal with this issue, that it has not been decided and that, therefore, the matter must proceed to trial, without the limitation defence being excised from the defence raised by the defendants."

Celebija v. Cooperators (1993), 44 A.C.W.S. (3d) 467 (Ont. Ct. (Gen. Div.)) (**Tab 5**), aff'd (1994), 47 A.C.W.S. (3d) 837 (Ont. Ct. (Gen. Div.)) (**Tab 6**) at para. 8.

15. There is a world of difference between a passing reference to an issue that was not decided (i.e. the Jurisdiction Issue) and a judicial ruling on that issue. With respect, to find that this Court's explicit declination to rule on the Jurisdiction Issue amounts to a decision on that issue would be fundamentally absurd. Moreover, the proposition that the Court's Rule 21.01(1)(b) decision confirms, in and of itself, that the Court has jurisdiction over the subject matter of the Amended Statement of Claim (as appears at paragraph 1 of the Plaintiff's Submissions) is nonsensical and blurs the distinction between the Court's jurisdiction over preliminary issues and its jurisdiction over the merits of an action. In any event, the Court's jurisdiction over the Amended Statement of Claim could not have been determined on the basis of the 'plain and obvious' test pertaining to Rule 21.01(1)(b).

TeleZone Inc. v Canada (A.G.), 2008 ONCA 892 (**Tab 7**) at para. 92 [*TeleZone*].

16. In short, Mr. Justice Doi did not decide the Jurisdiction Issue and this preliminary question remains unanswered.

ii. The Jurisdiction Issue Was Neither Addressed by Nor Within the Jurisdiction of the Court of Appeal for Ontario

17. At Part B of her Submissions, the Plaintiff incorrectly alleges that the Jurisdiction Issue was "confirmed by [the] Court of Appeal". In addition to being without merit, this allegation is at odds with the procedural history of the instant action.

18. An appeal lies from an order of the Court. It is the direction of the Court, and not the supporting reasons for judgment, that comprise the appealable order. This trite principle was articulated as follows in the seminal case of *Canadian Express Ltd. v. Blair*:

> Reasons for judgment do not constitute the judgment of the court. An appeal is taken not from the reasons for judgment but from the judgment itself, and it is the order of the court appealed from which binds, not the reasons assigned for making it: the reasons may be wrong but the order right.

Black's, *supra*, (**Tab 3**) *sub vero* "order".
Canadian Express Ltd. v. Blair (1991), 6 O.R. (3d) 212 (Div. Ct.) (**Tab 8**) at p. 3. See also *Grand River Enterprises v. Burnham* (2005), 197 O.A.C. 168 (**Tab 9**) at para. 10.

19. Only two appealable directions or 'orders' arose from the hearing of the Defendants' Motion before this Honourable Court: (1) that the Amended Statement of Claim be struck under Rule 21.01(1)(b) without leave to amend; and (2) that the Plaintiff pay $5,500.00 in costs to the Defendants. Consequently, there was no order in respect of the Jurisdiction Issue that could be confirmed by — let alone appealed to — the Court of Appeal.

Donovan ONSC, *supra*, (**Tab 1**) at paras. 39-41.
Costs Endorsement of Mr. Justice Doi dated March 20, 2019 (**Tab 10**) at para. 7.

20. This conclusion is reinforced by the contents of the draft Order endorsed by Mr. Justice Doi on March 20, 2019: there is no mention whatsoever of a Court direction regarding jurisdiction or Rule 21.01(3)(a). Notably, the draft Order was jointly prepared and approved by the Parties, based off an initial draft Order prepared by the Plaintiff; the final draft Order was also filed by the Plaintiff. In approving the draft Order, both Parties indicated their agreement that the document set out what the Court had ordered.

Order of Mr. Justice Doi dated March 20, 2019 (**Tab 11**).
Chrysler Credit Canada Ltd. v. 734925 Ontario Ltd., (1991), 5 O.R. (3d) 65 (Ct. (Gen. Div.)) (**Tab 12**) at p. 4 [*Chrysler Credit*].

