

Amended this 29 day of January,
2020

Pursuant to the order of the Honourable
Justice Roberts and Justice Van Rensburg

Court File No.: CV18-00001938-0000

Dated this 25 day of October,
2019

Ontario

Per 

SUPERIOR COURT OF JUSTICE



BETWEEN:

KELLY LYNN DONOVAN

Plaintiff

- and -

WATERLOO REGIONAL POLICE SERVICES BOARD, and

BRYAN LARKIN

Defendants

AMENDED

STATEMENT OF CLAIM

TO THE DEFENDANTS

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

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

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

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

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

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

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

Date: "May 9, 2018" Issued by: "C. Davies"

Name: _____

Local Registrar

Address of Court Office:

7755 Hurontario Street

Brampton, Ontario

L6W 4T6

TO: WATERLOO REGIONAL POLICE SERVICES BOARD

200 Maple Grove Road

Cambridge, Ontario

N0B 1M0

AND TO: BRYAN LARKIN

c/o Waterloo Regional Police Services Board

200 Maple Grove Road

Cambridge, Ontario

N0B 1M0

CLAIM

I. Relief Claimed

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

- a. Damages for breach of contract, in the amount of Two Hundred Thousand Dollars (\$200,000.00);
- b. Punitive, exemplary and/or aggravated damages in the amount of Ten Thousand Dollars (\$10,000.00);
- c. To be reinstated as a sworn member of the Waterloo Regional Police Service at full pay of a first-class constable with all the rights, privileges and prerogatives she formerly enjoyed, on terms mutually agreed upon by both the defendants and plaintiff.
- d. Pre-judgment and post-judgment interest in accordance with the Courts of Justice Act, R.S.O. 1990, c. C.43, as amended;
- e. Costs of this proceeding on a solicitor and his own client scale, together with applicable HST; and
- f. Such further and other relief as counsel may advise and this Honourable Court deems just.

2. The Plaintiff, Kelly Lynn Donovan, claims against the Defendant Bryan Larkin, the following relief:

- a. Damages for misfeasance in public office, in the amount of Fifty Thousand Dollars (\$50,000.00);
- b. Punitive, exemplary and/or aggravated damages in the amount of Ten

Thousand Dollars (\$10,000.00);

- c. Pre-judgment and post-judgment interest in accordance with the Courts of Justice Act, R.S.O. 1990, c. C.43, as amended;
- d. Costs of this proceeding on a solicitor and his own client scale, together with applicable HST; and
- e. Such further and other relief as counsel may advise and this Honourable Court deems just.

II. Parties

- 3. The plaintiff, Kelly Lynn Donovan, is a former police officer who resides in the City of Brantford in the Province of Ontario. Prior to June 26, 2017, the Plaintiff was employed by the defendant Waterloo Regional Police Services Board (“defendant board”).
- 4. The defendant Bryan Larkin is chief of Waterloo Regional Police Service and is employed by the defendant board.

III. Facts

Class action lawsuit

- 5. On May 30, 2017, a class action lawsuit was filed against the defendants in the Ontario Superior Court of Justice in Brampton; Court File Number CV-17-2346-

00, (furthermore referred to as “the class action lawsuit”). The plaintiff is not a party to the class action lawsuit. The class action lawsuit alleges systemic and institutional gender-based discrimination and harassment and seeks total damages of One Hundred and Sixty-Seven Million Dollars (\$167,000,000.00).

Plaintiff’s resignation

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

- a. *“Except where disclosure is required by law, or where disclosure is to Donovan’s immediate family members or to persons providing professional financial/legal advice (all of whom agree to be bound by this non-disclosure and confidentiality clause), the parties undertake and agree that they will keep the terms and existence of this Resignation Agreement in absolute and strict confidence at all times, without time limitation, and not disclose its contents to any third party, person or entity. For added certainty, and without limiting the generality of the foregoing, the parties undertake and agree that they will not publicize, discuss, disclose or communicate in any way with any person, entity or organization, in any form whatsoever, the contents or terms of all or any part of this Resignation Agreement. If asked, the parties (and anyone subject to the terms of this non-disclosure and confidentiality clause) will*

indicate only that all outstanding matters between the parties were settled to their mutual satisfaction, the terms of which settlement are strictly confidential.”

