

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.