21. Even if Mr. Justice Doi's Motion decision could be said to amount to a direction on the Jurisdiction Issue (which is categorically denied), the Jurisdiction Issue would have still been outside of the Court of Appeal's jurisdiction. Pursuant to Rule 61.04(3), the Court of Appeal's jurisdiction is limited to the grounds and legislative authorities set out in the Plaintiff's Notice of Appeal. Despite setting out 12 different grounds of appeal, the Plaintiff's Notice of Appeal is devoid of any reference whatsoever to the Jurisdiction Issue. As the Plaintiff made no reference to the Jurisdiction Issue in her Notice of Appeal, the Jurisdiction Issue was neither before nor within the jurisdiction of the Court of Appeal.

> *Rules*, *supra*, r. 61.04(3).
> Notice of Appeal dated March 13, 2019 filed by Kelly Donovan (**Tab 13**).

22. The Plaintiff relies upon the Court of Appeal's statement that the Amended Statement of Claim (i.e. insofar as whether Chief Larkin's affidavit in the class action amounts to a breach of confidentiality) "should be decided with an evidentiary record and not on a pleadings motion". However, the Court of Appeal's statement was made solely to support the conclusion that the Amended Statement of Claim could not be struck under Rule 21.01(1)(b); it was not a finding in respect of the Jurisdiction Issue.

> *Donovan ONCA*, *supra*, (**Tab 2**) at para. 18.

23. The comments of Madam Justice Favreau, quoted at paragraph 8 of the Plaintiff's Submissions, also appear to be relied upon by the Plaintiff to suggest that the Jurisdiction Issue has already been decided by the Court. The issue before Madam Justice Favreau, however, was whether section 137.1(3) of the *Courts of Justice Act* permits the Court to dismiss an application before the Human Rights Tribunal of Ontario ("HRTO"). Clearly, the jurisdictional concerns raised by the Defendants before Madam Justice Favreau arose in a wholly different context than the Jurisdiction Issue in the instant action. In any event, Madam Justice Favreau expressly declined to decide the issue of jurisdiction. Her *obiter dicta* comments are neither binding nor dispositive.

> *Donovan v. (Waterloo) Police Services Board*, 2019 ONSC 818 (**Appendix "B" to the Plaintiff's Submissions**) at para. 51.
> *Courts of Justice Act*, R.S.O. 1990, c. C.43.

24. In conclusion, no judge has held that the subject matter of the Amended Statement of Claim falls within the Court's jurisdiction. Not only are the Defendants entitled to a decision in

respect of the Jurisdiction Issue, but this outstanding issue ought to be determined before the instant action can proceed.

B. As the Doctrine of Estoppel Does Not Apply to the Instant Proceeding, It Cannot Bar a Ruling on the Jurisdiction Issue

25. *Res judicata* prevents parties from pursuing matters adjudged. The doctrine operates to bar both issues and causes of action that have been decided or could have been raised in an earlier proceeding (known, respectively, as 'issue estoppel' and 'cause of action estoppel').

26. The required elements of issue estoppel are:

(a) The same question has been decided in a prior proceeding;

(b) The judicial decision which is said to create the estoppel was a final decision; and

(c) The parties to the judicial decision (or their privies) were the same persons (or their privies) as the parties to the proceedings in which the estoppel is raised.

> *Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44 (**Appendix "F" to the Plaintiff's Submissions**) at para 25 [*Danyluk*].

27. A final decision was issued by this Court in the Motion and the Parties to the Motion hearing are the same Parties to the instant request. Nevertheless, the question decided at the Motion hearing (i.e. the Pleadings Issue) is **entirely different** than the question now before the Court (i.e. the Jurisdiction Issue). The absence of any decision on the Jurisdiction Issue is necessarily fatal to the Plaintiff's claim of estoppel in the instant matter.

