Court File No.

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

KELLY LYNN DONOVAN

Moving Party

and

REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD

Non-Moving Party

Proceeding under the *Courts of Justice Act, R.S.O. 1990, c. C.43*

MOTION OF RECORD OF THE MOVING PARTY

VOLUME I

September 14, 2018

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TAB 1

FORM 37A

Courts of Justice Act

NOTICE OF MOTION

Court File No.

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

KELLY LYNN DONOVAN

Moving Party

and

REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD

Non-Moving Party

NOTICE OF MOTION

The plaintiff will make a Motion to a JUDGE on _____, at (time), or as soon after that time as the motion can be heard, at 361 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard

☐ in writing under subrule 37.12.1 (1) because it is *(insert one of on consent, unopposed or made without notice)*;

☐ in writing as an opposed motion under subrule 37.12.1 (4);

X orally.

THE MOTION IS FOR

1. An order, pursuant to s. 137.1(3) of the *Courts of Justice Act, R.S.O. 1990, c. C.43* ("*CJA*"), to dismiss the proceeding brought against the moving party at the Human Rights Tribunal of Ontario ("HRTO") in Toronto, Ontario, HRTO File No. 2018-33237-S, in its entirety, on the ground that it is a proceeding that limits freedom of expression on matters of public interest.
2. The costs of this Motion, and of the proceeding, on a substantial indemnity basis, fixed and payable by the non-moving party to the moving party within 30 days, pursuant to Rule 57.03(1) of the Rules of Civil Procedure.
3. Such further general and punitive damages as this Honourable Court may deem just in the circumstances.

THE GROUNDS FOR THE MOTION ARE

I. Facts

4. In May, 2017, the plaintiff negotiated her resignation from her employment with the non-moving party with the help of her counsel, Ms. Pamela Machado.
5. On June 8, 2017, both the moving party and the non-moving party had signed the resignation agreement that restricted the plaintiff from filing a new proceeding or new complaint against the defendant, but did not include a non-disclosure clause. The plaintiff agreed to not discuss the terms or existence of the resignation agreement unless asked and both parties signed mutual releases.
6. Since resigning, the moving party has spoken publicly about the need for better legislation in Canadian policing and protection of police whistleblowers from reprisal. The moving party speaks of her experiences prior to the date of her resignation, but does not deny that she voluntarily resigned from her employment.

7. The expressions made by the moving party all relate to matters of public interest.
8. The moving party uses her experience to educate professionals on the need for whistleblower protection and has even addressed the standing committee on justice policy at the Ontario Legislature on two separate occasions.
9. On June 28, 2018, the non-moving party brought an action against the moving party in the form of a section 45.9 application under the *Ontario Human Rights Code, R.S.O. 1990, c. H.19* ("the *Code*"), file number 2018-33237-S, furthermore referred to as the "proceeding."
10. The proceeding alleges the moving party has repeatedly breached the terms of her resignation agreement, relying on the assumption that any expression made by the moving party has been a "complaint."
11. The moving party has not made any new complaints against the non-moving party since the date of her resignation.
12. The proceeding brought against the moving party violates the *CJA* "Prevention of Proceedings that Limit Freedom of Expression on Matters of Public Interest (Gag Proceedings)."
13. The proceeding is untimely and an effort by the non-moving party to use litigation to limit expression on matters of public interest.
14. The non-moving party is using the proceeding to limit the moving party's freedom of expression by requesting an order by the Human Rights Tribunal for the following:
    a. Direct the moving party to cease and desist from making any further expressions;
    b. Remove her book from the public domain;
    c. Have public allegations that are under the control of the moving party removed from the public domain; and

d. Order the moving party to pay significant damages to remedy the ongoing damage to the reputation of the non-moving party.

II. Law

15. Subsection 42(1) of the *Code* reads "The provisions of the *Statutory Powers Procedures Act, R.S.O. 1990, CHAPTER S.22* ("*SPPA*"), apply to a proceeding before the Tribunal unless they conflict with a provision of this Act, the regulations or the Tribunal rules."
16. According to the *SPPA*, "proceeding" means a proceeding to which the *SPPA* applies, subsection 1(1).
17. The *CJA* prevents proceedings that limit freedom of expression on matters of public interest, section 137.1.
18. In accordance with subsection 137.4(1) of the *CJA*, this applies to proceedings before a tribunal, within the meaning of the *SPPA*, and a copy of this Notice of Motion will be filed with the Human Rights Tribunal of Ontario.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

19. HRTO File No. 2018-33237-S Form 18 filed by the non-moving party on June 28, 2018.
20. The affidavit of Kelly Lynn Donovan sworn September 12, 2018.
21. Such further and other material as the moving party may advise and this Honourable Court permit.

September 14, 2018

Kelly Lynn Donovan, self-represented
11 Daniel Place
Brantford, Ontario
N3R 1K6
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TO: Donald Jarvis, counsel for Defendants
Filion Wakely Thorup Angeletti LLP
Bay Adelaide Centre
333 Bay Street, Suite 2500, Box 44
Toronto, Ontario

M5H 2R2
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Form 4C
Courts of Justice Act
backsheet

KELLY LYNN DONOVAN – and-
Moving Party

REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD
Non-Moving Party

HRTO 2018-33237-S

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

NOTICE OF MOTION

Kelly Lynn Donovan
11 Daniel Place
Brantford, Ontario
N3R1K6
Tel. 519-209-5721
Email: kelly@fit4duty.ca

TAB 2

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 HRTO may extend this time if the HRTO 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 HRTO.

Human Rights Tribunal of Ontario

Application for Contravention of Settlement - Rule 24
Form 18

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. If you need a paper copy or accessible format, contact us:

Human Rights
Tribunal of Ontario
655 Bay Street, 14th
floor Toronto,
Ontario M7A2A3
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

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? O Mail © Email O Fax

(If you check email, you are consenting to the delivery of documents by email.)

Check off whether you are the:

® Applicant O Respondent O Ontario Human Rights Commission O

Other - describe: _____

2. Representative Contact Information

[x] I authorize the organization and/or person named below to represent me.

First (or Given) Name Donald	**Last (or Family) Name Jarvis**

Organization (if applicable) Filion Wakely Thorup Angeletti LLP	**LSUC No. (if applicable) 28483C**

Street Number Street Name Apt/Suite 333 Bay Street Suite 2500

City/Town Province Toronto ON	**Postal Code Email M5H 2R2 djarvis@filion.on.ca**	
Daytime Phone Cell Phone 416-408-5516	**Fax 416-408-4814**	**TTY**

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

Application for Contravention of Settlement - Rule 24
Form 18

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	Last (or Family) Name	Title
Caroline V. (Nini)	Jones	Solicitor

Street Number	Street Name	Apt/Suite
155	Wellington Street	35th Floor

City /Town	Province	Postal Code	Email
Toronto	ON	M5V3H1	nini.jones@paliareroland.com

Daytime Phone	Cell Phone	Fax	TTY
416.646.7433		416.646.4301	

b) Individual

First (or Given) Name	Last (or Family) Name
Kelly	Donovan

Street Number	Street Name	Apt/Suite
11	Daniel Place	

City/Town	Province	Postal	Email
Brantford	ON	N3R 1K6	kelly@fit4duty.ca

Daytime Phone	Cell Phone	Fax	TTY
519-209-5721			

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 I 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* (FI PR A).

Name: **Donald B. Jarvis**	
Signature:.	**Date: (dd/mm/yyyy) 28/06/2018**

[redacted]

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 became 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

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I.

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 2016-24566-1 (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 FIRTO 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 HRTO 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 deputations 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 HRTO 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 HRTO 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 FIRTO placed the HRTO 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 HRTO 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 HRTO 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 HRTO 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 HRTO found that the issues "while not coextensive, significantly overlap such that all of the concerns with duplicative concurrent litigation are in play". Accordingly, the HRTO

deferred the HRTO 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. 2016-245566-1 (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 HRTO 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 HRTO 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 HRTO 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."

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 (HRTO) 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 HRTO 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 HRTO 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 HRTO delivered a decision to allow WRPS the continued deferral of Donovan's Human Rights complaint. The HRTO'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 Linkedln account, her twitter account, Facebook (at fit4dutycanda) 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), 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 copyof 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". Tier 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 chiefs 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 Linkedln 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 Oversite 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 FIRTO 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 HRTO 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 HRTO 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 HRTO 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 HRTO 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 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 HRTO 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 HRTO Application, Ms Donovan has publicly repeated the allegations giving rise to her HRTO 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 HRTO to the public domain. These actions breach the fundamental purpose of the Resignation Agreement — namely, to resolve the HRTO Application. Her actions further violate her confidentiality obligations.

73. Not only has she repeated the allegations giving rise to her HRTO 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 3

Court File No.

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

KELLY LYNN DONOVAN

Moving Party

and

REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD

Non-Moving Party

AFFIDAVIT OF KELLY LYNN DONOVAN

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

1. I am the party in this matter and as such I am familiar with the proceeding. Where the statements made herein are based on information and belief, I state the source of the information, and believe it to be true.
2. I was a police officer working for the Waterloo Regional Police Service on May 4, 2016, when I made an unprotected disclosure of wrongdoing to the board.
3. From May 9, 2016, until June 25, 2017, I faced reprisal for the disclosure.
4. There is no whistleblower protection for municipal police officers in Ontario.

5. There is a culture of fear in policing because historically police services have used discipline and harassment to punish those who speak publicly about the way the police service has treated them.
6. On June 25, 2017, I resigned from my employment with Waterloo Regional Police Service.
7. I understand the terms contained in the resignation agreement I signed on June 8, 2017 (furthermore referred to as the "resignation agreement"), as explained to me by my counsel at that time, Ms. Pamela Machado. It was made clear to me that I could talk about my experiences with Waterloo Regional Police Service, I was only restricted from bringing a new legal proceeding against them, filing a new complaint against them and I was not to discuss the existence or terms of the agreement itself. I was agreeable to those terms.
8. The intent of the resignation agreement was to prevent my participation in the $167M class action lawsuit that was filed against the Waterloo Regional Police Services Board on May 30, 2017, for systemic gender discrimination, sexual harassment and sexual assault.
9. The Waterloo Regional Police Services Board has now, on two separate occasions, violated the resignation agreement.
10. The Waterloo Regional Police Services Board has brought a proceeding against me in the Human Rights Tribunal of Ontario and have asked that I no longer be able to speak about my experiences in policing or advocate for change, and they are asking that I pay them significant damages and remove any comments about them from the public domain. This is essentially a "strategic lawsuit against public participation (SLAPP)."
11. Attached hereto and marked as **Exhibit "A"** is a copy of my resignation agreement, (redacted as per the Waterloo Regional Police Services Board).

MY PERSONAL SITUATION

12. I worked for the Waterloo Regional Police Service from December, 2010, until June 25, 2017. Prior to 2016, I had nothing but positive documentations in my personnel file and in 2015 I was named a Woman of Distinction by the YWCA of Cambridge, Ontario.
13. I hold a Bachelor of Science Degree in Statistics from the University of Western Ontario.
14. In February, 2011, I was in very close proximity to a traumatic training accident on the firing range at the Ontario Police College which was the catalyst for my post-traumatic stress disorder ("PTSD) with which I was diagnosed in December, 2016.
15. My PTSD is triggered often which sends me into a deep depression.
16. I have shared custody of my three children and I do not receive support payments from their father.
17. I own my own home and live in Brantford, Ontario. I am preparing my home for sale because I have not been able to earn an income to afford the bills to remain in my home.
18. I now operate my own business called Fit4Duty – The Ethical Standard and I provide consulting, training and ethical reporting lines to corporations. In 2017, my gross income was just over $1,600.00.
19. I have no income other than what I am able to earn through my business.

MY RESIGNATION

20. Between 2015 and 2016, I had witnessed misfeasance by officers within the Waterloo Regional Police Service when conducting internal investigations.
21. In May 2016, there was no internal policy or provincial legislation which would have allowed me to make a disclosure of wrongdoing. The WRPS internal policy only permitted "members of the public" to be "complainants." Prior to 2014, members of the service could take a complaint to their supervisor, that was removed from the new procedure.

22. Attached hereto and marked as **Exhibit "B"** is a copy of the WRPS Complaints procedure that was valid up until April, 2014.
23. Attached hereto and marked as **Exhibit "C"** is a copy of the WRPS Complaints procedure effective April, 2014.
24. The *Police Services Act, R.S.O. 1990, c. P.15*, subsection 58(2) states that a member of a police force, if that police force or another member of that police force is the subject of the complaint cannot make a complaint to the Independent Police Review Director.
25. I had made my concerns known publicly at an association meeting and I did not have their support.
26. On May 4, 2016, I made a presentation to the Waterloo Regional Police Services Board to disclose inconsistencies and corrupt practices occurring within the police service when conducting internal investigations. I ran out of time before I could read all of my material.
27. Attached hereto and marked as **Exhibit "D"** is a copy of my delegation to the board and an email stating I wished to return in July, 2016, to finish reading my material.
28. On May 9, 2016, I faced reprisal in the form of a modification of my job duties, I was limited to administrative duties, I was placed under investigation by the professional standards unit for six Police Service Act violations and I was directed by chief Bryan Larkin to not present myself in front of the board without his permission.
29. On May 9, 2016, I made a second disclosure to the board by way of email to inform them of the reprisal I was facing. This email was shared with the chief.
30. Attached hereto and marked as **Exhibit "E"** is the email I sent the board on May 9, 2016.
31. On May 31, 2016, I was served another notice of investigation for having sent the email to the board, two additional charges were added to my investigation and I was then directed by the chief to have no communication, direct or indirect, with members of the board.

32. In June, 2016, I filed both workplace harassment and human rights complaints.
33. From May, 2016, until February, 2017, I was not served a notice of hearing for the professional standards investigation (despite the six-month requirement) and my human rights matter continued to be deferred in order for the service to proceed with discipline.
34. The outcome of my workplace harassment investigation by a lawyer hired by the service was that I was not being harassed.
35. The outcome of an investigative review completed by York Regional Police Service was that the criminal investigation I had mentioned in my delegation to the board was proper, I disagreed.
36. I filed a complaint against the Waterloo Regional Police Services Board with the Ontario Civilian Police Commission and they decided it was not in the public interest to conduct an investigation into the conduct of board members.
37. I filed a complaint against the York Regional Police Service with the Office of the Independent Police Review Director about the conduct of the York Regional Police investigator, and they decided it was not in the public interest to conduct an investigation into the conduct of that investigator. I was told at that time to take the matter up with my board, although I was still on a no contact order with members of the board.
38. In December, 2016, I was diagnosed with post-traumatic stress disorder. In February, 2017, I was too ill to return to work.
39. In May, 2017, I entered into discussions with my counsel, Ms. Pamela Machado, to resign from my employment. During settlement negotiations, I made it clear to my counsel that I would not agree to a non-disclosure clause limiting me from speaking about my experiences.
40. Attached hereto and marked as **Exhibit "F"** is a series of email communication between myself and Ms. Pamela Machado regarding the resignation agreement. I waive solicitor/client privilege in order for these relevant emails to be admitted to record.

41. I voluntarily resigned from my employment with the Waterloo Regional Police Services Board on June 25, 2017.

EXPRESSIONS MADE AFTER JUNE 25, 2017

42. On July 16, 2017, I released a research paper I had written detailing the need for better protection for municipal police whistleblowers. In this report, I cite cases from the Royal Canadian Mounted Police, Calgary Police Service, Edmonton Police Service, services across Canada, even the New York Police Department. The report was an educational paper researching the history of the police complaints system in Ontario and the need for better legislation. In this report, I made public expressions of matters of public interest. The intention of the report is cited in the "Executive Summary" as "This report will provide insight into current legislation governing municipal police officers in Ontario and point out deficiencies."
43. Attached hereto and marked as **Exhibit "G"** is the email sent to all police services boards across Ontario with the "Report of Systemic Misfeasance in Ontario Policing and the Coordinated Suppression of Whistleblowers" attached.
44. The Waterloo Regional Police Service was aware that I had released this report, as I had emailed a copy to the board executive assistant, Madeleine Widmeyer, on July 17, 2017, and CTV News asked them for a comment and the chief acknowledged on a publicly broadcast news clip that he was aware of the report.
45. I received hundreds of emails, text messages and social media messages praising me for my courage to speak out about the issues contained in my report.
46. I was interviewed by CBC Radio and I stated to Craig Norris, CBC Reporter, that the issues in my report were not directed at Waterloo Regional Police but rather all police services across Canada.

47. I have also spoken to 570 News, CTV News Kitchener, Stand Up Speak Up Podcast and Revolution Radio about my experiences as a police officer making an unprotected disclosure of wrongdoing and my recommendations to strengthen legislation. When I have spoken to media, I have referenced matters of public interest and I have not made any slanderous statements about the board.
48. Attached hereto and marked as **Exhibit "H"** is a list of comments I received in the weeks following the release of my report.
49. On August 11, 2017, I received a response from the Honourable Ralph Goodale which concluded by saying "Thank you again for writing me on this important matter and sharing a copy of your report with me."
50. Attached hereto and marked as **Exhibit "I"** is the letter dated August 11, 2017, from the Honourable Ralph Goodale.
51. On September 13, 2017, I received a response from Marie-France Lalonde, Minister of Community Safety and Correctional Services.
52. Attached hereto and marked as **Exhibit "J"** is the September 13, 2017, letter from Minister Lalonde.
53. On September 22, 2017, I wrote a response to Minister Lalonde because I was not satisfied with her letter of September 13th. In it, I state *"I have been contacted by dozens of officers from cross Ontario who have fallen victim to the systemic misfeasance or who have been injured during their careers and not provided adequate support but rather been subjected to tyranny and oppression which has had many of them on the verge of suicide."* I did not receive a response to this letter.
54. Attached hereto and marked as **Exhibit "K"** is my letter dated to September 22, 2017, to Minister Lalonde.

55. Since July, 2017, I have made presentations to the Ottawa Police Service, Durham Regional Police Service and I returned to present to the Waterloo Regional Police Services Board in September, 2017. In these presentations, I have discussed such issues as diversity in policing and improved transparency and governance.
56. Attached hereto and marked as **Exhibit "L"** is a 570 News article that was published after my delegation to the Waterloo Regional Police Services Board on September 6, 2017.
57. Attached hereto and marked as **Exhibit "M"** is my delegation presented to the Ottawa Police Services board on September 25, 2017.
58. I have attended conferences hosted by the Conference Board of Canada, Canadian Institute and the Institute of Public Administrators of Canada to raise awareness of the need for whistleblower programs.
59. My health improved during the fall and winter of 2017/2018 and although I remained under the care of my family physician, psychiatrist and psychologist I stopped taking my prescribed medication. During this time, my psychologist visits were paid for by the Workplace Safety and Insurance Board, as I no longer had benefits coverage with the board.
60. January 17, 2018, would have been the deadline for the Waterloo Regional Police Services Board to file an allegation of contravention of settlement with the Human Rights Tribunal of Ontario if they were alleging that my report had violated the resignation agreement. There was no such allegation filed by the board on this date.
61. In February, 2018, I was given the opportunity to present to the standing committee on justice policy at the Ontario Legislature to debate Bill 175, the "Safer Ontario Act," which was a bill to replace the current *Police Services Act, R.S.O. 1990, c. P.15*. During my 5-minute presentation I shared my experiences with the committee. Nothing stated in this session had not been publicly stated in my report of July, 2017.

62. In March, 2018, I re-attended the Ontario Legislature to present to the standing committee on justice policy to debate Bill 175 on behalf of the National Women in Law Enforcement Association. I was welcomed and thanked after both of my attendances at the Ontario Legislature. Preparing and delivering both of these addresses were very stressful and difficult for me.

BREACH OF CONTRACT

63. In January, 2018, I had learned that chief Bryan Larkin stated in a sworn affidavit filed in Ontario Superior Court of Justice, Court File No. CV-17-2346-00, that a female constable who had filed a human rights complaint against the service and had voluntarily resigned in 2017 was paid a "monetary settlement." I was the only female constable who had filed a human rights complaint against the service and voluntarily resigned in 2017. I believed the "non-identifying" factors used by chief Larkin were sufficient to identify me.
64. I believed this to be a violation by chief Bryan Larkin of the terms of the resignation agreement. This caused me to feel re-traumatized due to the fact that chief Bryan Larkin had not respected my rights under our agreement and was using my case in his defence of the class action lawsuit filed by many of my former female colleagues.
65. My health deteriorated into the spring of 2018, I was put back on my prescribed medication and I had suicidal thoughts. I began to have significant difficulties managing my day to day activities and operating my business, which is my only source of income, became extremely difficult.
66. I was informed in February, 2018, by the Waterloo Regional Police Association President Mark Egers that the association was filing a grievance on behalf of all of its members whose privacy was breached in that same affidavit filed by chief Larkin. As I am no longer a member of the association, I proceeded with my own allegation.

