

**COURT OF APPEAL FOR ONTARIO**

BETWEEN:

KELLY LYNN DONOVAN

Plaintiff  
(Appellant)

and

REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD and  
BRYAN LARKIN

Defendants  
(Respondents)

**APPELLANT'S  
EXHIBIT BOOK**

Date: June 16, 2021

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## Table of Contents

Tab	Document	PDF Page No.
1	Affidavit of Kelly Donovan sworn February 10, 2021	3
2	WSIB Decision Letter from July 12, 2017	26
3	WSIB Employer's Report dated May 23, 2017	29
4	Affidavit of Laura Freitag sworn February 9, 2021	33
5	Redacted Resignation Agreement executed June 8, 2017	46
6	Affidavit of Chief Larkin sworn December 21, 2017, and "Exhibit F" thereto	57
7	WRPSB Application for Contravention of Settlement dated June 28, 2018 (HRT0 File No. 2018-33237-S)	81
8	Response to Application for Contravention of Settlement dated July 10, 2018	112
9	Notice of Hearing (HRT0) dated August 3, 2018	120
10	Donovan's Application for Contravention of Settlement dated July 27, 2018 (HRT0 File No. 2018-33503-S)	126
11	WSIB Appeal Cover Letter	141
12	Intent to Object Form dated January 11, 2018	143
13	Email to Donald Jarvis, February 19, 2020, 9:40 a.m.	150
14	Defendants' Email and Letter to Justice Doi, February 19, 2020, 11:28 a.m.	152
15	Letter to Defendants, April 27, 2020	156
16	Letter from Defendants, May 6, 2020	159
17	2015 – 2019 Uniform Collective Agreement	164
18	List of Submissions to HRT0 between June, 2018, & August, 2020	234
19	CBC News Article, January 5, 2016	240
20	WRPSB Meeting Agenda and PTSD Prevention Plan, July 5, 2017	243
21	Waterloo Chronicle Article, July 6, 2017	249
22	Waterloo Record Article, January 3, 2019	253
23	Toronto Star Article, January 29, 2021	256
24	Copies of MFIPPA Approval Letters and Chart of Legal Expenses Paid by WRPSB	260

\* Tabs are bookmarked within this document, (open "Bookmarks" by clicking on the  icon

on the left for Mac users, or right click for Windows and select  "More").

# Tab 1

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

BETWEEN:

KELLY LYNN DONOVAN

Plaintiff  
(Responding Party)

and

REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD and

BRYAN LARKIN

Defendants  
(Moving Parties)

**AFFIDAVIT OF KELLY DONOVAN  
(Sworn February 10, 2021)**

I, Kelly Donovan, of the City of Brantford, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the Plaintiff in this matter and have represented myself at all times. As such, I have personal knowledge of all matters to which I hereinafter depose. Where I rely on external information, I am confident that the information is accurate and have provided as much evidence as possible through the use of Exhibits.

**Employment with the Organizational Defendant – Relevant Facts**

2. I was employed as a Constable by the Organizational Defendant from December, 2010, to June, 2017. I was promoted to Use of Force Training Officer in May, 2015.
3. In February, 2011, I was in the immediate vicinity of an accidental discharge by a fellow recruit while studying to become a police constable at the Ontario Police College. The



recruit suffered 4 significant bullet wounds in his right leg and only survived the incident because a former paramedic was a student in our class and performed advanced trauma first-aid. This was a traumatic incident I experienced before ever stepping foot on patrol for the Organizational Defendant. I do not know if the Organizational Defendant notified the Workplace Safety and Insurance Board (“WSIB”) of my exposure to this traumatic incident when it occurred.

4. In May, 2016, I attended a public meeting of the Organizational Defendant and made a disclosure, in good faith, of internal misfeasance by the Personal Defendant, Bryan Larkin, Chief of Police. At that time, the [Police Services Act, R.S.O. 1990, c. P.15, section 58\(2\)](#), did not permit a police officer to make a complaint about their own police service, and the internal police service procedure only permitted members of the public to make complaints.
5. My May, 2016, board delegation was covered in local media. Attached hereto and marked as **Exhibit “A”** is a copy of the May 11, 2016, Cambridge Times article.
6. Following the May, 2016, disclosure I faced retaliatory action by the Personal Defendant, in the form of a misconduct investigation, a change in my employment and an order to cease communication with members of the Board (the Organizational Defendant).
7. As a result of the retaliatory action by the Personal Defendant, I filed several complaints against the Defendants, including a complaint to the Human Rights Tribunal of Ontario (“HRTO”).
8. I began to suffer from symptoms of post-traumatic stress disorder (“PTSD”), relating to the training accident at paragraph 3, around December, 2016. I had to take a medical leave of absence from my employment in February, 2017.

9. I applied to the WSIB, for benefits in April, 2017, and my claim was approved on July 12, 2017; claim number 30505408. The approval letter from WSIB states that I was entitled to benefits as of February 27, 2017, and that a “written appeal notice” must be submitted no later than January 12, 2018, if I wanted to “object” to the decision. Attached hereto and marked as **Exhibit “B”** is a copy of this decision letter from WSIB.
10. I began intensive therapy with a qualified psychologist, Dr. Kathy Lawrence, for post-traumatic stress disorder (“PTSD”), and I was prescribed medication for anxiety and depression.

### **Resignation from WRPSB**

11. Starting in May, 2017, I decided to resign from my employment and entered into negotiations with the Organizational Defendant.
12. Also in May, 2017, a \$167,000,000 class action lawsuit, (CV-17-2346-00), was filed against the Organizational Defendant for systemic gender discrimination, sexual harassment and sexual assault. I was eligible to join the suit as a plaintiff.
13. On June 8, 2017, I agreed to the terms set out in a Resignation Agreement, drafted by Donald Jarvis, counsel for the Organizational Defendant, which included mutual releases, (meaning I was giving up my right to sue for anything that happened to me prior to the date of my resignation, including joining the class action lawsuit). This agreement terminated several ongoing processes, including the misconduct investigation and multiple complaints I had filed against the Defendants. The Agreement was signed by the Personal Defendant, on behalf of the Organizational Defendant.
14. My reasons for requiring that the Defendants sign a release was because I had learned that the Director of Legal Services for the Organizational Defendant had filed a personal lawsuit

against a member of the service for statements made at an association meeting. Attached hereto and marked as **Exhibit “C”** is a copy of the amended Statement of Claim filed by Gary Melanson against David Flynn. I did not want to live in fear of litigation after resigning from my employment.

15. Following my resignation, I started my own business, Fit4Duty – The Ethical Standard™, providing consulting and safe workplace reporting programs to employers. I continued to receive therapy for PTSD funded by WSIB.
16. In July, 2017, I published a report about the retaliation police whistleblowers face within Ontario police services, based on my experience working for the Organizational Defendant and also my research of past police “whistle-blowers” in Canada. I distributed the report to every police services board in Ontario, including the Organizational Defendant. I was very transparent about my desire to improve protections for police officers who make disclosures of internal abuses of power. Attached hereto and marked as **Exhibit “D”** is a copy of the email sent to every police services board member in Ontario on July 16, 2017.
17. The report sent to members of the Organizational Defendant board contained several mentions of how misfeasance within Ontario police services is contributing to the deterioration of police officers’ mental health. An excerpt of the report, from page 3 stated; “Even when the Workplace Safety and Insurance Board (WSIB) approves a claim for PTSD, the police service will pay lawyers to appeal that decision. What appears to be a supportive and healthy environment on the surface is in some cases highly toxic and contributing to the deterioration of some police officer’s mental health.” Attached hereto and marked as **Exhibit “E”** is a copy of the first 3 pages of my report.

18. Around September, 2017, I viewed BlueLine, Canada's Law Enforcement Magazine online, and noticed an announcement on Page 6 relating to the swearing in of the Personal Defendant as the President of the Ontario Association Chiefs of Police. The article stated; "He said he hopes to focus more on occupational stress within policing..." A copy of page 6 of the magazine is attached hereto and marked as **Exhibit "F."**
19. Also in September, 2017, I reattended a public meeting of the Organizational Defendant and presented a delegation about the need for board member training. I still had an interest in helping the Organizational Defendant provide effective oversight and governance of the police service. I was not engaged by any member of the Organizational Defendant board.
20. Since resigning from the Organizational Defendant, I have been featured in news media and I made two separate presentations to the standing committee on justice policy at the Ontario Legislature about the risks a police officer takes when they report internal abuses of power. I had been the only delegate to address these issues to the standing committee. My advocacy resulted in changes to Ontario's policing laws, police officers are now permitted to report internal misconduct and the new statute provides protection from reprisal. Ironically, the Defendants mention the new statute at paragraph 21 d) of their Notice of Motion.
21. It is my belief that the issues I exposed in my July, 2017, report and continue to expose, are matters of public interest and my belief has been further solidified by the fact that government changed the laws in favour of protecting police whistleblowers.

### **Class Action Lawsuit**

22. In December, 2017, the Personal Defendant swore an Affidavit to defend the Organizational Defendant in the ongoing class action lawsuit, which included an additional

chart showing details of Human Rights Tribunal complaints filed against the Organizational Defendant by female members. It was not necessary for the Personal Defendant to include the information contained in the additional chart, and it was my opinion that the information was sufficient to identify me and that confidential details of the Resignation Agreement were disclosed. The chart read; "SETTLED: - monetary settlement, - withdrawal of OHRT application, - voluntary resignation." The Organizational Defendant permitted this Affidavit to be published, knowing it disclosed details of my Resignation Agreement.

23. Since I had already faced retaliation at the hands of the Personal Defendant, I viewed this action, the disregard for our signed legal agreement, as another form of retaliation. The Personal Defendant knew the terms of the Resignation Agreement, as he had signed it on behalf of the Organizational Defendant, and he knew I had signed a release and could not participate in the class action lawsuit. The Personal Defendant showed disregard for his contractual obligations in keeping the terms of the Resignation Agreement confidential.
24. The Personal Defendant's Affidavit was filed by the Organizational Defendant to support their motion to have the class action dismissed on the ground that courts lacked jurisdiction. One of their main arguments advanced in their motion was that jurisdiction of the claim belonged to the HRTO. By including the additional information in his Affidavit, the Personal Defendant was telling the Court that these cases were evidence that the HRTO should be the preferred venue for female officers to voice concerns about systemic gender discrimination, sexual harassment and sexual assault. Essentially, my case was held out as a success story to the Court so that my former female colleagues' fight for justice would be dismissed.

25. Another thing that upset me about the Personal Defendant's disclosure was that, I did not want anyone to believe I had accepted "hush money." I knew, when I resigned, that the problem of police whistleblower retaliation was important. I did not want anyone to believe that I had accepted "hush money" and agreed to keep silent. It was my opinion that the Personal Defendant's disclosure implied that I had signed a non-disclosure clause, and had been intentionally breaching that clause since resigning. This was not the case at all.
26. The Defendants were successful in having the class action dismissed for lack of jurisdiction. On July 13, 2018, Justice Baltman clearly stated, at paras. 5, and 22 – 24, of her Reasons for Judgment, that she determined the women's claims were best adjudicated by the HRTO. I believe that the Personal Defendant's Affidavit carried significant weight in Justice Baltman's Judgment since he is the chief of police, and I was barred from participating in the class action lawsuit to rebut what had been written in his Affidavit.
27. Since July, 2018, the decision of Justice Baltman has been cited in 6 civil cases to support the dismissal of claims, including the decision of Justice Doi in this matter.

### **Legal Actions**

28. On May 9, 2018, I filed the original statement of claim in this case.
29. On June 7, 2018, the Defendants filed a Notice of Motion.
30. On June 28, 2018, the Organizational Defendant filed an Application for Contravention of Settlement against the Plaintiff at the Human Rights Tribunal of Ontario ("HRTO"), initiating a parallel proceeding at the tribunal level. Including exhibits, the Organizational Defendant's submission to the HRTO was a total of 485 pages.
31. In the Organizational Defendant's Application at the HRTO, it alleged that every incident of public speaking, news media, website blog or social media post wherein I discuss my

experience as a “police whistle-blower” has been a violation of my Resignation Agreement.

The Organizational Defendant has asked the HRTO for the following remedy:

- a. direct me to cease engaging “in an ongoing series of contraventions of the Resignation Agreement;”
  - b. direct me to redact allegations against the WRPSB from my book;
  - c. order me to pay the WRPSB significant damages to remedy the ongoing damage to the Waterloo Regional Police Service’s “reputation in the context of intentional and repeated violations of the most fundamental nature.”
32. It is my belief that the Organizational Defendant’s case against me at the HRTO was a further attempt to discredit and silence me, as explained at paragraph 24. They wanted people to believe that I had accepted “hush money” and that I had in fact been blatantly violating the agreement frequently by speaking out; none of which was true.
33. On July 10, 2018, I provided a Reply to the HRTO informing of the ongoing matter in this Honourable Court, and asking that the Organizational Defendant’s Application be dismissed without a hearing because it was retaliatory, vexatious and commenced in bad faith, or at least stayed until my matter brought in Court had concluded. This request was not addressed by the HRTO Registrar, the Organizational Defendant’s Application proceeded.
34. On July 27, 2018, I filed an Application for Contravention of Settlement against the Defendants so as to not be prejudiced at the February 22, 2019, hearing of the Defendant’s Application set by the HRTO. This was essentially a modified version of my original statement of claim. I knew this was duplicating my claim, but I did not know what else to

do given the fact that the HRTTO was proceeding with the Organizational Defendant's claim against me before my claim was able to proceed in civil court.

35. The HRTTO scheduled a hearing of the Organizational Defendant's Application for February 22, 2019, without addressing the objections I had raised in my July 10<sup>th</sup> submission.

### **WSIB Appeal**

36. In August, 2018, I received a large package from the WSIB stating that the Organizational Defendant was appealing my claim number 30505408. I perceived this action as another blatant breach of the Resignation Agreement by the Defendants. A copy of the cover letter to this package is attached hereto and marked as **Exhibit "G."** It is clear from the opening line of this letter that the Organizational Defendant had in fact filed an appeal; "This letter is to let you know the employer has informed us in writing of their intention to appeal a decision(s) in this claim." The Organizational Defendant's submission was in accordance with the WSIB decision letter I had received, cited at para. 9.
37. The lawyer for the Organizational Defendant had submitted the appeal document to the WSIB on January 11, 2018. The general reason the Organizational Defendant objected to my approved WSIB claim was that they believed "the worker's alleged injury did not arise out of or in the course of the worker's employment."
38. The package also contained a submission made to the WSIB by Heather Henning, the Return to Work Coordinator for the Organizational Defendant. Ms. Henning had written on page 1 of this submission; "Employee states she is experiencing psychological trauma (PTSD) – Panic attacks, nightmares, flashbacks, depression, anxiety – relating back to traumatic incident at OPC on 24 Feb 2011 when fellow recruit standing directly beside



K.Donovan shot himself in the leg.” A copy of this 3-page Employer’s Report is attached hereto and marked as **Exhibit “H.”** The date of this Report is May 23, 2017, so it is clear that the Organizational Defendant knew about the exposure to the traumatic incident at the police college prior to the date of my resignation, and definitely prior to them filing the appeal on January 11, 2018.

39. As mentioned above at paragraphs 9, and 38, the Organizational Defendant had acknowledged that my injury resulted from a traumatic incident while employed as a police officer, and that my claim had already been approved by the WSIB dating back to before the date of my resignation.

40. I knew that the Defendants were very aware of the new presumptive legislation passed, [Supporting Ontario’s First Responders Act \(Posttraumatic Stress Disorder\), 2016, S.O. 2016, c. 4 – Bill 163](#), which meant that a diagnosis of PTSD would be presumed to be a work-related injury for first responders (police included). Their appeal submission on January 11, 2018, felt like a very personal attack on me, to have my medical care revoked, taking into account their knowledge of my traumatic incident and the presumptive legislation.

