



# HUMAN RIGHTS TRIBUNAL OF ONTARIO

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**B E T W E E N:**

**The Regional Municipality of Waterloo Police Services Board**

**Applicant**

**-and-**

**Kelly Donovan**

**Respondent**

**-and-**

**Waterloo Regional Police Association**

**Intervenor**

**AND B E T W E E N:**

**Kelly Donovan**

**Applicant**

**-and-**

**The Regional Municipality of Waterloo Police Services Board  
and Bryan Larkin**

**Respondents**

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## CASE ASSESSMENT DIRECTION

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**Adjudicator:** Marla Burstyn

**Date:** May 25, 2022

**File Numbers:** 2018-33237-S and 2018-33503-S

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[1] This Case Assessment Direction (“CAD”) provides important directions to the parties following the Case Management Conference Call (“CMCC”) held on May 10, 2022.

[2] Further to paragraphs 31 and 41 of the Court of Appeal for Ontario’s Reasons for Decision released on March 10, 2022 (the “Court of Appeal Decision”), the purpose of the CMCC was to discuss whether the parties have or intend to invoke the statutory labour arbitration regime to pursue the remedies sought in their Contravention of Settlement (“COS”) Applications and whether the parties are required to do so based on the Court of Appeal Decision. The Court of Appeal Decision stayed the motion judge’s Order dismissing Ms. Donovan’s civil action pending the outcome of any proceeding taken by Ms. Donovan pursuant to the collective agreement and before the HRTO.

[3] At the CMCC, counsel for the respondent’s position was that the wording in para. 41 of the Court of Appeal Decision is not intended to mean that the parties must first go to the statutory labour arbitration regime and then to the HRTO to pursue the remedies sought in their COS Applications. Counsel advised that the appeal was argued on the basis of whether Ms. Donovan can proceed with her civil action; the issue of concurrent jurisdiction between the statutory labour regime and the HRTO was not argued on the appeal. Counsel for the respondent’s position is that any suggestion that there is a sequence in the processing of Ms. Donovan’s claim as between the statutory labour regime and the HRTO should not be read into the Court of Appeal Decision.

[4] At the CMCC, Ms. Donovan advised that following the Court of Appeal Decision, she made a request for a grievance to be filed, the substance of which mirrors her civil action. She further advised that the request for a grievance is under consideration, and it is not at all clear that the grievance will proceed because of jurisdictional considerations.

[5] At the CMCC, Ms. Donovan also indicated that she wants to make a request to amend her COS Application to include all of the allegations made in her civil action. Her view is that she has to make the request for a grievance, and the request to amend, even if they are not allowed, so that she exhausts her remedies under the collective agreement and at the HRTO, which she believes will lead the court to lifting the stay of her action.

[6] If Ms. Donovan wishes to make a further request to amend her COS Application to mirror her Statement of Claim, the Tribunal directs her to do so by filing a Request for Order during Proceedings by June 15, 2022, for consideration.

[7] The Tribunal further directs Ms. Donovan to provide the Tribunal with an update on the status of her request for grievance, no later than July 15, 2022. To be clear, the Tribunal directs Ms. Donovan to advise i) whether the union has made a decision to proceed with the grievance, and if not, when that decision is expected to be made; ii) if the grievance is proceeding, when it is expected to take place; iii) any other relevant information related to the status of the request for grievance. A copy of this CAD is being provided to counsel for the union to facilitate this.

[8] Subject to any updated information that is provided that may impact the COS Applications, the Registrar will proceed to schedule a preliminary hearing to be heard on September 8, 2022 as directed in the Tribunal's Interim Decision, 2019 HRTO 1326, on the following issues:

- a. The Tribunal's jurisdiction to hear Ms. Donovan's COS Application (2018-33503-S) because it was filed more than 6 months after the date of the last alleged incident of contravention of settlement (section 45.9(3) of the *Code*);
- b. Ms. Donovan's Request to Amend her COS Application 2018-33503-S;
- c. Ms. Donovan's Request for Productions; and
- d. Whether Ms. Donovan's recording of the February 19, 2019 CMCC should be determined to be an abuse of the Tribunal's process and the consequences of such a determination.

[9] The parties must file documents and submissions to be relied upon at the preliminary hearing by August 5, 2022. If the parties are relying on materials previously filed, I direct the parties to clearly identify those materials.

[10] The parties must file any case law to be relied upon by August 19, 2022.

[11] Ms. Donovan has made a request to be permitted to have a court reporter record the preliminary hearing at her expense. The respondent may file written submissions in relation to this request by June 15, 2022, for consideration. I note that the Tribunal's Practice Direction on Recording Hearings provides direction in relation this request.

## **DIRECTIONS**

[12] The Tribunal directs Ms. Donovan to file a Request for Order during Proceedings no later than June 15, 2022, if she wants to make a further request to amend her COS Application to mirror her civil action.

[13] The Tribunal directs Ms. Donovan to provide the Tribunal with an update on the status of her request for grievance, no later than July 15, 2022.

[14] The Registrar will schedule a full-day Preliminary Hearing via Zoom to take place on September 8, 2022.

Dated at Toronto, this 25<sup>th</sup> day of May, 2022.



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Marla Burstyn  
Member