67. On May 9, 2018, I filed a statement of claim against the board and the chief, alleging a breach of contract (the resignation agreement), in the Ontario Superior Court of Justice, Court File No. CV-18-00001938-0000. The board filed a motion to dismiss this proceeding and that motion is being heard in February, 2019.

STRATEGIC LAWSUIT AGAINST PUBLIC PARTICIPATION ("SLAPP")

68. On June 28, 2018, I was served, by email, with the board's HRTO Form 18, Contravention of Settlement, (the proceeding). The following week, I received, by Purolator courier, approximately 400-pages of material in support of the board's Form 18. Much of it was strategically chosen expressions that only mention Waterloo Regional Police.
69. The Human Rights Tribunal of Ontario has scheduled a hearing for this proceeding to advance on February 22, 2019.
70. The board has stated the filing of their Form 18 was not in retaliation to my statement of claim, however, all dated documents contained in the 400-page package were all printed from my company website in June, 2018.
71. I learned that the board was alleging I had violated the resignation agreement as far back as July 17, 2017, when I released my report as they state is was a "complaint." This report was not directed to any one in particular and no request to intervene, investigate or otherwise was made to any official body.
72. The board is alleging that my delegation to the Durham Regional Police Services board and attendances at the Ontario Legislature were violations of my agreement.
73. The board is alleging that publication of documents I received lawfully through the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, ("MFIPPA") is also a violation of the resignation agreement.

74. I write several blog posts about, not only policing, all workplaces in Canada and how they can improve. The board is alleging that those posts which mention the Waterloo Regional Police Services Board are violations of my resignation agreement.
75. Attached hereto and marked as **Exhibit "N"** and in the interest of transparency, are all of my previous blog posts to show the Honourable Court that I have not targeted the Waterloo Regional Police Service in my attempt to expose workplace issues.
76. The essence of the proceeding is that the board is alleging that every time I speak publicly about Waterloo Regional Police Service (make an expression), I am making a "complaint" about the Waterloo Regional Police Service, and that by discussing the treatment I received leading up to my resignation date, I am denying that I resigned voluntarily.
77. The board has alleged that a letter I sent to Minister Yasir Naqvi in January, 2018, was a new complaint against the board. In fact, the letter was a complaint about the Ontario Civilian Police Commission and the Office of the Independent Police Director. The letter references the many complaints that have been received by those two oversight bodies and not acted upon. The letter was a call to action to the Minister to provide better oversight of the two oversight bodies under his authority. It was not a new complaint about the board, and it did not contain any information that had not been disclosed prior to my resignation date.
78. Attached hereto and marked as **Exhibit "O"** is the full letter to Minister Yasir Naqvi dated January 8, 2018.
79. I did not agree to a non-disclosure clause, and as such I have been under the belief that unless I make untrue, slanderous, or defamatory statements, I can lawfully make an expression of a matter of public interest, of course respecting my Oath of Secrecy when I exercised the duties of a police officer. I have maintained a clear understanding of the rules placed upon me by the resignation agreement.

80. I have not filed a complaint against the Waterloo Regional Police Service, or any employee, director, agent, or otherwise. I have not filed a proceeding against the Waterloo Regional Police Service, or any employee, director, agent, or otherwise for matters up until my resignation date of June 25, 2017. I believe I have respected the terms of the resignation agreement entirely.
81. I have not joined the ongoing class action lawsuit against the Waterloo Regional Police Service, which was the intention of my resignation agreement.
82. I have not embellished or lied about anything that happened up until June 25, 2017. The information I discuss publicly is not to cause damage to any person's reputation, it is to draw attention to the behaviour, harassment and silencing that our current laws allow of people like myself who make unprotected disclosures.
83. I am also restricted from discussing the existence of the resignation agreement, so only when I have been asked, I have stated that the terms of the resignation agreement are strictly confidential.
84. I have not denied that I resigned voluntarily.
85. I believe the proceeding filed by the board is in retaliation for my statement of claim filed against the board in May, 2018, and is an attempt to unduly limit expression on matters of public interest.
86. The board has asked the Tribunal for an order that I have engaged in an ongoing series of contraventions although there is no explanation for the delay in submitting their Form 18, more than five months beyond the deadline. The board has relied on a "series of violations" to have the Tribunal allow their proceeding.
87. The board requesting that I "cease and desist from any further violations of the resignation agreement" is an attempt by the board to have me be silenced from speaking about my experiences with Waterloo Regional Police Service. Not having agreed to a non-disclosure

clause in the original agreement, this is an attempt by the board to silence me by implying a non-disclosure clause after the fact and is unconstitutional.

88. The board requesting that I redact allegations against the WRPSB from my book and to remove from the public domain any other allegations she has made against the WRPSB contrary to the resignation agreement is another attempt by the board to silence me by implying that the resignation agreement restricted me from discussing the treatment I received while employed by the WRPSB. In the absence of a non-disclosure agreement or allegation of defamatory statements, this request by the board is in violation of Ontario Regulation 421/97, MEMBERS OF POLICE SERVICES BOARDS – CODE OF CONDUCT;

    a. Section 9. Board members shall discharge their duties in a manner that respects the dignity of individuals and in accordance with the *Human Rights Code* and the Canadian Charter of Rights and Freedoms.

89. I learned in August, 2018, that the board has appealed my Workplace Safety and Insurance Board ("WSIB") claim (which was filed prior to my resignation) in January, 2018, which is an additional violation of the resignation agreement by the board of APPENDIX "B" FULL AND FINAL RELEASE contained in the resignation agreement wherein the board agreed *"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."* See APPENDIX "B" of **Exhibit "A."**

90. The alleged breach by the board in January, 2018, with chief Larkin's affidavit might be an arguable issue, but it is clear that appealing my WSIB claim that was in place prior to my resignation is a clear breach of the resignation agreement, and the motivation for the board to have done that is questionable considering they knew my illness was attributable to my employment with the board and publicly state that their officers' wellbeing is their concern.

91. Attached hereto and marked as **Exhibit "P"** is an article titled "It's OK to talk about it: Waterloo Police on new PTSD plan," CBC News, July 17, 2017.
92. Without continued support from the WSIB, I would have no means of continuing treatment for my post-traumatic stress disorder which has intensified since the actions of chief Bryan Larkin in January, 2018.
93. I have not been able to solicit new business due to the stress and increased PTSD symptoms.
94. The board has harassed me with their filing of the proceeding and appeal of my WSIB claim and caused me additional stress and I have incurred a tremendous amount of debt since I have been unable to work due to the voluminous materials being filed against me that I have had to respond to on my own.
95. The continued reprisal I face and the fact that the board is also trying to remove the only medical support I have at this time to deal with my PTSD sends a clear message that they will continue to use all available means to ensure that I am no longer a public critic of their actions and decisions.

PUBLIC INTEREST

96. I believe the information contained in my report, attached as Exhibit "G", to be of public interest and my intention was to raise awareness to improve legislation in Ontario for protection for municipal police officers and more accountability and transparency within police services.
97. Since July, 2017, I continue to receive emails and telephone calls from officers across Canada and members of the public who state that the issues I discuss in my report are important and in the public interest.
98. Attached hereto and marked as **Exhibit "Q"** are letters I received to support the fact that the expressions I have made are in the public interest.

99. When I read about the suicide of Krista Carle, former RCMP member, in July, 2018, I fell into a deep depression. I feel that without the intervention by the Court into an issue that happens too often, police services using all available means to silence anyone who speaks out against their policies or procedures, and use legal means to eliminate any care available to them, there will continue to be more suicides of police officers.

100. Attached hereto and marked as **Exhibit "R"** is a CBC News article titled "Ex-Mountie Krista Carle, who helped bring to light abuse and harassment in RCMP, has died."

101. Attached hereto and marked as **Exhibit "S"** is a CBC News article titled "OPP launching internal review of officer suicides."

102. In my report, contained in Exhibit "G" I discuss what the issues contained therein are doing to the police culture and the wellbeing of police officers in Ontario. Those same sentiments were stated in 2012, by then Ontario Ombudsman, André Marin.

103. Attached hereto and marked at **Exhibit "T"** is "In the Line of Duty" Ombudsman Report, October, 2012.

104. On page 83 of my report, attached as Exhibit "G", I discuss the two police whistleblowers in Montreal who exposed corrupt practices within the force's internal affairs department. After the release of this report, in December, 2017, the chief of Montreal police Philippe Pichet was suspended after the release of a report by Quebec's former deputy justice minister Michel Bouchard, examining Montreal's internal investigations department.

105. Attached hereto and marked as **Exhibit "U"** is CBC News article titled "Montreal police Chief Philippe Pichet suspended, replaced by SQ Director," December 6, 2017.

106. Attached hereto and marked as **Exhibit "V"** is the "Rapport d'enquête administrative sur la Division des affaires internes du Service de police de la Ville de Montréal". Page 5 of the report shows a quote by the Montreal Police Union:

a. "…considers it crucial to take the means to restore the confidence of its members and the pubic in the internal affairs and management of the Service de Police de la Ville de Montréal." (Translated).

107. Even as far back as 1992 here in Ontario, reports have been written about inconsistencies and corrupt practices when conducting internal investigations.

108. Attached hereto and marked as **Exhibit "W"** is the Conclusion of The Ontario Civilian Commission on Police Services "Report on an inquiry into administration of internal investigations by the Metropolitan Toronto Police Force."

109. I believe it is extremely concerning and a matter of public interest that police services take this type of action against a former employee who speaks publicly about her experiences, the deficiencies and offers ways to improve the current culture.

CULTURE OF FEAR

110. The culture of fear exists in the policing profession because of what police services have been able to do to anyone who has spoken up in the past.

111. In January, 2018, Sergeant Jessica McInnis of the Toronto Police Service faced discipline after filing a human rights complaint against the Toronto Police Service.

112. Attached hereto and marked as **Exhibit "X"** is an article titled "Toronto police officer disciplined for texts she says prove harassment," Wendy Gillis, Toronto Star, January 31, 2018.

113. In July, 2018, Constable Amy Mattijjsse of Cobourg Police was charged with 19 counts of misconduct, most of the charges stemming from harassment complaints she had made against members of the service.

114. On September 10, 2018, Today's Northumberland reported that the 19 charges Mattijjsse was facing were put on hold pending a review by the Ontario Civilian Police Commission as to whether or not the charges were a "form of inappropriate reprisal."

115. Attached hereto and marked as **Exhibit "Y"** is an article titled "Police Services Act Hearing For Cobourg Constable On Hold Indefinitely," Today's Northumberland, September 10, 2018.

SWORN BEFORE ME at

Brantford, Ontario on September 12, 2018

Commissioner for Taking Affidavits

KELLY LYNN DONOVAN

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

TAB A

This is **Exhibit "A"** referred to in the affidavit of Kelly Lynn Donovan

sworn on September 12, 2018.

Mary Lou Donald

Commissioner for Taking Affidavits

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

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 ("HRTO") on or about June 6, 2016 and having HRTO 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. [redacted]

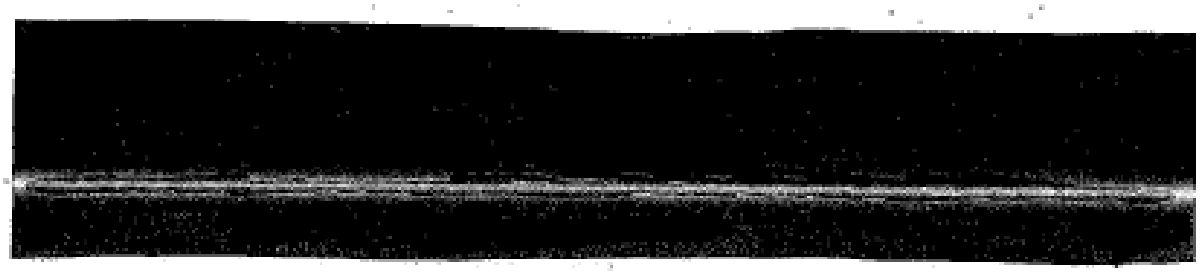
3. By no later than July 15, 2017, the Board will pay to Donovan all outstanding Annual Leave pay, Statutory Holiday pay and Overtime pay, if any, accrued and still owing to Donovan as of the date of her employment resignation.

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. 

8.

9.

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. [redacted]

14. [redacted]

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 Dundonald Ontario this 3rd day of June, 2017.

SIGNED AND WITNESSED
in the presence of:

M Kimpel
Witness Signature
Print Name: Molly Kimpel

KELLY DONOVAN

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

SIGNED AND WITNESSED
in the presence of:

Gary V. Melanson
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 Egers V.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 8th, 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 8th, 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 8th, 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 8th, 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 8th 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 8th 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 8th, 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 8th day of June, 2017, in the City of Cambridge, Ontario.

SIGNED AND WITNESSED
in the presence of:

Gary V. Melanson
Witness Signature

Print Name: GARY V. MELANSON

Bryan Larkin

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

TAB B

This is **Exhibit "B"** referred to in the affidavit of Kelly Lynn Donovan

sworn on September 12, 2018.

Mary Louise Donald

Commissioner for Taking Affidavits

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

Procedure of the Waterloo Regional Police Service

Complaints		
Edition:		Number: 2009-88-HR
Effective Date: 2009-11-17	Expiration Date: None	Reevaluation Date:
Related Documents:		Responsibility to Update: Policing Standards
Security/Special Instructions:		Originator: Quality Assurance

A. Subject

1. This is the Procedure for accepting, investigating and resolving complaints which occurred before October 19th, 2009. For all other complaints, members are to refer to Standing Order 2009-088. Specifically, the Chief is responsible for:
    a. complaints received from a member of the public about a policy or service provided by the Service; and
    b. complaints received about the conduct of a Waterloo Regional Police Service police officer, except for complaints about the Chief of Police or a Deputy Chief of Police (complaints about the Chief or a Deputy are directed to the Police Services Board for investigation and resolution).

B. References

1. Police Services Act and Regulations
2. Statutory Powers Procedures Act
3. Uniform Collective Agreement

C. Forms

1. Commission Review Waiver
2. Complaint Form
3. Informal Resolution Contact Sheet

D. Definitions

1. For the purposes of this Procedure:

    a. *Act* - means the Police Services Act and amendments thereto;

    b. *Board* - means the Waterloo Regional Police Services Board;

    c. *Commission* - means the Ontario Civilian Commission on Police Services;

    d. *complaint* - means a complaint about a policy or service provided by the Waterloo Regional Police Service or about the conduct of a Waterloo Regional Police Service police officer;

    e. *conduct* - includes both misconduct and unsatisfactory work performance as outlined in the Act and Regulations;

    f. *member* - means a sworn officer of the Waterloo Regional Police Service;

    g. member of the public - *means a citizen;*

    h. *Regulations* - means the *Regulations* of the Police Services Act and amendments thereto;

    i. *supervisor* - means an officer of the confirmed rank of Sergeant or higher;

    j. *verbal warning* - means a warning given verbally to a *member* and recorded on an Informal Resolution Contact Sheet by a *supervisor* for misconduct or unsatisfactory work performance; and

    k. *written warning* - means a warning given in writing to a member and recorded on an Informal Resolution Contact Sheet by a *supervisor* for misconduct or unsatisfactory work performance.

E. Policy

1. The Service is committed to the principle that fair, open, prompt, thorough and efficient response to complaints is a cornerstone to establishing and maintaining a positive community-police relationship.

2. Any *member of the public* may make a complaint about:

    a. a policy of the Service.

    b. a service provided by the Service.

3. Any *member of the public* or a *supervisor* may make or initiate a complaint about the conduct of a *member* of the Service.

4. Conditions for accepting complaints or withdrawals of complaints from a *member of the public;*

a. complaint/withdrawal is ABOUT OUR SERVICE (i.e., a policy, service or a *member* of the Waterloo Regional Police). When required, inform complainants to attend at the appropriate police service;

b. complaint received from a *member of the public* who was DIRECTLY AFFECTED;

c. complaint/withdrawal received in WRITING and SIGNED by the complainant; and

d. complaint/withdrawal DELIVERED personally to any division by the complainant or their agent, or RECEIVED by mail, facsimile or from the Commission.

5. The Act provides for an immediate resolution of a conduct complaint that is obviously conduct that is not of a serious nature.

   The Service supports an immediate resolution of a complaint of conduct that satisfies all parties involved and minimizes the use of resources. Subsequently, an Informal Resolution Contact Sheet was developed to facilitate immediate informal resolution. An Informal Resolution Contact Sheet may be used if all of the following conditions are met:

   a. before or during an investigation into a complaint of *conduct;*

   b. the *conduct* appears to be obviously conduct that is not of a serious nature;

   c. The *supervisor* or unit commander believes the complaint can be resolved by:

      i. an explanation of a policy or service;

      ii. an exchange of information;

      iii. an officer apology;

      iv. a *verbal warning* to the officer; and

      V. a *written warning* to the officer;

   d. there is no need to proceed with a progressive discipline problem; and

   e. the complainant and officer consent to the proposed resolution.

6. Complaints shall be processed according to the Complaints Policy flowchart (see Appendix A.)

7. The Chief shall refer all complaints about the Chief of Police or a Deputy Chief to the *Board.*

8. File and retain complaints according to the File and Retain Table.

9. Forward all original complaint withdrawals to the appropriate unit commander.

10. Hearings will be coordinated by the Professional Standards Commander on the direction of the Chief of Police.

11. A committee comprised of the Professional Standards Commander, a Deputy and all superintendents will review resolutions and dispositions to ensure region-wide consistency and fairness. The committee will meet when required and at a minimum, bi-annually.

F. **Member**

1. Appropriately inform *members of the public* when encountering a complaint (see sections E.2., E.3. and E.4.).

2. Direct complainants to a *supervisor*.

3. If the complaint is received by mail, facsimile or from the Commission, forward it directly to the Professional Standards Commander.

G. **Supervisor**

1. Classify the complaint as a policy or Service *complaint* or a *conduct complaint.*

a. Policy or Service *Complaint*

i. Complete the Complaint form, or assist the complainant to complete the form (type or neatly print). If the complaint is a separate written and signed document, attach it to the Complaint form.

ii. Ensure any ambiguities or inconsistencies are clarified by the complainant.

iii. Attach any pertinent documents to the Complaint form.

iv. DO NOT express a personal opinion to the complainant on the outcome of the complaint.

v. Provide a copy of the Complaint form to the complainant and explain the Complaint Procedure and its various steps.

vi. Provide and explain the Commission Review Waiver form to the complainant. Attach it to the Complaint form if the complainant wishes to complete it.

vii. Obtain a *complaint* number from Professional Standards.

viii. Forward the original Complaint form and original Commission Review Waiver form if completed, with any attachments, to your unit commander and copy(s) to the Professional Standards

b. Conduct Complaint

Stage 1 - Informal Resolution Contact Sheet

1. Gather the necessary information surrounding the complaint. Ensure acceptance/withdrawal conditions outlined in sections E.2., E.3. and E.4. (a) are met.

ii. Ensure the substance of the complaint meets the conditions set out in Section E. 5. (a), (b), (c) and (d).

iii. If the above conditions are not met, go to *Stage 2* below.

iv. Discuss with the complainant, the Informal Resolution Contact whereby the complaint can be immediately resolved pending their consent and the officer's consent to the resolution.

v. If the complainant agrees to proceed, make the necessary arrangements and attempt to resolve the complaint as soon as possible. If the complainant wishes to proceed with a more formal route, go to *Stage 2* below.

vi. If the complainant and officer consent to the proposed resolution (i.e., resolution achieved), complete the Informal Resolution Contact Sheet and forward it to the subject officer's unit commander.

vii. If the complainant or officer do not consent to the proposed resolution (i.e., resolution not achieved), go to *Stage 2* below.

c. Stage 2 - Complaint Requires Full Review and Final Report

1. Gather the necessary information surrounding the complaint, determination of the date of the incident. Ensure the acceptance/withdrawal conditions are met (see Sections E.2., E.3. and E.4.)

ii. Ensure a preliminary investigation is conducted.

iii. Take all reasonable steps to ensure that evidence that might otherwise be lost is secured. Arrange for photographs and/or video if required (i.e., if the complaint involves evident physical injuries or damage to property).

iv. Complete the Complaint form, or assist the complainant to complete the form (type or neatly print). If the complaint is a separate written and signed document, attach it to the Complaint form.

v. Ensure any ambiguities or inconsistencies are clarified by the complainant.

vi. Attach any pertinent documents (such as a copy of a method of release) to the Complaint form.

vii. DO NOT express a personal opinion to the complainant on the outcome of the complaint.

viii. Provide a copy of the Complaint form to the complainant and explain the complaint procedure and its various steps.

ix. Provide and explain the Commission Review Waiver form to the complainant. Attach it to the Complaint form if the complainant wishes to complete it.

x. Ensure a report on the evidence and preliminary investigation, if any, is forthwith prepared.

xi. Obtain a *complaint* number from Professional Standards.

xii. Forward the original Complaint form and original Commission Review Waiver form if completed, with any attachments, to your unit commander and copy(s) to the Professional Standards

H. **Unit Commander**

1. Forward all original Informal Resolution Contact Sheets to the Professional Standards Commander.

2. Forward all original *complaint* withdrawals to the Professional Standards Commander with your recommendations.

3. Policy or Service *Complaint*
   a. Forward the original Complaint form and original Commission Review completed, with any attachments, to the Chief within five (5) days of the determination that the complaint is about a policy or service. If the complaint affects the area under your command, submit any documentation that will assist in a review.
   b.
   c. When directed by the Chief, coordinate the review and submit a written report to the Chief.