41. I had kept a copy of a January 6, 2016, CBC News article featuring Larkin who spoke about the new WSIB law and he held himself out as someone who cares about the wellbeing of police officers who suffer from PTSD. Larkin was quoted in the article as saying; “I think we’re humanizing the profession. I think we’re showing that we’re normal people... We have normal people doing an abnormal job.” A copy of this article is attached hereto and marked as **Exhibit “I.”**

42. I had known that the Organizational Defendant had been required by the provincial government to implement a PTSD Prevention Plan, which had been presented at the July 5, 2017, board meeting as a Chief's Report. The second slide stated; "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." A copy of the board agenda and slide presentation is attached hereto and marked as **Exhibit "J."**
43. Board member Karl Kiefer was quoted in an article in the Waterloo Chronicle stating; "I really like (this PTSD Prevention Plan) because it comes from a proactive rather than reactive position; highlighting education is key." Mr. Kiefer is now vice-chair of the Organizational Defendant board. Attached hereto and marked as **Exhibit "K"** is a copy of this article.
44. Ironically, I had written about the oppression and abuse suffered by police officers diagnosed with PTSD in my July, 2017, report, and the actions of the Defendants were now justifying the comments I had written about misfeasance within Ontario police services, see paragraph 17 above.
45. I felt like the police service was dehumanizing me, like my life did not matter. They knew that they had signed a contract to not file any appeals against me, (this document was in fact signed by the Personal Defendant), and they knew that the law presumes that a PTSD diagnosis for a police officer is work-related. They had every reason not to file this appeal, yet they still did. I viewed the actions of the Defendants as lawless and deliberate.
46. I suffered a moral injury witnessing these public officers behave so deliberately and with total disregard for my wellbeing. An article explaining moral injury is attached hereto and marked as **Exhibit "L."**

47. Another fact about the police service's submission to WSIB that concerned me was that, the package was signed and submitted by the same lawyer who had prepared my Resignation Agreement, Donald Jarvis. He knew, or ought to have known, that the release in the agreement he drafted would prohibit the Organizational Defendant from filing the appeal. My lawyer had emailed me during our negotiations of my Resignation Agreement and had stated that once I confirm that I agree with their proposal, "he [police service lawyer] will ask Don Jarvis to do up the usual paper work." I waive solicitor client privilege with my former lawyer Pamela Machado in order to admit this evidence. A copy of my email correspondence with Pamela Machado is attached hereto and marked as **Exhibit "M."**

48. PTSD already makes a person feel like a burden on their family, friends and society. A feeling of worthlessness is common in those suffering from PTSD which results in suicidal ideations. These actions by the Defendants caused my PTSD symptoms to drastically worsen, which also affected my ability to parent my three children when in my care and establish my business. Since I was unable to focus my energy on my business, I was unable to earn income which caused additional stress and mental anguish.

### **Litigation as a Weapon**

49. Throughout the fall of 2018, I made several attempts to have the Organizational Defendant's HRTO proceeding dismissed as a retaliatory action and an abuse of process. I also applied to the Superior Court of Justice to have the tribunal proceeding dismissed for limiting freedom of expression on matters of public interest, (CV-18-00605386-0000). Justice Favreau ruled that tribunal proceedings are not considered "proceedings" for the purposes of Courts of Justice Act, section 137.1.

50. Since June, 2018, I have had to manage, at times, weekly document submissions and requests as a result of the collateral and retaliatory attack launched against me by the Organizational Defendant. To stay organized, I have had to prepare a list of correspondence between the Organizational Defendant, the HRTO Registrar, and I. A copy of this list is attached hereto and marked as **Exhibit “N.”** It is evident from this list of documents that the Organizational Defendant has had ample opportunity to prepare a Statement of Defence in this case as they have submitted over 755 pages to the HRTO to further their retaliatory case against me.
51. On January 16, 2019, I amended my statement of claim on consent to include a second allegation of breach of contract, (the WSIB appeal).
52. On February 13, 2019, Justice Doi heard the motion in its entirety and agreed with the arguments advanced by the Defendants. Justice Doi’s Reasons for Judgement were released on February 21, 2019.
53. I understood Justice Doi’s decision to mean that he had sided with every argument advanced by the Defendants. In paragraph 25 of his reasons, he found that the “privative clause” contained in the Workplace Safety and Insurance Act meant that Court did not have jurisdiction over a civil claim relating to a WSIB claim. Although I disagreed with Justice Doi, I took this to be a ruling on the Defendants’ jurisdictional issue, and I relied on that fact at the Court of Appeal.
54. On March 8, 2019, the Defendants filed their cost submission to Justice Doi and did not make any mention of an allegedly unanswered issue of jurisdiction.

55. On March 22, 2019, I filed a Notice of Appeal to appeal Justice Doi's order. A copy of the Notice of Appeal is attached hereto and marked as **Exhibit "O."** I perfected the appeal on April 23, 2019.
56. I prepared the initial draft of Justice Doi's Order and sent it to the Defendants on April 15, 2019, at 10:27 a.m. The Defendants made some revisions, yet did not raise any outstanding issues, and sent it back to me at 3:43 p.m. that same date. I relied on the expertise of experienced counsel to include the substantive parts of the Order. Attached hereto and marked as **Exhibit "P"** is Justice Doi's Order.
57. In responding to my appeal, neither Defendant raised an outstanding issue of jurisdiction regarding the order made by Justice Doi. The Defendants did not file a cross-appeal.
58. On October 11, 2019, my appeal was heard and the Honourable panel granted my appeal and leave to amend my claim further against the Personal Defendant. There were no oral arguments advanced by the Defendants regarding an unresolved issue from the motion.
59. The Reasons for Decision released by the Court of Appeal also addressed jurisdiction at paragraph 15 when the Honourable Panel disagreed with Justice Doi and believed that the "privative clause" in the WSIA does not prevent me from bringing my action in Court.
60. On December 17, 2019, the Court of Appeal awarded me costs for both the appeal and the motion.
61. On January 29, 2020, I received the final Order of the Court of Appeal for Ontario delivered by email. Attached hereto and marked as **Exhibit "Q"** is the final Order of the Court of Appeal.
62. On January 29, 2020, I amended my Statement of Claim pursuant to the Order of the Court of Appeal.

63. February 18, 2020, was the date on which the Defendants were to file their Statement of Defence or Notice of Intent to Defend, and did not.
64. On February 19, 2020, at 9:40 a.m., I sent an email to counsel for the Defendants, as a professional courtesy, advising that his clients were now considered to be in default and I asked when I could expect to receive their Statement of Defence. Attached hereto and marked as **Exhibit “R”** is a copy of this email.
65. Approximately two hours later, at 11:28 a.m., Defendants’ counsel sent a letter to Justice Doi stating they believed their February, 2019, motion remained undecided. A copy of this email and letter (without the case law attached) is attached hereto and marked as **Exhibit “S.”** I was given an opportunity to prepare written submissions on the matter.
66. On April 20, 2020, Justice Doi provided an endorsement instructing the Defendants to file a Rule 59.06(1) motion, and reserved the issue of costs to the judge hearing the return of the motion.
67. On April, 27, 2020, I wrote to the Defendants to advise them of a recent decision from the Manitoba Court of Appeal. I attempted to save us from “unnecessary expense and delay.” In the highlighted case ([\*Lantin et al v. Seven Oaks General Hospital\*, 2019 MBCA 115](#)), a party to civil case had made a Rule 59.06(1) motion, (which is identical to the Ontario Rule 59.06(1)), and that Honourable Court had determined that a Justice of a lower court amending a decision dated before the order of the Court of Appeal was an error in law. In this letter, I also agreed to consent to changes to the Order of the Court of Appeal to reflect a finding on jurisdiction, provided it did not change the outcome achieved. A copy of this letter (without the case law) is attached hereto and marked as **Exhibit “T.”**

68. On May 6, 2020, the Defendants responded to my April 27<sup>th</sup> letter stating they believed *Lantin* was “factually distinguishable” from the case at bar, and that they intended to proceed with a Rule 59.06(1) motion. A copy of this letter (without the case law) is attached hereto and marked as **Exhibit “U.”**
69. Despite what they wrote in their April 27, 2020, letter, they did not proceed with a Rule 59.06(1) motion, as recommended by Justice Doi, they have filed a new (duplicate) Rule 21.01(3)(a) motion, and have asked for more time to file their Statement of Defence.
70. The Defendants’ Factum for this motion is almost identical to the Factum filed for their February 13, 2019, motion before Justice Doi. Their arguments are the same, and they do not allege that new material evidence has become available, or that any fraud was committed which would justify reopening the matter. Attached hereto and marked as **Exhibit “V”** is a scan of the Table of Contents from the Defendant’s February 13, 2019, Factum.
71. It is clear from the evidence supplied at paragraph 50 above, that the Defendants have had ample opportunity to prepare a Statement of Defence, yet they chose instead to focus their resources on their retaliatory proceeding filed at the HRTO against me.
72. From March, 2020, until October, 2020, I had to seek legal advice to deal with this issue that I believed was nonsensical and contrary to jurisprudence. I could not understand how the Defendants could legally proceed to revisit the motion judge’s decision on issues they only raised after I was successful in having my claim re-opened at the Ontario Court of Appeal. I could not have prepared my responding motion material had it not been for the legal advice I obtained. This was a legal expense I incurred only due to the unnecessary step taken by the Defendants in this matter.

73. On December 18, 2020, I received copies of invoices that were obtained as a result of requests made pursuant to the [Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M.56](#), (“*MFIPPA*”), from Bruce Ricketts. Mr. Ricketts is the former President of Canadians for Accountability and he frequently makes requests for information he deems to be in the public interest. The invoices show all amounts paid by the Organizational Defendant for legal services provided by Donald Jarvis for matters involving me. Attached hereto and marked as **Exhibit “W”** are copies of the approval letters for the requests made by Mr. Ricketts, dating back to 2019, and a chart showing the totals of invoiced paid by the Organizational Defendant from July, 2017, (after I resigned), to September, 2020.

74. The fact that the Organizational Defendant has spent \$378,510.41 on legal fees, since I resigned from employment, causes me to believe that they will stop at nothing to achieve my silence and prevent my efforts to enforce the terms of my Resignation Agreement.

75. I believe the Defendants have been using litigation to silence, intimidate and punish me for having spoken out about the perceived abuses of power I witnessed while employed by them. The financial and personal costs associated with this litigation have been devastating for me, but not for the Defendants who have access to unlimited financial resources to fund their legal fees.

76. On December 9, 2020, I amended my Statement of Claim on consent by filing a fresh amended Statement of Claim.

### **Health and Professional Effects**



77. Between the date of my resignation and January, 2018, I was invited to speak at conferences and I began to cultivate professional relationships; one which led to my first consulting client.
78. My mental health had been improving in the fall of 2017 to the point where I stopped taking medication for my PTSD and my therapy sessions were less frequent.
79. There is no mistaking that after I resigned from employment with the Organizational Defendant my health significantly improved.
80. Once the Defendants began to take action that completely disregarded the terms set out in my Resignation Agreement, and once they filed their retaliatory application against me at the HRTO, I began to suffer further injury. I became unable to maintain the pace of building my business and continuing to cultivate new professional relationships. I resumed my medication and increased the frequency of my psychology appointments. I suffered a moral injury and lost further confidence in the institution of policing and public officers.
81. The lawless, oppressive and harassing conduct of the Defendants has caused me to suffer harm, and I continue to suffer harm as a result of their conduct to this date. The harm I have suffered has affected my relationship with my children.
82. Once the Organizational Defendant filed their retaliatory proceeding against me at the HRTO, it became a full-time job for me to defend against their allegations, as is evident in the material I supplied at paragraph 50. The result of my rapidly deteriorating health and increasing demands from the HRTO was that I was unable to conduct any business at all, and therefore did not have a source of income for a lengthy period of time.

83. In June, 2019, twelve months after the Organizational Defendant filed their retaliatory proceeding against me at the HRTO, I had to sell my home located at 11 Daniel Place in Brantford, Ontario, because I could no longer afford the bills associated with the home.
84. From June, 2019, until July, 2020, I resided in my parents' home located in Paris, Ontario. It was humiliating for me to have to reside with my parents at the age of 40 and with my 3 children. Not having a residence of my own caused my children to choose to reside with their father more which further weakened my relationship with my children. Throughout this period, I continued treatment with my psychologist and our appointments were lengthened to 1.5 hours every other week.
85. In 2019, there were 9 police officer suicides in Ontario which resulted in Ontario's chief coroner launching an expert panel to review the suicides. The Personal Respondent was quoted in news articles acknowledging the problem of mental health and suicides in the police community. One article quoted the Personal Defendant stating; "We fully support and welcome a review that will help determine how mental health support can be better provided to first responders." Attached hereto and marked as **Exhibit "X"** is a copy of this January 3, 2019, Waterloo Record article.
86. As noted above at paragraphs 18, 39, 41, 42, and 85 the Defendants have publicly declared their understanding of PTSD and how it affects first responders. I believe the actions of the Defendants are intentional and meant to stop me from speaking publicly about my experience working for the Organization Defendant and to stop my enforcement efforts of the Resignation Agreement; whether as a result of my declining mental health or if I were to succumb to suicide.

87. As recently as January 29, 2021, the Defendants have been publicly criticized for the way they treat injured workers. A current police officer working for the Organizational Defendant, but off on stress leave, Angelina Rivers, was quoted in a Toronto Star article saying “the internal culture where I come from looks down very heavily on people with mental health issues.” Attached hereto and marked as **Exhibit “Y”** is a copy of this article.
88. In the news article cited above, spokesperson for the Organizational Defendant is quoted as saying; “Waterloo police ‘has progressive and comprehensive programs, initiatives, training and supports in place... to ensure our members feel supported and are able to receive help when they need it.’”
89. Also in the news article cited above, the spokesperson reported that 71% of police officers working for the Organizational Defendant agreed that the service provides sufficient support for mental wellbeing, yet the internal member survey cited in the article was not completed by police officers currently off work due to mental health injuries. The claims made by the Organizational Defendant in the article are misleading and not representative of the views of their members who experience mental health injuries in the workplace.
90. I believe that the totality of evidence I have presented proves that the image the Defendants have tried to uphold in the public eye is incongruent with how they actually behave, and how they treat injured employees and former employees.
91. In addition to moral injury, I have also suffered from institutional betrayal and sanctuary trauma, in that the very people who are in positions of authority to provide help are the ones causing me pain, see paragraph 46 for details on moral injury. Despite the actions taken by the Defendants, the Personal Defendant continues to be praised and rewarded by his peers. Following the filing of the \$167M class action lawsuit, the Personal Defendant

was elected President of the Ontario Association Chiefs of Police. In 2020, despite this ongoing lawsuit for misfeasance in public office, the Personal Defendant was elected President of the Canadian Association Chiefs of Police. Neither Defendant has shown any remorse for the pain they have caused me, or any of the plaintiffs who participated in the class action lawsuit.

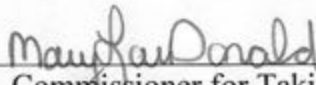
92. Following my victory at the Ontario Court of Appeal in October, 2019, I experienced a small improvement in my health. I believed that since my civil case was going to continue against the Defendants in the Honourable Court, that the HRTO would back off and not allow the Organizational Defendant's case to proceed against me. It is evident from the material I provided at paragraph 50 that this has not occurred, the HRTO case has continued to progress, and I have not been able to return to good health.

93. I had hope, following my victory at the Ontario Court of Appeal, that this case at bar would advance towards a resolution. This hope was lost when the Defendants did not submit their Statement of Defence within the prescribed timeframe, and instead attempted to revisit the original motion. I believe they are operating as if the laws and the rules do not apply to them, with disregard for my health and wellbeing.

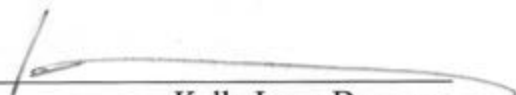
94. My PTSD has been triggered by the conduct of the Defendants since May, 2016, when they took retaliatory action against me for speaking publicly about perceived abuses of power within the police service. Despite my attempts to recover from my PTSD since resigning from my employment, the Defendants continue to trigger my PTSD symptoms with their ongoing misfeasance.

95. I make this Affidavit in defence of the Defendants' motion to have my Claim dismissed and to support my request for Orders cited in my Factum.

SWORN BEFORE ME at the City of Brantford,  
In the Province of Ontario, this 10<sup>th</sup> day of  
February, 2021.