> See *Minott v. O'Shanter Development Co.* (1999) 42 O.R. (3d) 321 (C.A.) (**Appendix "C" to the Plaintiff's Submissions**) at pp. 15-19, 27.

28. Ironically, the Plaintiff actually relies upon authorities that emphasize the need for a final decision **in respect of the Jurisdiction Issue** to support a claim of estoppel. All of *Kendall v. Sirard*, *Danyluk v. Ainsworth Technologies Inc.*, and *Penner v. Niagara (Regional Police Services Board)* — cases relied upon by the Plaintiff at paragraphs 13, 16, and 17 of her Submissions — emphasize that, for estoppel to apply, there must have been a decision on the very same question before the Court. Based on these authorities, no estoppel has been triggered as the Jurisdiction Issue has not been decided in any proceeding.

> *Kendall v. Sirard*, 2007 ONCA 468 (**Appendix "E" to the Plaintiff's Submissions**) at para. 43, citing *Ward v. Dana G. Colson Management Ltd.* (1994), 34 C.P.C. (3d) 211 (Ont. Ct. (Gen. Div.)).
> *Danyluk, supra*, (**Appendix "F" to the Plaintiff's Submissions**) at para. 24.
> *Penner v. Niagara (Regional Police Services Board)*, 2013 SCC 19 (**Appendix "G" to the Plaintiff's Submissions**) at para. 89.

29. At paragraphs 14 and 15 of her Submissions, the Plaintiff baldly alleges that the Defendants did not use reasonable diligence to bring forward the Jurisdiction Issue. This allegation is patently incorrect. This is not a situation where a party, after having omitted to raise an argument, is seeking to raise an argument for the first time. It is precisely because the Defendants raised and argued the Jurisdiction Issue in its Motion that this issue remains outstanding and requires a ruling from this Court.

30. The elements of issue estoppel have not been met in this case. In requesting the Court's ruling on the Jurisdiction Issue, the Defendants are properly pursuing the determination of an issue that has not yet been the subject of a final judicial decision and that was pursued from the outset of this action.

C. Mr. Justice Doi Is Not *Functus Officio* in Respect of the Jurisdiction Issue

31. The Plaintiff alleges that a ruling on the Jurisdiction Issue would breach the *functus officio* doctrine. This allegation is predicated on the Plaintiff's erroneous belief that the Jurisdiction Issue was decided by this Honourable Court. However, the doctrine of *functus officio* does **not** preclude the determination of outstanding issues that have already been argued by the Parties.

32. Whether a judge is *functus officio* in respect of an issue necessarily depends on whether that issue was previously raised and answered by the judge. If a party raises multiple arguments at a hearing but the presiding judge only determines one of these arguments, the judge retains his duty to determine the balance of the arguments:

> *Functus officio* means, literally, having discharged his duty. Determining whether a judge is *functus officio* involves, in light of Rule 15.07, drawing a line between an omission by the trial judge — a failure to do something which should have been done — and the discharge of the duty but failing to consider some argument which had someone, whether counsel or judge, thought about it might have had an impact on the result. The line is not easily drawn. **If a court was required to answer four questions, but determined only three, clearly, it would not have done something it was required to do. The judge would not be *functus officio*, at least, in respect of the fourth question**....
>
> [Emphasis added]

Badejo v. McLean (1996), 138 D.L.R. (4th) 541 (Nfld. C.A.) (**Tab 14**) at para. 16.

33. As the Defendants duly pursued the Jurisdiction Issue at the Motion and a decision on this issue has not been rendered, the Court cannot be *functus officio* in respect of the Jurisdiction Issue. To the contrary, the Defendants respectfully submit that the Court is required to discharge its duty to decide the Jurisdiction Issue previously argued by the Parties.