4. Conduct Complaint
   a. All *complaints* concerning the conduct of the Chief or Deputy, are delivered to the Chair of the Board within three (3) days of the determination that the complaint is a conduct complaint.

   b. Maintain a master file in respect of each *conduct complaint* received.

   c. Record all time limits set out in the Act to ensure compliance.

   d. Do not commence a review of a *conduct complaint* until a completed Commission Review Waiver Form is received from the complainant or the thirty (30) day waiting period is expired.

   e. Within five (5) days of commencing the review, consider:

      i. Whether the *complaint* is frivolous or vexatious or made in bad faith in accordance with the Act.

      ii. Whether the facts upon which the complaint is based occurred more than six months before the day of the *complaint* in accordance with the Act.

      iii. Whether the complainant was not directly affected by the conduct that is the subject of the complaint in accordance with the Act.

   f. In the event that you decide not to deal with a *complaint* for any of the reasons described above, forthwith notify the complainant and officer in writing and send the original Complaint form and copy of notifications to
   g- If a review is to be conducted, at your discretion either:

      i. take responsibility for the review and assign your own investigators to conduct the investigation and complete a final report; or

ii. forward the complaint to the Professional Standards Commander for the investigation and final report.

h. If you are conducting the review, notify the subject officer in writing of the *complaint*, unless such notice would prejudice the investigation.

i. Upon the review of a final report, and:

i. if you are of the opinion that the complaint is unsubstantiated, ensure the complainant and the officer are notified in writing in accordance with Act;

ii. if you are of the opinion that there was misconduct or unsatisfactory work performance but that is was not of a serious nature, you may proceed with the informal resolution process outlined in the Act; and

iii. if you are of the opinion that the officer's conduct may constitute misconduct or unsatisfactory work performance of a serious nature, send the final report to the Professional Standards Commander for a hearing along with:

A. a recommendation that a hearing be held;

B. a Complaint of Offence; and

C. a request that a Notice of Hearing be prepared.

j. Assist the Professional Standards Commander as required.

I. Professional Standards Commander

1. Maintain a master file in respect of each policy or Service *complaint* and *conduct complaint* received, and assign a *complaint* number to assist in tracking *complaints.*

2. When receiving a *complaint* requiring a review, coordinate the investigation and assign investigators as required.

3. Make recommendations and submissions to the Chief in accordance with the Act.

4. Follow the direction of the Chief and ensure notifications and procedures outlined in the Act are completed and recorded.

5. Coordinate hearings on the direction of the Chief.

6. Chair the committee to review resolutions and dispositions for consistency.

7. Maintain and forward reports on *complaint* statistics to the Chief as outlined in By-law

No. 97-2.

J. Chief of Police

1. Policy or Service Complaint

a. Follow the procedures in By-law No. 97-2.
b. If action is to be taken, consider:
   i. sending *complaints* about a policy to the unit commander of the originating branch of the policy, requesting investigation and a
   ii. sending *complaints* about a service to an appropriate Unit Commander, requesting investigation and a written report.

2. Conduct Complaint

a. When required, direct the Professional Standards Commander whether or not:
   1. the subject officer will be notified of the *complaint;*
   ii. to continue with a *complaint* when a withdrawal is received;
   iii. the complainant is directly affected;
   iv. the *complaint* is more than six months old;
   V. the *complaint* is frivolous or vexatious or made in bad faith;
   vi. to cause the *complaint* to be investigated by another police service in accordance with the Act; and
   vii. to initiate an informal resolution process during the investigation in accordance with the Act.

b. Upon the review of a final report, and:
   i. if of the opinion that the *complaint* is unsubstantiated, ensure the complainant and the officer are notified in writing in accordance
   ii. if of the opinion that there was misconduct or unsatisfactory work performance but that is was not of a serious nature, you may direct the Professional Standards Commander to proceed with the informal resolution process outlined in the Act; and
   iii. if of the opinion that the officer's *conduct* may constitute misconduct or unsatisfactory work performance of a serious nature, direct the Professional Standards Commander to initiate a hearing in Accordance with the Act. Assign a hearing prosecutor and presiding or hearing officer.

c. If the report received includes a statement that the officer is suspected of or charged with an offence under the laws of Canada or a Province or a Territory, or is suspected of misconduct under the Act, consider whether to invoke the suspension provisions of the Act.

d. If six (6) months have elapsed since the facts on which the *complaint* is based first came to the attention of the Service, do not proceed with a hearing or serve a Notice of Hearing unless the Board is of the opinion that it was reasonable, under the circumstances, to delay the hearing or serving the Notice of Hearing.

e. In the event that a Crown Attorney has been consulted with respect to the *complaint*, you may proceed to deal with the part of the *complaint* that constitutes misconduct under the Act or unsatisfactory work performance, unless the Crown Attorney directs otherwise.

f. If informal resolution fails [as above in 2(b)], impose a penalty and/or action in accordance with the Act with consideration to the officer's oral or written reply. If the officer refuses to accept the penalty and/or action, direct the Professional Standards Commander to initiate a hearing in accordance with the Act. Assign a hearing prosecutor and presiding or hearing officer.

g. When receiving a Commission's appeal decision, direct the Professional Standards Commander to take action as directed by the Commission.

h. If the *complaint* involves more than one police service, liaise with the other police chief(s) and, in accordance with the Act, decide upon the investigation methods and costs.

K. Hearing Prosecutor

1. Upon the receipt of a Complaint of Offence, decide whether or not a hearing will be conducted.

2. Prepare and sign the Notice of Hearing.
3. Arrange through the police officer's *supervisor* to effect service upon the subject police officer a true copy of the Notice of Hearing, together with a statement of particulars.

4. Ensure the investigators prepare a brief similar to the preparation of a case for criminal court.

5. Arrange to have the necessary witness(es) present at the trial.

6. Upon confirmation of the penalty and/or action from the Chief, ensure that the penalty and/or action is carried out.

7. Forward the complete file to the Professional Standards Commander.

L. Presiding or Hearing Officer

1. Ensure the evidence is recorded.

2. Ensure the hearing is conducted in an efficient, orderly manner.
3. If misconduct or unsatisfactory work performance is proved on clear and convincing evidence, ensure the prosecutor gives a history of the police officer's service.

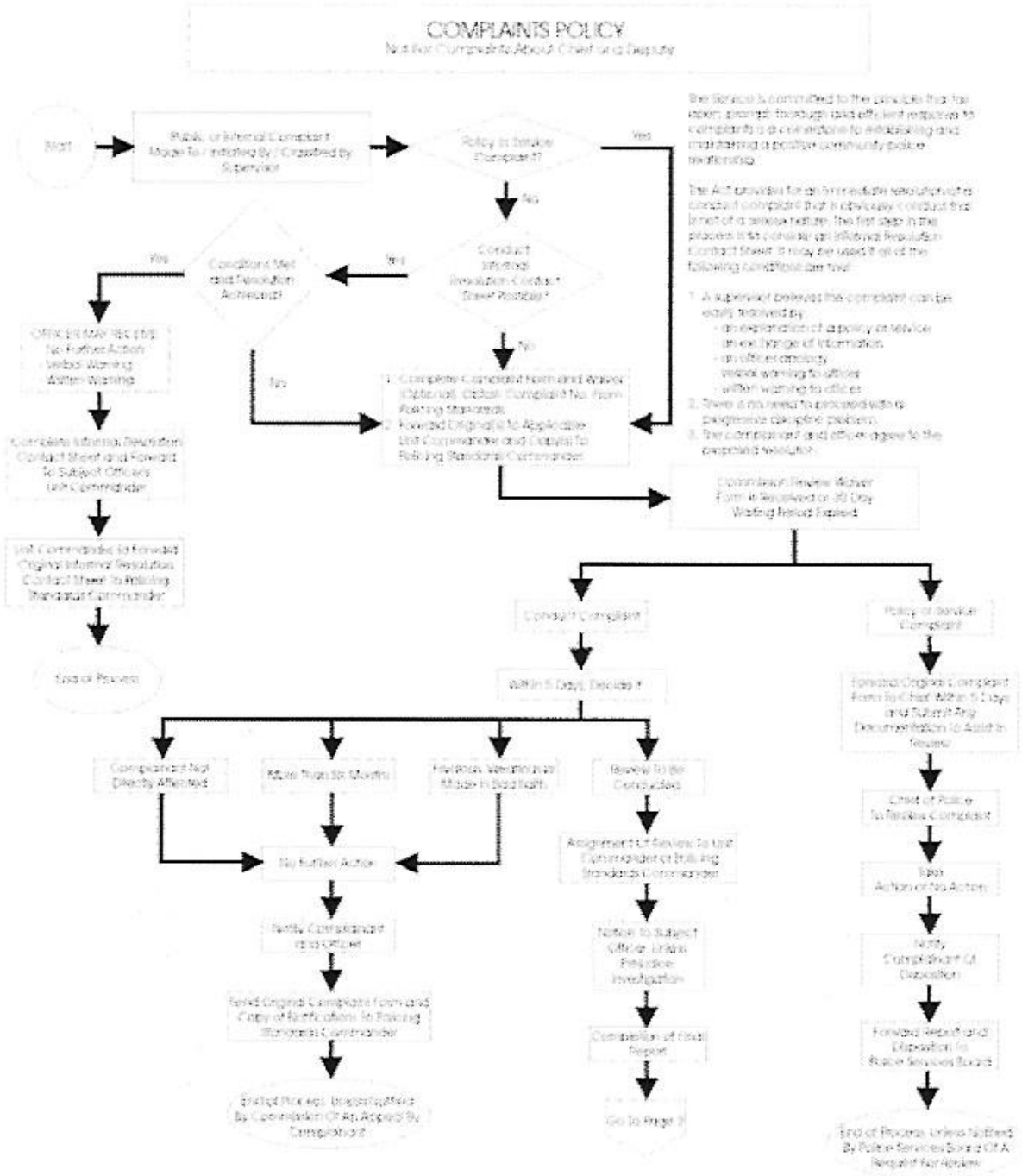
4. Award the penalty and/or action.

5. Ensure the subject officer and Chief are served with a copy of the disposition of the hearing.

M. **Subject Police Officer**

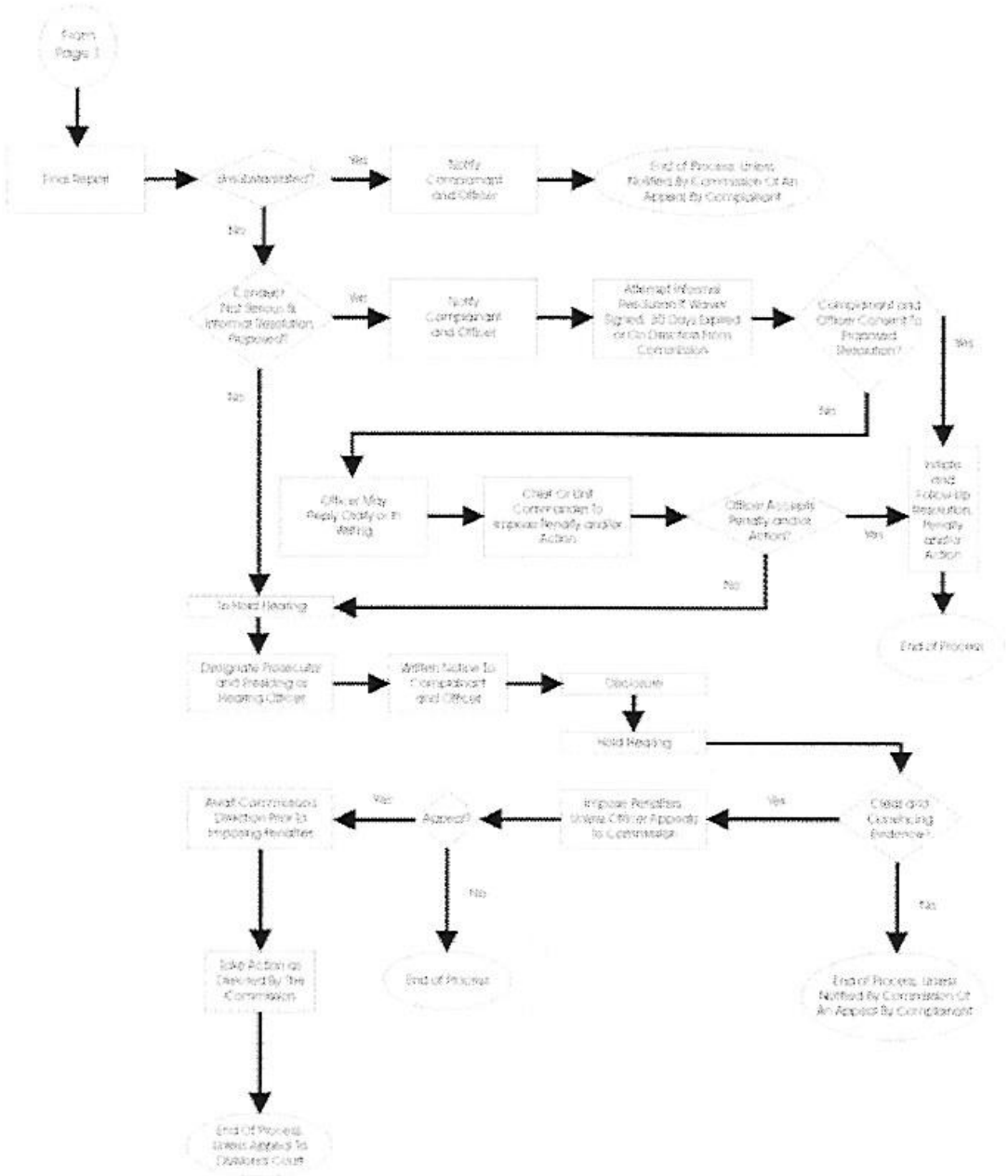
1. Notify the presiding or hearing officer, in writing and before the date of the hearing, of the name(s) of police service witness(es) to be called in order that they can be notified to attend.

APPENDIX


COMPLAINTS POLICY
Public or Internal Complaint Made To / Initiated By / Classified by Supervisor
Policy or Service Complaint?
Yes
No
Conduct Informal Resolution / Conduct Issues Possible?
Conditions Met and Resolution Achieved?
Yes
No
Yes
Yes
No
Conduct Issues Informal Resolution Conduct Sheet and Forward To Subject Officer's Unit Commander
Unit Commander to Forward Ongoing Informal Resolution Conduct Sheet To Policing Standards Commander
End of Process
Complainant Interview Waiver Form is Received or 30 Day Waiting Period Expired
Conduct Complaint
Policy or Service Complaint
Within 5 Days, Decide If
Complainant Not Directly Affected
Action Taken Six Months
Frivolous, Vexatious or Made in Bad Faith
Review to be Conducted
No Further Action
Notify Complainant of No Action
Send Original Complaint Form and Copy of Notifications to Policing Standards Commander
Unless Appeal Lodged By Complainant Or As Agreed By Complainant
Assignment of Review to Unit Commander or Policing Standards Commander
Notice to Subject Officer Unless Prejudice Investigation
Consideration of Final Review
Go to Page 3
Forward Original Complaint Form to Chief Within 5 Days and Submit Any Documentation to Assist in Review
Chief of Police to Review Complaint
Take Action or No Action
Notify Complainant of Disposition
Forward Report and Disposition to Police Services Board
End of Process Unless Facilitated By Police Services Board Or A Request For Review

COMPLAINTS POLICY - PAGE 2

Next Five Complaints About Chief or a Deputy



TAB C

This is **Exhibit "C"** referred to in the affidavit of Kelly Lynn Donovan

sworn on September 12, 2018.

Commissioner for Taking Affidavits

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

Procedure of the Waterloo Regional Police Service		
Public Complaints and Chief's Complaints		
Edition: 4		Number: 2014-054-AD
Effective Date: 2014-04-02	Expiration Date:	Reevaluation Date: 2016-04-02
Related Documents:		Security/Special Instructions:

Subject

As an organization committed to providing ethical, honest and professional service, this is the Procedure for the intake, investigation and resolution of *public complaints* about the conduct of *police officers* or the policies or services provided by the Service, as well as *Chief's complaints.*

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N. Chief's Complaints
O. Professional Standards Inspector
P. Divisional Inspector/Duty Officer
Q. Superintendent
R. Deputy Chief of Systems and Innovation

A. References

1. Charter of Rights and Freedoms

2. "Public complaints – Local Complaints", Ontario Regulation 263/09, Police Services Act
3. "Code of Conduct", a Schedule to "General", Ontario Regulation 268/10, Police Services Act
4. Statutory Powers Procedure Act

B. Forms

1. Informal Resolution Agreement – Record of Disposition without a Hearing
2. OIPRD Complaint Against the Police
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7. OIPRD 45 Day Investigative Status Update
8. OIPRD Investigative Report
9. WRPS Customer Service Issue/Contact
10. WRPS Local Complaint Acknowledgement Form

C. Definitions

1. For the purpose of this Procedure:
    a. *Alternative Dispute Resolution (ADR) process* – means mediation, conciliation, negotiation or any other means of facilitating the resolution of issues in dispute;
    b. *Chief's complaint* – means a complaint initiated by the Chief or designate about the conduct of a *police officer* of the Service;
    c. *complainant* – means a person(s) who makes a complaint in accordance with the provisions of the Police Services Act (PSA);
    d. *contact* – means a discussion or exchange with a potential *complainant* who, after being informed of *local complaint* and *public complaint* options, wishes only to express a concern, seek explanation and/or information or discuss a customer service issue;
    e. *criminal allegation* – means an alleged breach of any Act of the Parliament of Canada;
    f. *delegate* – means an officer authorized by the Chief to perform a duty as set out herein and/or authorized by the PSA;
    g. *Director* – means the Director of the *Office of the Independent Police Review Director*;
    h. *disposition without a hearing* – means a discipline process in accordance with the informal discipline provisions of the PSA for breaches of conduct and/or unsatisfactory work performance that are not considered to be of a serious nature but where an *informal resolution* was not reached;

i. *final report* – means the report created pursuant to the PSA that addresses an unresolved *OIPRD* matter or the outcome of a *Chief's complaint* investigation;

j. *formal discipline hearing* – means a discipline process involving a formal hearing in accordance with the PSA for:

   i. substantiated breaches of the Code of Conduct and/or unsatisfactory work performance that are considered to be of a serious nature; or

   ii. substantiated breaches of the Code of Conduct and/or unsatisfactory work performance that could not be resolved through *informal resolution* or the *disposition without a hearing* process;

k. *informal resolution* – means a resolution of a discipline process in accordance with the PSA for breaches of conduct and/or unsatisfactory work performance that was not of a serious nature and the *respondent officer* and the *complainant* if applicable consents to the resolution;

l. *Liaison Officer* – means the *police officer* delegated by the Chief, in accordance with the PSA, to liaise with the *OIPRD*. The *Liaison Officer* shall be the Professional Standards Branch Inspector or designate unless the Chief designates in writing another *member* for a specific complaint;

m. *local complaint* – means a complaint made in person, by a member of the public regarding the conduct of a *police officer* or about the policies or services provided by the Service that are a less serious complaint and where a *public complaint* in respect to the matter has not been made. *Local complaints* may be accepted for:

   i. dealing with personal property other than firearms or money;

   ii. failing to treat a person equally;

   iii. using profane language;

   iv. acting in a disorderly manner;

   v. neglect of duty;

   vi. failing to work in accordance with orders;

   vii. failing to make a report or record entry;

   viii. conspiring to commit any of the above; and/ or

   ix. contravening any provision of the Act or Regulations;

n. *local resolution* – means a process for resolving *local complaints*;

o. *member* – means any employee of the Service including auxiliaries;

p. *misconduct* – means an act or omission on the part of a *police officer* that constitutes an offence under Part V of the PSA;

q. *Office of the Independent Police Review Director (OIPRD)* – means an arm's length independent body within the Ministry of the Attorney General to administer *public complaints* about the police in Ontario;

r. *police officer* – means the Chief or any other police officer of the Service but does not include special constables, auxiliaries, civilians or volunteers;

s. *public complaint* – means an allegation(s) made by a member of the public to the *OIPRD* under Part V of the PSA, about the conduct of a *police officer* or about the policies or services provided by a police service;

t. *serious misconduct* – means conduct contrary to the Code of Conduct of the PSA that, in the sole discretion and determination of the Chief or designate or *OIPRD*, is of such a nature that it is considered serious, taking into account relevant facts and other considerations;

u. *supervisor* – means, for the purposes of resolving *contacts*, at least a confirmed rank sergeant or for *local* or *public complaints* and *local resolutions*, a confirmed rank staff sergeant or acting staff sergeant in consultation with a confirmed rank staff sergeant or *police officers* assigned to the Professional Standards Branch;

v. *respondent officer* – means a *police officer* who is the subject of a complaint filed by a member of the public, Chief or the Board under Part V of the PSA, and may include the Chief or Deputy Chief; and

w. *witness officer* – means a *police officer* who may have been a witness to an incident or information regarding a complaint.