  
\_\_\_\_\_  
Commissioner for Taking Affidavits

*Mary Louise Donald, a Commissioner, etc.,  
County of Brant, for the Government of Ontario,  
Ministry of the Attorney General.*

  
\_\_\_\_\_  
Kelly Lynn Donovan

# Tab 2

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](http://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 3

MAY-23-2017 10:01

FROM-WATERLOO REGIONAL POLICE HR

+519 650 8587

T-215 P.003 F-576

**wsib**  
**cspaat**  
 ONTARIO

 Mail To: 200 Front Street West  
 Toronto ON M5V 3J1  
 OR Fax To: 416-344-4684  
 OR 1-888-313-7373

Please PRINT in black ink

7

**Employer's Report  
 of Injury/Disease (Form 7)**

 Claim Number  
 30505408

**A. Worker Information**

Job Title/Occupation (at the time of accident/illness - do not use abbreviations) <b>CONSTABLE (TRAINING BRANCH)</b>		Length of time in this position while working for you <b>7 Yrs</b>	Social Insurance Number <b>509 516 027</b>	
Please check if this worker is a: <input type="checkbox"/> executive <input type="checkbox"/> elected official <input type="checkbox"/> owner <input type="checkbox"/> spouse or relative of the employer				
Last Name <b>DONOVAN</b>		First Name <b>KELLY</b>		Worker Reference Number <b>201029052</b>
Address (number, street, apt., suite, unit) <b>11 DANIEL PL.</b>				
City/Town <b>BRANTFORD, ON</b>	Province <b>ON</b>	Postal Code <b>N3R 1K6</b>		
Is the worker covered by a Union/Collective Agreement? <input checked="" type="checkbox"/> yes <input type="checkbox"/> no		Worker's preferred language <input checked="" type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Other		
Date of Birth <b>16 01 79</b>		Telephone <b>(519) 209 5721</b>		
Sex <input type="checkbox"/> M <input checked="" type="checkbox"/> F		Date of Hire <b>19 12 10</b>		

**B. Employer Information**

Trade and Legal Name (if different provide both) <b>WATERLOO REGIONAL POLICE SERVICE</b>		Check one: <input checked="" type="checkbox"/> Firm Number <b>OR</b> <input type="checkbox"/> Account Number	Provide Number <b>855826</b>
Mailing Address <b>200 MAPLE GROVE ROAD</b>		Rate Group Number <b>999</b>	Classification Unit Code <b>9 9 9 0 0 0</b>
City/Town <b>CAMBRIDGE</b>	Province <b>ON</b>	Postal Code <b>N3H 5M1</b>	Telephone <b>(519) 570 3000</b>
Description of Business Activity <b>POLICE SERVICE</b>		Does your firm have 20 or more workers? <input checked="" type="checkbox"/> yes <input type="checkbox"/> no	FAX Number <b>(519) 650 8551</b>
Branch Address where worker is based (if different from mailing address - no abbreviations) <b>WATERLOO REGIONAL POLICE SERVICE</b>			
City/Town	Province	Postal Code	Alternate Telephone

**C. Accident/Illness Dates and Details**

1. Date and hour of accident/Awareness of illness dd mm yy <b>27 02 17</b>		<input type="checkbox"/> AM <input checked="" type="checkbox"/> PM	2. Who was the accident/illness reported to? (Name & Position) <b>REPORTED INITIALLY TO WSIB DIRECTLY BY EMPLOYEE</b>	
Date and hour reported to employer dd mm yy <b>10 05 17</b>		<input type="checkbox"/> AM <input checked="" type="checkbox"/> PM	Telephone ( ) Ext.	
3. Was the accident/illness: <input type="checkbox"/> Sudden Specific Event/Occurrence <input checked="" type="checkbox"/> Gradually Occurring Over Time <input type="checkbox"/> Occupational Disease <input type="checkbox"/> Fatality		4. Type of accident/illness: (Please check all that apply) <input type="checkbox"/> Struck/Caught <input type="checkbox"/> Fall <input type="checkbox"/> Slip/Trip <input type="checkbox"/> Overexertion <input type="checkbox"/> Harmful Substances/Environmental <input type="checkbox"/> Motor Vehicle Incident <input type="checkbox"/> Repetition <input type="checkbox"/> Assault <input type="checkbox"/> Fire/Explosion <input type="checkbox"/> Other		
5. Area of Injury (Body Part) - (Please check all that apply)				
<input type="checkbox"/> Head	<input type="checkbox"/> Teeth	<input type="checkbox"/> Upper back	<input type="checkbox"/> Left Shoulder	<input type="checkbox"/> Right Wrist
<input type="checkbox"/> Face	<input type="checkbox"/> Neck	<input type="checkbox"/> Lower back	<input type="checkbox"/> Left Arm	<input type="checkbox"/> Right Hand
<input type="checkbox"/> Eye(s)	<input type="checkbox"/> Chest	<input type="checkbox"/> Abdomen	<input type="checkbox"/> Left Elbow	<input type="checkbox"/> Right Finger(s)
<input type="checkbox"/> Ear(s)	<input type="checkbox"/> Pelvis	<input type="checkbox"/> Forearm	<input type="checkbox"/> Left Hip	<input type="checkbox"/> Right Thigh
<input checked="" type="checkbox"/> Other PSYCHOLOGICAL			<input type="checkbox"/> Left Knee	<input type="checkbox"/> Right Lower Leg
6. Describe what happened to cause the accident/illness and what the worker was doing at the time (lifting a 50 lb. box, slipped on wet floor, repetitive movements, etc.). Include what the injury is and any details of equipment, materials, environmental conditions (work area, temperature, noise, chemical, gas, fumes, other person) that may have contributed. For a condition that occurred gradually over time, please attach a description of the physical activity required to do the work.  Non-Physical Response EMPLOYEE STATES SHE IS EXPERIENCING PSYCHOLOGICAL TRAUMA (PTSD) - PANIC ATTACKS, NIGHTMARES, FLASHBACKS, DEPRESSION, ANXIETY - RELATING BACK TO TRAUMATIC INCIDENT AT OPC ON 24 FEB 2011 WHEN FELLOW RECRUIT STANDING DIRECTLY BESIDE K. DONOVAN SHOT HIMSELF IN THE LEG				

MAY-23-2017 10:02

FROM-WATERLOO REGIONAL POLICE HR

+519 650 8587

T-215 P.004/007 F-576

**wsib**  
**cspaat**  
ONTARIO

7

# Employer's Report of Injury/Disease (Form 7)

Claim Number  
30505408

Please PRINT in black ink

Worker Name  
DONOVAN, KELLY

Social Insurance Number  
509 516 027

## C. Accident/Illness Dates and Details (Continued)

7. Did the accident/illness happen on the employer's premises (owned, leased or maintained)? ☐ yes ☐ no Specify where (shop floor, warehouse, client/customer site, parking lot, etc.).

8. Did the accident/illness happen outside the Province of Ontario? ☐ yes ☒ no If yes, where (city, province/state, country).

9. Are you aware of any witnesses or other employees involved in this accident/illness? ☒ yes ☐ no If yes, provide name(s), position(s), and work phone number(s).  
1. OTHER MEMBERS OF RECRUIT CLASS  
2.

10. Was any individual, who does not work for your firm, partially or totally responsible for this accident/illness? ☐ yes ☐ no If yes, please provide name and work phone number

11. Are you aware of any prior similar or related problem, injury or condition? ☐ yes ☒ no If yes, please explain

12. If you have concerns about this claim, attach a written submission to this form. ☐ submission attached

## D. Health Care

1. Did the worker receive health care for this injury? ☒ yes ☐ no If yes, when: dd mm yy 2. When did the employer learn that the worker received health care? dd mm yy  
11 05 17

3. Where was the worker treated for this injury? (Please check all that apply)  
☐ On-site health care ☐ Ambulance ☒ Emergency department ☐ Admitted to hospital ☒ Health professional office ☐ Clinic  
☐ Other:

Name, address and phone number of health professional or facility who treated this worker (if known) PER FORM 6: U/K FAMILY PHYSICIAN;

BRANTFORD GENERAL HOSPITAL; DR. BOOK (PSYCHIATRIST)

## E. Lost Time - No Lost Time

1. Please choose one of the following indicators. After the day of accident/awareness of illness, this worker:

- ☐ Returned to his/her regular job and has not lost any time and/or earnings. (Complete sections G and J).  
☐ Returned to modified work and has not lost any time and/or earnings. (Complete sections F, G, and J).  
☒ Has lost time and/or earnings. (Complete ALL remaining sections).

Provide date worker first lost time dd mm yy 27 02 17 Date worker returned to work (if known) dd mm yy ☐ regular work ☐ modified work

2. This Lost Time - No Lost Time - Modified Work information was confirmed by:

☒ Myself

☐ Other

Name HEATHER HENNING

Telephone

Ext.

( 519 ) 650 8500 8706

## F. Return To Work

1. Have you been provided with work limitations for this worker's injury? ☐ yes ☐ no

2. Has modified work been discussed with this worker? ☐ yes ☐ no

3. Has modified work been offered to this worker? ☐ yes ☐ no

If yes, was it ☐ Accepted ☐ Declined  
☐ If Declined please attach a copy of the written offer given to the worker.

4. Who is responsible for arranging worker's return to work

☒ Myself

☐ Other

Name HEATHER HENNING

Telephone

Ext.

( 519 ) 650 8500 8706

wsib  
cspaat  
ONTARIO

7

# Employer's Report of Injury/Disease (Form 7)

Claim Number  
30505408

Please PRINT in black ink

Worker Name  
DONOVAN, KELLY

Social Insurance Number  
509 516 027

## G. Base Wage/Employment Information - (Do not include overtime here)

### 1. Is this worker (Please check all that apply)

- ☒ Permanent Full Time    ☐ Casual/Irregular    ☐ Student    ☐ Registered Apprentice    ☐ Owner Operator or (Sub) Contractor  
☐ Permanent Part Time    ☐ Seasonal    ☐ Unpaid/Trainee    ☐ Optional Insurance  
☐ Temporary Full Time    ☐ Contract    ☐ Other \_\_\_\_\_  
☐ Temporary Part Time

2. Regular rate of pay \$ 46.48 per ☒ hour ☐ day ☐ week ☐ other PAID 40 HOURS PER WEEK

## H. Additional Wage Information

1. Net Claim Code or Amount Federal 11635 Provincial 10171

2. Vacation pay - on each cheque? ☐ yes ☒ no Provide percentage %

3. Date and hour last worked dd mm yy 23 02 17 05:00 ☒ AM ☐ PM

4. Normal working hours on last day worked From 07:00 ☒ AM ☐ PM To 05:00 ☒ AM ☐ PM

5. Actual earnings for last day worked \$ 464.80

6. Normal earnings for last day worked \$ 464.80

7. Advances on wages: Is the worker being paid while he/she recovers? ☒ yes ☐ no If yes, indicate: ☒ Full/Regular ☐ Other \_\_\_\_\_

### 8. Other Earnings (Not Regular Wages): Provide the total of additional earnings for each week for the 4 weeks before the accident/illness.

\* For Rotational Shift workers - If the shift cycle exceeds 4 weeks, please attach the earnings information for the last complete shift cycle prior to the date of accident/illness.

Use these spaces for any other earnings (indicate Commission, Differentials, Premiums, Bonus, Tips, In Lieu %, etc.).

Period	From Date (dd/mm/yy)	To Date (dd/mm/yy)	Mandatory Overtime Pay	Voluntary Overtime Pay				
Week 1			\$	\$	\$	\$	\$	\$
Week 2			\$	\$	\$	\$	\$	\$
Week 3			\$	\$	\$	\$	\$	\$
Week 4			\$	\$	\$	\$	\$	\$

## I. Work Schedule (Complete either A, B or C. Do not include overtime shifts)

### (A) Regular Schedule - Indicate normal work days and hours.

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	10.00	10.00	10.00	10.00		

Example: Monday to Friday, 40 hours

S	M	T	W	T	F	S
8	8	8	8	8	8	

### or, (B) Repeating Rotational Shift Worker - Provide

NUMBER OF DAYS ON	NUMBER OF DAYS OFF	HOURS PER SHIFT(S)	NUMBER OF WEEKS IN CYCLE

### or, (C) Varied or Irregular Work Schedule - Provide the total number of regular hours and shifts for each week for the 4 weeks prior to the accident/illness. (Do not include overtime hours or shifts here).

	Week 1	Week 2	Week 3	Week 4
From/To Dates (dd/mm/yy)				
Total Hours Worked				
Total Shifts Worked				

## J. It is an offence to deliberately make false statements to the Workplace Safety and Insurance Board. I declare that all of the information provided on pages 1, 2, and 3 is true.

Name of person completing this report (please print) HEATHER HENNING Official title RTW COORDINATOR

Signature *H. Henning* Telephone ( 519 ) 650 8500 Ext. 8706 Date dd mm yy 23 05 17

THE WORKPLACE SAFETY AND INSURANCE ACT REQUIRES YOU GIVE A COPY OF THIS FORM TO YOUR WORKER

# Tab 4

**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 "HRTTO"), having HRTTO 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	<ul style="list-style-type: none"><li>• Sex, including sexual harassment and pregnancy</li><li>• Marital status</li></ul>	SETTLED <ul style="list-style-type: none"><li>• monetary settlement</li><li>• withdrawal of OHRT application</li><li>• voluntary resignation</li></ul>

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 HRTTO. The RFOP requested that the HRTTO 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 HRTTO'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 HRTTO'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 HRTTO 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 HRTTO 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 HRTTO 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 HRTTO 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 5

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 ("HRT") on or about June 6, 2016 and having HRT 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 HRTTO 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 8<sup>th</sup> day of June, 2017.

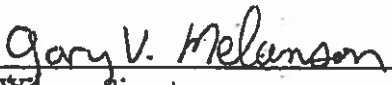
SIGNED AND WITNESSED  
in the presence of:

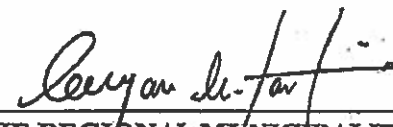
  
Witness Signature  
Print Name: Molly Kimpel

  
KELLY DONOVAN

DATED at the City/Town of Cambridge, Ontario this 8<sup>th</sup> day of June, 2017.


SIGNED AND WITNESSED  
in the presence of:

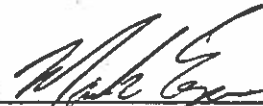
  
Witness Signature  
Print Name: GARY V. MELANSON

  
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 Repardon U.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 8<sup>th</sup>, 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 8<sup>th</sup>, 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 8<sup>th</sup>, 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 8<sup>th</sup>, 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 8<sup>th</sup> 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 8<sup>th</sup> 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 8<sup>th</sup>, 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 8<sup>th</sup> day of June \_\_\_\_\_, 2017, in the City of Cambridge, Ontario.

**SIGNED AND WITNESSED**  
in the presence of:

Gary V. Melanson  
Witness Signature

Bryan Larkin  
**THE REGIONAL MUNICIPALITY  
OF WATERLOO POLICE  
SERVICES BOARD**  
Per: Bryan Larkin, Chief of Police

Print Name: GARY V. MELANSON

# Tab 6

**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

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

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”.

**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.



**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

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 discreditable conduct,

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 HRT from Ms. Rivers' counsel in that proceeding and the counsel of the WRPSB in that proceeding.

36. It is the position of the Defendant, WRPSB, that the Plaintiff, Angelina Rivers (aka Cea), with her HRT0 outstanding and in fact now refusing to proceed with the scheduled hearing of her Complaint before the HRT0 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 MacMillan, of our Professional Standards Branch, that on June 2, 2017, he

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,*

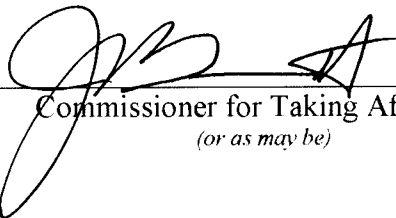
- (a) As may be required in connection with the administration of this Act and the regulations;*
- (b) To his or her counsel;*
- (c) As may be required for law enforcement purposes; or*
- (d) With the consent of the person, if any, to whom the information relates."*

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.