34. This state of affairs remains true even when a decision is appealed and overturned on other grounds. In *Authorson (Litigation Guardian of) v. Canada (A.G.)*, cited at paragraph 12 of the Plaintiff's Submissions, the Court was faced with four class action issues. In an initial decision, the Court rendered a decision on two liability-related issues but left the other two damages-related issues undecided. One of the decided issues was overturned on appeal. Nevertheless, the other finding in respect of liability still stood and, on that basis, the Court was not *functus officio* with respect to damages. In concluding that it could rule on damages, the Court stated that its previous partial judgment created an exception to how jurisdiction would flow between lower and appeal courts in the normal course of litigation:

> In the normal course of litigation, once a motions court or trial court has delivered a judgment and the matter is appealed, the motion or trial court has no further jurisdiction in the matter unless the appellate court should send the matter back. **However, this was not ordinary litigation. I had delivered a judgment restricted to liability only.** The assessment of damages arising from that liability was to be dealt with separately.
>
> [Emphasis added]

Authorson (Litigation Guardian of) v. Canada (A.G.) (2003), 69 O.R. (3d) 106 (Sup. Ct.) (**Appendix "D" to the Plaintiff's Submissions**) at para. 22 [*Authorson*].

35. Applying *Authorson*, the Court of Appeal's October 25, 2019 decision does not preclude this Honourable Court from granting the Defendants' February 19, 2020 request. The Court of Appeal's ruling was limited to strictly whether the Amended Statement of Claim ought to be struck under Rule 21.01(1)(b). To the extent that this Honourable Court is *functus officio*, it is in respect of the Pleadings Issue only.

36. This application of the *functus officio* doctrine is consistent with the *Rules*. Notably, the Legislature has expressly contemplated and permitted the Court's amendment of orders to address matters not previously adjudicated; it follows, perforce, that the doctrine of *functus officio* does not preclude the Court from adjudicating issues previously undecided.

Rules, *supra*, r. 59.06(1).

37. Put simply, this Honourable Court is not *functus officio* in respect of the Jurisdiction Issue. Both the common law and the *Rules* permit the Court to decide matters not yet adjudicated.

D. The Defendants' Request Does Not Amount to an Abuse of Process. On the Contrary, the Defendants' Request Promotes the Expeditious Resolution of the Parties' Dispute

38. The Plaintiff baldly alleges that the Defendants are engaging in an abuse of process and bad faith litigation. The Defendants respectfully submit that these allegations are based on a misunderstanding of the Defendants' intention to have the instant action processed properly and efficiently.

39. Rule 1.04(1) requires court actions to be determined in the most just, expeditious, and cost-effective manner. This is a fundamental tenet of Ontario's justice system.

Rules, *supra*, r. 1.04(1).

40. Consistent with Rule 1.04(1) is the requirement that the Court confirm, from the outset, that claims are being adjudicated in the proper forum. For the Parties to litigate the subject matter of the Amended Amended Statement of Claim only to discover that the Court did not have jurisdiction over that subject matter would fly in the face of Rule 1.04(1). Moreover, the Court of Appeal has expressly held that questions of jurisdiction must be decided early in a proceeding — in fact, before the delivery of a Statement of Defence — in order to promote efficient, cost-effective litigation:

> **Motions to determine whether a court has jurisdiction to adjudicate a plaintiff's claim are intended to be decided expeditiously and early in the proceedings, preferably before a statement of defence has been filed.** Invariably, such proceedings are decided by reading the plaintiff's claim. No extrinsic evidence is required as on a motion to determine the substantive adequacy of a pleading. If the claim is within the subject matter jurisdiction of the Superior Court, that is the end of the matter. The courts' jurisdiction will be affirmed. However, as I have pointed out, there are exceptions. The court will be deprived of its jurisdiction where there is a statutory scheme intended to determine the subject matter of the claim administratively and able to provide the remedy sought by the plaintiff. An example of this type of case is Weber. As **the jurisdiction of a court to adjudicate a claim can, and should, be decided without the consideration and application of extrinsic evidence bearing upon the conduct of the parties that gave rise to their dispute**, this court is in a position to decide the issue in these appeals by examining the statement of claim in each case. However, I am of the view that extrinsic evidence that has been explicitly

