

BETWEEN:

KELLY DONOVAN

Applicant

- and -

THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD and

BRYAN LARKIN

Respondents

Schedule A

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I. Background

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

II. Facts

Class action lawsuit

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

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

Applicant's resignation

9. On June 8, 2017, the applicant and respondents entered into a Resignation agreement, written by counsel for the organizational respondent, containing the following clause:

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

10. The Resignation agreement was signed by the individual respondent on behalf of the organizational respondent.

11. The intent of the resignation agreement was to prevent the applicant from joining the class

action lawsuit.

III. Overview

12. On December 21, 2017, the individual respondent swore an affidavit in defense of the class action lawsuit and that document was submitted to record.

13. In the affidavit, the individual respondent states, at para. 13:

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

14. The attachment to the individual respondent’s affidavit is a chart titled “Police Officer Initiated Ontario Human Rights Complaints” and lists four female officers. Those officers are identified in the following ways:

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

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

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

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

IV. Timeliness & Retaliation

21. The applicant had chosen to proceed with an allegation of breach of contract in the Ontario Superior Court of Justice against the respondents as opposed to the Human Rights Tribunal due to the complexities of the employment relationship which led to her resignation.
22. The applicant filed a statement of claim in the Ontario Superior Court of Justice, court file number CV-18-00001938-0000 (“the statement of claim”), on May 9, 2018, which is within the six-month limitation period.
23. The organizational respondent brought a motion on June 7, 2018, to dismiss the statement of claim on several bases, including jurisdiction, and that motion is being heard on February 13, 2019.
24. The applicant did not file a Form 18 within the six-month period because she was waiting for the courts to make a ruling regarding jurisdiction. This ruling will not be made until after the February 13, 2019, date.
25. Despite the ongoing court proceeding against the organizational respondent, the organizational respondent filed HRTO File No. 2018-33237-S in bad faith against the applicant in June, 2018.
26. The applicant brings this application now as a result of a letter she received from the registrar on July 19, 2018, indicating there would be a full day in-person hearing scheduled to hear the parties’ submissions on the matters raised in the application brought forward by the organizational respondent.
27. The applicant’s position is that the application brought forward by the organizational respondent should be dismissed without a hearing, the reasons were set out in the applicant’s Form 19 of HRTO File No. 2018-33237-S.
28. The filing of the section 45.9 application 2018-33237-S by the organizational respondent

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

29. The applicant has no other option but to file this application so that her original allegation of a breach of contract or contravention of settlement against the organizational respondent will be heard when the Tribunal hears the retaliatory allegations made by the organizational respondent.
30. It would severely prejudice the applicant if the Tribunal hears submissions which support only the organizational respondent's section 45.9 application done out of retaliation in June, 2018, and not the applicant's original allegation made in May, 2018, that the organizational respondent violated the terms of the resignation agreement.

V. Applicant's health

31. Prior to February, 2011, the applicant did not have any health issues. The applicant was healthy, educated and highly employable. She was hired by the organizational respondent on her first attempt in December, 2010.
32. Since February, 2017, the applicant has suffered from severe post-traumatic stress disorder ("PTSD") symptoms.
33. The applicant's symptoms briefly improved when she resigned from the police service in June, 2017.
34. The applicant's moral injury causes her to be triggered any time she witnesses an individual in a position of authority who has sworn an oath to uphold the law commit an act that the applicant perceives as unlawful or unethical.
35. The applicant's PTSD was severely triggered in early January, 2018, when she read the

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

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

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

VI. Relief Claimed

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

- a. General damages, in the amount of twenty-thousand dollars (\$20,000.00);
- b. Special damages for the living expenses of the applicant, since she has not been well enough to earn an income, for every month since January, 2018, when she was re-injured as a result of the reckless violation of the resignation agreement by the individual respondent and the retaliation by the organizational respondent;
- c. As a public interest remedy, the applicant seeks to be reinstated as a sworn member of the Waterloo Regional Police Service at full pay of a first-class constable with all the rights, privileges and prerogatives she formerly enjoyed, in the capacity of Integrity Commissioner reporting directly to the organizational respondent;
- d. Dismissal of HRTO File No. 2018-33237-S for reasons set-out in the applicant's Form 19 on file;
- e. Pre-judgment and post-judgment interest in accordance with the Courts of Justice Act, R.S.O. 1990, c. C.43, as amended; and

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