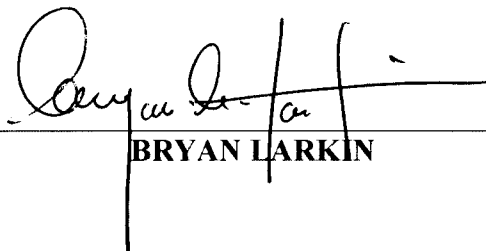
50. Upon leaving his employment, Mr. Zehr completely erased all files on the hard drive of his computer. He also recalled, from storage, all of his police notebooks, which are the property of Waterloo Regional Police Services, and took them from the premises. Attached hereto and marked as "Exhibit L" 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



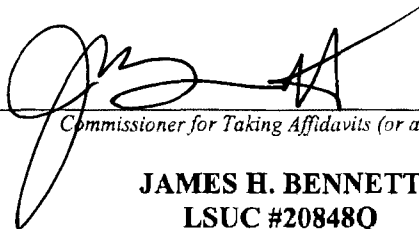
Commissioner for Taking Affidavits  
(or as may be)



**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)	<ul style="list-style-type: none"> <li>• Disability</li> <li>• Sex, including sexual harassment &amp; Pregnancy</li> <li>• Sexual solicitation or advances</li> </ul>	ON GOING
Female Constable	<ul style="list-style-type: none"> <li>▪ Sex, including sexual harassment and pregnancy</li> <li>▪ Marital status</li> </ul>	SETTLED <ul style="list-style-type: none"> <li>• monetary settlement</li> <li>• withdrawal of OHRT application</li> <li>• voluntary resignation</li> </ul>
Female Constable	<ul style="list-style-type: none"> <li>• employment (rate of pay, denied promotion, discipline)</li> <li>• sexual harassment (comments, displays, jokes, poisoned work environment, denied accommodation or modified work in the workplace)</li> </ul>	WITHDRAWN <ul style="list-style-type: none"> <li>• 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)</li> </ul>

Female Sergeant	<ul style="list-style-type: none"> <li>• Disability</li> <li>• Sex including sexual harassment, pregnancy, gender identity</li> <li>• Reprisal or threat of Reprisal</li> <li>• Discrimination in employment on basis of sex and disability</li> <li>• Discrimination in discipline</li> <li>• Discrimination in comments, displays, jokes, harassment, poison environment, sex harassment, solicitation or advances</li> <li>• Denied workplace opportunity</li> <li>• Denied employment benefits</li> <li>• Denied necessary accommodation or modified work</li> </ul>	<p>SETTLED</p> <ul style="list-style-type: none"> <li>• monetary settlement</li> <li>• withdrawal of Application</li> </ul>
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# Tab 7



**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](http://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](mailto:hrto.registrar@ontario.ca)



### Application Information

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

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

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

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

Check off whether you are the:

- ☒ Applicant ☐ Respondent ☐ Ontario Human Rights Commission  
☐ Other - describe: \_\_\_\_\_

### 2. Representative Contact Information

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

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

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



**3. Contact Information for the Other Parties to the Settlement**

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

**a) Organization**

Full Name of Organization

Waterloo Regional Police Association

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

First (or Given) Name

Caroline V. (Nini)

Last (or Family) Name

Jones

Title

Solicitor

Street Number

155

Street Name

Wellington Street

Apt/Suite

35th Floor

City/Town

Toronto

Province

ON

Postal Code

M5V 3H1

Email

nini.jones@paliaroland.com

Daytime Phone

416.646.7433

Cell Phone

Fax

416.646.4301

TTY

**b) Individual**

First (or Given) Name

Kelly

Last (or Family) Name

Donovan

Street Number

11

Street Name

Daniel Place

Apt/Suite

City/Town

Brantford

Province

ON

Postal Code

N3R 1K6

Email

kelly@fit4duty.ca

Daytime Phone

519-209-5721

Cell Phone

Fax

TTY

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

Ongoing.

(dd/mm/yyyy)

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

See Schedule "A".





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

See Schedule "A".

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

See Schedule "A".

**8. Declaration and Signature**

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

**Declaration:**

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

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

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

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

Name:

Donald B. Jarvis

Signature:

*Donald Jarvis*

Date: (dd/mm/yyyy)

28/06/2018

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

**Freedom of Information and Privacy**

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

**SCHEDULE "A" TO FORM 18**  
**(CONTRAVENTION OF SETTLEMENT)**

BETWEEN:

**THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD**

Applicant

- and -

**KELLY DONOVAN**

Respondent

**TABLE OF CONTENTS**

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

## **I. INTRODUCTION**

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

## **II. THE PARTIES**

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

## **III. BACKGROUND**

### **A. *The HRTO Application***

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

where members of the Service were involved, either as alleged victims or as alleged perpetrators. Members of the public as well as the media were present during Ms Donovan's delegation. As set out in her HRTTO 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 depositions 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 HRT0 Application, Ms Donovan characterized the *PSA* Investigation as "bullying" and intimidation in response to her delegation.
12. Notably, despite Ms Donovan's meeting with Inspector Thiel and Acting Inspector Goodman during which she had been expressly directed not to appear before the Board, Ms Donovan subsequently sent an email to members of the Board advising that she had been served with a Directive and a Notice of Investigation. Ms Donovan also asserted that her actions were above reproach and that she had no personal interest in any of the matters she brought to the Board's attention. Ms Donovan was subsequently served with a second Notice of Investigation on May 31, 2016 in relation to her email to members of the Board. This notice indicated that an investigation would be conducted to determine whether Ms Donovan's actions constituted deceit and/or discreditable conduct under the *PSA*. Once again, the Notice of Investigation ordered Ms Donovan not to have any contact with members of the Board without the permission of the Chief of Police.
13. On or about June 2, 2016, Ms Donovan filed an internal complaint alleging that she had been discriminated against and harassed contrary to the *Human Rights Code* and WRPS

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

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

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

- (b) As a result of a law suit commenced by Constable Jeremy Snyder arising out of his acquittal following a criminal trial for sexual assault, the Board had already had a review done and received an independent report, subject to solicitor-client privilege and litigation privilege – the existence of which was well-known to Constable Snyder. In addition, Constable Snyder was actively involved in another criminal prosecution (this time for domestic assault, mischief and threats) that resulted in a withdrawal of charges and peace bond, but was still outstanding at the time of Ms Donovan's deputations to the Board. On January 10, 2017, Constable Snyder pleaded guilty to Discreditable Conduct under the *PSA* arising out of the underlying incidents of the criminal charges.
  - (c) The independent, third-party investigation into Ms Donovan's internal harassment and discrimination complaint was concluded in October 2016. Ms Bernardi's report was issued on October 31, 2016, and was shared with counsel for Ms Donovan on or about November 27, 2016. Ms Bernardi found that there had been no discrimination based on sex, and that no members of the Service had engaged in any form of harassment. What is more, Ms Bernardi noted that it was reasonable in the circumstances for the Service to take the position that an investigation into Ms Donovan's conduct in making a delegation to the Board was warranted.
- 17. On or about December 14, 2016, Ms Donovan requested that her HRTO Application be reactivated.
  - 18. The WRPSB opposed Ms Donovan's request to reactivate her Application, taking the position that the Application should continue to be deferred pending the conclusion of an ongoing investigation under the *PSA* and any disciplinary proceeding that may arise in the event that charges were laid against Ms Donovan under the *PSA*. Ms Donovan had made serious allegations against other members of the Service and may have improperly accessed and publicly shared details from a protected Crown Brief in the Finucan matter,

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

19. The Service had reasonable and demonstrable grounds to investigate Ms Donovan's conduct on and following May 4, 2016 and to determine whether charges under the *PSA* were necessary and appropriate. This investigation, by consent of Ms Donovan's counsel, was deferred pending the completion of the internal Harassment and Discrimination investigation and the final report regarding the independent review conducted by the YRP of the Finucan matter.
20. A *PSA* investigation is a statutorily mandated employment misconduct and discipline system. In this case, it was to cover the same facts and underlying allegations made by Ms Donovan in her HRTTO 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 HRTTO 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 HRTTO 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 HRTTO 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 HRTTO deferred the HRTTO Application for 60 days or such shorter time period in which a decision was made as to whether or not more charges ought to be brought against Ms Donovan under the *PSA*.
24. However, the WRPSB was not able to reach a final decision regarding whether to bring charges against Ms Donovan within the 60 day period due to a necessary interview with



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

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

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

26. During the period of deferral, the parties successfully negotiated a Resignation Agreement to "fully resolve and settle the two outstanding matters between them, namely: (a) the application filed by Donovan with the Human Rights Tribunal of Ontario ("HRTO") on or about June 6, 2016 and having HRTO File No. 2016-245566-I (the "Application"); and (b) the Board's investigation into whether Ms Donovan engaged in misconduct in or about May 2016 sufficient to warrant formal charges against Donovan under the *Police Services Act* (the "Potential PSA Charges")".
27. Pursuant to the Resignation Agreement, Ms Donovan expressly confirmed that "she is freely and voluntarily resigning her employment with the Board effective on or about June 25, 2017" and that this resignation was "irrevocable".
28. Not only did the parties expressly agree that Ms Donovan resigned but the parties agreed to strict confidentiality provisions pursuant to which the parties undertook to keep the terms of the Resignation Agreement in absolute and strict confidence. The Resignation Agreement provided that "[i]f asked, the parties .... will indicate only that all outstanding matters between the parties were settled to their mutual satisfaction, the terms of which settlement are strictly confidential".
29. The Resignation Agreement also included a Full and Final Release pursuant to which Ms Donovan released and forever discharged "the Regional Municipality of Waterloo Police Services Board ...from any and all ...complaints...claims....which I have ever had...by reason of my employment with or the resignation of my employment with the Regional Municipality of Waterloo Police Services Board... or which arises out of or in any way relates to the matters giving rise to my HRTO Application". Pursuant to the Full and Final Release, Ms Donovan further agreed that the Release could be raised as a complete bar to "any complaint against any of the Releasees or anyone connected with the

Releasees for or by reason of any cause, matter or thing, including the matters arising out of or in any way relating to my HRT0 Application”.

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

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

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

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

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

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

"Kelly Donovan is available for speaking engagements, training, policy development, and whistleblower programs for both government and corporations. For more information visit [www.fit4duty.ca](http://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 (HRT) 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 HRT 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 HRT 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 HRT delivered a decision to allow WRPS the continued deferral of Donovan's Human Rights complaint. The HRT's decision did not address Donovan's allegations of violations of her Charter Rights or reprisal.

....

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

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

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

37. In addition to her personal complaints and the public repetition of the allegations and factual underpinnings of her HRTO Application, Ms Donovan outlined in the Book various complaints about the treatment of others, including:
- (a) At page 11, Ms Donovan wrote that in her policing career she “saw very qualified, confident and intelligent women come and go because they refused to remain in the toxic environment, impenetrable to change; that is policing”.
  - (b) Commencing at page 36, Ms Donovan complained about the conduct of the Chief of the WRPS in respect of his release of a personal email sent by Constable Craig Markham.
  - (c) At pages 54-55, Ms Donovan set out complaints against the WRPS in respect of matters regarding Constable Jeremy Snyder and Sergeant Bradley Finucan.
  - (d) At pages 57-58, Ms Donovan complained about the treatment of Rajiv Sharma by the WRPS.
38. Ms Donovan’s Book generated media attention, including the following:
- (a) In an interview with 570 News, Ms Donovan is recorded as saying that the WRPS is attacking her credibility and failing to acknowledge the problems that exist. A copy the inquiry from 570 News is attached at **Tab 4**. A copy of the 570 News article dated July 17, 2017 is attached at **Tab 5**.
  - (b) A CBC report dated July 18, 2017 is attached at **Tab 6** and records Ms Donovan as alleging that she was subject to reprisals for raising issues with the WRPS regarding its handling of internal investigations.
39. Subsequent to the publication of her Book, Ms Donovan continued to make public complaints about the WRPS, repeating both the allegations giving rise to her HRTO Application and the Potential *PSA* Charges and alleging that she was constructively dismissed. These complaints and allegations have been made in various public speaking engagements, communications with government and the media, and through social media (including her website, her LinkedIn account, her twitter account, Facebook (at fit4dutyanda) and YouTube). The particulars of this ongoing series of contraventions of the Resignation Agreement include the following.
40. In or about June 2017, Ms Donovan established a twitter account ([https://twitter.com/fit4duty\\_ethics?lang=en](https://twitter.com/fit4duty_ethics?lang=en)), which she has used as a forum to advertise

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

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

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

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

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

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

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

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

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

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



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

....

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

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

[emphasis added]

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

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

...

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

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

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

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

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

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

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

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

...

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

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

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

51. Ms Donovan also has a YouTube Channel (Fit4Duty – the Ethical Standard) in which she regularly posts videos including allegations of impropriety by the WRPS and complaints of constructive dismissal, the particulars of which include:

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

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

**V. SUBMISSIONS**

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

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

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

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

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

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

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

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

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

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

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

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

62. These factors all weigh in favour of significant remedies, including substantial damages, in this case.
63. The Tribunal has recognized that damages must recognize the cost, inconvenience and aggravation involved in enforcement of the settlement. In *Harvey v Newtek Automotive*, 2013 HRT0 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 HRT0 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 is as “incurred in good faith and no substantial prejudice will result to any person affected by the delay”. In the present case, the WRPSB has delayed the instant Application in the good faith hope that Ms Donovan would move on and cease making accusations and complaints. Unfortunately, her conduct is persistent and can no longer be tolerated. Her ongoing accusations are tantamount to slander and defamation. Indeed the triggering event is her filing of a Statement of Claim seeking to enforce the Resignation Agreement in response to the WRPSB’s good faith attempt to defend itself against a proposed class action. In support of its defence, the WRPSB referred to the Donovan case on a completely no-names basis. While the reference was consistent with the requirements of the Resignation Agreement, Ms Donovan objected by commencing a civil action. In effect, while Ms Donovan has completely disregarded the obligations of the Resignation Agreement, she is using the Agreement to try to limit the ability of the WRPS to defend itself in the proposed class action. A copy of the Statement of Claim is attached at **Tab 14**.
70. In any event, quite apart from the fact that any delay was incurred in good faith with no substantial prejudice to Ms Donovan, her actions form “a series of contraventions”. Section 45.9(3) of the *Code* expressly permits an application to enforce a settlement where there is a series of contraventions and the application is made to the Tribunal within six months of the last contravention in the series. As set out above, Ms Donovan

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

## **VI. CONCLUSION**

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

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

77. For all of the foregoing reasons, the WRPSB requests that the Tribunal:
- (a) declare that Ms Donovan has engaged in an ongoing series of contraventions of the Resignation Agreement;
  - (b) direct Ms Donovan to cease and desist from any further violations of the Resignation Agreement;
  - (c) direct Ms Donovan to redact allegations against the WRPSB from her Book and to remove from the public domain any other allegations she has made against the WRPSB contrary to the Resignation Agreement;
  - (d) direct Ms Donovan to make best efforts to have those public allegations that are under the control of other parties removed from the public domain; and
  - (e) order Ms Donovan to pay significant damages to remedy the ongoing damage to the WRPS's reputation in the context of intentional and repeated violations of the most fundamental nature. In the alternative, the WRPSB states that the Tribunal ought to assess damages with reference to the revenue generated by Ms Donovan through her ongoing breaches which are being 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 8



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](http://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](mailto:hrto.registrar@ontario.ca)



<b>Application Information</b>	
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 Kelly		Last (or Family) Name Donovan		Apt/Suite	
Street Number 11	Street Name Daniel Place			Apt/Suite	
City/Town Brantford		Province Ontario	Postal Code N3R1K6	Email kelly@fit4duty.ca	
Daytime Phone 5192095721	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.)



**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 9



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

655 Bay Street, 14<sup>th</sup> 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: [hrt.o.registrar@ontario.ca](mailto:hrt.o.registrar@ontario.ca)  
Website: [sjo.to.ca/hrt.o](http://sjo.to.ca/hrt.o)

**Tribunaux de justice sociale Ontario**

*Pour une justice accessible et équitable*

**Tribunal des droits de la personne de l'Ontario**

655, rue Bay, 14<sup>e</sup> étage  
Toronto ON M7A 2A3  
Tél.: 416-326-1312 ou 1-866-598-0322  
Télec.: 416-326-2199 ou 1-866-355-6099  
Courriel: [hrt.o.registrar@ontario.ca](mailto:hrt.o.registrar@ontario.ca)  
Site Web: [tjso.ca/tdpo](http://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](mailto:djarvis@filion.on.ca)

Kelly Donovan  
11 Daniel Place  
Brantford, Ontario N3R 1K6  
Via Mail & Email: [kelly@fit4duty.ca](mailto: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@paliarerland.com](mailto:nini.jones@paliarerland.com)

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

Child and Family Services Review Board  
Custody Review Board  
Human Rights Tribunal of Ontario  
Landlord and Tenant Board Ontario  
Special Education (*English*) Tribunal Ontario  
Special Education (*French*) Tribunal Ontario  
Social Benefits Tribunal

Commission de révision des services à l'enfance et à la famille  
Commission de révision des placements sous garde  
Tribunal des droits de la personne de l'Ontario  
Commission de la location immobilière  
Tribunal de l'enfance en difficulté de l'Ontario (*anglais*)  
Tribunal de l'enfance en difficulté de l'Ontario (*français*)  
Tribunal de l'aide sociale

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](http://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/](http://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](http://sjto.ca/hrto). To request a copy of these documents, you can also contact the HRTO by e-mail ([hrto.registrar@ontario.ca](mailto: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, 14<sup>th</sup> 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](http://www.hrlsc.on.ca)

# Tab 10



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

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

Or

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

**Deadline:**

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

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

**Follow these steps to make your application:**

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



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

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

**Follow these steps to respond:**

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

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

Download forms from the Forms & Filing section of the HRTO web site at [www.sjto.ca/hrto](http://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](mailto:hrto.registrar@ontario.ca)



<b>Application Information</b>	
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 Kelly		Last (or Family) Name Donovan		Organization (if applicable)	
Street Number 11	Street Name Daniel Place			Apt/Suite	
City/Town Brantford		Province On	Postal Code N3R1K6	Email kelly@fit4duty.ca	
Daytime Phone 5192095721	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.)