> referred to within the pleadings or documents referred to and relied on in the statement of claim may be considered to determine the substance and the nature of the plaintiff's claim when this is unclear from reading the statement of claim.
>
> The process to decide whether a court has subject matter jurisdiction is found in rule 21.01(3), which permits a defendant to move to have an action stayed or dismissed on the ground that the court has no jurisdiction over the subject matter of the action. **This a summary procedure well suited to determining the issue as a preliminary matter. To follow this procedure avoids such a motion becoming a trial within a trial into facts not even pleaded in the underlying statements of claim**, as occurred in [past cases]. In my view, so long as the facts pleaded in the statement of claim raise a claim cognizable in the Superior Court, that court has jurisdiction to decide the claim. This would occur in virtually all cases given that the Superior Court is a court of general jurisdiction. That is why extrinsic evidence of facts not pleaded is generally not receivable. Moreover, **it is essential to decide jurisdiction motions early in the proceedings and expeditiously so that the plaintiff can get on with its case**....
>
> [Emphasis added]

TeleZone, supra, (**Tab 7**) at para. 108-109.

41. The Plaintiff's Submissions repeatedly reference the Defendants' approval of draft Orders in this proceeding, so it would appear, to make the argument that the Defendants have conceded the Court's jurisdiction over the subject matter of the Amended Amended Statement of Claim. This is an argument wholly without merit. A party's approval of a draft order is strictly an administrative step taken in an action and does not constitute any substantive concession:

> I should make it clear that, as I have mentioned above, approval of a draft order is only an agreement that that is what the court ordered. It is not, in the slightest degree, a concession that the order was right, or that the court had jurisdiction, or an agreement not to appeal. It is purely an administrative act for the purpose of permitting the court system to function.

Chrysler Credit, supra, (**Tab 12**) at p. 4.

42. The Plaintiff refers to events surrounding this proceeding in an attempt to allege inaction by the Defendants in their pursuit of the Jurisdiction Issue. This is also an assertion wholly without merit. Until the Court of Appeal's ruling on October 25, 2019, the Amended Statement of Claim had been found to disclose no reasonable cause of action. As such,

there was no requirement for the Defendants to seek a determination of the proper forum for the Plaintiff's claims. Moreover, a proper and complete assessment of the continuing relevance of the Jurisdiction Issue could not be finalized until the Defendants' receipt of the Amended Amended Statement of Claim. Only after the Defendants had been served with the Amended Amended Statement of Claim on January 29, 2020, and had an opportunity to evaluate those amendments, could the Defendants knowledgeably instruct counsel to proceed with securing a ruling on the Jurisdiction Issue. To characterize the Defendants as 'lying in the weeds' is wholly disingenuous.

43. In summary, the granting of the Defendants' request is consistent with the efficient litigation of this matter and the timely resolution of the outstanding Jurisdiction Issue. This is especially critical given that the Plaintiff has initiated concurrent proceedings before the Court and the HRTO in respect of the same allegations. Contrary to the Plaintiff's allegations of bad faith and abuse of process, the Defendants' request, if granted, would serve to streamline the processing of the Parties' dispute and ensure the economical use of judicial resources.

PART III - ORDER REQUESTED

44. Based on the foregoing, the Defendants request that this Court render a determination on the Jurisdiction Issue as requested.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 3rd day of April, 2020.