7. The agreement also contained a release signed by chief Bryan Larkin which stated:
 - a. “THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD [...] does hereby release and forever discharge KELLY DONOVAN (“DONOVAN”) from any and all actions, causes of action, complaints, applications, appeals...”
 - b. “AND FOR THE SAID CONSIDERATION, THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD further agrees not to commence, maintain, or continue any action, cause of action or claim, request, complaint, demand or other proceeding, against any person, corporation or entity in which any claim could arise against DONOVAN for contribution or indemnity.”
8. The Resignation Agreement was signed by the defendant Bryan Larkin on behalf of the defendant board.
9. The plaintiff agreed to resign from her career in order to recover from her workplace injury and establish comparable employment as a single mother supporting her three children in exchange for the contractual and statutory obligations placed upon the defendants; a public body and a public officer.

Plaintiff's health

10. Prior to February, 2011, the plaintiff did not have any health issues. The plaintiff was healthy, educated and highly employable. She was hired by the defendant board on her first attempt in December, 2010.
11. In December 2015, the plaintiff was diagnosed with post-traumatic stress disorder ("PTSD").
12. In May, 2016, the plaintiff made a disclosure of internal misconduct to the defendant board, her disclosure included allegations that the defendant Bryan Larkin had authorized unlawful arrests of police officers and had failed to properly investigate criminal allegations against police officers.
13. The defendant Bryan Larkin retaliated against the plaintiff by removing her from her position of employment, putting her under investigation by the police service's professional standards branch and she was ordered to have no contact with members of the defendant board.
14. It was defendant Bryan Larkin's retaliation against the plaintiff that caused the plaintiff's health to worsen drastically. These abuses of power, as the plaintiff saw them, became significant triggers of a workplace injury she sustained in February, 2011.
15. Starting in February, 2017, the plaintiff could not attend work due to the severity of her post-traumatic stress disorder (PTSD) symptoms. The plaintiff's medical condition was caused by her employment with the defendant board; both from a training accident and the moral injury she suffered in 2015 pertaining to alleged internal corrupt practices she had witnessed.
16. In April, 2017, the plaintiff applied to the Workplace Safety and Insurance Board

(“WSIB”) for benefits as a result of her workplace injury. The plaintiff’s claim was approved, claim number 30505408.

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

IV. Overview

18. On January 6, 2016, defendant Bryan Larkin was interviewed by Craig Norris, of the CBC News, about the need to prevent PTSD in police. An excerpt from the article reads;

- a. “More can be done to prevent first responders from getting post-traumatic stress disorder, rather than waiting until treatment is necessary.”

19. On July 5, 2017, the defendant board received the provincially mandated “PTSD Prevention Plan” prepared by members of the service under the direction of defendant Bryan Larkin. The defendant board’s minutes for that meeting show that a Power Point presentation was made to the board that states:

- a. “All PTSD diagnoses in Police Officers and communicators are presumptive;” and
- b. “Plan outlines our commitment to Employees by documenting what we are currently doing and committed to doing for the Prevention, Intervention and recovery from PTSD.”

20. On July 17, 2017, the plaintiff published a research paper titled “Misfeasance in

Ontario Policing and the Coordinated Suppression of Whistleblowers.” The defendant board received this paper directly from the plaintiff by email. The paper detailed the way the plaintiff was treated when she made a disclosure of misconduct to the defendant board as well as other cases from across Canada of ‘whistleblower’ retaliation by police chiefs. An excerpt from page 8 of the report reads:

- a. “What the public do not know is that at times it is the operational stress an officer is facing that causes them to deal with PTSD symptoms. In some cases, the internal issues created by management can leave effects that last far longer than the difficult calls for service.”

21. Defendant Bryan Larkin submitted a statement to CBC News on July 17, 2017, that he was aware of the plaintiff’s report.