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  
Virginia

Last (or Family) Name  
Torrance

Title  
WRPS

Street Number 200	Street Name Maple Grove Road			Apt/Suite P.O.Box 3070
City/Town Cambridge	Province On	Postal Code N3H5M1	Email virginia.torrance@wrps.on.ca	
Daytime Phone 5196508552	Cell Phone	Fax 5196508851	TTY	

**b) Individual**

First (or Given) Name  
Bryan

Last (or Family) Name  
Larkin

Street Number 378	Street Name Golf Course Road			Apt/Suite
City/Town Conestogo	Province On	Postal Code N0B1N0	Email 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 .....	- 2 -
II.	Facts .....	- 2 -
	Class action lawsuit .....	- 2 -
	Applicant's resignation .....	- 3 -
III.	Overview .....	- 4 -
IV.	Timeliness & Retaliation .....	- 5 -
V.	Applicant's health .....	- 7 -
VI.	Relief Claimed .....	- 8 -



## **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 11



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

August 14, 2018

KELLY DONOVAN  
11 DANIEL PL  
BRANTFORD ON N3R 1K6  
CANADA

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

**Dear KELLY DONOVAN**

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

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

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

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

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

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

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

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

# Tab 12

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 <b>Kelly Donovan</b>	Claim No. <b>30505408</b>
---------------------------------------	------------------------------

**2. Objecting Party**

<input type="checkbox"/> Worker	<input type="checkbox"/> Worker Representative	<input checked="" type="checkbox"/> Employer	<input type="checkbox"/> Employer Representative	<input type="checkbox"/> Transfer-of-Cost Employer
---------------------------------	--	--	--	--

**3. General Information**

Is the worker/employer address and contact information the same as the decision letter? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see changes below.		
Name <b>Waterloo Regional Police Service</b>		
Address <b>200 Maple Grove Road</b>	City/Town <b>Cambridge</b>	Postal Code <b>N3H 5M1</b>
Telephone No.: (Day) <b>( 519 ) 653-7700</b>	Telephone No.: (Evening) <b>( )</b>	Language <input checked="" type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Other _____

**4. Representation**

See Instruction Sheet for information on possible assistance available.		
Please check one: <input type="checkbox"/> I will represent myself in the objection process, or I am currently seeking representation. <input checked="" type="checkbox"/> I have a representative to handle my objection.		
If you are represented - A signed <i>Direction of Authorization</i> for this representative must be in the claim file.		
Representative's Name <b>Donald B. Jarvis</b>	Organization <b>Filion Wakely Thorup Angeletti LLP</b>	
Address <b>333 Bay Street, Suite 2500</b>	City/Town <b>Toronto, Ontario</b>	Postal Code <b>M5H 2R2</b>
Telephone No.: (Day) <b>( 416 ) 408-5516</b>	Telephone No.: (Evening) <b>( )</b>	FAX No. <b>( 416 ) 408-4814</b>

**5. Intent to Object**

I disagree with the following decision(s):	
Date of Decision Letter(s) (dd/mm/yyyy)	Issue(s) in Dispute
<b>12/Jul/2017</b>	<b>Entitlement to healthcare and loss of earnings benefits</b>

**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.	
<input type="checkbox"/> No, I have no additional explanation/information to submit.	
<input checked="" type="checkbox"/> Yes, additional explanation/information is attached. (Please put the worker's name and claim number on each page.)	

Name (please print) <b>DONALD B. JARVIS</b>	Signature 	Date <b>11 JAN 2018</b>
--	---	----------------------------

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

Worker's Name <b>Kelly Donovan</b>	Claim No. <b>30505408</b>
---------------------------------------	------------------------------

**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 13

**From:** Fit4Duty [kelly@fit4duty.ca](mailto:kelly@fit4duty.ca)  
**Subject:** CV18-00001938-0000  
**Date:** February 19, 2020 at 9:40 AM  
**To:** Donald B. Jarvis [djarvis@filion.on.ca](mailto:djarvis@filion.on.ca), Cassandra Ma [cma@filion.on.ca](mailto:cma@filion.on.ca)

---



Good morning,

The WRPSB and Bryan Larkin are now in default, as I have not been served their statement of defence. Can you please advise when I can expect to receive this document?

Thank you,

Kelly Donovan  
Fit4Duty - The Ethical Standard  
[kelly@fit4duty.ca](mailto:kelly@fit4duty.ca)  
+1.519.209.5721  
[www.fit4duty.ca](http://www.fit4duty.ca)

This e-mail and any files transmitted with it are confidential and are intended solely for the use of the individual or entity to whom they are addressed. This communication may contain material protected by contract law. If you are not the intended recipient or the person responsible for delivery of the e-mail to the intended recipient, be advised that you have received this e-mail in error and that any use, dissemination, forwarding, printing or copying of this e-mail is strictly prohibited. If you have received this e-mail in error, please immediately notify Fit4Duty - The Ethical Standard(TM) by telephone at 519-209-5721.

# Tab 14

**From:** Christa Ambrose [christaa@filion.on.ca](mailto:christaa@filion.on.ca)  
**Subject:** Kelly Lynn Donovan V. Waterloo Regional Police Services Board and Bryan Larkin (Court File No. CV-18-1938)  
**Date:** February 19, 2020 at 11:28 AM  
**To:** [Snaza.Velanovski@ontario.ca](mailto:Snaza.Velanovski@ontario.ca)  
**Cc:** Donald B. Jarvis [DJarvis@filion.on.ca](mailto:DJarvis@filion.on.ca), Cassandra Ma [cma@filion.on.ca](mailto:cma@filion.on.ca), Kelly Donovan ([kelly@fit4duty.ca](mailto:kelly@fit4duty.ca)) [kelly@fit4duty.ca](mailto:kelly@fit4duty.ca)

---

CA

**On Behalf of Donald B. Jarvis**

Attached please find correspondence dated February 19, 2020, along with documents thereto with respect to the above-noted matter. Would you kindly provide this correspondence and documents to Justice Michael T. Doi. Thank you.

**Christa Ambrose**

Assistant to Donald B. Jarvis and Carol S. Nielsen



Bay Adelaide Centre  
333 Bay Street  
Suite 2500 Box 44  
Toronto, Ontario  
Canada M5H 2R2

[cambrose@filion.on.ca](mailto:cambrose@filion.on.ca)  
t: 416-408-3221 x2316  
f: 416-408-4814  
[www.filion.on.ca](http://www.filion.on.ca)



Doi ltr-  
Feb.19'....1).pdf

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.

**Filion Wakely Thorup Angeletti LLP** [www.filion.on.ca](http://www.filion.on.ca)

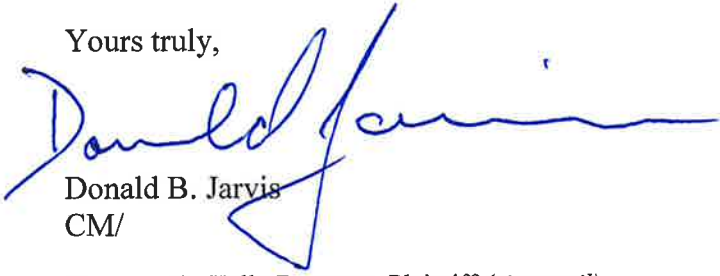
Toronto  
Bay Adelaide Centre  
333 Bay Street, Suite 2500, PO Box 44  
Toronto, Ontario M5H 2R2  
tel 416.408.3221 | fax 416.408.4814  
[toronto@filion.on.ca](mailto:toronto@filion.on.ca)

London  
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London, Ontario N6A 5J9  
tel 519.433.7270 | fax 519.433.4453  
[london@filion.on.ca](mailto:london@filion.on.ca)

Hamilton  
1 King Street West, Suite 1201, Box 57030  
Hamilton, Ontario L8P 4W9  
tel 905.526.8904 | fax 905.577.0805  
[hamilton@filion.on.ca](mailto:hamilton@filion.on.ca)

Thank you for your immediate attention to this matter. We look forward to your earliest reply.

Yours truly,

A handwritten signature in blue ink, appearing to read "Donald B. Jarvis". The signature is fluid and cursive, with a large initial "D" and a long, sweeping horizontal line at the end.

Donald B. Jarvis  
CM/

cc Ms. Kelly Donovan, Plaintiff (*via email*)  
Ms. Virginia Torrance, Regional Municipality of Waterloo Police Services Board (*via email*)

# Tab 15



Mr. Donald Jarvis  
Filion Wakely Thorup Angeletti LLP  
Bay Adelaide Centre  
333 Bay Street  
Suite 2500, Box 44  
Toronto, Ontario  
M5H 2R2

**Delivered by email**

Re: Donovan v. Waterloo Police – Court File No. CV-18-1938

April 27, 2020

Dear Mr. Jarvis and Ms. Ma;

I clearly understand from your material filed with Justice Doi on April 3, 2020, that you adamantly disagree with the arguments I put forth in my March 17, 2020, submission. You were clear in your letter dated April 23, 2020, that your client intends to pursue a Rule 59.06(1) motion, as suggested by Justice Doi in his endorsement dated April 20, 2020.

I am writing you to bring a recent case to your attention, and to hopefully prevent unnecessary expense to both myself and your publicly funded client, the WRPSB, and Bryan Larkin. Hopefully, when your clients learn of this recent decision, “cooler heads” will prevail.

The case is; *Lantin et al v. Seven Oaks General Hospital*, 2019 MBCA 115. I have attached it for your reference.

Although the case referenced above occurred in the Court of Appeal of Manitoba, the Rules are identical to ours in Ontario. In the case above, the Court of Appeal allowed an appeal, and then afterwards the lower court amended their judgment (which had been overturned), and it was not a minor change. Court of Queen’s Bench Rules, Reg. 553/88, Rule 59.06(1) is identical to Rule 59.06(1) of the Rules of Civil Procedure.

At paragraph 28 of the decision, Justice of Appeal Mainella explains that a Justice of the lower court amending a decision dated before the order of the Court of Appeal was an error in law. Paragraph 31 states; “The idea of two judgments existing at the same time for the same parties on the same cause of action is both illogical and contrary to the law.” Using the same logic as in *Lantin*, at para. 32, “the only judgement that was in effect between the parties” was the one given by the Ontario Court of Appeal allowing my amended claim to proceed. In accordance with Rule 61.16(6.1), any omission from the judgment should be addressed with the Ontario Court of Appeal.

Your clients have asked the lower court to reconsider the Order made on March 20, 2019, because your clients believe that courts never had jurisdiction of my claim and it should therefore be dismissed. That would not be a minor change to the original order, and it would be a change to an order that no longer exists.

It is unfortunate that your clients' alternate grounds to dismiss my claim were not explicitly addressed in Justice Doi's decision, however, not having raised the omission on appeal appears to have been a critical error on their part, as Justice Doi's judgment is no longer in effect.

I understand I will be given the opportunity to properly argue my position when your motion is finally scheduled and heard. However, being made aware of the recent case above, and still deciding to bring this motion, may be considered improper or an act of bad faith.

To save us both from the unnecessary expense and delay, I propose that your clients reconsider their desire to attempt to re-open the issue of jurisdiction, withdraw their desire to proceed with a Rule 59.06(1) motion in Brampton and provide their statement of defence forthwith in order that this litigation can proceed on an evidentiary record, as was recommended by the Court of Appeal. I had already pointed out to you, that your clients' statement of defence has not been provided in accordance with the Rules, and that your letter to Justice Doi was submitted one day after the 20-day period to submit their statement of defence had elapsed.

Should an amendment be proposed to the Order dated October 25, 2019, by the Ontario Court of Appeal, to satisfy your client's desire to explicitly address any outstanding matter in this proceeding, which does not change the outcome of the Order, I may be inclined to consent to the amendment without the need for the hearing of a motion, at your clients' expense. Alternatively, proceeding with their Rule 59.06(1) motion may provide grounds for additional orders or appeals.

I would also like to remind your clients that I have not withdrawn my June 5, 2019, offer to settle.

With respect,

Kelly Donovan

# Tab 16

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

**Reply to Cassandra Ma**  
Toronto Office  
tel 416.408.5508 | email cma@filion.on.ca

May 6, 2020

**SENT VIA E-MAIL**

Kelly Donovan  
14 Laurie Ann Lane  
Paris, Ontario N3L 4H4

Dear Ms. Donovan:

**Re: Waterloo Regional Police Services Board and Bryan Larkin ats. Kelly Lynn Donovan  
(Court File No. CV-18-00001938-0000)**

We confirm receipt of your correspondence dated April 27, 2020. We have thoroughly reviewed the case that you provided, *Lantin et al. v. Seven Oaks General Hospital*, 2019 MBCA 115 (“*Lantin Appeal #2*”). It is our view that *Lantin Appeal # 2* is factually distinguishable from the instant proceeding and, in fact, consistent with our client’s proposed Rule 59.06(1) motion.

In the trial decision of *Lantin et al. v. Sokolies et al.*, 2017 MBQB 40 (“*Lantin*”), the Manitoba Court of Queen’s Bench awarded damages totalling \$1,539,145.51 after the plaintiff successfully brought a medical malpractice action. This damages award was comprised of \$175,000 in non-pecuniary damages, \$1,300,000 in damages for loss of earning capacity; and \$64,145.51 for a subrogated claim. The Order of the Trial Judge was signed on May 18, 2017.

The defendant appealed the amounts awarded for non-pecuniary damages and damages for loss of earning capacity to the Manitoba Court of Appeal (2018 MBCA 57, referred to hereinafter as “*Lantin Appeal #1*”). At this appeal, the Trial Judge was found to have failed to make any allowance for contingencies when assessing the plaintiff’s loss of earning capacity. This error in law had resulted in an inordinately high damages award. Accordingly, the Court of Appeal lowered the damages awarded for loss of earning capacity from \$1,300,000 to \$525,000. The amount for non-pecuniary damages, however, was expressly left intact. The Court of Appeal’s Order was entered on June 19, 2018.

Following *Lantin Appeal #1*, the plaintiff brought a Rule 59.06(1) “slip rule” motion before the Manitoba Court of Queen’s Bench, seeking amendment of the May 18, 2017 Order by the Trial Judge (2018 MBQB 160, referred to hereinafter as “*Lantin Motion*”). Specifically, the plaintiff’s motion sought a 3% per annum upwards adjustment of the non-pecuniary damages award pursuant to section 80(3) of *The Court of Queen’s Bench Act*, which required the Court to make allowance for the plaintiff’s lost opportunity to invest the non-pecuniary damages amount. The Motion Judge granted the plaintiff’s motion and the resulting amendment added \$43,682.88 to the original non-pecuniary damages award of \$175,000 (or a total non-pecuniary damages award of \$218,682.88).

The *Lantin Motion* decision was appealed by the defendant and overturned in *Lantin Appeal #2*. The Court of Appeal found that the Motion Judge was incorrect in concluding that *Lantin Appeal #1* made no difference to her ability to amend the May 18, 2017 Order. To the contrary, the June 19, 2018 Order of the Court of Appeal had replaced the Trial Judge’s May 18, 2017 Order, such that the May 18, 2017 Order was effectively no longer in existence or available for amendment. By permitting the amendment, the Motion Judge essentially acted as though both the Trial Judge’s Order and the Court of Appeal’s Order were simultaneously in effect. This would lead to the illogical result of the plaintiff being entitled to a single award of non-pecuniary damages that was, at the same time, \$175,000 or \$218,682.88.

Notably, the plaintiff had not raised the issue of a section 80(3) adjustment until **after** the *Lantin Appeal #1* Order had been entered. This is a critical difference from the instant proceeding: as you are aware, the Defendants raised the issue of jurisdiction in their Notice of Motion and the matter was fully argued in the original motion before Mr. Justice Doi.

Further, in *Lantin Appeal #2*, the Court of Appeal expressly acknowledged the possibility of multiple final judgments in the same action where the judgments pertain to different issues in the action:

[31] The idea of two judgments existing at the same time for the same parties **on the same cause of action** is both illogical and contrary to the law. The correct statement of principle is set out as follows in WB Williston & RJ Rolls, *The Law of Civil Procedure* (Toronto: Butterworths, 1970), vol 2 at 1022: “**More than one final judgment may be given in an action or proceeding if several causes of action or issues are decided at different times**, but if there is only one cause of action only one judgment can be given.”