Donald B. Jarvis and Cassandra Ma
Filion Wakely Thorup Angeletti LLP
Lawyer for the Defendants

TAB CC

THIS IS EXHIBIT "CC" REFERRED TO IN THE AFFIDAVIT OF LAURA J. FREITAG SWORN BEFORE ME THIS 9th **DAY OF** February**,** 2021**.**

A COMMISSIONER FOR TAKING AFFIDAVITS

ENDORSEMENT
SHORT STYLE OF CAUSE:
DONOVAN V. WATERLOO REGIONAL POLICE SERVICES BOARD

File No. CV-18-1938

Date	Counsel	
April 20, 2020 In Chambers	D. Jarvis (for Moving Defendants) K. Donovan (self-represented Responding Plaintiff)	[1] On February 21, 2019, I released my decision to strike the Amended Statement of Claim under Rule 21.01(1)(b) without leave to amend: *Donovan v. Waterloo Regional Police Services Board,* 2019 ONSC 1212. On October 25, 2019, the Court of Appeal allowed the Plaintiff's appeal and set aside my order: 2019 ONCA 845. [2] On February 19, 2020, the Defendants wrote to me for directions on seeking a decision on their alternate grounds under Rule 21.01(3) for striking the claim, which they had raised in their notice of motion and was not addressed in the foregoing decisions. On March 17, 2020, the Plaintiff filed a written response to the Defendants' request for directions, and on April 13, 2020 the Defendants filed reply submissions. [3] In my view, this matter should appropriately be returned as a new motion under Rule 59.06(1) for hearing before the court. Given my prior involvement with this case, I believe that this motion should be argued before another judge and should not come back before me. [4] Due to the serious health risks posed by the COVID-19 global pandemic, regular court operations have been suspended since March 15, 2020: see *Notice to the Profession for Civil and Family Matters,* Chief Justice of the Ontario Superior Court of Justice dated April 2, 2020, https://www.ontariocourts.ca/scj/notice-profession-civil-family/. Once court operations resume, the parties may schedule the return on this motion through the Trial Coordinator's Office. [5] Costs are reserved to the judge hearing the return of the motion. Doi J.

TAB DD

THIS IS EXHIBIT "DD" REFERRED TO IN THE AFFIDAVIT OF LAURA J. FREITAG SWORN BEFORE ME THIS 9th DAY OF February, 2021.

A COMMISSIONER FOR TAKING AFFIDAVITS

"Fresh as Amended November 23 2020
pursuant to Rule 26.02 (b) of the Rules of Civil
Procedure."

SHARON DOE Digitally signed by SHARON DOE
DN: cn=SHARON DOE, o=MAG, ou=CSD,
email=SHARON.DOE@ONTARIO.CA, c=US
Date: 2020.12.09 10:42:03 -05'00'

Court File No.: CV18-00001938-0000

Ontario
SUPERIOR COURT OF JUSTICE

B E T W E E N:

KELLY LYNN DONOVAN

Plaintiff

- and –

WATERLOO REGIONAL POLICE SERVICES BOARD, and BRYAN LARKIN

Defendants

FRESH AMENDED 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: May 9, 2018

Issued by: "C.OLIVEIRA"
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
c/o Waterloo Regional Police Services Board
200 Maple Grove Road
Cambridge, Ontario
N0B 1M0

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, misfeasance in public office and negligence 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. Pre-judgment and post-judgment interest in accordance with the Courts of Justice Act, R.S.O. 1990, c. C.43, as amended;
    d. Costs of this proceeding on a solicitor and his own client scale, together with applicable HST; and
    e. Such further and other relief as counsel may advise and this Honourable Court deems just.

2. The Plaintiff, Kelly Lynn Donovan, claims against the Defendant Bryan Larkin, the following relief:

    a. Damages for misfeasance in public office, in the amount of Fifty Thousand Dollars ($50,000.00);
    b. Punitive, exemplary and/or aggravated damages in the amount of Ten Thousand Dollars ($10,000.00);
    c. Pre-judgment and post-judgment interest in accordance with the Courts of Justice Act, R.S.O. 1990, c. C.43, as amended;
    d. Costs of this proceeding on a solicitor and his own client scale, together with applicable HST; and
    e. Such further and other relief as counsel may advise and this Honourable Court deems just.