Procedure of the Chief

D. General

1. The Service is committed to respecting the rights of a *complainant* and the involved *police officer(s)* by having any complaints investigated in a professional and timely manner.
2. Any member of the public making a complaint directly to the Service shall be advised of their right to complain to the *OIPRD* about:
    a. policies or services provided by the Service; and**/or**
    b. the conduct of a *police officer* of the Service.
3. A *member* of the Service cannot make a *public complaint* against the Service or another *police officer* of the Service. However, the Chief may initiate a *Chief's complaint* about the conduct of a *police officer* of the Service.
4. The Chief may delegate the Deputy Chief of Systems and Innovation to oversee that investigation.
5. In circumstances where a *respondent officer* works within an area of the Service that is not overseen by a Divisional Inspector, the Professional Standards Branch Inspector shall assume the responsibilities of the Divisional Inspector, as outlined in Section P of this Procedure.
6. A *public complaint* must be made in writing and submitted to the *OIPRD* and their process (see *OIPRD* website).
7. Complaints may be brought by a third party not directly involved (see Section 60(6) of PSA).
8. Telephone complaints are not acceptable formats for initiating a *public complaint*.
9. Should a complaint be received by the Service in a written format (e.g., faxed, hand delivered letter or received via Canada Post), the complaint shall be sent to the Professional Standards Branch where the *Liaison Officer* shall forward the information to the *OIPRD* for follow up.
10. Once a *public complaint* has been officially submitted, *members* are legislatively prohibited from advising the *respondent officer*. However, the *respondent officer's* supervisors may:

a. take necessary risk management actions (e.g., the need to re-assign, suspend or direct no contact) after notifying the Divisional Inspector or Duty Officer; and/or

b. advise the *respondent officer* of the *public complaint* if the Professional Standards Inspector has received permission from the *OIPRD* before a determination is made regarding the complaint.

11. It is the responsibility of the *OIPRD* to determine whether the complaint relates to the conduct of a *police officer* or to the policies or services provided by the Service.

12. The *OIPRD* will return a policy or service complaint to the Chief for investigation, and the Chief will have 60 days to reply to the *complainant*, and the *OIPRD*, in writing, of any decision or disposition.

13. The *OIPRD* may decide not to deal with a *public complaint* if for a variety of legislated reasons including but not limited to:

a. the complaint is made more than six (6) months after the incident;

b. prohibited by position/employment as set out in Section 58(2) of the PSA; or

c. if the complaint is considered to be frivolous, vexatious or made in bad faith.

14. The Chief and the *complainant* will be notified in writing by the *OIPRD* if the *Director* decides not to deal with the complaint.

15. Notice of the complaint shall not be provided to any *respondent* or *witness officer* until the *OIPRD* so directs for a *public complaint* or the Chief for a *Chief's complaint*. Notice may be withheld if, in the opinion of the *Director* or the Chief, the notice might prejudice an investigation into the matter.

16. If a *complainant* and a *police officer* are referred to an *ADR* process:

a. the person selected or appointed to facilitate the *ADR* process shall not be a *police officer* or employee of any police service; and

b. all communications and the facilitator's notes and records shall remain confidential and are deemed to have been made without prejudice to the *complainant* and the *respondent officer* in the process.

17. Where this Procedure requires notification of a complaint, such shall not be done to a *police officer* named in the complaint. Notification shall be to the next supervisor of equal or higher rank.

E. **Members**

1. Members shall when:

a. a *complainant* attends a police station to make a complaint, immediately notify the patrol supervisor or another staff sergeant on duty (or their supervisor if they are the subject of the complaint);

b. receiving a complaint by telephone, notify the patrol supervisor or another on duty staff sergeant (not the subject of the complaint) and transfer the *complainant* to that *supervisor*; and

c. receiving complaints about the policies of another police service or about the conduct of an officer from another police service, shall notify an on-duty *supervisor*.

F. Supervisor

1. When a *complainant* attends a police station to make a complaint, the on-duty staff sergeant or acting staff sergeant shall meet the *complainant*, unless they are the subject of the complaint.
2. A *supervisor* shall:
    a. when receiving a potential complaint by telephone, consider whether the complaint is a *contact* (Section G), a *local complaint* (Section H) or a *public complaint* (Section I);
    b. when receiving a complaint about the policies of another police service or about the conduct of an officer from another police service:
        i. advise the *complainant* of the *public complaints* process and provide an *OIPRD* information pamphlet outlining *complainant* rights, methods of filing a complaint, addresses or website information, as required; and
        ii. advise the *complainant* the signed complaint may be submitted to any police service, including the involved police service; and
    c. only accept *a* written *public complaint* made in relation to:
        i. a *police officer* of this Service or any other service; or
        ii. the policies and services of this Service or any other service.

G. Contacts

1. A *supervisor* dealing with a *complainant* who has been informed of the *local complaint* and *public complaint* options, yet wishes only to seek explanation, information or discuss a customer service issue, shall:
    a. attempt to address the concern, which may include an apology for the inconvenience;
    b. make notes of the issue and resolution;
    c. complete a WRPS Customer Service Issue/Contact form; and
    d. forward the completed document by fax to the Professional Standards Branch Inspector.

H. Intake of a Local Complaint

1. Where the criteria in Section C(1)(m) for a *local complaint* are met, the *supervisor* shall:
    a. attempt to deal with the matter as a *local complaint* and resolve the issue;
    b. prior to accepting a *local complaint*:
        i. offer the *complainant OIPRD* publications/information regarding *public complaints*;
        ii. advise the *complainant* they may complain to the *OIPRD* pursuant to Part V of the PSA;
        iii. print a Local Complaint Acknowledgement form available on At Your Service;

iv. review the form with the *complainant* and check off each box to ensure the *complainant* has been informed:

I. that they may make a *public complaint* to the *OIPRD*;

II. that the Chief may require a *public complaint* be made if the allegation exceeds the limits of a *local complaint*;

III. of publications respecting *public complaints* provided by the *OIPRD*;

IV. the complaint cannot be accepted if the *complainant* has already made a *public complaint* respecting the same incident;

V. of the 30 day time limit to resolve a *local complaint* and that a further 30 days is possible on consent of the *OIPRD*;

VI. that the *local resolution* must be in writing on the prescribed OIPRD Local Resolution Complaint Summary form and signed by the *complainant*, *respondent officer* and:

i. Chief or designate;

ii. confirmed rank staff sergeant; or

iii. sergeant assigned to the Professional Standards Branch;

VII. that a failure to sign the OIPRD Local Complaint Acknowledgement form will result in the matter being recorded as a local inquiry and forward to the *OIPRD*; and

VIII. that *Alternative Dispute Resolution (ADR) process* may be requested by the *complainant*;

c. fill out the "Complainant" and "Summary of Complaint" section of the OIPRD Local Resolution Agreement form and have the *complainant* initial both sections;

d. notify the Divisional Inspector and discuss resolution options. For *respondent officers* working within an area of the Service that is not overseen by a Divisional Inspector, notify the Director of the Branch and discuss resolution options with the Professional Standards Branch Inspector;

e. attempt to resolve the *local complaint* by considering:

i. discussing the matter with the *police officer* and inform the *complainant* of results;

ii. facilitating discussion between the *complainant* and the *police officer*;

iii. facilitating an apology by the *police officer*, if appropriate;

iv. after consultation with the Divisional Inspector or the Professional Standards Branch Inspector in circumstances listed above, any other appropriate resolution; and

v. if the matter cannot be resolved, explore whether formal mediation, or *ADR*, may be appropriate.

2. If the *local complaint* can be resolved, the *supervisor* shall:

a. record the resolution on the OIPRD Local Resolution Agreement;

b. ensure the OIPRD Local Resolution Agreement form is signed by the *complainant*, the *police officer* and the designated officer who resolved the complaint within 30 days (an extension may be requested from the *OIPRD* by the *Liaison Officer* at the 20 day mark if it is clear the 30 day timeline will expire prior to the parties signing off on the resolution);

c. forward the completed OIPRD Local Resolution Agreement form to the Professional Standards Branch Inspector immediately by fax and the original copy afterwards by courier; and

d. if the *complainant* refuses to complete or sign the form, forward it to the Professional Standards Branch Inspector.

3. The *supervisor* shall, if a *local complaint* cannot be resolved:

   a. advise the *complainant* that they may make a *public complaint*; and

   b. bring the matter to the attention of the Divisional Inspector for consideration as a *Chief's complaint*. If the complaint involves a *police officer* that is not overseen by a Divisional Inspector, advise the Professional Standards Branch Inspector.

4. The *supervisor* shall:

   a. refuse the *local complaint* if the criteria exceed the definition of a *local complaint*;

   b. request the *complainant* to make a *public complaint* instead;

   c. if the *complainant* refuses to make a *public complaint*, forward all pertinent information to the Divisional Inspector to consider the appropriateness of a *Chief's complaint*;

   d. not accept a *local complaint* if:

      i. it does not meet the criteria of a *local complaint*;

      ii. the complaint is in respect of the conduct of the Chief or a Deputy Chief of Police; or

      iii. in the opinion of the supervisor it is in the public interest for the matter to be dealt with as a *Chief's* or *public complaint*; and

   e. when the *complainant* wishes to proceed by way of a *public complaint*, the *supervisor* shall follow the process in Section I.

I. Intake of a Public Complaint

1. Upon receiving a *public complaint*, the *supervisor* shall:

   a. notify the Divisional Inspector or Director, if on duty, or the Duty Officer at the first reasonable opportunity, if the urgency of the matter requires it;

   b. complete the OIPRD Complaint Against the Police form, or if a *complainant* insists, accept the complaint in any written format;

   c. have the *complainant* sign the form and if they refuse, advise him/her that the *OIPRD* may refuse their complaint;

   d. give the *complainant* an *OIPRD* information pamphlet outlining the complaint process and *complainant*'s rights;

   e. advise the *complainant* that their complaint will be forwarded to the *OIPRD* for screening and assignment to the appropriate agency for investigation;

f. take reasonable steps to ensure that evidence that might otherwise be lost is immediately secured, including, but not limited to:

   i. obtaining Forensic Identification Branch assistance for video or photographs of any injury or damage; and

   ii. seizing any relevant evidence;

g. record details of the complaint and interview with the *complainant* in their notebook;

h. immediately fax the signed *public complaint* and any related documents to the Professional Standards Branch;

i. forward the original documents to the Professional Standards Branch Inspector and a copy to the Divisional Inspector/Director;

j. not communicate any information gained during the complaint intake to anyone other than those authorized to process or administer the complaint; and

k. inform the *complainant* the *OIPRD* requires the form to be signed for the complaint to proceed and the matter could be subject to an internal investigation (*Chief's complaint*) and forward the complaint to the Professional Standards Branch.

J. Investigation of Public Complaints

1. Complaints that are received in the form of a *public complaint* and returned to the Service for investigation may be assigned to a Professional Standards Branch investigator, a *respondent officer's supervisor* or another *supervisor* as deemed appropriate by the Deputy Chief of Systems and Innovation.
2. *Police officers* assigned to investigate *public complaints* shall:
   a. be of equal or higher rank than the *respondent officer*;
   b. ensure the *respondent officer(s)* have been served with a letter of notice from the *OIPRD* and a copy of the *OIPRD* complaint, when directed to do so by the *OIPRD*;
   c. conduct the investigation in a prompt and timely manner within 120 days of the receipt of a complaint about the conduct of an officer or within 60 days for a complaint about policy or service; and
   d. advise the *respondent officer* prior to any request for a statement that they have the right to be represented by a Waterloo Regional Police Association member, any other representative or counsel.
3. At the request of the *respondent officer*, their representative may be present with them during any meeting between an investigator and the *respondent officer* pertaining to the *public complaint*.
4. An investigator who wishes to interview a *respondent officer* or request a statement in relation to a complaint containing *criminal allegations* shall:
   a. advise the *police officer* they are the subject of a complaint containing a *criminal allegation*; and
   b. determine whether it is necessary to discuss with and get direction from the *OIPRD* regarding the non-service of a Notice of Investigation because it would compromise the investigation.

5. The *police officer* who is investigating a complaint of an allegation of *misconduct* shall:
    a. advise the *respondent officer* that the complaint is one of *misconduct* under the PSA;
    b. ensure the *respondent officer* has received a copy of the OIPRD Complaint Against the Police form;
    c. order the *respondent officer* to provide a full and complete statement **or** attend an interview in response to the complaint;
    d. if criminal conduct is subsequently identified during the complaint investigation, only use the *respondent officer's* compelled statement for the PSA portion of the investigation;
    e. order the *respondent* or *witness officers* to produce any notebooks, Service equipment or duty reports pertaining to the allegations in the complaint;
    f. ensure the *respondent officer* is advised of the status of the investigation on a reasonable basis unless such might prejudice the investigation or for another appropriate reason;
    g. when complaints are referred to another agency for investigation, ensure any request for notebooks, statements, or other evidence are referred to the *Liaison Officer*;
    h. complete a *final report* to be submitted to the *OIPRD* within 120 days in the case of a conduct complaint and 60 days in the case of a policy or service complaint unless an extension is given by the OIPRD; and
    i. also provide the *final report* to the *complainant*.

K. Public Complaint Decisions

1. At the conclusion of an investigation, the Chief or designate will decide, based on reasonable grounds, whether the complaint is substantiated or unsubstantiated.
2. If the complaint is deemed to be substantiated, the Chief or designate will decide if the conduct was of a *serious* or less serious nature.
3. If the *OIPRD* conducted the investigation, the *Director* will make the decision described in (2) above. The Chief will be responsible for any discipline that may result from a substantiated complaint.
4. The *respondent officer* will receive a copy of the *final report*.
5. If it is determined that there was *misconduct* or unsatisfactory work performance but it was not a *serious misconduct*, the Chief or delegate, may resolve the matter consistent with Part V of the PSA.
6. *Serious misconducts* shall go to a disciplinary hearing.
7. No copy of a *public* or *local complaint* will be directed to a *respondent officer's* personnel file unless the complaint resulted in an *informal resolution* or a *disposition without a hearing*, which requires agreement by the *respondent officer* or a conviction as a result of a disciplinary hearing (no consent required). Entries shall be purged in accordance with the Collective Agreements or PSA.

L. Informal Resolutions (Public Complaints)

1. Only a complaint in relation to conduct which is of a less serious nature may be the subject of *informal resolution*, which may be obtained at any stage of the complaint process, with the consent of the *OIPRD*, providing that all parties agree.
2. The investigating officer may attempt to resolve the complaint during an investigation using any remedial action or strategy that does not involve forfeiture of time or other punitive options, subject to the approval of the Professional Standards Inspector or designate.
3. At the conclusion of an investigation that has substantiated *misconduct* that is not a *serious misconduct* and on the direction of the Chief or designate, the complaint may be resolved using any remedial action or strategy, including discipline.
4. No resolution or discipline may be issued by the Chief until the matter is reviewed by the *OIPRD* with regard to the facts of the *misconduct*.
5. Should both the *complainant* and *respondent officer* agree to an *informal resolution* or withdrawal of the complaint, the investigating officer shall:
    a. ensure the informal resolution or withdrawal of the complaint has been approved by the *OIPRD* prior to being accepted or any related discipline being administered;
    b. complete an OIPRD Informal Resolution form;
    c. forward the completed original OIPRD Informal Resolution Agreement form or the OIPRD Withdrawal of Complaint form to the Professional Standards Branch Inspector;
    d. forward the applicable copy to the Divisional Inspector;
    e. provide the *complainant* and the *respondent officer* with copies of the OIPRD Informal Resolution Agreement form or the OIPRD Withdrawal of Complaint form; and
    f. ensure the *informal resolution* does not form part of the officer's personnel file.
6. If an *informal resolution* cannot be achieved with the *complainant*, the investigating officer shall:
    a. complete the *final report* and forward it to the Professional Standards Branch Inspector for a decision; and
    b. inform the *complainant* that they may request a review of the *final report* by the *OIPRD*.
7. Subject to an approval of the finding of the misconduct not being of a serious nature, discipline may be imposed with acceptance of the *respondent officer* (i.e., disposition without a hearing). Failing that, the matter shall go to a hearing pursuant to the PSA.

M. Policy and Service Complaints

1. All policy/service complaints, (like those of conduct), must be recorded on the OIPRD Complaint Against the Police form and forwarded to the *OIPRD* by the *Liaison Officer* within three (3) days of receipt.
2. After screening, the *OIPRD* is required to refer policy/service complaints back to the Chief for investigation. The Chief or designate shall determine the appropriate action.

3. Upon receiving a service or policy complaint and where the Chief or designate has directed action be taken, the Chief or designate shall:
    a. notify the Police Services Board of the matter and the resolution;
    b. assign the complaint to a *police officer* for investigation; and
    c. notify the *complainant* and the *OIPRD* of the disposition within 60 days of the referral by way of written report.
4. *Complainants* have the right to ask the Police Services Board for a review of the decision and be so informed.

N. Chiefs Complaints

1. A *complainant* making a *public complaint* shall be advised of the right to complain to the *OIPRD* under Part V of the PSA before the matter proceeds as a *Chief's complaint.*
2. An internal conduct complaint may be initiated by the Chief or a Deputy Chief against a *police officer* when the *police officer* is a member of the Service, except for the Deputy Chief. The Chief or designate shall promptly give notice to the *police officer* of the allegation, unless in the opinion of the Chief it might prejudice the investigation.
3. The investigation of *Chief's complaints* shall be conducted in accordance with Part V of the PSA.
4. *Chief's complaints* shall be resolved by *informal resolution*, disposition without a Hearing or by Hearing consistent with Part V of the PSA.
5. If it is a *Chief's complaint* matter and the complaint is unsubstantiated, the *final report* shall be forwarded to the *respondent officer.*
6. Investigation into a *Chief's complaint* shall be conducted in a timely manner.
7. A *Chief's complaint* investigation shall be considered to have commenced and shall be completed within six months of the date on which the Chief becomes aware of the facts upon which the complaint is based. Note: the date of commencement may be considered the day upon which a supervisor becomes aware of enough evidence upon which the Chief (or designate) could act upon and investigate.
8. An extension of this time period may be requested from the Police Services Board where appropriate.

O. Professional Standards Branch Inspector

1. The Professional Standards Branch Inspector or designate shall:
    a. upon receiving a completed OIPRD Local Resolution Agreement form, ensure the form is forwarded, with a cover letter, to the *Director* by electronic copy no later than five days after it is completed and signed;
    b. forward a copy of the cover letter and OIPRD Local Resolution Agreement form to the Divisional Inspector of the *police officer* being complained about;
    c. where a *complainant* refuses to complete or sign the OIPRD Local Resolution Agreement form, record the matter as an inquiry, advise the involved *police officer* and take no further action, unless the subject matter should be reviewed as a *Chief's complaint*;

d. ensure that any *public complaint* received, in any written format, is forwarded to the *OIPRD* pursuant to the OIPRD guidelines;

e. where the matter is a *public complaint* ensure the *respondent officer* and the Divisional Inspector/Director receive a copy of the notification letter and complaint except where the *OIPRD* has directed the *respondent officer* not be notified. Where the Professional Standards Branch Inspector or designate determines the *respondent officer* should not be notified, this decision shall be reviewed with the *OIPRD*;

f. in the case of a *Chief's complaint*, with consultation with the Deputy Chief of Systems and Innovation, determine if the *respondent officer* will be notified of the complaint or whether to do so would prejudice the investigation;

g. ensure *Chief's complaints* and any assigned *public complaints* are properly investigated;

h. when complaints are referred to another agency for investigation, liaise with that agency to collect and produce Service *member's* notebooks, statements, or other evidence as requested;

i. ensure that all WRPS Customer Service Issue/Contact sheets are reviewed and captured for quarterly reporting; and

j. comply with the reporting requirements of the *OIPRD*.