[Emphasis added]

As stated in our April 3, 2020 submissions to Mr. Justice Doi, the Defendants seek a ruling on the previously-argued jurisdiction issue. Neither Mr. Justice Doi nor the Court of Appeal for Ontario has decided this issue. This fact is another material distinction between *Lantin Appeal #2* and the instant proceeding. We wholly agree that the only final judgment in effect regarding whether the Amended Statement of Claim discloses a reasonable cause of action is the October 25, 2019 decision of the Court of Appeal for Ontario. However, precisely because the Court of Appeal decided only that issue (i.e. whether the Amended Statement of Claim discloses a reasonable cause of action) and not whether the subject matter of the Amended Statement of Claim is within the jurisdiction of the Court, no conflict of judgments will arise if the Ontario Superior Court of Justice now rules on the jurisdiction issue. Put simply, there has never been any judgment, let alone a final judgment, with respect to the jurisdiction issue. This is the opposite of the situation before the Manitoba Court of Appeal in *Lantin Appeal #2*.

We also note that *Lantin Appeal #2*, being a decision of the Manitoba Court of Appeal, is not binding on the Ontario Courts.

In summary, our clients' proposed motion on jurisdiction is neither precluded by *Lantin Appeal #2* nor an act in bad faith. As you will recall from our various submissions to Mr. Justice Doi, the Defendants' position has always been that the jurisdiction issue must be determined by the Court at a preliminary stage, whether pursuant to Rule 59.06(1) or otherwise. Moreover, to be clear, the Defendants will be bringing this jurisdiction motion on the basis of Rule 59.06(1), Rule 21.01(3)(a), and any other applicable Rules. In any event, the purpose of this jurisdiction motion is to determine the central and fundamental question of whether your allegations against our clients may properly be heard by the Court. Ultimately, this will help to streamline the parties' proceedings before both the Court and the Human Rights Tribunal of Ontario, and be cost-effective for the parties. If our clients' position regarding jurisdiction is correct, the parties will save the expense and time associated with potentially unnecessary discovery and litigation before the Court. Such an approach has been regarded positively by the Courts in past cases.

Although you have raised the possibility of consensually amending the Court of Appeal's October 25, 2019 Order to address the outstanding issue of jurisdiction, this Order cannot be amended to include matters that were not argued before the Court of Appeal. It is precisely this state of affairs that led to our February 19, 2020 request for direction from Mr. Justice Doi.

Should you have any questions regarding the foregoing, or wish to discuss other measures for the efficient processing of all outstanding proceedings, please do not hesitate to contact our office.

Yours truly,

A handwritten signature in blue ink, appearing to read "Donald B. Jarvis", with a long horizontal flourish extending to the right.

Donald B. Jarvis  
Cassandra Ma  
CM/

Encl.

cc Ms. Virginia Torrance, Regional Municipality of Waterloo Police Services Board

# Tab 17



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

	<u>PAGE(S)</u>	<u>ARTICLE</u>
ADOPTION LEAVE.....	35 - 36	29
AIR CONDITIONING.....	41	39
ALLOWANCE FOR ATTENDING CLASSES.....	17 - 18	17
ANNUAL LEAVE.....	37 - 39	33
ASSOCIATION DUES.....	2 - 3	4
ASSOCIATION MEETINGS.....	20 - 22	22
ASSOCIATION REPRESENTATION.....	2	3
BENEFIT COVERAGE .....	24 - 30	25
BEREAVEMENT LEAVE.....	36	31
CLOTHING.....	16 - 17	16
COMPLAINT & GRIEVANCE PROCEDURE.....	42 - 44	42
COMPLEMENT - APPENDIX 'B'.....	55	
COURT-TIME PAY.....	8 - 10	10
DEPARTMENTAL BY-LAWS.....	18 - 19	19
DURATION.....	52	44
ESTABLISHED COMPLEMENT, ACTING RANKS.....	6	7
EXCHANGE OF SHIFTS.....	14 - 15	14
EXEMPTION FROM FOOT PATROL DUTY.....	39	34
FAMILY LEAVE.....	32	27
GENERAL PROVISIONS.....	39	35
GRIEVANCES.....	22	23
HOURS OF WORK.....	13 - 14	13
INJURY ON DUTY.....	19	20
JOB SHARING PROGRAM.....	44 - 52	43
LAYOFF.....	40 - 41	38
LEGAL INDEMNIFICATION.....	11 - 12	12
LUNCH PERIOD, MEAL ALLOWANCE.....	15 - 16	15

I N D E X

	<u>PAGE(S)</u>	<u>ARTICLE</u>
MANAGEMENT RIGHTS.....	2	2
MARRIAGE LEAVE.....	36	30
MILEAGE REIMBURSEMENT FOR USE OF PERSONAL VEHICLE.....	42	41
PAID DUTY PAY.....	6 - 7	8
PAY FOR OVERTIME, CALL-OUT, STAND-BY AND ON-CALL.....	7 - 8	9
PAYMENT FOR OVERTIME, COURT-TIME, ETC.....	10 - 11	11
PENSIONS.....	22 - 23	24
PERSONAL LEAVE.....	36 - 37	32
PREGNANCY AND PARENTAL LEAVE.....	32 - 35	28
PROMOTIONS.....	6	6
PURGING OF FILES.....	41 - 42	40
RECOGNITION AND SCOPE.....	1	1
SALARIES.....	3 - 6	5
SALARY SCHEDULE - APPENDIX 'A'.....	53 - 54	
SENIORITY.....	39 - 40	37
SICK LEAVE, SICK LEAVE BANK.....	30 - 32	26
SHIFT SCHEDULE - APPENDIX 'E'.....	63	
SHIFT SCHEDULE - 10-35 DAY/AFTERNOON/NIGHT - APPENDIX 'D'.....	57 - 62	
STATUTORY OR DECLARED HOLIDAYS.....	19 - 20	21
TRANSFERS.....	39	36
TUITION FOR SUPPLEMENTARY EDUCATION.....	18	18
VOLUNTEERS - APPENDIX 'C'.....	56	

THIS AGREEMENT made this 17<sup>th</sup> 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 ( $\frac{1}{2}$ ) 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 ( $\frac{1}{2}$ ) 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 (1<sup>st</sup>) 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 feasons 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 (OCPD), 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:

- o Summer hats
- o Police shirts and police sweaters by exception only with approval from Stores Fleet Manager through Stores at Police Headquarters
- o 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 1<sup>st</sup> of December, or on the regular pay date preceding December 1<sup>st</sup>. 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 1<sup>st</sup> shall submit the request by October 15<sup>th</sup> and the Officer in Charge shall make a determination within three (3) working days of receiving the request. Members requesting time off after November 1<sup>st</sup> 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 15<sup>th</sup>. 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 15<sup>th</sup>. Their Supervisor shall make a determination on these requests based on a seniority basis by October 22<sup>nd</sup>.

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 1<sup>st</sup>, 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 1<sup>st</sup>, 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 ( $\frac{1}{2}$ ) 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

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 Article

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 31<sup>st</sup>, 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 31<sup>st</sup> 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 31<sup>st</sup> 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 (50<sup>th</sup>) 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 1<sup>st</sup>, 1973 by virtue of the Regional Municipality of Waterloo Act shall be credited with continuous service prior to December 31<sup>st</sup>, 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 9<sup>th</sup>, 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 (OCPD) 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 31<sup>st</sup> 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

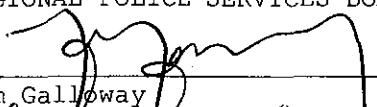
sharing arrangements.


**ARTICLE 44 - DURATION**

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

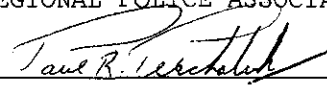
Dated and signed at Cambridge, this       day of       , 2016.

ON BEHALF OF THE WATERLOO  
REGIONAL POLICE SERVICES BOARD

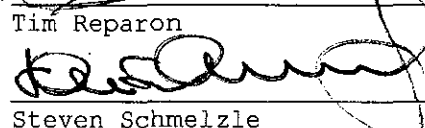
  
Tom Galloway

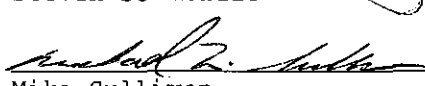
  
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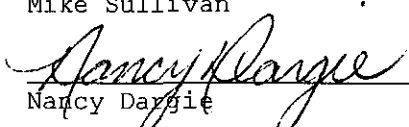
ON BEHALF OF THE WATERLOO  
REGIONAL POLICE ASSOCIATION

  
Paul Perchaluk

  
Tim Reparson

  
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)

<u>Rank</u>	<u>Jan. 1, 2015</u>	<u>Jan. 1, 2016</u>	<u>Jan. 1, 2017</u>
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)

<u>Rank</u>	<u>Jan. 1, 2018</u>	<u>July 1, 2019</u>
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

Roger Hollingworth

ON BEHALF OF THE WATERLOO  
REGIONAL POLICE ASSOCIATION

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.

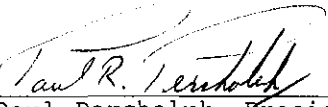
Court Break provisions shall apply to members of the Core Teams.

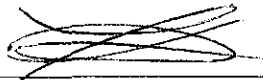
The Court Break provisions contained herein shall supersede the provisions of Article 10.05 of the Uniform Collective Agreement.

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

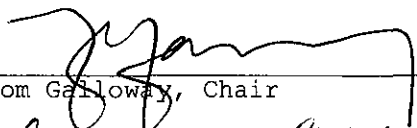
Dated this 9<sup>th</sup> day of September 2015, in the City of Cambridge.

ON BEHALF OF THE WATERLOO  
REGIONAL POLICE ASSOCIATION

  
Paul Perchaluk, President

  
Tim Reparón, 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
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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.

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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:

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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.

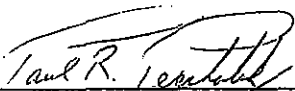
Court Break provisions shall apply to members of the Core Teams.

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 9<sup>th</sup> day of September 2015, in the City of Cambridge.

ON BEHALF OF THE WATERLOO  
REGIONAL POLICE ASSOCIATION

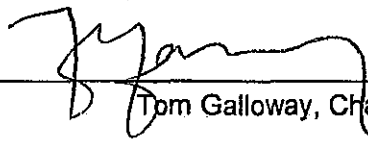


Paul Perchaluk, President

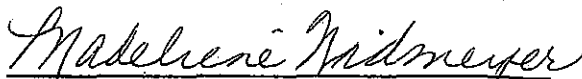


Tim Reparón, Vice President

ON BEHALF OF THE WATERLOO  
REGIONAL POLICE SERVICES BOARD



Tom Galloway, Chair



Madeliene Widmeyer, Executive Assistant

## **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

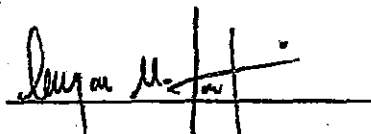
### **PROCESS**

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

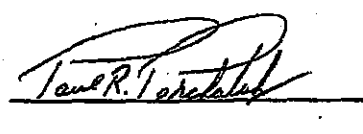
- be completed prior to the end of June 2015. The first round of voting will eliminate the shift option that has garnered the least amount of support. The second and final round of voting will determine which of the two schedules shall be adopted.
7. The WRPS and WRPA will agree upon a percentage of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

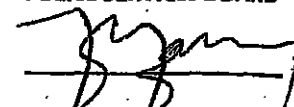

ON BEHALF OF THE WATERLOO  
REGIONAL POLICE SERVICE

  
Bryan M. Larkin, Chief of Police

ON BEHALF OF THE WATERLOO  
REGIONAL POLICE ASSOCIATION

  
Paul Perchaluk, President

ON BEHALF OF THE  
WATERLOO REGIONAL  
POLICE SERVICES BOARD

  
Tom Galloway, Chair  
Tim Reparon, Vice President  
Madeliene Widmeyer  
Executive Assistant

**(Appendix B)**

- 62 -

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 11<sup>th</sup> day of February, 2004.

ON BEHALF OF THE WATERLOO  
REGIONAL POLICE SERVICES BOARD

T. Galloway

J.E. Kissner

ON BEHALF OF THE WATERLOO  
REGIONAL POLICE ASSOCIATION

Roger Goulard

R. Todd Loveday

# Tab 18

### **HRTO Submissions 2018-33237-S/2018-33503-S**

<b>DATE:</b>	<b>By:</b>	<b>Submission:</b>	<b># Pgs</b>	<b>Details:</b>	<b>HRTO Response:</b>
June 28, 2018	WRPSB	Form 18	485	<ol style="list-style-type: none"> <li>1. Series of allegations of contravention of settlement</li> <li>2. Seeking that I stop speaking publicly about WRPSB, stop selling my book</li> <li>3. Retract allegations in public domain</li> <li>4. Pay significant damages</li> </ol>	Sent Jul 19/18 email
July 10, 2018	KD	Form 19	3	<ol style="list-style-type: none"> <li>1. Procedural fairness (ongoing court matter)</li> <li>2. Filed out of retaliation/vexatious/bad faith</li> <li>3. Improper to respond to Form 18, due to ongoing court proceeding</li> </ol>	Acknowledged but not addressed
July 19, 2018	HRTO	Letter by email	2	Hearing to be scheduled to provide oral submissions	
July 23, 2018	KD	Email to Registrar		Asked for clarification, if hearing was for my objections, or merits of their case	Did not address, said to take it up at hearing
July 27, 2018	KD	Form 18	9	<ol style="list-style-type: none"> <li>1. Application filed under duress, since HRTO proceeding despite ongoing court matter</li> <li>2. Timeliness issue explained in submission</li> </ol>	Registrar filed Form 10 to dismiss my application, untimeliness
July 30, 2018	WRPSB	Form 10	58	Request to dismiss all of my objections raised in July 10, 2018, submission	Hearing of preliminary matter scheduled
August 3, 2018	HRTO	Notice of Hearing	5	Hearing of WRPSB's application scheduled for Feb. 22, 2019	
August 10, 2018, 10:13am	HRTO	Form 10	3	Registrar issues "Notice of Intent to Dismiss" my application for timeliness. Says I do not appear to have cited facts that constitute "good faith"	HRTO tries to have my Application Dismissed

August 10, 2018, 11:35am	WRPSB	Email to Registrar	1	Their Form 11 was due today, but in light of the HRTO's Form 10, they stated they would "hold off filing any response."	
August 22, 2018	WRPSB	Email to Registrar	1	<ol style="list-style-type: none"> <li>1. Objecting to allowing me extensions to file my Form 11 in response to the HRTO's request to dismiss my application.</li> <li>2. Since I am "well" enough to be conducting work for my business, I must be well enough to complete my paperwork.</li> </ol>	
January 25, 2019	WRPSB	Email to Registrar	4	<ol style="list-style-type: none"> <li>1. WRPSB asking for my application to be dismissed and their allegations deemed accepted, move to determine issue of remedy.</li> <li>2. Brought to HRTO's attention, Civil Court application to dismiss WRPSB's application</li> </ol>	
February 4, 2019	KD	Email to Registrar	1	<ol style="list-style-type: none"> <li>1. Sent court decision: Ontario Superior Court of Justice Decision: Donovan v. (Waterloo) Police Services Board, 2019 ONSC 818</li> <li>2. Attempt to have HRTO application dismissed for infringing on constitutional rights.</li> <li>3. WRPSB gave undertaking to Justice to allow me time to properly respond to document requests at HRTO.</li> </ol>	No response
February 6, 2019	HRTO	Case Assessment Direction (CAD)	5	<ol style="list-style-type: none"> <li>1. Directed to decide by February 8, 2019, if I intend to pursue my HRTO application.</li> <li>2. File response to Registrar's Notice of</li> </ol>	



				Intent to Dismiss by February 15, 2019.	
February 6, 2019	KD	Email to Registrar		<ol style="list-style-type: none"> <li>1. Pointed out Code of Conduct violations by Ms. Letheren in not respecting natural justice and procedural fairness</li> <li>2. Conflict of Interest by Mr. Fthenos as having been previously employed as Chief Instructor of the Ontario Police College</li> </ol>	No response
February 8, 2019	WRPSB	Email	1	Stating they are available for Feb 19, 2019, Case Management Call	
February 11, 2019	KD	Email		Stated I did not receive a response to my previous email raising issues with WRPSB case.	No response
February 11, 2019	HRT0	Email		Email stated that HRT0 did not receive Feb. 6, 2019, email I sent to Registrar – sent again.	No response
February 11, 2019	KD	Email		I sent the email confirmation I received after my February 6, 2019, email to HRT0 Registrar	No response
February 12, 2019	HRT0	Email		Request of complete copy of resignation agreement.	
February 12, 2019	HRT0	Email	4	Notice of Case Management Teleconference Call. Call scheduled for February 19, 2019	
February 15, 2019	WRPSB	Email to Registrar		Requesting my application be dismissed again, for delay, breach of absolute privilege.	
February 19, 2010	HRT0			Case Management Teleconference	
February 20, 2019	KD	Form 10 – To amend my application		Added second breach of WSIB appeal to original Application	No response
February 20, 2019	HRT0	Interim Decision	5	<ol style="list-style-type: none"> <li>1. Both applications be heard together</li> <li>2. Feb. 22<sup>nd</sup> hearing adjourned</li> </ol>	