22. On December 21, 2017, defendant Bryan Larkin swore an affidavit in defense of the class action lawsuit, to support a motion to dismiss the class action lawsuit and advance his position as chief of police employed by the defendant board, and the document was submitted to record. The affidavit was published on the public website of the law firm advancing the class action lawsuit.

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

- a. *“Attached hereto and marked as “Exhibit F” to this my Affidavit, is an additional chart that I had requested the Human Resources Division of WRPS prepare, showing where the Human Rights Tribunal complaints that had been commenced by female employees in the last five years, and their status or resolution. Again, this chart has non-identifying*

information, with the exception of the Plaintiff, [name removed], who's Complaint is to the Human Rights Tribunal as it is still outstanding, and the status of which is referred to in detail below."

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

Those officers are identified in the following ways:

- a. One female officer is named and the three remaining female officers are not.
- b. Of the three-unnamed female officers, two are listed as "Constables" and one as "Sergeant."

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

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

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

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

28. The information disclosed by defendant Bryan Larkin was sufficient to identify the plaintiff and caused her a great deal of humiliation, mental distress and anger. The plaintiff was used by defendant Larkin to attempt to stop the efforts of the plaintiff's female colleagues in their fight for justice.

29. The public disclosure made by defendant Bryan Larkin was not required by law, contained sufficient information for the plaintiff to be identified and violates the terms of the Resignation Agreement.
30. The defendant Bryan Larkin knew the content of his affidavit was inappropriate because the Waterloo Regional Police Association, (the bargaining agent for current members of the police service), filed a grievance against the defendant board for the violation of several female members' privacy in this same affidavit.
31. Defendant Bryan Larkin was aware of the terms contained in the Resignation Agreement, in that he knew that the plaintiff was contractually barred from participating in the class action lawsuit, and the terms of the Resignation Agreement were to be kept confidential, yet he unnecessarily requested the Human Resources Division of the police service prepare an additional chart that included the plaintiff in his affidavit.
32. Defendant Bryan Larkin has an advanced level of knowledge about police officers who have been diagnosed with PTSD.
33. Defendant Bryan Larkin knew, or ought to have known, the triggers that were responsible for the rapid decline of the plaintiff's health between 2016 and 2017. More specifically, the plaintiff was healthy and actively working until after defendant Larkin retaliated against her for making a disclosure to the defendant board.
34. Defendant Bryan Larkin, who is the chief of police of a large regional municipality and swore an oath to discharge his duties according to law, deliberately involved the plaintiff in the class action lawsuit and violated the terms of the Resignation

Agreement knowing this would injure the plaintiff by impeding her recovery and worsening her PTSD symptoms.

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

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

37. Following the plaintiff's resignation, she continued to receive benefits from WSIB in the form of psychological treatment by Dr. Kathy Lawrence. Since the plaintiff voluntarily resigned, her salary was no longer being paid by WSIB.

38. In August, 2018, the plaintiff was made aware by WSIB that on January 11, 2018, the defendant Board submitted an appeal of the plaintiff's claim number 30505408. The appeal was prepared by counsel for the defendant, the same counsel who represented the defendants when the resignation agreement was prepared and signed.

39. The plaintiff therefore claims the relief as set out in paragraph 1 of the Statement of Claim for two distinct and separate breaches of the resignation agreement by the defendant Board and individual defendant.

40. The plaintiff therefore claims the relief as set out in paragraph 2 of the Amended Statement of Claim for the deliberate and unlawful conduct by defendant Bryan Larkin.

41. The defendants are jointly and severally liable for the damages caused to the plaintiff. Further, the defendant board is vicariously liable for the conduct,

representations, omissions and/or negligence of the police service's employees, agents, servants and contractors, which includes the defendant Bryan Larkin.

FORM 4C

Courts of Justice Act

BACKSHEET

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

Court file no. CV-18-00001938-0000

Ontario Superior Court of Justice

PROCEEDING COMMENCED AT Brampton

Amended STATEMENT OF CLAIM

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