P. Divisional Inspector/Duty Officer

1. The Divisional Inspector, Duty Officer or the Professional Standards Branch Inspector (in circumstances as outlined in Section D(5)) when informed of a *complaint* or potential *misconduct* recognized or reported internally, shall:

   a. in consultation with their Superintendent assess the seriousness of the complaint allegations and notify the Professional Standards Branch Inspector if the matter warrants immediate investigation;

   a. if necessary risk management actions (e.g., the need to re-assign, suspend or direct no contact) have been made, notify the appropriate Command Superintendent;

   b. direct *members* under their command to retain complaint related documents in a manner consistent with the Records Retention – Law Enforcement Activity Procedure and the provisions of the PSA and Collective Agreements;

   c. ensure that if the matter has been reported by a member of the public, that person is advised of their right to report the matter to the *OIPRD* and of the right of review of the *final report* and standing at Hearing, that may be forfeited as a result of not doing so; and

   d. ensure *OIPRD* brochures are available for the public to access at their respective Divisions.

Q. Superintendent

1. The Superintendent shall:

   a. in consultation with their Divisional Inspector assess the seriousness of the complaint allegations and ensure the Professional Standards Branch Inspector is notified if the matter warrants immediate investigation;

b. notify the Deputy Chief of Systems and Innovation of any immediate risk management action that has been taken (e.g., the need to re-assign, suspend or direct no contact); and

c. seek the direction of the Deputy Chief of Systems and Innovation regarding:

   i. the appropriateness of suspending the *police officer* from duty or reassigning the *police officer* until an assessment of their duties may be completed; and

   ii. the initiation and coordination of any potential *Chief's complaint* and subsequent investigation. The *Chief's complaint* may be conducted in concert with a *public complaint* about the related subject matter.

R. Deputy Chief of Systems and Innovation

1. The Deputy Chief of Systems and Innovation shall:

   a. inform the Chief of the progress of all investigations and penalty Hearings;

   b. assist the Chief with the reporting of all Service and policy complaints to the Police Services Board, regardless of disposition;

   c. approve the issuing of a notice of investigation to *respondent officers*;

   d. in consultation with the Chief, and upon recommendations made by the Superintendent, Divisional Inspector and the Director of Legal Services review reports and determine:

      i. whether misconduct has been substantiated or not;

      ii. if substantiated whether the misconduct is of a serious nature and if so ensure a hearing is commenced;

      iii. if substantiated and the misconduct is not of a serious nature, decide upon informal resolution, the informal penalty and ensure the informal penalty and ensure the informal resolution/disposition without a Hearing is pursued;

   e. assign an investigator to public complaints returned to the Service by the *OIPRD* for investigation;

   f. review and determine in consultation with the Chief, the need for suspensions, the length of time and the continued need; and

   g. determine and assign a Hearing Officer and Prosecutor, unless directed otherwise by the *OIPRD*.

TAB D

This is **Exhibit "D"** referred to in the affidavit of Kelly Lynn Donovan

sworn on September 12, 2018.

Mary Louise Donald

Commissioner for Taking Affidavits

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

Thank you Acting Chair Smith, distinguished Board members, Chief Larkin, Deputies Chalk and Thaler:

I would like to introduce myself. I am Kelly Donovan, a constable with the Service. In 2010 I was one of 31 recruits hired out of 798 applicants. I have received my fitness pin every year since then and recently completed a mentorship in the Fraud unit. I love policing, I love serving my community and fellow officers and I thank you for having given me the opportunity to do so. I have 3 young children at home to support and I am a single mother. In 2015, I was awarded the YWCA Women of Distinction award, and I am very proud of this achievement. I am currently assigned to the training branch and I take my role of training officers for use of force very seriously. While attending OPC for Basic Constable Training I was directly beside another recruit who shot himself in the leg and almost died on the firing line. Because of that experience, I will always have a greater respect for quality assurance in use of force training. One of my initiatives in the training branch was to collect statistical data from this year's judgment scenario to help identify training needs for 2017, something that, to my knowledge, has never been done.

One of my reasons for joining policing was that I had been involved in a domestic incident with the father of my children in 2008 who was, at the time, employed by another police service. Through FOI I obtained the officers' notes and reports. I was not impressed with the manner in which that service handled a member involved domestic incident. I was determined to become a police officer myself and perform more thorough, fair and impartial investigations. I have always believed that police officers are not above the law and should have the laws applied equally to them as members of the public.

I chose the Waterloo Regional Police Service because I believed that it was a service that valued Integrity and Justice. With the experiences I have had and what I have learned in the past 5 years, I have several reasons to doubt my initial belief. I am passionately committed to this service and the community but I cannot stand by and watch while members of this service succumb to its discretionary law enforcement.

Since June, 2015, when I joined the training branch I have come into contact with over 300 of our officers. I regularly overhear conversations by more experienced officers and I choose not to partake. It is my interpretation that the majority of our officers share my concerns. I feel compelled to address the Board with these issues as the Board is ultimately responsible for the delivery of service by this department and provides civilian oversight. I do this on my own accord and against the advice of friends.

I would like to share with you what I know of some recent cases that will help you understand my disillusionment.

In June of 2014 I became friends with Sgt. Finucan and he shared with me the details of his last relationship and how he had learned that his common-law spouse of 5 years had been having an affair with a married man, who was also a member of the service at that time. Finucan and his children had been caught completely off guard and it had devastated all of them.

Sgt. Finucan, was arrested in January, 2015, for a series of historical allegations. I was disappointed to learn that what prompted his arrest was contacting his ex-partner in December of 2014 after not having contacted her for 15 months.

Finucan permitted me to read the disclosure information for the case. I learned that the allegations dated back to the time when the female complainant began her affair and the two of them were still a couple. When Finucan was arrested the investigators only had evidence of 1 text message sent by Finucan in December of 2014 and 3 emails 2 weeks later.

When the investigators obtained Finucan's cell phone data it should have become obvious that prior to December, 2014, communication was reciprocated by the female and there had been no harassment.

I learned that investigators were alleging Finucan had harassed both complainants when he made attempts to speak to them by phone on the day that he discovered her

infidelity. What I found most interesting is that the investigators included several phone calls made by Finucan in the guilty plea synopsis yet chose to exclude a text message from the female complainant that same day that stated she would call Finucan later. An hour after she sent the text message, the female called Finucan and they spoke on the phone. Once again, the cell phone data would corroborate all of this information and should have been noted by investigators.

In fact, on several occasions when investigators were alleging that Finucan had been harassing the female, she had actually been the one to initiate conversation with him. For a period of 5 months after their relationship ended, she continued her relationship with the former member and she continued to initiate contact with Finucan, even visiting him at his home. The cell phone evidence would have corroborated this as well.
The allegation of the male complainant, that Finucan placed 30 to 40 phone calls to him, should have been dismissed when the cell phone records showed that those calls did not happen.

The only physical evidence in this case is the cell phone data of Finucan and when it was obtained by investigators it should have cast serious doubt on the allegations and credibility of both complainants.

The emails Finucan sent to the female complainant in December, 2014, were a series of Blackberry messages between the male complainant and a third-party female.
Contained in these messages was a threat made by the male to “spray bullets” into the lunchroom at WRPS North Division and other significant issues of professional misconduct and ostensibly criminal activity. I have read these messages and I find them very concerning. To my knowledge, the service was provided these messages and had taken no action since the male complainant had resigned from the service in the summer of 2014.These Blackberry messages had nothing to do with Finucan, however due to the serious nature of the threats made by the male and the fact that he was now having regular contact with the female’s children, Finucan felt it was necessary to make her aware. Instead of questioning the motive of the two complainants, the investigators

prematurely arrested Finucan in January, 2015, in front of his platoon, stripped him of his badge and he was placed on suspension.

If the investigators believed they had grounds for the charge of harassing communication since Finucan sent 1 text message and 3 emails after having no contact with either complainant for 15 months; the criminal code charge of harassing communications was a summary conviction offence in January, 2015, and is not arrestable.

Finucan worked as a respected and trusted member of this service continuously for 15 months prior to December, 2014, and managed to avoid and have no contact with either complainant (and until the male complainant resigned all three of them worked for the service). The female complainant, on the other hand, frequently attended Finucan's division voluntarily for paid duties and since his arrest has registered as a patient at his physiotherapy clinic; where she knows he is a regular patient. Information was also circulating through the service that in the summer of 2014 the female complainant asked to be transferred to Finucan's division permanently. Finucan's suspension was not warranted, there was no danger, there were alternatives, and lastly to say the investigation was questionable is an understatement. And still, the decision was made to suspend him with pay and make an example of him in local media and to further the political agenda of our provincial association of chiefs of police.

Despite the legal process taking its course and Finucan's attorney pointing out all of the discrepancies between the physical evidence, the allegations and credibility of the two complainants, neither the investigators nor the prosecution were willing to amend the agreed statement of facts. Finucan had no means of funding a $90,000 legal bill in order to put the two complainants and investigators under oath and as such he has been made out to be a criminal in his community and suffered irreparable shame.
In April of 2015, a friend of mine confided in me that she had had a relationship with a married plain clothes member of our Service and that since ending that relationship he had been harassing her. My friend provided me with the text messages that were being sent to her from a WRPS work cell phone while the member was parked outside of her

home waiting for her. She was scared to go home and when she finally did she slept in her attic in the event he broke into her home; something she said he had done in the past. Based on my conversation with her, a review of the text messages and the actions she took that night to protect herself I believed she had a fear for her safety and I believed that grounds existed to charge the member with criminal harassment.
My friend did not want to report the incident to police for fear of retaliation by the male. Despite her wishes, I reported the incident to my supervisor and offered to provide copies of the telecommunication because I was concerned for her safety. I was later advised by a Domestic Violence Investigator that because my friend would not cooperate with the investigation there would be no further investigation. As opposed to any reprimand, suspension or criminal charge the member has since been sent on an Acting Sergeants' course. I also cannot explain the actions of these investigators since the province has a mandatory charge policy and our service procedure does not require the cooperation of a victim in a domestic violence case.

Shortly after that, Jeremy Snyder, an officer with whom this board is very familiar, was charged with domestic related charges as a result of a third-party complaint when the victim herself was not 100% cooperative. I searched the internet and found articles surrounding the charges this service laid in 2012. I learned that when Justice Kim Carpenter-Gunn found Snyder not guilty of the charges laid by this department she delivered an emphatic acquittal, repeatedly questioning the credibility and motives of Snyder's accusers.

I find it undeniably upsetting that a member of this service had to spend tens of thousands of dollars to defend himself in a criminal case that would have resounding effects on his personal and family life only to learn that adequate investigation may have uncovered the lack of credibility and motive of the accusers, and prevented charges from ever being laid in the first place – not to mention eliminate the need for any period of paid suspension. I do not know any details surrounding Snyder's current charges, nor do I know any of the facts of the sexual assault case in 2012. What I do know is that the service has shown a history of inconsistency and discretion during internal investigations.

10 minute time limit reached.

TAB E

This is **Exhibit "E"** referred to in the affidavit of Kelly Lynn Donovan

sworn on September 12, 2018.

Mary Lou Donald

Commissioner for Taking Affidavits

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

From: **Kelly Donovan** donovandih@gmail.com
Subject: Re: Police Service Board Public Session May 4, 2016
Date: May 9, 2016 at 10:11 PM
To: rosemary.smith@wrps.on.ca, ken.seiling@wrps.on.ca, peter.ringrose@wrps.on.ca, karl.kiefer@wrps.on.ca, jim.wideman@wrps.on.ca, philip.huck@wrps.on.ca
Cc: pao@pao.ca, cpa-acp@cpa-acp.ca, pperchaluk@wrpa.org, treparon@wrpa.org, mjames@wrpa.org, tdawson@wrpa.org

Good evening distinguished Board Members;

When I was hired by the service I was asked a series of questions in order for the service to gauge my integrity. I am a person of high integrity and morals and I cannot simply turn a blind eye when I see something that I believe is wrong, even if it means putting my family's livelihood at risk. I have no personal interest in any of the matters that I brought to the Board's attention. I came to the Board on May 4th to report what I felt was my duty to report only after the service did not act appropriately with that information. Nothing I presented to you is new information to the service. I was not responsible for the media having been in attendance, and I had no intention of involving the media; my message was for the police services board members.

I was served notice of investigation for six Police Service Act charges on May 9, 2016, as a direct result of my attendance at the May 4th meeting. On this date, I was also served a directive forbidding me from attending another Police Service Board meeting without the permission of the chief. I have been reassigned to administrative duties and removed from my position as a use of force trainer. It is this exact behaviour of the service that prompted my delegation in the first place.

Section 35 of the Police Service Act states that police service board meetings SHALL be open to the public unless the board chooses to exclude the public under subsection (4). Police Service Board By-Laws allow for delegations to be presented. If the Chief has ordered me, under section 41(1) of the Police Service Act - a duty of a chief of police, to not attend any future meetings of the police service board without his permission this seems to not be in accordance with the objectives, priorities and policies established by the board, nor does it reflect the needs of the community.

The portion of my delegation from May 4th that I did not have time to present stated that I am fully aware that by making the presentation I would be targeted for discipline. Still, I felt it was necessary to attend and present my delegation. Being proud of myself for standing up for what I believe in is more important to me than job security. However, I never thought I would have to choose between the two being a police officer.

I truly believe in the service's Value of Integrity and Respect whereby I continue to conduct myself ethically, honestly and professionally. I appreciate having had the opportunity to attend on May 4th.

Respectfully,
Kelly Donovan

TAB F

This is **Exhibit "F"** referred to in the affidavit of Kelly Lynn Donovan

sworn on September 12, 2018.

Mary Louise Donald

Commissioner for Taking Affidavits

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

From: **Machado Law** pamela@pmachadolaw.com
Subject: Reply from WRPS
Date: May 8, 2017 at 7:17 PM
To: Kelly Donovan donovandih@gmail.com
Cc: Machado Law pamela@pmachadolaw.com

PM

Their counsel has advised that he has instructions to accept our counterproposal as set out below. It will obviously have to be put into writing into a settlement agreement that has a release and confirms the withdrawal of the Ontario Human Rights Tribunal matter, etc.

The only clarifications that we discussed were: (1) that the confidentiality clause should have the usual exception so that you can consult legal counsel and/or financial advisors regarding the settlement terms; and (2) that it contains the standard term that should either party be asked about the terms of the settlement, it is agreed that both parties will respond with words to the effect of "all matters between the parties were settled to their mutual satisfaction – the terms of which are confidential". Can you confirm that the above is acceptable?

Once we have that information, he will ask Don Jarvis to do up the usual paper work required to paper the agreed upon settlement and the withdrawal of the Human Rights complaint.

Please let me know what you think.

On a side note; FOI REQUEST

He advised me that WRPS has received an FOI request that includes references to you. They are generally not permitted to reveal the maker of the request or that a request has been made unless it is required to assist them in responding and/or relates to an on-going matter (e.g., our settlement) – he believed both are the case here, and so does not intend to release absent your consent.

An individual, purporting to act for a public accountability organization regarding whistleblowers, has made a request for amounts paid to York Regional Police (there is none), Don Jarvis's firm and to Bernardi all relating to the on-going matters specifically involving you. I thought this may be the law firm dealing with the class action, however, when one of their lawyers called me this evening out of the blue to ask me whether your matter had settled as they have "heard rumblings" it had, and I asked about this FOI, she had no clue. Seemed odd to me that she wouldn't and that she would call out of the blue like that.

They have asked the requester whether they have the consent of the third parties involved (notwithstanding that the requestor identified you and the accounts by name) and without such they will likely not be confirming or denying the existence of the records to protect the identity of their employees. If the requestor provides them with the consent or indicates they want them to seek the third party consent then they would do so and deal with the request in the normal course.

Please let me know your thoughts.

Thanks

Pamela Machado,
Barrister & Solicitor

Machado Law Professional Corporation
420 Main Street East, Suite 624
Milton, Ontario
L9T 8G3

Tel: (289) 383-2130
Fax: (289) 878-7311

pamela@pmachadolaw.com
www.pmachadolaw.com
Follow me on Twitter @PMachadoLaw

From: donovandih@gmail.com
Subject: Re: Reply from WRPS
Date: May 8, 2017 at 7:29 PM
To: Machado Law pamela@pmachadolaw.com

Hi Pamela,

What exactly does that mean about the confidentiality clause? Does that mean I'm not able to discuss what happened to my career in policing? Are you able to spell it out to me in laymen's terms? As I said, I won't agree to never discuss details of my delegation etc.

I appreciate your help.

As for the FOI request, I do not have an outstanding FOI request and I have not been asked to give any kind of third party consent. My FOI request was fulfilled. As for the class action, I have not had any contact with anyone regarding that suit and as I said in my 'counter-offer' I would not participate if my terms were accepted by the wrps.

On a side note, for reasons related to my OMERS, it is beneficial to me if the date of my resignation could fall near the end of June. Perhaps I have holiday time and stat time that would carry me over to then?

Thanks,
Kelly

Sent from my iPhone

On May 8, 2017, at 7:17 PM, Machado Law <pamela@pmachadolaw.com> wrote:

> Their counsel has advised that he has instructions to accept our counterproposal as set out below. It will obviously have to be put into writing into a settlement agreement that has a release and confirms the withdrawal of the Ontario Human Rights Tribunal matter, etc.
>
> The only clarifications that we discussed were: (1) that the confidentiality clause should have the usual exception so that you can consult legal counsel and/or financial advisors regarding the settlement terms; and (2) that it contains the standard term that should either party be asked about the terms of the settlement, it is agreed that both parties will respond with words to the effect of “all matters between the parties were settled to their mutual satisfaction – the terms of which are confidential”. Can you confirm that the above is acceptable?
>
> Once we have that information, he will ask Don Jarvis to do up the usual paper work required to paper the agreed upon settlement and the withdrawal of the Human Rights complaint.
>
> Please let me know what you think.
>
> On a side note; FOI REQUEST
>
> He advised me that WRPS has received an FOI request that includes references to you. They are generally not permitted to reveal the maker of the request or that a request has been made unless it is required to assist them in responding and/or relates to an on-going matter (e.g., our settlement) – he believed both are the case here, and so does not intend to release absent your consent.
>
> An individual, purporting to act for a public accountability organization regarding whistleblowers, has made a request for amounts paid to York Regional Police (there is none), Don Jarvis’s firm and to Bernardi all relating to the on-going matters specifically involving you. I thought this may be the law firm dealing with the class action, however, when one of their lawyers called me this evening out of the blue to ask me whether your matter had settled as they have “heard rumblings” it had, and I asked about this FOI, she had no clue. Seemed odd to me that she wouldn’t and that she would call out of the blue like that.
>
> They have asked the requester whether they have the consent of the third parties involved (notwithstanding that the requestor identified you and the accounts by name) and without such they will likely not be confirming or denying the existence of the records to protect the identity of their employees. If the requestor provides them with the consent or indicates they want them to seek the third party consent then they would do so and deal with the request in the normal course.
>
> Please let me know your thoughts.
>
> Thanks
>
> Pamela Machado,
> Barrister & Solicitor
>
> Machado Law Professional Corporation
> 420 Main Street East, Suite 624
> Milton, Ontario
> L9T 8G3

From: **Machado Law** pamela@pmachadolaw.com
Subject: Re: Reply from WRPS
Date: May 8, 2017 at 7:34 PM
To: donovandih@gmail.com

PM

It means that as it relates to the settlement only that is what you would be required to say. This does not prevent you from speaking of your experience in policing at all. It only means that when people ask what happened to the HRTO matter or the PSA matter that is what you would say. Make sense?

I will advise that you are not consenting to the FOI nor do you have information about it.

I will ask about the other concern - stat etc.

Pamela Machado,
Barrister & Solicitor

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> On May 8, 2017, at 7:29 PM, donovandih@gmail.com wrote:
>
> Hi Pamela,
>
> What exactly does that mean about the confidentiality clause? Does that mean I'm not able to discuss what happened to my career in policing? Are you able to spell it out to me in laymen's terms? As I said, I won't agree to never discuss details of my delegation etc.
>
> I appreciate your help.
>
> As for the FOI request, I do not have an outstanding FOI request and I have not been asked to give any kind of third party consent. My FOI request was fulfilled. As for the class action, I have not had any contact with anyone regarding that suit and as I said in my 'counter-offer' I would not participate if my terms were accepted by the wrps.

From: **Machado Law** pamela@pmachadolaw.com
Subject: Settlement
Date: May 9, 2017 at 5:40 PM
To: donovandih@gmail.com

PM

Hi Kelly.

Gary has confirmed instructions to agree to your request to have your resignation fall at the end of June. He has suggested June 25th, a Sunday for the purposes of the pay period so you can use your holiday and/or stat time effective June 9th as that is the date up to which you have been approved by Acclaim on sick – if you want to have that switch over earlier, they are fine with that because once we have an agreement, you will no longer have to deal with Acclaim from whatever date we set.