				3. I was ordered to submit all outstanding documents	
March 1, 2019	WRPSB	Email to Registrar	1	Regarding scheduling of mediation date.	
March 1, 2019	HRT0	Notice of Mediation	7	Mediation was scheduled for May 1, 2019	
March 5, 2019	WRPSB	Form 11	60		
May 1, 2019	KD	Form 11	868	Hand delivered at HRT0 mediation	
May 3, 2019	KD	Email to Registrar requesting hearing			Automatic response from HRT0 Registrar (MAG)
May 6, 2019	WRPSB	Email to Registrar	2	Advising registrar not to proceed to a hearing until preliminary matters are decided.	No response
May 6, 2019	KD	Email to Registrar	1	Requested public hearing	No response
May 7, 2019	KD	Notice of Constitutional Challenge Filed	17	WRPSB's Application is attempt to limit public debate on matters of public interest and contrary to s. 2 & s.15 of Charter	No response
May 16, 2019	WRPSB	Response to KD's Form 11	8	Objecting to everything	
May 27, 2019	KD	Email to Registrar	1	I did not receive a response to my May 6 <sup>th</sup> request for a public hearing	No response
July 4, 2019	KD	Email to Registrar	50	Sent evidence of Retaliation	No response
September 30, 2019	HRT0	Interim Decision	9	<ul style="list-style-type: none"> <li>- Dismissing Constitutional Challenge</li> <li>- If I continue to make allegations of Code of Conduct breaches by the Adjudicator and Registrar, it will be determined an abuse of process</li> <li>- Threats to bar me from participating for recording phone call without permission</li> </ul>	Denied a public hearing once again

				- Says another teleconference call would be scheduled	
November 7, 2019	WRPSB	Reply to Form 11	5	"Presence or absence of a general non-disclosure clause is not determinative of whether Ms. Donovan breached the resignation agreement."	
April 15, 2020	KD	Form 10	104	Order to dismiss WRPSB application, for bad faith, abuse of process (retaliation)	No response
April 21, 2020	WRPSB	Email to Registrar		Re: extending deadlines due to COVID	
May 22, 2020	WRPSB	Email to Registrar		Re: extending deadlines due to COVID	
June 16, 2020	WRPSB	Form 11	22	Submitted at 7:35pm, WRPA not copied, LATE.	
June 22, 2020	KD	Form 10 & Email to Registrar	1	WRPSB's response untimely (late, did not include WRPA), new Form 10 requesting two witness testimonies, or email from Cormier	No response
June 23, 2020	WRPSB	Email to Registrar	66	Addressed untimeliness, but not substance of Form 11	
July 26, 2020	KD	Email to HRT0	1	1. Informed of address change 2. Requested to be informed of next steps	No response
July 28, 2020	WRPSB	Email to Registrar	1	Re: extending deadlines due to COVID	
August 31, 2020, at 10:49am	WRPSB	Form 11	41	Object to everything	
August 31, 2020, at 11:28am	WRPSB	Form 11 – Sent twice	41	Object to everything	

# Tab 19

Kitchener-Waterloo

## Support to prevent PTSD in police needed, says Chief Larkin



It is key police address mental health before there are problems, Waterloo Region police chief says

CBC News · Posted: Jan 06, 2016 12:08 PM ET | Last Updated: January 6, 2016



(Colin Butler/CBC)

[comments](#) 

More can be done to prevent first responders from getting post-traumatic stress disorder, rather than waiting until treatment is necessary, Waterloo Regional Police Chief Bryan Larkin says.

"I think the tragedy in much of this for me is that when somebody is in some form of crisis within our organization or finds themselves mentally ill or something terrible happens, the water cooler talk or the talk in the boardroom is, 'Well, we could see this coming,'" Larkin said in an interview Wednesday morning with *The Morning Edition* host Craig Norris.

"I think when we hear those comments, we have failed," he said. "If the behaviour is predictable, it's preventable."

- [Ontario could recognize PTSD as workplace-related illness for first responders](#)
- [PTSD taking its toll on Canada's prison guards](#)

Proposed legislation from Toronto NDP MPP Cheri DiNovo would see Ontario recognize post-traumatic stress disorder (PTSD) as a workplace-related illness. The private member's bill, which has been introduced five times, will come up for debate in the legislature in February. If passed, Bill 2 would assume a first responder developed PTSD through their work and allow them to take medical leave, instead of requiring the employee to prove how they got it.

**“If behaviour is predictable, it's preventable.”**

- Waterloo Region Police Chief Bryan Larkin

"I think it's both insulting and inaccurate to think that people will fake this any more than they would any physical illness," DiNovo told CBC News recently. "You can do everything you can to prevent it but it will still happen to a few — and we have to protect those few."

### Local police get training

Alberta has had similar legislation since 2012 and a new law surrounding mental health and first-responders came into effect in Manitoba on Jan. 1.

Larkin said the introduction of the legislation has sparked some great discussion about what is needed, but the focus needs to be more on what can be done to mentally support police officers and other first responders in their jobs every day.

"The larger discussion for me is around prevention awareness and resiliency and how do we prevent individuals and first responders from getting to the point where legislation has to be enacted," Larkin said.

He said legislation could lay the groundwork for mandatory resiliency training, wellness plans and peer support, although police in Ontario are already working to train all officers with the Road to Mental Readiness, a program developed by the Canadian Armed Forces.

"A lot of (the training program) is around peer recognition and supervisor recognition ... in the sense that, there's signs of distress, there's signs of challenges in people, that can go noticed but generally in the past have gone unchecked or we didn't provide our workplace members or supervisors the tools to notice or recognize them," Larkin said.

Mid-to-senior level managers within the Waterloo Region Police force have already received the training, he said, while the remaining members will start the program next week.

Much of the training will be erasing the stigma that police officers have to don a superhero costume, Larkin said.

"I think we're humanizing the profession. I think we're showing that we're normal people," Larkin said of recent efforts to deal with mental health in the force. "We have normal people doing an abnormal job."

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# Tab 20



## REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD MEETING

Wednesday, July 5, 2017  
Board Room – Police Headquarters  
Closed Session: 8:30 a.m.  
Open Meeting: 10:30 a.m.

### OPEN MEETING AGENDA

- |  |    |
|--|----|
| 1.0 Meeting Called to Order  |    |
| 2.0 Motion to Go Into Closed Session   |    |
| 3.0 Motion to Reconvene in Open Session  |    |
| 4.0 Declarations of Pecuniary Interest under the Municipal Conflict of Interest Act  |    |
| 5.0 <u>Closed Session Recommendations</u> (if any)   |    |
| 6.0 <u>Confirmation of Minutes: June 7, 2017</u>   | 1  |
| 7.0 <u>Business Arising from the Minutes</u>   |    |
| 8.0 <u>Correspondence</u>  |    |
| 8.1 Association of Black Law Enforcers – Request for Sponsorship (attached)  | 7  |
| 8.2 Region of Waterloo, 2018 Budget Process and Timeline (attached)  | 16 |
| 8.3 Ombudsman 2016-2017 Annual Report – the 80-page report can be accessed at the following link:<br><a href="https://www.ombudsman.on.ca/Files/sitemedia/Documents/Resources/Reports/Annual/AR2017-EN-Final.pdf">https://www.ombudsman.on.ca/Files/sitemedia/Documents/Resources/Reports/Annual/AR2017-EN-Final.pdf</a> | 39 |
| 8.4 Special Investigations Unit 2016-2017 Annual Report – the 43-page report can be accessed at the following link: <a href="https://www.siu.on.ca/pdfs/siu_ar_2016-17_eng_online_f.pdf">https://www.siu.on.ca/pdfs/siu_ar_2016-17_eng_online_f.pdf</a>  | 40 |
| 9.0 <u>Police Services Board Reports</u>   |    |
| 10.0 <u>Chief of Police Reports</u>  |    |
| 10.1 Chief's Award for Exemplary Service: Superintendent Robert Gould (verbal)   |    |
| 10.2 2017-100, Auxiliary Promotion: Hetherington (attached)  | 41 |
| 10.3 2017-111, Organizational Restructuring Review Project (attached)  | 43 |



10.4	PTSD Prevention Plan (presentation attached)	68
10.5	2017-106, Approval of Auxiliary Constable: Praught (attached)	71
10.6	2017-105, Sergeant Promotion and Transfer: Matthews (attached)	73
10.7	2017-107, Purchasing Awards – 2017 Q2 (attached)	74
10.8	2017-098, Police Reported Hate Crime in 2015 (attached)	78
10.9	2017-099, Letters of Appreciation – Mid-Year (attached)	82
10.10	2017-110, Ministry of Labour Orders Regarding Voice Radio System (attached)	108
10.11	2017-112, Ever After Music Festival (attached)	115
10.12	University of Waterloo 2016 Annual Report – Special Constables (attached)	118
11.0	<u>New Business</u>	
12.0	<u>Future Agenda Items</u>	
13.0	<u>Information Items</u>	
13.1	New Recruit Badge Ceremony, Wednesday, August 16, 2017, 1:00 p.m., Breslau Community Centre	
13.2	WRPA Annual Retirement Dinner, Thursday, September 14, 2017, 6:00 p.m., Association Hall	
14.0	Adjournment	

# PTSD PREVENTION PLAN

April 23 2017

Wellness Unit: SSgt. Dean Smith  
Shelley Howes



## PTSD Prevention Plan

- Ministry of Labour Requirement
- All PTSD diagnoses in Police Officers and communicators are presumptive
- 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



## PTSD Prevention Plan

- **Wellness Unit**

- Staff Sergeant and a Wellness Coordinator
- Coordinated effort
  - RTW coordinator
  - Occupational Health and Safety Advisor
  - Occupational Health Nurse



## PTSD Prevention Plan

### Wellness Unit:

- Current Steps
  - Education – training days
  - Safeguarding interviews
  - Peer Support
  - Outreach
  - Early Intervention
  - Critical Incident Protocol
  - Wellness Page- Resources



## PTSD Prevention Plan

### Future Steps

- Continue Education working towards eliminating Stigma
- Safeguarding interviews with professionals
- Annual Wellness Checks
- Critical Incident Protocol
- Develop process and working relationships with RTW, OHSA, OH nurse
- Board Policy



# Tab 21



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## NEWS

# Waterloo police's PTSD prevention plan focuses on education and early intervention

By **Samantha Beattie** Waterloo Chronicle

Thursday, July 6, 2017

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Asking for help is OK.

That's the message Waterloo Region Police Service is trying to ingrain in its members as the province pushes to prevent post-traumatic stress disorder.

"We still have a culture bravado in the sense that we want to be heroes, strong and vibrant," said Chief Bryan Larkin. "But we are seeing more people feeling comfortable coming forward."

In April, all Ontario police services were required to submit a PTSD prevention plan to the provincial government. WRPS's plan was presented to the Police Service Board at its July 5 meeting. Many of the steps have already been implemented, said Shelley Howes of the Wellness Unit.

"We have been doing a significant amount of (mental health) training in the last two-plus years," Howes said. "Clearly, creating awareness around mental health is a fundamental step."

Of all the Workplace Safety and Insurance Board claims filed by WRPS, 11 per cent are related to occupational stress, a number that will likely increase, said Larkin.

Along with training its members in the areas of PTSD and mental health awareness, WRPS has introduced "safeguarding interviews" where officers entering and exiting specialized branches — such as major crime, homicide, sexual assault, and others — talk one-on-one with a psychologist to ensure they're in a good place and have strong coping skills and support networks.

Peer support is another component that's been "rejuvenated" and is when civilian and sworn members provide support to colleagues in difficult situations, Howes said. WRPS also provides outreach to its members who are away from work "due to positive or

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Early intervention is key. That's why Wellness Unit Staff Sgt. Dean Smith reviews the calls for service every day and focuses on the ones that may be particularly challenging for officers — like suicide calls. He contacts supervisors and requests they check in with those officers to provide supports and resources in a timely fashion and open the door for future conversations.

"These are the things that can change the culture in policing, when these kinds of conversations become normal and expected," Howes said.

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If there's a critical incident, like an officer on duty suffering a serious injury or dying, or having to use lethal force, WRPS has a protocol to automatically provide group and/or one-on-one counselling sessions.

"I really like (this PTSD prevention plan) because it comes from a proactive rather than reactive position; highlighting education is key," said police board member Coun. Karl Kiefer.

Coun. Tom Galloway, police board chair, asked if WRPS would be assisting officers looking for spiritual guidance as part of their overall wellness.

Larkin said it is working with Interfaith Counselling Centre to improve inclusion and spiritual care. Ten faith leaders in the region are currently familiarizing themselves with the WRPS organization and will be available to members who need their support.

"Some good work has been happening around spiritual care," said Larkin.

*Samantha Beattie is a reporter with the Toronto Star.*



# **Tab 22**

# The Record

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## WATERLOO REGION

# Experts to probe 9 police suicides

By **Laura Booth** Record Reporter

Waterloo Region Record

▲ Thu., Jan. 3, 2019 | ⌚ 2 min. read

🔄 Article was updated Apr. 13, 2020

WATERLOO REGION — Ontario's chief coroner is launching an expert panel to review the suicides of nine police officers in 2018, including an officer from the Waterloo Regional Police.

"I'm going to identify experts that would deal with mental wellness, deal with operational stress injury, deal with health and wellness within a police service — so bring experts from all of those different groups to convene a diverse panel," Dr. Dirk Huyer told The Record Thursday.

The panel has yet to be selected, but members will be presented with the cases of all nine officers. They will look for trends and commonalities to determine whether there were potential points of prevention or intervention, said Huyer.

"Ultimately, our job is to help prevent further deaths," he said.

Information about the officers, gleaned from family, health and employment records, along with information from the police services involved, will be examined.

The panel will also look at the mental health strategies in place at the police services that employed the officers.

"Are the strategies solid? Because if the strategies are solid, then is there a reason that they're not getting the help that is available to them?" said Huyer.

While the coroner will not disclose the names of the officers or the police services that will be subject to the expert panel review, he confirmed that one of the nine officers was with Waterloo Regional Police.

Huyer said he has contacted all of the police services affected.

On Thursday, Waterloo Regional Police Chief Bryan Larkin confirmed he's spoken with the chief coroner about the review.

"We fully support and welcome a review that will help determine how mental health support can be better provided to first responders," Larkin said in a statement. "We look forward to the review's findings and we are hopeful this review will result in greater awareness and more discussion concerning mental illness."

Huyer said all nine deceased officers were active members or "very" recently retired, and they are believed to be the only officer deaths by suicide in the province for all of 2018.

"That's a significant number; it's far greater than we have seen in many years," said Huyer, adding that over the past five years, there's generally been fewer than five suicides per year.

The coroner's expert panel will publish its findings and recommendations in a report Huyer expects to be completed by the summer. The report will be made public, although the families of the deceased officers will decide if the officers will be identified.

Huyer said the decision to launch the panel was spurred by the high number of suicides among officers, along with the decision by the Ontario Provincial Police to launch an internal review into suicides and attempted suicides involving its members over the past five years.

The OPP review, which will try to identify what is preventing officers with mental health issues from seeking help, was launched after three OPP officers died by suicide within a three-week period last summer.

Sgt. Sylvain Routhier, Det. Insp. Paul Horne, and Const. Joshua De Bock died by suicide, the OPP said in August.

**lbooth@therecord.com, Twitter: @BoothRecord**

**With files from The Canadian Press**

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GTA

# Canadian police officers fear stigma of reporting mental health issues: survey

By **Wendy Gillis** Staff Reporter

Fri., Jan. 29, 2021 | ⌚ 6 min. read

A suicidal cop is denied help by a police chief who “didn’t like this officer.”

A male supervisor tells another manager she’ll turn officers into “pussies” when she suggests taking an active approach to workplace mental health.

An inspector says cops who responded to a “horrible suicide” must be offered mental health support “so we can say we did it.”

A cross-Canada survey of more than 800 officers has found that despite beefed-up officer wellness programs and growing awareness about the psychological toll of the job, stigma still surrounds mental illness in policing.

Most cops polled, especially women and junior officers, believe reporting mental health issues could have negative repercussions on their career.