II. Parties

3. 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").

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

III. Facts

Class action lawsuit

5. 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

6. 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."

7. The agreement also contained a release signed by chief Bryan Larkin which stated:

    a. "THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD […] does hereby release and forever discharge KELLY DONOVAN ("DONOVAN") from any and all actions, causes of action, complaints, applications, appeals…"

    b. "AND FOR THE SAID CONSIDERATION, THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD further agrees not to commence, maintain, or continue any action, cause of action or claim, request, complaint, demand or other proceeding, against any person, corporation or entity in which any claim could arise

against DONOVAN for contribution or indemnity."

8. The Resignation Agreement was signed by the defendant Bryan Larkin on behalf of the defendant board.
9. The plaintiff agreed to resign from her career in order to recover from her workplace injury and establish comparable employment as a single mother supporting her three children in exchange for the contractual and statutory obligations placed upon the defendants; a public body and a public officer.

Plaintiff's health

10. 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.
11. In December 2015, the plaintiff was diagnosed with post-traumatic stress disorder ("PTSD").
12. In May, 2016, the plaintiff made a disclosure of internal misconduct to the defendant board, her disclosure included allegations that the defendant Bryan Larkin had authorized unlawful arrests of police officers and had failed to properly investigate criminal allegations against police officers.
13. The defendant Bryan Larkin retaliated against the plaintiff by removing her from her position of employment, putting her under investigation by the police service's professional standards branch and she was ordered to have no contact with members of the defendant board.
14. It was defendant Bryan Larkin's retaliation against the plaintiff that caused the

plaintiff's health to worsen drastically. These abuses of power, as the plaintiff saw them, became significant triggers of a workplace injury she sustained in February, 2011.

15. 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.
16. In April, 2017, the plaintiff applied to the Workplace Safety and Insurance Board ("WSIB") for benefits as a result of her workplace injury. The plaintiff's claim was approved, claim number 30505408.
17. 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

18. On January 6, 2016, defendant Bryan Larkin was interviewed by Craig Norris, of the CBC News, about the need to prevent PTSD in police. An excerpt from the article reads;
    a. "More can be done to prevent first responders from getting post-traumatic stress disorder, rather than waiting until treatment is necessary."
19. On July 5, 2017, the defendant board received the provincially mandated "PTSD

Prevention Plan" prepared by members of the service under the direction of defendant Bryan Larkin. The defendant board's minutes for that meeting show that a Power Point presentation was made to the board that states:

a. "All PTSD diagnoses in Police Officers and communicators are presumptive;" and
b. "Plan outlines our commitment to Employees by documenting what we are currently doing and committed to doing for the Prevention, Intervention and recovery from PTSD."

20. On July 17, 2017, the plaintiff published a research paper titled "Misfeasance in Ontario Policing and the Coordinated Suppression of Whistleblowers." The defendant board received this paper directly from the plaintiff by email. The paper detailed the way the plaintiff was treated when she made a disclosure of misconduct to the defendant board as well as other cases from across Canada of 'whistleblower' retaliation by police chiefs. An excerpt from page 8 of the report reads:

a. "What the public do not know is that at times it is the operational stress an officer is facing that causes them to deal with PTSD symptoms. In some cases, the internal issues created by management can leave effects that last far longer than the difficult calls for service."

21. Defendant Bryan Larkin submitted a statement to CBC News on July 17, 2017, that he was aware of the plaintiff's report.

22. On December 21, 2017, defendant Bryan Larkin swore an affidavit in defense of the class action lawsuit, to support a motion to dismiss the class action lawsuit and advance his position as chief of police employed by the defendant board, and

the document was submitted to record. The affidavit was published on the public website of the law firm advancing the class action lawsuit. The Defendant Board was negligent in allowing the Defendant Bryan Larkin's affidavit to be published.

23. 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."*

24. 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."