He has instructed Don Jarvis to prepare the final documents re: settlement, which will be subject to the mutual agreement on those documents. Don will reach out to me directly so that this can be discussed and finalized but if you need anything, let me know.

Please let me know if you have questions in the interim.

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Barrister & Solicitor

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From: **Machado Law** pamela@pmachadolaw.com
Subject: Please review
Date: May 12, 2017 at 6:13 PM
To: Kelly Donovan donovandih@gmail.com

PM

Hi Kelly,

Please review. I have highlighted and made comment in two areas. I want your feedback. It's airtight in terms of the Release, which may impact any class action. It is important you know this.

Please read and get back to me.

Thank you.

Resignation Agreement.pdf

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Barrister & Solicitor

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From: **Kelly Donovan** donovandih@gmail.com
Subject: Agreement
Date: May 15, 2017 at 5:28 PM
To: Pamela Machado pamela@pmachadolaw.com

Hi Pamela,
I've been dissecting it more now…

When we communicated about the agreement by email you had said that the agreement "does not prevent you from speaking of your experience in policing at all."

But, I'm confused about paragraph 11 (which seems like I'm agreeing to not discuss anything) and on page 8 (which is page 2 of Appendix A), it states that I agree to keep confidential any information I obtained during my employment with the Regional Municipality of Waterloo (that's pretty broad…. Any information I obtained from 2010 to 2017?).

Can you please clarify?
Kelly

From: **Machado Law** pamela@pmachadolaw.com
Subject: Re: Agreement
Date: May 15, 2017 at 5:44 PM
To: Kelly Donovan donovandih@gmail.com

PM

Yes I agree it seems to hence we need to go over it in person. This is their offer. You'll see my comments include amending that paragraph.

We can discuss all of the angles Thursday.

Pamela Machado
Barrister & Solicitor

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On May 15, 2017, at 5:28 PM, Kelly Donovan <donovandih@gmail.com> wrote:

> Hi Pamela,
> I've been dissecting it more now…
>
> When we communicated about the agreement by email you had said that the agreement "does not prevent you from speaking of your experience in policing at all."
>
> But, I'm confused about paragraph 11 (which seems like I'm agreeing to not discuss anything) and on page 8 (which is page 2 of Appendix A), it states that I agree to keep confidential any information I obtained during my employment with the Regional Municipality of Waterloo (that's pretty broad…. Any information I obtained from 2010 to 2017?).
>
> Can you please clarify?
> Kelly

From: **Machado Law** pamela@pmachadolaw.com
Subject: Re: Donovan
Date: May 18, 2017 at 1:37 PM
To: Gary Melanson Gary.Melanson@wrps.on.ca
Cc: DONALD JARVIS (djarvis@filion.on.ca) djarvis@filion.on.ca

PM

WITHOUT PREJUDICE:

I have now met with Kelly, and after review of the terms as suggested by you both, we have attached our final proposal for settlement. In good faith, the salary amount being requested is higher (one additional year) than initially discussed, in order to account for your requirement that she abandon her WSIB claim [your original paragraph 11(c)] with her resignation, which will act as a disadvantage to her given the loss she will sustain regarding the WSIB's support for mental health benefits etc. To be frank, if she remains employed, she would receive continued support from WSIB in addition to her wages, benefits etc. This amount will also account for any deductions she will sustain.

Kelly is still interested in severing this relationship, however, she wants to ensure she receives the coverage she and her family require.

The changes to the confidentiality clause do not relate to any intention on her part to launch any type of proceeding;

There are also mutual releases attached, as well as her undertaking that she will not bring any action against the Association. These should account for further consideration in my opinion.

Should these terms remain unsatisfactory, we will proceed to next steps in all related matters.

Thank you for your consideration.

Pamela Machado,
Barrister & Solicitor

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> On May 8, 2017, at 1:00 PM, MELANSON, GARY <Gary.Melanson@wrps.on.ca> wrote:
>
> Pam,
>
> Further to our conversation today, I can advise that I have instructions to accept Kelly's counterproposal as set out below. It will

From: **Machado Law** pamela@pmachadolaw.com
Subject: Update
Date: June 2, 2017 at 4:28 PM
To: donovandih@gmail.com

PM

From Gary:

In the end, I believe I have a simple solution. I have been instructed to ask Don to remove the WSIB clause and our offer (with that change and your suggested revisions on the wording of the settlement documentation, subject to Don's input and sign off) will otherwise remain the same. That would seem to address the rationale for the change in the settlement amount.

I agree with you that if the resolution is not achieved by June 7th (or such date that you and Don extend), our offer will be removed from the table and we will simple move on with all the outstanding matters. I hope that is not the case and the removal of the key concern of your client will put this back on the track.

Anyway, I hope that the above helps.

Pamela Machado
Barrister & Solicitor

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TAB G

This is **Exhibit "G"** referred to in the affidavit of Kelly Lynn Donovan

sworn on September 12, 2018.

Mary LaDonald

Commissioner for Taking Affidavits

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

From: **Kelly Donovan** donovandih@gmail.com
Subject: Systemic Misfeasance in Canadian Policing
Date: July 16, 2017 at 10:30 PM
To: Fit4Duty kelly@fit4duty.ca
Bcc: admin@oapsb.ca, pao@pao.ca, communications@capg.ca, cpa-acp@cpa-acp.ca, mskof@ottawapa.ca, SOE@transparency.org, apboard@amherstburgpolice.ca, bpsboard@barriepolice.ca, bellevillepsb@bell.net, bpsb@police.brantford.on.ca, themayor@brockville.com, CKmayor@chatham-kent.ca, cpsb@cobourg.ca, rmcgee@deepriver.ca, aboily@dryden.ca, 2430@drps.ca, mmcdonald@elgin.ca, rpiche45@gmail.com, mayor@gananoque.ca, psb@gsps.ca, mayor@guelph.ca, PoliceServicesBoard@haltonpolice.ca, lois.morin@hamilton.ca, spaterson@hanover.ca, aletham@city.kawarthalakes.on.ca, mayor@cityofkingston.ca, mayor@london.ca, stewart@stewartstrathearn.ca, nbpsb@northbaypolice.on.ca, nvincent@northhuron.ca, jwilliams@orangeville.ca, Lynn.Kennedy@ottawa.ca, iboddy@owensound.ca, info@peelpoliceboard.ca, clerk@peterborough.ca, phpsb@porthope.ca, mayor@stthomas.ca, mayor@sarnia.ca, mayor.provenzano@cityssm.on.ca, rchambers@shelburne.ca, mayor@smithsfalls.ca, j.fields@southhuron.ca, admin@sspboard.ca, r@shomehardware, pshantz@stratfordcanada.ca, smackenzie@strathroy-caradoc.ca, mayor@timmins.ca, mayor_tory@toronto.ca, madeliene.widmeyer@wrps.on.ca, mayor@westgrey.com, dlagace@wnpb.ca, sbacarro@police.windsor.on.ca, psb@yrp.ca

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Good evening police services board members and overseers,

Attached you will find a report I prepared based on my experiences in the policing profession. The report was prepared using public sources, not police resources. The report can be distributed to all members of your police services board, but I do not give permission to distribute this report to any other person than a member of the Board. The report is designed to make you aware of systemic issues; some of which can be prevented with better oversight at the municipal level. You represent the taxpayers in your municipality and have a responsibility to them to monitor the performance of the chief.

Justice Tulloch recently made very specific recommendations to police services boards, and some of those same recommendations have been made as far back as 1989 and not implemented. What I find interesting is that the recent OAPSB survey results show that many of you feel the government needs to clarify your role as police service board members. Justice Tulloch pointed out that police service boards need to start taking a more active role as the civilian oversight body for municipal police services. There is obviously a breakdown of communication and I hope to help bridge that gap. I have prepared training on several topics, many of which were recommended by Justice Tulloch and I can provide you with survey and whistleblower programs. It is my goal to improve the quality of oversight of Ontario's police service boards.

Please take the time to read the executive summary of my report and the entire report if it interests you.

I have chosen to leave the policing profession to provide my services directly to police services boards. Police services boards need to become what they were intended to be; independent and impartial civilian oversight bodies. Trust me to provide expert training and employee engagement so that you can truly be aware of internal dealings at your police service, before you are next to make headlines.

There is a reason that I will not be very popular among senior police leaders in the next little while, but don't let their smear campaign steer you wrong. I have proven that at all cost I will stay true to the same morals and integrity I brought to the career in the first place. Can you say that about all of your members? Only those who have experienced the police culture can truly understand why it is what it is and why it has been so difficult to change.

Let me help you gauge and improve the level of ethics, accountability and transparency at your service. This is your opportunity to take initiative and show your constituents that you will not wait until you are forced to implement the recent recommendations.

I look forward to meeting each and every one of you,
Kelly Donovan - www.fit4duty.ca

Report_v13.pdf

Report of Systemic Misfeasance in Ontario Policing and the Coordinated Suppression of Whistleblowers Attached separately (due to size)

TAB H

This is **Exhibit "H"** referred to in the affidavit of Kelly Lynn Donovan

sworn on September 12, 2018.

Commissioner for Taking Affidavits

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

The following is feedback that Kelly Donovan received following the release of her Report of Systemic Misfeasance in Ontario Policing and the Coordinated Suppression of Whistleblowers on July 17, 2017:

"Kelly I am very happy to hear of your honest report on policing."

"Love this! I hope this brings about change."

"Just wanted to say thank you to you. I got the courage to quit my job and report my boss. Your story inspired me to stand up to him."

"Good for you Kelly! Keep on fighting the good fight for all of us!"

"Watched your video and went through your site today. I love what you're doing to build accountability among police leaders and agencies."

"Hi Kelly - just saw your material and report - great work. I work in the whistleblower field a lot and know what happens to police whistleblowers. Good luck with Fit4Duty."

"You are embarking on some excellent work and your credibility comes out in spades. Let me know how an old Staff Sergeant with a story to tell can help. Keep going !"

"I saw your paper that you wrote. Absolutely excellent. You are 100% bang-on on what the truth of the pathetic state of policing is today. If you read my profile, you will understand my direction and why I too am leaving shortly. This all MUST stop. Congratulations on your hard brave work."

"FYI, I viewed your profile as I wanted to listen to your radio interview with CBC radio in relation to your report. You're very well spoken."

"I read the report - excellent work! Thank you for speaking up!"

"Great work Kelly. Yes please keep me in the loop. Let's face it...the problems are deeply entrenched in the culture. Policing is too much of a paramilitary occupation and nastiness is ingrained right from the start."

"read your 93-page report. Amazing, very well written!"

"I just finished reading your paper which was sent to me by a colleague. It is very timely and supportive of my current situation. Thank you for publishing such a good paper at this time in my life."

"Good for you!! Well written.. congrats I hope this is a huge step forward for you in your new career... I'm sure you'll sleep well every night coming home from a cause you can truly believe in."

"Congratulations and well done. You obviously know what you have ignited. If it's anything less than a firestorm then I will be surprised. It never fails to astound me how insulated majorities can fool themselves and believe that they are fooling everybody else as well. What you are doing has needed doing for a very long time. Hang in there, it will get rough."

"Excellent job speaking out. I can't stand people who sit quietly by. You are going to face a s**t storm, but they are ignorant people. Thank you for speaking up."

"Congratulations Kelly for having the courage to speak out, however, I am sorry it cost you your career like so many others. Anyone working at WRPS, or has a family member or friend working there, is fully aware that these practices have been standard operating procedure for years. Unfortunately WRPS is not alone. While the feds oversee the RCMP and the province oversees the OPP, there is no oversight into regional service behaviour as you have found out the hard way. The fact that the chief continues to deny, deny, deny, sends a clear message to the men and women on the front lines. Tow the line or you're next. Keep up the good work Kelly and good luck."

“Kelly Donovan you are an exception and should be rewarded for your actions not penalized.”

TAB I

This is **Exhibit "I"** referred to in the affidavit of Kelly Lynn Donovan

sworn on September 12, 2018.

Mary Lou Donald

Commissioner for Taking Affidavits

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

Minister of Public Safety and Emergency Preparedness

Ministre de la Sécurité publique et de la Protection civile

Ottawa, Canada K1A 0P8

AOUT AUG 1 1 2017

Kelly Donovan
www.fit4duty.ca

Dear Ms. Donovan:

Thank you for your correspondence of July 16, 2017, on the issue of systemic misfeasance in Canadian policing.

Thank you for sharing your document entitled: *Report of Systemic Misfeasance in Ontario Policing and the Coordinated Suppression of Whistleblowers* and for your offer to discuss the important issues raised within. My officials will carefully review your findings and will contact you should they have any inquiries.

As Minister of Public Safety and Emergency Preparedness, I am committed to providing RCMP members with the support and leadership they need so that they can do their job of keeping Canadian communities safe. My mandate includes taking action to ensure the RCMP is free from harassment and sexual violence. As well, it is important that our national police service is an accountable and transparent organization.

As many of the issues you raise fall under the purview of my provincial colleague responsible for policing in Ontario, I note that you have also sent copies of your report to Stephen Beckett, Assistant Deputy Minister, and Matthew Torigian, Deputy Minister, at the Ontario Ministry of Community Safety and Correctional Services, as well as to the Honourable Marie-France Lalonde, Minister of Community Safety and Correctional Services, for their information and consideration.

Thank you again for writing on this important matter and sharing a copy of your report with me.

Yours sincerely,

The Honourable Ralph Goodale, P.C., M.P.

TAB J

This is **Exhibit "J"** referred to in the affidavit of Kelly Lynn Donovan

sworn on September 12, 2018.

Mary Louise Donald

Commissioner for Taking Affidavits

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

Ministry of Community Safety and Correctional Services

Office of the Minister

25 Grosvenor Street
18th Floor
Toronto ON M7A 1Y6
Tel: 416-325-0408
Fax: 416-325-6067

Ministère de la Sécurité communautaire et des Services correctionnels

Bureau de la ministre

25, rue Grosvenor
18e étage
Toronto ON M7A 1Y6
Tél. : 416-325-0408
Téléc. : 416-325-6067

Ontario

SEP 1 3 2017

MC-2017-1635
By e-mail

Ms. Kelly Donovan
President
Fit4Duty
Kelly@fit4duty.ca

Dear Ms. Donovan:

Thank you for your correspondence introducing Fit4Duty and for providing the report on policing and whistleblowers in Ontario.

Ontario is taking meaningful action to reform police oversight and modernize policing. As you know, last year Justice Michael H. Tulloch led an independent review of Ontario's police oversight bodies. His team consulted with over 1,500 people across Ontario, and the Independent Police Oversight Review Report was recently released, containing 129 recommendations to improve police oversight in Ontario. Our government will immediately begin taking steps to build a more open and accountable police oversight system to strengthen trust between police and the communities they serve.

To learn more about The Independent Police Oversight System Review Report you may wish to visit: **www.attorneygeneral.jus.gov.on.ca/english/about/pubs/police_oversight_review**.

The Ministry of the Attorney General has the lead on the Independent Police Oversight Review Report. As such, I have shared your correspondence with my colleague, the Honourable Yasir Naqvi, Attorney General, so that he is aware of your concerns.

Thank you again for your correspondence.

Sincerely,

Marie-France Lalonde
Minister

c: The Honourable Yasir Naqvi
Attorney General

TAB K

This is **Exhibit "K"** referred to in the affidavit of Kelly Lynn Donovan

sworn on September 12, 2018.

Commissioner for Taking Affidavits

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

Fit4Duty™– The Ethical Standard™
Brantford, Ontario
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www.fit4duty.ca

SEPTEMBER 22, 2017

The Honourable Marie-France Lalonde
25 Grosvenor Street
18th Floor
Toronto ON M7A 1Y6

Dear Hon. Marie-France Lalonde,

I first contacted you back in June, 2017, when I mailed you a copy of my Report of Systemic Misfeasance in Ontario Policing and the Coordinated Suppression of Whistleblowers. On August 11, 2017, The Honourable Ralph Goodale responded to that same communication and indicated that the matter was important and falls under the purview of his provincial colleagues responsible for policing in Ontario, (naming yourself, Assistant Deputy Minister Stephen Beckett and Deputy Minister Matthew Torigian). I acknowledge receipt of your letter dated September 13, 2017, wherein you state that since The Honourable Yasir Naqvi "has the lead on the Independent Police Oversight Review" you have shared my correspondence with him.

I am writing you once again to advise you that as one of your constituents and advocate for both the taxpayer and police communities I am not satisfied with your response, or lack thereof, to my research and courage in coming forward with my report. My report was prepared with the sole intention of forcing legislators to accept that major problems exist with police legislation, culture and civilian governance. I have observed your social media accounts for months and I know that you have met with police leaders and discussed the future of policing. These same police leaders are being investigated, arrested, suspended with pay, having class action lawsuits filed against their services, and are being reported to the Human Rights Tribunal of Ontario in unprecedented numbers. If the writing is not yet on the wall that status quo will lead Ontario policing into demise, I can promise you that the worst is yet to come. Since the release of my report, I have been contacted by dozens of officers from across Ontario who have fallen victim to the systemic misfeasance or who have been injured during their careers and not provided adequate support but rather been subjected to tyranny and oppression which has had many of them on the verge of suicide. This is no longer a delicate political issue; these voices must now be heard.

For decades, both the Ministry of the Attorney General as well as the Ministry of Community Safety and Correctional Services have been the subject of reports and recommendations that would have prevented many of the systemic issues that exist today, and yet; actions taken have been few and insufficient.

I may only appear to be one voice and one opinion to you and your colleagues but let me assure you that, although I may have been the only police officer with the courage to address these issues, I am not the only police officer passionate about improving the morale and respect within the profession.

In the absence of effective leadership, people resort to civil litigation. It is unfortunate that in our democratic civilization we need lawyers and judges to solve issues that can be handled by objective human beings. I am once again offering my time to engage in dialogue with you, or any of your colleagues, to ensure that changes that are made to policing in Ontario are in the best interests of our communities, our officers, and our taxpayers.

Respectfully,

Kelly Donovan

PRESIDENT

cc. Deputy Minister Matthew Torigian
Assistant Deputy Minister Stephen Beckett
The Honourable Yasir Naqvi

TAB L

This is **Exhibit "L"** referred to in the affidavit of Kelly Lynn Donovan

sworn on September 12, 2018.

Mary Louise Donald

Commissioner for Taking Affidavits

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

Ex-officer with Regional Police wants to train board members

LOCAL (HTTPS://WWW.570NEWS.COM/CATEGORY/LOCAL/)

by CARYN CEOLIN (HTTPS://WWW.570NEWS.COM/AUTHOR/CARYN-CEOLIN)
Posted Sep 6, 2017 6:19 pm EDT

Photo from 570's Erin Anderson

A former constable with Regional Police is renewing her call for change in Canadian policing.

Kelly Donovan presented to members of the local police services board at their monthly meeting Wednesday about her company, which offers training and consulting on ethics.

She spoke about the need to train police services boards across Canada to ensure more effective oversight, and protect whistleblowing officers from retaliation.

But the board said any training needs to go through procurement policies, and when she asked if she could leave business cards on the table, Donovan was told that would be inappropriate.

"I know it's not going to happen overnight, and I knew nobody would ask any questions," Donovan says. "It wasn't a way for me to pitch my business. It was more my way to express why they need this type of change so dramatically."

Donavan resigned from the force in June citing corruption within the service when conducting internal investigations.

"A presentation like this, in my opinion, is offering an opportunity for leadership," says Donovan. "And I have not seen any interest in doing that by anyone I've spoken to in my journey."

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by 570 NEWSROOM

Posted Jun 18, 2018 9:04 am EDT Last Updated Jun 18, 2018 at 12:00 pm EDT

TAB M

This is **Exhibit "M"** referred to in the affidavit of Kelly Lynn Donovan

sworn on September 12, 2018.

Mary Lou Donald

Commissioner for Taking Affidavits

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

In light of recent headlines, this presentation could not have come at a more appropriate time. I am one of millions of taxpayers in this province who are concerned with the deterioration of morale within our police services and integrity of its leaders.

Civilian oversight of our police is essential. It acts as a check and balance against the legal powers society has given the police to enforce the law. Effective oversight of the police is the way that the public and police remain partners in the preservation of public safety. For the police to be effective in our communities, the public must have respect for those who perform the policing function.

It was identified as far back as 1992 during the Inquiry by the Ontario Civilian Commission on Police Services (which they were called at the time) into the administration of internal investigations by the Metropolitan Toronto Police Force many recommendations for better oversight were made.

One of those recommendations was that the Solicitor General of Ontario should implement an educational program for members of Police Services Boards across Ontario to ensure that they are apprised of their authority and responsibilities.

Funny thing is that, earlier this year, the OAPSB survey results showed that the majority of police services board members don't believe their authorities are clear enough.