“They’ll tell you there’s no stigma. It’s an outright lie. You’ve got to present the persona of being indestructible or your career is over,” a male constable with nearly three decades on the job says in a [recently published study](#) out of Western University by London officer-turned-academic Lesley Bikos.

The research is the first phase of reporting from a [nationwide, anonymous survey](#) launched in 2019 that’s believed to be the first of its kind — data collection from more than 700 officers that Bikos, a PhD candidate, hopes will provide an on-the-ground picture of policing culture in a turbulent, changing time for the profession.

“The big, common theme that kept coming up, over and over again, was stigma,” Bikos said in an interview.

Bikos also conducted more than 100 interviews with officers ranging in rank from constable to senior management in 31 police services across the country, unearthing troubling anecdotes about workplace mental health incidents. The stories included in Bikos’ report are anonymized, but include details such as gender and years of service.

The mental health toll of policing has drawn increased attention in recent years, particularly in 2018, when nine active or recently retired Ontario police officers died by suicide.

Ontario’s coroner’s office [launched a review into the deaths](#), which concluded the suicide rate was statistically higher than in the general public and “anecdotally ... may reflect increases in mental health issues across the policing sector.”

Acting on a central recommendation from the review, Ontario coroners have begun tracking first-responder suicides. According to preliminary data provided to the Star, seven officers died by suicide in 2019, while four more died last year, including Const. Mike Austin, who [died inside Toronto police headquarters](#).

The deaths have helped promote openness about mental health issues in policing.

This week, for Bell Let’s Talk Day, chiefs and police associations across Canada urged their members to reach out for support and take advantage of wellness programs; according to the National Police Federation, the union representing thousands of RCMP officers, there was a 69-per-cent increase between 2014 and 2019 in members seeking mental health support.

Meanwhile, [peer support networks](#) have stepped in to help officers who may not want to go through their employer.

Although half those who participated in the online survey said mental health stigma has reduced in their workplace — generally, Bikos found, police forces now openly acknowledge mental health issues and some have developed more supports — there remains a widespread culture that prioritizes stoicism and toughness.

“The belief that those who experience mental illness are labelled weak, incompetent, and lazy largely remained, despite senior management messaging and programs/resources,” Bikos writes in the study, published in *Policing: An International Journal*.

“They had the real sense, whether it’s perception or reality, that this was all window dressing,” Bikos told the Star of the mental health supports and messaging.

Traditional masculinity was often identified as the largest cultural barrier to reducing stigma for both male and female officers, according to the study. But men had “deeply internalized” the idea that mental illness equated weakness and incompetence.

“Somewhere in my heart and mind I will always see this as a form of weakness,” said one male officer who is currently off on mental health leave after nearly two decades as an officer.

“Til the day I die, it will always feel that way just a little bit. I failed as a cop. I couldn’t deliver. That’s a huge part of the shame.”

Only 24 per cent of those surveyed said they felt that could report mental illness without fear.

The risk was most acutely felt by women officers, low ranking officers, and those already on leave for mental health reasons.

The latter group offered valuable insights because they had actual experience reporting mental illness. Bikos said some used the resources available through the police service — “we could classify that as progress.” Others felt isolated and were off for long periods of time, or retired early; in interviews, some said they’d been off for years and never heard from their service except for administrative reasons.

“That’s the issue. You can have supports in place, but if it’s not culturally accepted and leaders don’t demonstrate compassion and walk the talk, it leaves the impression that their concern is not genuine,” Bikos said.

Bikos stressed that she interviewed dedicated and progressive managers who attempted to create change, but they were too often outnumbered.

One female senior manager said she was trying to convince two other male supervisors that they should create a policy to take a more active approach to the mental health of officers.

“Their response was, ‘You’re going to turn them into pussies.’ I mean, that says it all,” the female officer said.

“Well, newflash! People are killing themselves. It’s ugly, there is so much stigma and it hinders us from moving forward.”

Waterloo police Const. Angie Rivers has been on leave with post-traumatic stress disorder since 2015, stemming from alleged workplace sexual harassment and bullying. She was later part of a class-action lawsuit that alleged gender-based discrimination within the Waterloo police service, allegations the force denied. In 2019, Ontario’s top court [ruled that the lawsuit could not proceed](#).

In an interview, Rivers said it took her a long time to realize she was suffering from mental health issues, which at one point included suicidal thoughts, in part because she says officers weren’t told symptoms to be aware of.

It was also “socially unacceptable for me to be ill,” Rivers said.

“The internal culture where I come from looks down very heavily on people with mental health issues,” Rivers said.

These cultural barriers can make it challenging for officers to come forward for assistance, “which is why I think you see officers reaching for help in unhealthy ways, such as drugs and alcohol or violence.”

Cherri Greeno, a spokesperson for Waterloo Regional Police, noted the service had not reviewed Bikos’ study and said she could not comment on Rivers’ case due to “labour laws and ongoing current proceedings.”

But she said Waterloo police “has progressive and comprehensive programs, initiatives, training and supports in place ... to ensure our members feel supported and are able to receive help when they need it.” These include an annual mandatory check-ins with a mental health professional, which she said is aimed in part at “helping to end the stigma associated with mental health challenges.” She also noted the service is developing an in-house psychological services program.

Greeno said a recent internal member survey found that, overall, respondents felt greater attention is being paid to mental health and work-life balance. Seventy-one per cent of officers agreed the service provides sufficient support for mental wellbeing.

Bikos’ study also found that officers with mental illness were called back to work prematurely and sent out on duty, “despite clear signs they were not healthy,” posing a potential danger to both officers and the public. In general, untreated mental illness in

officers creates risk ranging from lost productivity to heightened chance of suicide to increased aggressiveness and use-of-force incidents.

To begin working towards eliminating stigma around mental illness, policies that normalize mental illness as a job hazard, “not a personal failure,” increased supports that are confidential, including access to police-specific counselling that’s backed up to allow for intensive treatment, and improved return-to-work policies are needed, Bikos said.

Bikos also says an “honest review of organizational culture and its impacts on the workplace must be done.”

*If you are considering suicide, there is help. Find a list of local crisis centres at the [Canadian Association for Suicide Prevention](#). Or call 911 or in Ontario call Telehealth at 1-866-797-0000*



**Wendy Gillis** is a Toronto-based reporter covering crime and policing for the Star. Reach her by email at [wgillis@thestar.ca](mailto:wgillis@thestar.ca) or follow her on Twitter: [@wendygillis](#)

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# Tab 24



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ALL OTHER AREAS (519) 570-3000  
FACSIMILE (519) 650-1793

## WATERLOO REGIONAL POLICE



### ACCESS TO INFORMATION

Address all correspondence to:

BRYAN M. LARKIN  
CHIEF OF POLICE

Attention:

**FILE #190371**

June 5, 2019

**Bruce Ricketts**

Dear Mr. Ricketts:

I am writing regarding your request for access to information, our file 190371. A search was conducted for 'copies of any and all documents that will indicate all fees and disbursements paid to Donald B. Jarvis for services provided to Waterloo Regional Police Service and/or Regional Municipality of Waterloo for the matter regarding Kelly Donovan, between the dates of May 1, 2017 and May 10, 2019.

Forty-nine (49) pages of responsive records were located and after receiving authorization from the individual named in the records, partial access is granted to the information contained therein.

The fee of \$9.80 has been waived.

Access is denied to some information pursuant to the following exemption in the Municipal Freedom of Information and Protection of Privacy Act (the Act):

- 12 A head may refuse to disclose a record that is subject to solicitor-client privilege or that was prepared by or for counsel employed or retained by an institution for use in giving legal advice or in contemplation of or for use in litigation

Some portions of the record are deemed 'not responsive' as those portions do not contain information with respect to fees and disbursements.

**Please contact our office by phone at (519) 650-8500, extension 8262 or by email at [foi@wrps.on.ca](mailto:foi@wrps.on.ca), if you have any questions.**

You may request a review of this decision by the Information and Privacy Commissioner, 2 Bloor Street East, Suite 1400, Toronto, Ontario, M4W 1A8. You have thirty (30) days to make this appeal.

In the event you wish to launch an appeal, please provide the Commissioner's office with:

- 1) The file number listed at the beginning of this letter;
- 2) A copy of this decision letter; and
- 3) A copy of the original request for information you had sent to this institution (if available).

In addition, you must send a \$10.00 appeal fee to the Commissioner's office. Please include the fee in your letter of appeal. Appeal fees should be in the form of a cheque, or money order, payable to the Minister of Finance.

Enclosed are the records.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Cormier", written in a cursive style.

Paul Cormier  
Records Manager and Freedom of Information Coordinator  
PC: kb



**WATERLOO REGIONAL POLICE SERVICE**

P.O. Box 3070  
200 Maple Grove Road  
Cambridge, Ontario N3H 5M1  
519-570-9777

**FILE #190371**

May 15, 2019

Dear Ms. Kelly Donovan:

The Waterloo Regional Police Service has received a request for access to records pursuant to the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA).

The records contain information in the custody of the Waterloo Regional Police Service, specifically: All fees and disbursements paid to Donald B. Jarvis for services provided to Waterloo Regional Police Service and/or Regional Municipality of Waterloo for the matter regarding you between the dates of May 1, 2017 and May 2, 2019. Your views regarding disclosure of these records would be appreciated.

Please indicate on the attached form, "Affected Party Response", whether or not you would consider disclosure of these records to be an invasion of your personal privacy. If you object to the release of this information, please outline your objections in as much detail as possible. You may provide your response in writing, via email, or by telephone. Your response must be received by June 4, 2019.

For further information concerning MFIPPA, and your rights and responsibilities under MFIPPA, please refer to the attached document, "Affected Party Personal Information". If, after reviewing all of the documents included, you have further questions, you may contact the Access to Information Unit at 519-570-9777, extension 8262, or by email at [foi@wrps.on.ca](mailto:foi@wrps.on.ca).

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Cormier".

Paul Cormier  
Records Manager and Freedom of Information Coordinator  
PC:kb  
Attachments



**WATERLOO REGIONAL POLICE SERVICE**

P.O. Box 3070  
200 Maple Grove Road  
Cambridge, Ontario N3H 5M1  
519-570-9777

**FILE #190371**

May 13, 2019

Dear Mr. Ricketts:

Your request for records has been received by the Access to Information Unit and a file has been opened on today's date. Your request will be processed pursuant to the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA). Please note that reference number 190371 has been assigned and should be referred to in all future communication.

We acknowledge receipt of the \$5.00 application fee. You will be advised of any additional fees upon completion of your request.

You have requested records that will indicate all fees and disbursements paid to Donald B. Jarvis for services provided to Waterloo Regional Police Service in relation to a named individual. Please advise whether you would like us to seek consent from that individual to release the information to you. Your file will be placed on hold pending receipt of your response.

Please contact the Access to Information Unit by phone at 519-570-9777, extension 8262 or by email at [foi@wrps.on.ca](mailto:foi@wrps.on.ca), if you have any questions.

Sincerely,

*Kimberly Bowman*

Per: Paul Cormier

Records Manager and Freedom of Information Coordinator

PC:kb



**WATERLOO REGIONAL POLICE SERVICE**

P.O. Box 3070  
200 Maple Grove Road  
Cambridge, Ontario N3H 5M1  
519-570-9777

**FILE #200029**

February 26, 2020

**Bruce Ricketts**

Dear Mr. Ricketts:

**Re: Matters regarding Kelly Donovan**

**Bruce Ricketts**

56 Baypointe Crescent  
Ottawa, Ontario  
K2G 6R1

Dear Mr. Ricketts:

I am writing regarding your request for access to information, our file 200029. A search was conducted for 'copies of any and all documents that will indicate all fees and disbursements paid to Donald B. Jarvis for services provided to Waterloo Regional Police Service and/or Regional Municipality of Waterloo for the matter regarding Kelly Donovan, between the dates of May 10, 2019 and December 20, 2019.

The fee of \$3.60 has been waived.

Some portions of the record were deemed 'not responsive' as those portions do not contain information with respect to fees and disbursements. Those portions of the record have been redacted accordingly.

If you have any questions, please contact the Access to Information Unit by phone at 519-570-9777, extension 8262, or by email at [foi@wrps.on.ca](mailto:foi@wrps.on.ca).

Sincerely,

Kimberly Bowman

Analyst, Access to Information Unit

Auth: Paul Cormier, Records Manager and Freedom of Information Coordinator



**WATERLOO REGIONAL POLICE SERVICE**

P.O. Box 3070  
200 Maple Grove Road  
Cambridge, Ontario N3H 5M1  
519-570-9777

**FILE #200818**

November 27, 2020

**Bruce Ricketts**

Dear Mr. Ricketts:

**Re: Matters regarding Kelly Donovan**

**Bruce Ricketts**

56 Baypointe Crescent  
Ottawa, Ontario  
K2G 6R1

Dear Mr. Ricketts:

I am writing regarding your request for access to information, our file 200818. A search was conducted for 'copies of any and all documents that will indicate all fees and disbursements paid to Donald B. Jarvis for services provided to Waterloo Regional Police Service and/or Regional Municipality of Waterloo for the matter regarding Kelly Donovan, between the dates of December 20, 2019 and October 22, 2020.

The fee of \$3.80 has been waived.

Some portions of the record were deemed 'not responsive' as those portions do not contain information with respect to fees and disbursements. Those portions of the record have been redacted accordingly.

If you have any questions, please contact the Access to Information Unit by phone at 519-570-9777, extension 8262, or by email at [foi@wrps.on.ca](mailto:foi@wrps.on.ca).

Sincerely,

*Kimberly Bowman*

Kimberly Bowman

Analyst, Access to Information Unit

Auth: Paul Cormier, Records Manager and Freedom of Information Coordinator

## WRPS payments to lawyer

(Since Resignation)

2017		2019		2020	
July	\$127.13	January	15446.99	10-Jan	128.54
August	\$1,525.50	January	14940.63	26-Feb	572.71
September	\$127.13	January	1285.38	26-Feb	240.13
September	\$1,779.75	February	37291.27	26-Feb	1459.11
December	\$960.50	February	386.7	24-Mar	154.95
		February	2603.66	24-Mar	624.33
		February	4370.28	24-Mar	6613.05
2018		March	2938.95	15-Apr	309.34
January	\$2,042.48	March	2757.2	15-Apr	9941.81
March	\$3,432.38	March	6144.38	15-May	7869.04
March	\$446.35	April	659.03	15-May	12233.66
April	\$686.48	April	1144.13	18-Jun	5435.70
(Claim was Filed)		April	146.9	18-Jun	3733.24
May	\$6,126.01	May	\$4,124.50	21-Jun	7179.74
May	\$10,031.48	May	\$7,380.32	21-Jun	4813.80
June	\$10,383.49	May	\$2,472.28	28-Aug	2546.74
June	\$3,016.82	June	\$19,766.53	28-Aug	1522.68
July	\$8,406.30	June	\$381.38	28-Sep	7578.06
July	\$254.25	September	\$3,734.65	28-Sep	9766.03
July	\$2,443.63	September	\$104.53		
Juy	\$590.43	September	\$128.54		
August	\$463.30	September	\$104.53		
August	\$1,644.15	September	\$128.54		
August	\$1,428.04	October	\$1,285.38		
August	\$9,806.99	October	\$30,296.71		
August	\$1,398.38	October	\$1,156.84		
September	\$2,995.91	November	\$4,401.35		
September	\$971.80	November	\$12,727.59		
September	\$254.25	December	\$128.54		
September	\$2,923.88	December	\$723.20		
September	\$358.78	December	\$3,269.94		
October	\$574.89				
October	\$4,238.37				
November	\$12,337.31				
December	\$20,832.40				
December	\$30.79				
December	\$717.55				

**Subtotals: \$113,356.90**

**\$182,430.85**

**\$82,722.66**

**Total Legal Fees Paid by WRPSB Since Resignation:**

**\$378,510.41**

**Legal Fees Awarded to Plaintiff, including Interest:**

**\$7,558.56**

**\$386,068.97**

Court file no. C69467

**KELLY LYNN DONOVAN**

**v. REGIONAL MUNICIPALITY OF WATERLOO  
POLICE SERVICES BOARD, and BRYAN LARKIN**

Plaintiff (Appellant)

Defendants (Respondents)

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**COURT OF APPEAL FOR ONTARIO**

PROCEEDING COMMENCED AT BRAMPTON

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**APPELLANT'S EXHIBIT BOOK**

June 16, 2021

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Kelly Donovan, self-represented  
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Brantford, Ontario  
N3R 6Y9  
Phone: 519-209-5721  
Email: [donovandih@gmail.com](mailto:donovandih@gmail.com)