25. 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."*

26. There is only one female officer showing on this chart as having “voluntarily” resigned.
27. 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.
28. The information disclosed by defendant Bryan Larkin was sufficient to identify the plaintiff and caused her a great deal of humiliation, mental distress and anger. The plaintiff was used by defendant Larkin to attempt to stop the efforts of the plaintiff’s female colleagues in their fight for justice. The class action was subsequently dismissed as a result of the motion relying on the affidavit of Defendant Bryan Larkin.
29. 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.
30. The defendant Bryan Larkin knew the content of his affidavit was inappropriate because the Waterloo Regional Police Association, (the bargaining agent for current members of the police service), filed a grievance against the defendant board for the violation of several female members’ privacy in this same affidavit.
31. Defendant Bryan Larkin was aware of the terms contained in the Resignation Agreement, in that he knew that the plaintiff was contractually barred from participating in the class action lawsuit, and the terms of the Resignation Agreement were to be kept confidential, yet he unnecessarily requested the Human Resources Division of the police service prepare an additional chart that included the plaintiff in his affidavit.

32. Defendant Bryan Larkin has an advanced level of knowledge about police officers who have been diagnosed with PTSD.
33. Defendant Bryan Larkin knew, or ought to have known, the triggers that were responsible for the rapid decline of the plaintiff's health between 2016 and 2017. More specifically, the plaintiff was healthy and actively working until after defendant Larkin retaliated against her for making a disclosure to the defendant board.
34. Defendant Bryan Larkin, who is the chief of police of a large regional municipality and swore an oath to discharge his duties according to law, deliberately involved the plaintiff in the class action lawsuit and violated the terms of the Resignation Agreement knowing this would injure the plaintiff by impeding her recovery and worsening her PTSD symptoms.
35. 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. The Plaintiff increased the frequency and duration of her therapy after March, 2018, to continue indefinitely.
36. Defendant Bryan Larkin is aware that the plaintiff was on medical leave from February, 2017, until her resignation in June, 2017.
37. Following the plaintiff's resignation, she continued to receive benefits from WSIB in the form of psychological treatment by Dr. Kathy Lawrence. Since the plaintiff voluntarily resigned, her salary was no longer being paid by WSIB.
38. In August, 2018, the plaintiff was made aware by WSIB that on January 11, 2018, the defendant Board submitted an appeal of the plaintiff's claim number 30505408. The appeal was prepared by counsel for the defendant, the same

counsel who represented the defendants when the resignation agreement was prepared and signed.

39. The plaintiff therefore claims the relief as set out in paragraph 1 of the Statement of Claim for two distinct and separate breaches of the resignation agreement by the defendant Board and individual defendant.

40. The plaintiff therefore claims the relief as set out in paragraph 2 of the Amended Statement of Claim for the deliberate and unlawful conduct by defendant Bryan Larkin.

41. 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.

May 8, 2018

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Phone: 519-209-5721
Email: kelly@fit4duty.ca

Court file no. CV-18-00001938-0000

KELLY LYNN DONOVAN

Plaintiff

v. WATERLOO REGIONAL POLICE SERVICES BOARD, and BRYAN LARKIN

Defendants

Ontario
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT BRAMPTON

FRESH AMENDED STATEMENT OF CLAIM

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KELLY LYNN DONOVAN Plaintiff/Responding Party	and	WATERLOO REGIONAL POLICE SERVICES BOARD and BRYAN LARKIN Defendants/Moving Party	Court File No: CV-18-00001938-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at BRAMPTON

AFFIDAVIT OF LAURA FREITAG
(Sworn February 9, 2021)

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KELLY LYNN DONOVAN Plaintiff/Responding Party	and	WATERLOO REGIONAL POLICE SERVICES BOARD and BRYAN LARKIN Defendants/Moving Party	Court File No: CV-18-00001938-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at BRAMPTON

MOTION RECORD OF THE MOVING PARTY
(returnable February 22, 2021)

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