18 years after the report on Toronto, in 2010, it was learned that The Toronto Police Service did not engage the Board in the planning process for the G20 Summit and the Board failed to obtain the detailed information it required to address its gap in knowledge.

The results were numerous Human Rights complaints and lawsuits against the Toronto Police Services Board.

The Morden Report, clarified the legislated authorities of police services boards. In regards to current Police Services Act legislation outlining those authorities, Morden stated:

The relationship between the Board and the chief imposes duties on each of them: on the board to ask the chief questions about past and future situations and events related to policing in the municipality; and on the chief to inform the board on situations and events that the board should know about. Most of the time the chief has the information and the board does not. The board cannot ask questions about the information of which it is unaware. Accordingly, the burden is on the chief to take the initiative in ensuring that the board is properly informed about matters – past, present, or future – that fall under the purview of the board's responsibilities.

The Ontario Association of Chiefs of Police submitted to this Review that chiefs of police should not be responsible for training board members and that boards should not be "training themselves on what their legislative authority is."

Once again in 2017, Justice Michael Tulloch wrote in Chapter 12.2 of the Independent Police Oversight Review, that:

In some cases, new board members depend on the local police service that they govern to provide training. In Justice Tulloch's view, there is a natural conflict of interest when an organization subject to oversight is responsible for training and mentoring its overseers. Effective oversight requires confident, independent, and knowledgeable police services boards.

Without the appropriate skills, knowledge, and understanding, they may lack confidence to govern independently from the police service.

Ensuring that every police services board member receives such training will raise the capacity of boards to govern independently and hold police accountable within the communities they serve.

I have developed seven (7) training modules to satisfy Justice Tulloch's initial recommendation of training for police services board members. I am not here to ask that you hire me, but rather that you acknowledge the overdue need for this type of training.

I thank you for the opportunity to help repair the morale of Ottawa Police officers and ensure effective civilian oversight of the Service.

Thank you.

TAB N

This is **Exhibit "N"** referred to in the affidavit of Kelly Lynn Donovan

sworn on September 12, 2018.

Mary Louise Donald

Commissioner for Taking Affidavits

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

Perceived Bias? Or Blatant, Advertised Bias?

March 10, 2018|POLICING

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. I met with senior policy advisor to the Minister who wrote bill 175 prior to the release of the bill, to ensure that we did not pass laws that would allow internal corruption to persist. I provided Brendan Tate with a 200-page document outlining the recommendations made to change police legislation over the past 25-years, and yet another copy of my 93-page report on misfeasance.

The Safer Ontario Act was subsequently presented to the Legislative Assembly. Despite the bill addressing a very small portion of Justice Michael Tulloch's recent Independent Police Oversight Review recommendations, the bill did not correct any problems identified in policing over the past 25 years by the Ontario Civilian Police Commission, the Ombudsman, Justice Morden, Justice Lewis, Justice Iacobucci, countless coroners' inquests, I could go on, and on.

As the bill made its way through our democratic processes, there were two days set aside to hear from the public. Before the second day had even concluded, it was announced that the bill had been amended and would be presented for third reading the following week. This is not the way for the government to show the public it cares about its input. There were 282 amendments handed out on March 5th.

It is unclear if ANY of the issues that were addressed by members of the public were considered in the amendments to bill 175. In fact, the Liberals tabled a motion that

former police officers cannot hold the position of Inspector General (which is investigating the conduct of Chiefs and board members). Was that a slap in *my* face? I believe I was the only former police officer who presented to the Standing Committee and stated that internal corrupt practices were interfering with the proper administration of justice and public confidence. Yet, the government wants to prohibit people like me from ever being considered for such an important oversight role?
Liberal MPP Arthur Potts said this was to eliminate the "perception of bias" yet the Liberals still believe that allowing a chief of police to investigate another chief of police for criminal offences, allowing current police officers to be Inspectors, and allowing police to investigate police for internal misconduct or criminal allegations is all ok. Is there no perception of bias there? The public have said loud and clear that police should not investigate police. Not only does bill 175 allow for this to continue, it also ensures there will be no internal oversight as even when a police officer makes a "Disclosure of Professional Misconduct" (Part VIII of Sched. I), the chief will ultimately control the investigation.
The government is selling this bill to its MPPs and the public as "improving oversight" when in fact it gives more power to police chiefs. Those powers include:

- conduct unmonitored internal investigations of its own members, including fellow chiefs (Sched. I, s. 95 & 143(1)) - *the only oversight of this process is civil litigation which is already costing the taxpayer millions in settlements*;
- issue discipline to an officer without a hearing (Sched. I, s. 145(5)) which is unconstitutional - *and will cost the taxpayer millions when these challenges are brought before the courts*;
- refuse to produce information to the Inspector General (Sched. I, s. 81(4));
- release personal information to the police services board (Sched. I, s. 40(4.1) & (4.2)) - *not sure what the Information & Privacy Commissioner will think of this*;

The police services board used to be the conduit between the public and the police to ensure local accountability and engagement. Now, under subsection 38(5) of Sched. I, the police service board cannot establish policies on the deployment of officers, this is at the sole discretion of the chief.
Before Bill 175, members of the public could make complaints about police to the OIPRD, and complaints about board members and chiefs to the OCPC. Now, members of the public can **still** make complaints about police misconduct to a new body called the Complaints Director and to the Inspector General, if it is about a board member or chief. The names have changed, and the hearing process for officers has improved, but this is only for complaints that originate with the public.
So, how has Bill 175 improved transparency and accountability?
If the Inspector General suspects misconduct by a police officer, again, it is sent back to the chief to conduct an internal investigation. The Inspector General is only looking for violations of the Act by chiefs or board members. As soon as an allegation becomes criminal, both the Complaints Director and the Inspector General send it right back to the police (unless it meets the narrow SIU mandate). From what I heard of public debate, the issue the public have with trusting the police is what is done internally, and in secret. These internal investigations are not transparent and allow for favouritism, patronage and cronyism. But, I suppose a former police officer would not be able to identify those corruption risks [*tongue in cheek*].

There is a reason the Hon. Yasir Naqvi, Attorney General, has ignored every single request I have made to contact him, (mailed him my report in May, 2017, emailed him the report July, 2017, emailed a letter January, 2018). That reason is that I do not have the political influence, the power or the status as those individuals posing with him in the photo above. I am simply an informed, educated, experienced and ethical individual in this province who has already fallen victim to ineffective police legislation. And, I still stand by my original point; until you provide internal oversight and transparency, it doesn't matter what you do to help the public; you are facilitating corruption. Police chiefs already use mechanisms such as chiefs complaints and criminal charges to rid the service of an unfavourable officer (this was pointed out in the OCPC's 1992 report of the Metropolitan Toronto Police Force's Internal Affairs division). 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.
Generations to come will have to live with the Safer Ontario Act; sadly politicians come and go.

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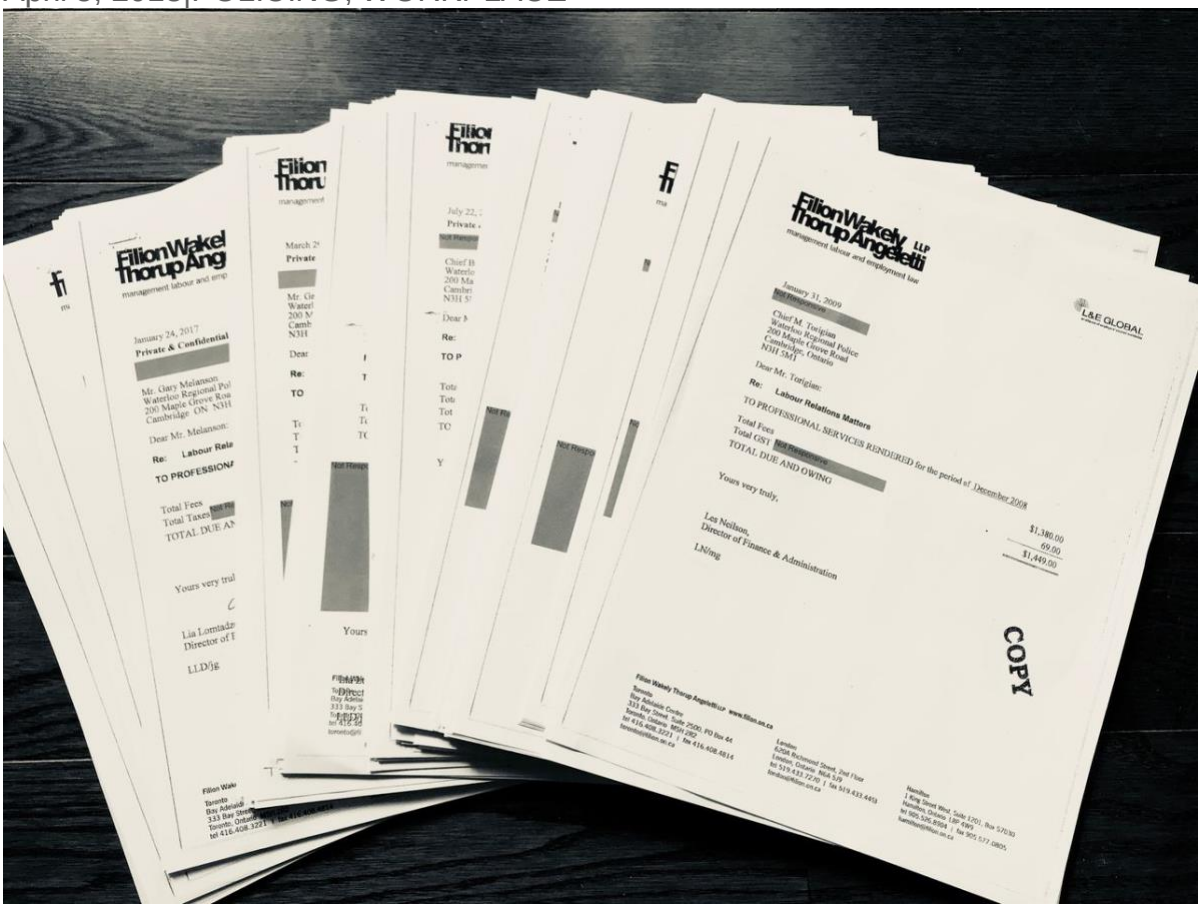


The public have read several headlines lately about the London Police Service and their overwhelming number of workplace harassment cases, more recently the two Human Rights complaints filed against the Ottawa Police Service and Chief, and we all recall the $167M class action lawsuit ongoing against the Waterloo Regional Police Service (WRPS). Is it an isolated problem? Do we just have a few "Bad Apples" or is it a systemic issue, as many complainants allege? This is precisely what I highlighted in my book the Systemic Misfeasance in Ontario Policing and the Coordinated Suppression of Whistleblowers. I resigned from the WRPS last summer very publicly to bring attention to what I consider misfeasance and waste of taxpayer funds occurring with the service with inadequate oversight by the Board. The response was swift, yet most people fell back on their trust that those in charge of our state-owned enterprises are making decisions in the best interest of the public, especially the chief of police and police services board. It's time the public are given tangible evidence and begin to understand the economics behind inadequate leadership and poor governance of our publicly funded enterprises. It became clear during my two presentations to the Standing Committee on Justice Policy to debate bill 175, that the government are not concerned with these systemic workplace issues, or the cost to the taxpayer. So, I took it upon myself to inform the taxpayer. I've said it before, and I'll say it again:
Ineffective oversight and poor governance are costing the Ontario taxpayer millions of dollars and ethical integrity.

Economics of Poor Governance

It's common knowledge that if employees are being treated poorly by their employer they will do such things as; file grievances, human rights complaints, workplace harassment complaints, or sue. Unfortunately, we don't have laws prohibiting state-owned enterprises from entering into non-disclosure agreements, therefore any settlements paid to employees is all done behind closed doors, (where is this in the budget?). The taxpayers really have no way of finding out how much "poor behaviour" within a government agency (such as harassment, discrimination, bullying), is costing them. *So, I thought outside the box.* I conducted research on The Canadian Legal Information Institute website to find out that the WRPS has had several human rights complaints filed by its employees over the years, and as far back as I could see, the police service used the same lawyer to defend all of those cases. For those who are not familiar, the Human Rights Tribunal of Ontario is an administrative law tribunal which acts like a court to decide on these matters brought forward (in this case) by employees of the WRPS against the police service.

I filed a freedom of information request at the WRPS, which as Toronto Star reporter Kenyon Wallace recently reported is a painstaking process. I asked for invoices paid to this particular lawyer's firm by the WRPS for "Labour Relations Matters" since 2009. Now, this is only a small piece of the pie, as it does not include money paid to lawyers to defend grievances or civil lawsuits filed by employees, this is only for human rights complaints, and it is only one firm. The result will shock you, or maybe it won't. The problem is, we don't know what is "normal." How much should poor behaviour within a government organization (with approximately 1,200 employees in 2016) cost taxpayers?

*The Waterloo Regional Police Service spent **$1,274,516.30** to retain one law firm on Labour Relations Matters from 2009 to 2017.*

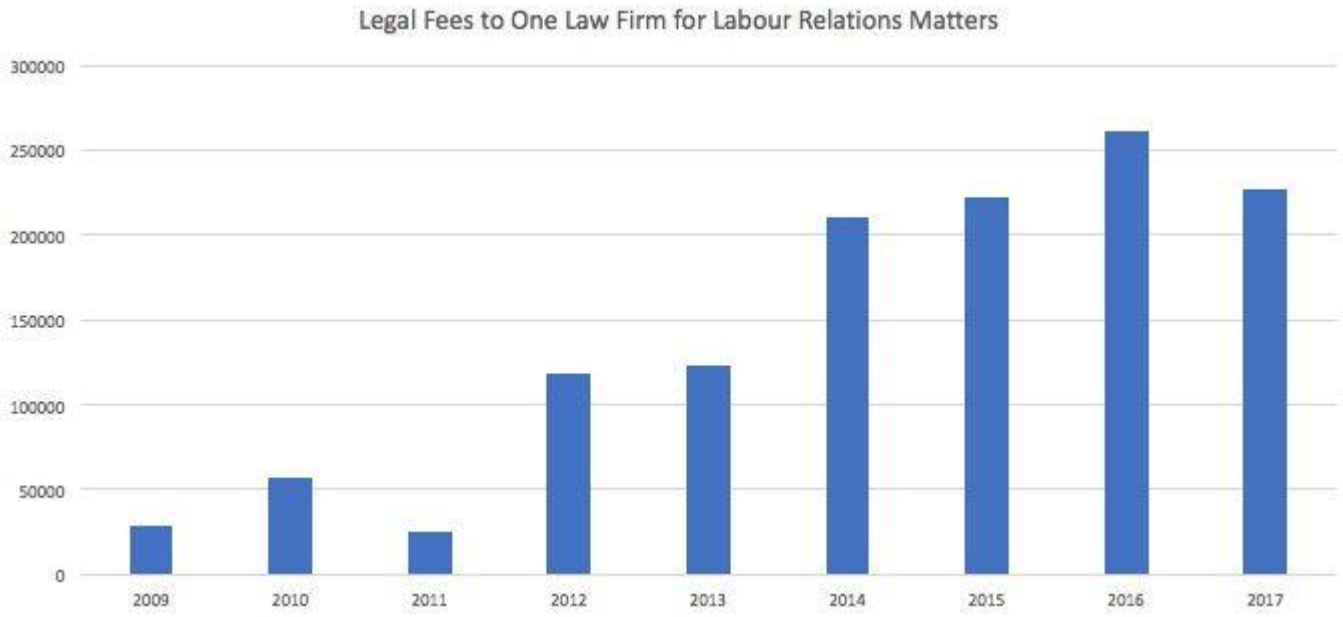
Now, again, this figure does not include payments made to ***other*** law firms for human rights cases or to defend such things as civil lawsuits, (such as the ongoing class action against WRPS). Please don't get me wrong, I understand the need for organizations to defend allegations (although from an ethical standpoint, I may disagree with their approaches). However, if there is no oversight of what is being done to remedy the problems that are leading to these complaints, then why are these cheques just being signed without the right questions being asked?

Let's look at how this figure acts as a **lagging indicator of ineffective management**. If there is a problem that is costing an organization money, reducing that cost becomes the measure for success in solving that problem. What has the WRPS done over the years to remedy this problem? The chief of police of WRPS, Bryan Larkin, issued a statement in January, 2018, in response to new allegations in the class action lawsuit. That statement read:

"Waterloo Regional Police Service is committed to providing a work environment in which all members are treated with respect and dignity. Workplace harassment and discrimination will not be tolerated from any person in the workplace."

I would argue that not everyone agrees with this statement; hence, the class action and ongoing human rights complaints. But, let's for a moment consider the issue of the expense to the taxpayer of the problem of internal harassment, discrimination and bullying. If this is an ongoing problem facing all workplaces and these types of complaints are inevitable, then this must be an acceptable and forecasted expense for all workplaces. So, I dug a little deeper. I looked at trends with this expense. For the first

couple of years 2009 - 2011, this expense was under $60,000. Then, in 2012, things change. For some unknown reason, the fees paid to this law firm went up **460%**, and only continued to climb. So, what happened?



I call these figures lagging indicators because obviously the first thing to happen was the poor behaviour. Then, employees have time to decide what to do about it, or there are failed attempts to handle the matter privately. Then, if things are not amicably resolved, the complaint gets filed. Following the filing of the complaint, the service responds; with a lawyer. So, why has the WRPS gone from spending **$25,662** on this problem in 2011, to **$226,717** in 2017?

Is it a question of management? From 2009 to early 2014, Matt Torigian (now Deputy Minister of Community Safety and Correctional Services, and recently named in affidavits filed by the plaintiffs in the ongoing class action lawsuit), was chief of police. From 2014 onward, Bryan Larkin has been Chief. Larkin is also the President of the Ontario Association Chiefs of Police. In addition to the statement above, Larkin also stated in the January, 2018, release:

"It has been a personal and professional goal of mine since being appointed as your Chief of Police, to continue to lead this organization with integrity and respect..."

If this is not a systemic problem building up, then I anticipate that taxpayers will have some difficult questions for the chief and board of WRPS. Consider this, the $261,333 spent on this law firm for Labour Relations Matters in 2016 is **1.86%** of the services budget for "Other Operating Expenses" (which is every expense other than Compensation) in the 2016 budget, according to the 2016 Annual Report. Was that a planned expense? Did the police services board ever know these fees were being incurred? And, what reporting was done back to the taxpayers or assurances that steps were being taken to reduce this expense? My question is; is every other police service spending this much in one year on Labour Relations Matters? We don't know.

"

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	2016 Budget	2016 Actuals	Variance	Variance Notes	2017 Budget	Budget Change	% Change	Budget Notes
Expenditures								
Compensation	$ 139,009	$ 139,324	$ (315)	A1	$ 142,832	$ 3,823	2.8%	B1
Other operating	15,323	14,021	1,302	A2	16,530	1,207	7.9%	B2
Debt Servicing	3,861	3,858	3		3,985	124	3.2%	B3
Transfers to reserves	3,536	3,607	(71)	A3	3,484	(52)	(1.5%)	B4
Interdepartmental charges	3,820	3,557	263	A4	4,077	257	6.7%	B5
Net expenditures	**$ 165,549**	**$ 164,367**	**$ 1,182**		**$ 170,908**	**$ 5,359**	**3.2%**	

The taxpayers of Ontario deserve more transparency. If this type of analysis was conducted across the province, what would the expense be to Ontarians for the mistreatment of our police employees by their own services? There are about 60 municipal police services in Ontario (18,000 police officers), plus the 8,000 or so Ontario Provincial Police and Royal Canadian Mounted Police officers. If we have spent over $1.27M since 2009 in the Region of Waterloo alone (750 officers, 450 civilians), what has this problem cost the other 59 municipalities and province? If only Minister Yasir Naqvi would return my correspondence.

As I've said many times about the issues I identified in my book, this is not an issue isolated to Waterloo Region. A few weeks ago, London Police Service made the newswith their issues relating to workplace harassment. This week, Ottawa faced a second human rights complaint in a week from their members. Prior to any objective analysis, (similar to what I have done here with Waterloo), the board chair and Ottawa Mayor have both made blanket statements that they support their chief. The bottom line is, and the evidence points to the fact that, this is not only a women's issue; this is an accountability and transparency issue. And, my hope with this article is that taxpayers will begin to realize that this issue is systemic. And, blind support of our leaders, without adequate and objective analysis will only serve to add fuel to the fire.

Ironically, I spoke to the WRPS police services board back in September. I advised them that I had established training for board members to ensure effective and independent oversight of the police service. Part of my training is teaching the importance of proper analysis of indicators to establish problems and identify areas for improvement; with the overall goal to improve accountability and transparency within police services. Another ironic fact, I had requested to speak at a London Police Services board meeting last fall, and was denied.

Since police officers in Ontario have sworn an Oath of Secrecy, and will not speak publicly about "internal matters" I endeavour to be their voice. Having been "on the inside" and am now meeting corporate leaders and board members, I now see that policing is one of the most toxic work environments, primarily because you're not allowed to talk about it.

It is time that the public demand more from their politicians and politicians start to spend their money on solutions; not concealment.

Kelly Donovan is a former police officer now offering consulting and workplace solutions to prevent systemic issues. Her company website is www.fit4duty.ca and her personal website is www.kellydonovan.ca

Discrimination Within Ontario Policing

April 14, 2018|POLICING

In 2007, the Ontario Human Rights commission reported that there were 151 complaints against 21 police services in Ontario. (That's an average of over 7 complaints at each of those 21 police services, but we also have 39 police services who did not have any human rights complaints filed against them that year). Of those 151, 41 of the complaints were filed by employees of police services, 27% of all human rights complaints against the police were from their own. The population of Ontario was 12.8 million in 2007, and there were 24,450 police officers. In very general terms, this means that as a member of the public there was a 0.001% chance you would need to file a human rights complaint about the way you were treated by police. On the other hand, if you worked for a police service, there was a 0.168% chance. You were 100 times more likely to face discrimination or harassment by police if you work for police. Those were the numbers in 2007 taken from a guide published to the Commission's website which states:

"This guide aims to encourage and support police services across Ontario in their work as it relates to upholding the Ontario Human Rights Code."

So, did they listen? Might be time to update the statistics.

As published by the Ottawa Citizen this week, Ottawa Police Service currently has 5 active human rights complaints filed by its members; 4 for racial discrimination, 1 for gender discrimination. The article centres around the fact that 2 cases (not included in

the 5), were settled last year in silence. What that means is that the police service board either signed a cheque to a member for an undisclosed amount of money or agreed to implement some type of non-pecuniary damages in order for them to withdraw their complaint (or have it be "settled"); to make it go away. Our government does not require that this amount be disclosed to tax payers or that the settlement process be transparent, and it is not obtainable through freedom of information legislation. The taxpayer trusts the oversight of the board. The taxpayer trusts that board members will only pay settlements to people who deserve them. The taxpayer trusts that the board will only pay settlements when every other attempt to rectify the situation has failed. The taxpayer also trusts that the board will take steps to ensure that no further taxpayer money is wasted on that very same problem in the future. How have our police services boards been performing? I recently published an articleabout how the Waterloo Regional Police spent over $1.27 million on one law firm to defend "Labour Relations Matters" from 2009 to 2017. Do the taxpayers of the Region of Waterloo know what steps are being taken to rid the service of those "bad apples" or correct a systemic problem?

In 2013, the Ottawa Police were ordered to collect race-based data for all traffic stops as a result of a settlement of a human rights complaint filed by a young Black male.

"The research findings that have arisen from the data collection are alarming and are consistent with racial profiling."

An excerpt from that report states: The researchers found that Black and Middle Eastern people experienced disproportionately high incidences of traffic stops. Black drivers were stopped 2.3 times more than you would expect based on their driving population and Middle Eastern drivers were stopped 3.3 times more. Young male Black drivers (age 16-24) were stopped 8.3 times more than would be expected based on their driving population, while young male Middle Eastern drivers were stopped 12 times more. So, following this finding, did the Ottawa police implement "meaningful and effective measures"? As stated in Shaamini Yogaretnam's article of April 12, 2018, the following cases are ongoing with the Human Rights Tribunal against the Ottawa Police Service:

1. *"Insp. Samir Bhatnagar, an East-Indian officer, has alleged racial discrimination by police Chief Charles Bordeleau. In his complaint, Bhatnagar says that under Bordeleau's tenure he has been denied a promotion to the upper ranks of the force despite being qualified for the job."*
2. *"Const. Matt Clarke, a black officer, is alleging discrimination based on race by a supervisor while he was an officer in the force's unit at the Ottawa airport."*
3. *"Const. Khoa Hoang, a Vietnamese officer, alleges that he was racially discriminated against in being denied a promotion – to sergeant..."*
4. *"Const. Pat Lafreniere, an Indigenous officer, is also alleging racial discrimination."*

Not Only Ottawa

In an April, 2017, article in the Toronto Star, Peel Regional Police's treatment of non-white police officers was spotlighted. An excerpt from that article reads:

"Peel police discriminated against a South Asian-Canadian officer on the basis of his race when he was denied the opportunity for promotion into the senior ranks, the Human Rights Tribunal of Ontario has ruled."

Not Only Race

We could play a blindfolded game of "pin the tail on the donkey" with a map of Ontario and no matter where that pin lands you will have an allegation of gender discrimination against a police service. From the West to the East you have: Sgt. Christine Bissonnette in Windsor, Ava Williams (sexual assault victim) in London, the class action lawsuit in Waterloo, Sgt. Helena Pereira in Hamilton, Sgt. Jessica McInnisand Heather McWilliam in Toronto, Barb Sjaarda in Ottawa... The list goes on and on.

Ignorance is Bliss

The reality is, our police services are spending money to fight these allegations, the public do not know exactly how much is being spent on the cost to defend, or the settlements paid out. The public also do not know exactly what actions are being taken to mitigate this expense. I sent a letter to Minister of the Attorney General Yasir Naqvi on January 8, 2018. At the end of that letter I listed several suggested directives for police services around mandatory reporting requirements, in order for the public to learn about the seriousness and expense of the issue of internal systemic issues within our police services. I have yet to receive a response to this letter.

I spent the last two days in Toronto at the Conference Board of Canada's National Corporate Ethics and Integrity Summit and it was refreshing to learn about ethical measures being taken inside corporations to deal with these, and other, issues. In a corporate setting, if shareholders are not satisfied that expensive problems are not being rectified, they simply invest their money elsewhere. If the government would allow the public the opportunity to learn exactly how much this problem in policing is costing them and what, if anything, is being done to reduce or eliminate this expense, would the "shareholders" be happy? Or, would they be looking to invest elsewhere?

My research showed that Waterloo spent $226,717 on one law firm in 2017 for these types of matters. If we look at that in terms of a "per officer" cost, that is about $302 per officer, per year, (again, to pay ONE law firm). If this is an acceptable expense, does this mean that this problem is costing the provincial taxpayer a minimum of $7.85 million on *some* of the legal fees per year? (There were 25,981 police officers in Ontario in 2017). Now, I recognize that in 2007 it was only 40% of our municipal police services who had human rights complaints filed against them, and that could very well be the case today. So, then the questions become, is it a differentiation in leadership, or population? Perhaps, it's even a matter of some police services encouraging the complaints process, versus others who suppress complaints and enable a culture of fear? Without the data, and current data, we can only guess.

Until the public know exactly how much is spent, and how much gets paid out in settlements, these figures are our best guess. Considering this problem seems to be exponentially worsening, procrastination by police services boards and our government will be catastrophic.

This article was written to create dialogue and inspire ethical leadership.

What Policing Culture is Doing to Good People

May 11, 2018|POLICING

PC Scolley, Toronto Police Service. What do I know about her? Very little. I'm not writing this article to defame her, in any way, or assume I know anything about her as a person. She is, however, the epitome of what the culture in policing is doing to good people, more specifically; women. She, unlike the other women who have testified against Heather McWilliam in her ongoing Human Rights Tribunal of Ontario trial, got caught lying. Knowing personally what can happen to you when you cross that thin blue line, I am scared for PC Scolley.

PC Scolley used to be friends with Heather McWilliam, (the Tribunal heard last week). After Heather went off work sick, her and PC Scolley rarely spoke and were disconnected on Facebook. When PC Scolley heard that the service was looking for witnesses to Heather's complaint, PC Scolley volunteered to testify. PC Scolley was not witness to all of the incidents which Heather had alleged were harassing or discriminating, yet PC Scolley testified that she wanted to come forward because she did not believe Heather's complaint. PC Scolley later testified that she had not read Heather's complaint, she was basing her opinion solely on things that Heather had told her when they were friends. Part of PC Scolley's testimony included her finding out that a Sergeant on their shift had downloaded a picture of PC Scolley, Heather and one other female constable to his work computer and made the photo his wallpaper on the desktop. The photo was of the three women on vacation, in their bikinis (taken from Facebook, and that particular boss was not a "friend" of theirs on Facebook). PC Scolley testified that she did not think it was inappropriate that a supervisor would use a

personal picture of a subordinate officer in a bikini in this way, "it was just a bathing suit picture." PC Scolley originally testified that there was no sexual harassment at 23 Division. She later disclosed that a colleague had confided in her that she was being sexually harassed by one of the same Sergeants Heather had alleged was sexually harassing her. PC Scolley also disclosed that she had had problems with a male colleague who had repeatedly touched her leg (while working at 23 Division). PC Scolley said she didn't consider this sexual harassment or assault because the male officer was the same rank as her and the behaviour stopped once she made an issue of it.

Why am I making such a big deal about this female PC's testimony? This is precisely what is wrong with the policing culture when you are examining ANY gender issues or disparity. There are several women police officers who will say that there are NO problems in policing, no gender discrimination, no harassment, no misogyny. There are also women who say the problems are systemic and ingrained in police culture. How can there be two such distant opinions on the same subject when looking at the same behaviours?

The truth is, police women rock. They are the strong, confident women you meet coaching your kids' sports teams, they are the women who won't back down to anybody or anything, they are adrenaline junkies, they are the women that young women aspire to be. I know many of them; I used to be one. Every police woman comes into the job with excitement and enthusiasm and hopes to find camaraderie and support from all of her colleagues, men and women alike.

So, when they find themselves in a position where they feel like an object, not respected, inadequate, not welcome... They have a choice to make. Do they brush off the jokes? Do they loosen their boundaries? Down-play their hurt feelings? Laugh along with the jokes about other women? Be a "good sport?" Or, do they remain confident, self-loving, and stand up for themselves? Many tenured women in policing come from a time when they had no choice but to "suck it up." It's no wonder that when you ask one of them they will tell you 'things were tough, but they stuck it out.' Does that mean that police women have a responsibility to 'suck it up?' Women are still incredibly outnumbered by men in Canadian policing, yet they are still finding their voice and speaking up so that future generations of women in policing do not have to 'suck it up'; accept your bosses tongue in your mouth when he forces a kiss on you, let your boss grab you by the hips and motion that he is having intercourse with you from behind, let your boss comment on how your breasts look, accept the photos of his genitalia when he sends them to you... Enough is enough.

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. Oprah said it best:

"...their time is up."

Unfortunately for PC Scolley, she may now find herself falling victim to the secret world of chiefs complaints, and may be charged with neglect of duty or deceit by the chief of the Toronto Police Service. Like the Waterloo Regional Police did with me, it's always

good for the service to make an example of anyone whose conduct they do not want to see repeated by other subordinate officers. PC Scolley came forward to help Toronto Police with their defence, they believed she was going to contribute to their defence of there being no systemic sexual harassment at 23 Division. In the end, her testimony revealed that herself and one other woman at 23 Division had been sexually harassed, to her knowledge (not including Heather). Her honesty might be end up being her demise.

For what it's worth, I appreciate that PC Scolley did what she believed was right and told the truth. I am sorry that she may now face reprisal from her employer.

This is how policing in Ontario works, you're either on one side, or the other, of the thin blue line. The National Women in Law Enforcement Association will always have her back, we won't hold it against her that she tried to remain loyal to your colleagues and chief; we've all been there and faced the same dilemma. We get it.

Kelly Donovan is a former police officer now offering consulting and workplace solutions to prevent systemic issues. Her company website is www.fit4duty.ca and her personal website is www.kellydonovan.ca

TAB O

This is **Exhibit "O"** referred to in the affidavit of Kelly Lynn Donovan

sworn on September 12, 2018.

Commissioner for Taking Affidavits

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

Kelly Donovan

January 8, 2018

Ministry of the Attorney General
McMurtry-Scott Building
720 Bay Street, 11th Floor
Toronto, Ontario
M7A 2S9

To the Honourable Yasir Naqvi, Attorney General:

At this point, I trust that you have read my report of systemic misfeasance in Ontario policing that I widely distributed back in July, 2017. The report compiles actual cases from across Canada that show systemic abuses of power, investigative conflicts of interest and influences of power between police services and their oversight agencies; allowing misfeasance to flourish. I left the profession of policing to improve The Ethical Standard™ across Canada. Part of my journey has been ensuring the public is aware of the current state of policing, who the enablers are, and the ineffectiveness of our current oversight structure. I intend to hold police leaders and overseers to a higher standard of ethics and integrity. I trust that you would support me in this endeavour, and that is why you are receiving this document.

At this point in time, since I have not been engaged on these issues by anyone from your Ministry, I am involving you in these serious matters that should have been handled by various police services boards, the Ontario Civilian Police Commission ("the OCPC") and Office of the Independent Police Review Director ("the OIPRD"), and were not. Legitimate, reasonable and terribly concerning complaints about police officers, police chiefs and police service board members have been made to these bodies and there has been a complete disregard for legislated oversight responsibility; usually citing that these investigations are not in the "public interest." Perhaps it is time for the Ministry to survey the public to obtain their opinion of precisely what investigations are in the public interest. There are enough studies to show that any police officer misconduct is a matter of interest to the public.

I have no doubt that misfeasance exists within all police services in Ontario. This document specifically addresses corruption at the Ottawa Police Service ("OPS"), Waterloo Regional Police Service ("WRPS"), and York Regional Police Service ("YRP").

I have been advised by members of the OPS that complaints have been made to the OCPC and OIPRD in the past regarding the conduct of the OPSB Chair, Mr. Eli El-Chantiry, and OPS Chief of Police, Mr. Charles Bordeleau. To this day, both of those individuals maintain their positions of authority and to my knowledge have not faced any discipline or objective and impartial investigation. If, in fact, investigations have uncovered misconduct or illegal conduct then transparency needs to improve.

I have personal knowledge about the issues at WRPS and I complained to the proper authorities as well. Similar to the matters in Ottawa, the individuals creating the problems are still all in their positions of authority. None of my complaints to both the OCPC and OIPRD were even investigated. The power we give police chiefs in Ontario becomes evident when only two weeks after the filing of the class action lawsuit against WRPS, Chief Larkin was elected as President of the Ontario Association Chiefs of Police. No one in this province seems to be accountable to the police officers or taxpayers; everyone continues to defer responsibility.

As Attorney General, Hon. Mr. Naqvi, I hold you responsible for ensuring this misfeasance does not continue, and that those committing these unethical and illegal acts are held accountable. Only with consistency and transparency will police services in Ontario regain the trust of the public and policing communities.

When you continue to reward, promote and insulate those responsible for the abuses of power, you become part of the problem.

I have outlined to you below my concerns based on evidence provided to me by complainants, all of which has already been brought to the attention of the OCPC and OIPRD.

I have broken down the concerns as follows:

Part I – Criminal Allegations Against Members of Ottawa Police Service 175

Part II – Criminal Allegations Against OPSB Chair 176

Part III – Allegations of Corruption, Misconduct and/or Unethical Conduct by OPS Chief and OPSB Chair 176

Part IV - Allegations of Corruption, Misconduct and/or Unethical Conduct by WRPS Chief, Waterloo Regional Police Services Board and York Regional Police Service 181

Neglect of Duty: 183

Part I – Criminal Allegations Against Members of Ottawa Police Service

1. Revolving around numerous incidents reported by a civilian over a two-year period (Dec 2016-present), members of OPS have allegedly repeatedly refused or ignored evidence provided by the complainant, refused to take information on new incidents, failed to file charges, failed to consult with the embedded crown, released personal information that was not of public record and discussed the active investigation with unauthorized parties; the investigations were passed on to four different investigators in ten month period. A request for information on the investigations, by the complainant, revealed and substantiated the above allegations, as well as showing egregious and biased characterization of the complainant and incomplete information, inaccurate information and contradictions in reports, notebooks, emails and previous information provided to the complainant. This has resulted in the complainant filing complaints to the OIPRD, OCPC and Information Privacy Commissioner related to conduct (negligence, obstruction of justice, deceit, etc.) under the PSA, and negligence under related privacy legislation.
2. Further, during the above investigations, in spring 2016 a concerned OPS member informed the complainant, as the accused continued their actions towards her, alleged that her investigations were "politicized" by the Chair of OPSB, who is also Councillor for her area. This was substantiated by other emails from the Chair showing implicit, detailed knowledge of her investigations while they were active and sharing of information with members of the public and the accused.
3. On November 22, 2016, at 9:46 am, a City of Ottawa employee, who is assistant to the OPSB Chair/Councillor, sent an email request to an OPS Inspector asking for details of police investigations and the outcome of the investigations involving civilians living on Needhams Side Road.
4. A 4-page brief was prepared detailing police involvement with a female civilian residing on Needhams Side Road. This brief was sent electronically to the City employee on November 22, 2016.
5. The City employee is not a member of the OPS and did not file a request for information pursuant to the Municipal Freedom of Information and Protection of

Privacy Act ("MFIPPA").[1] OPS has confirmed that there was no MFIPPA request filed by anyone on the above investigations.

6. The 4-page brief was not redacted and the civilian's permission was not granted to release the information in the brief.
7. FOR CONTEXT: On April 16, 2012, a police constable was arrested and charged with Breach of Trust by a Public Official, contrary to section 122 of the Criminal Code of Canada for having shared details of an occurrence report with a civilian. The officer's guilty plea to the criminal charge and subsequent conviction of misconduct resulted in his termination from employment as a police officer.[2]

Part II – Criminal Allegations Against OPSB Chair

8. In May, 2017, a citizen of Ottawa laid a private information accusing board chair Eli El-Chantiry of the following Criminal Code of Canada offences:
    a. s. 122 Breach of Trust by public officer; and
    b. s. 123 Disobeying a Statute – aggravating charge to s. 122 Breach of Trust.
9. The court did not permit the charges to proceed.

Part III – Allegations of Corruption, Misconduct and/or Unethical Conduct by OPS Chief and OPSB Chair

10. In February, 2016, an odd series of events led to the dismissal of a provincial offence against Lester Thompson, (father-in-law of OPS Chief Charles Bordeleau). Bordeleau had telephoned the prosecutor's office to find out who had been assigned the case. The charge was eventually dismissed, reasons cited being there was no one in attendance to provide evidence, despite the officer being advised he could leave. It is unclear if the board conducted an investigation into the conduct of Chief Bordeleau.[3] The Chief of police is involved with the

[1] R.S.O. 1990, c. M.56.
[2] Markham and the Waterloo Regional Police Service, 2015 ONCPC 04.
[3] "Conflict-of-interest allegation involving top police families prompts review," by Shaamini Yogaretnam, Ottawa Citizen, February 17, 2016.

administration of justice in ways that create great potential for conflict and improper use of power.[4]

11. In April, 2016, OPSB Chair Eli El-Chantiry was criticized for allowing four standing committees to meet more often than the entire board behind closed doors. Stéphane Émard-Chabot, a lawyer who teaches and practices municipal law, was quoted by Joanne Chianello of the CBC as saying; "That is a citizen's right to observe the functioning of municipal government in all its pieces, and it reflects the provincial priority to promote transparency and accountability." The Ottawa Police Association was quoted as saying the board's procedures did not provide enough transparency. The PSA explicitly states that the PSB meetings are to be public, save in-camera requirements, and that all agendas, minutes, disclosures, and decisions are to be posted.[5]
12. In May, 2017, Michael Edelson, defense lawyer, sent a letter to Chief Charles Bordeleau and two provincial cabinet ministers detailing legal disclosure the lawyer received while defending then-acting Staff Sgt. Marty Rukavina. The charges were ultimately stayed, but disclosure provided to the officer's lawyer is alleged to have shown that evidence in the case was changed by the force's legal counsel and that some senior officers gave false statements during the SIU's investigation.[6] In response to this letter, Chief Bordeleau presented the issue to El-Chantiry and requested an investigation be conducted by the Ontario Provincial Police ("OPP") into the conduct of three senior members of the OPS. It is unclear what information the board was given at this time regarding the need to have the OPP conduct an investigation, although the allegations were publicly cited as "fraud and evidence manipulation."[7]
13. On June 21, 2017, the lead investigator of the OPP probe emailed a member of the OPS and confirmed that the OPP were conducting a "criminal investigation" into the "conduct of a number of senior officers" of the OPS.

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[4] Vogel v. Canadian Broadcasting Corporation, 1982 CanLII 801 (BC SC).
[5] Police Services Act, R.S.O. 1990, c. P.15, Section 35(3).
[6] "Ottawa police chief stands by temporary promotion of officer facing OPP probe," Ottawa Citizen, July 24, 2017.
[7] "Updated: Ottawa police chief asks OPP to investigate senior officers for alleged evidence manipulation," Shaamini Yogaretnam, Ottawa Citizen, May 1, 2017.

14. Matt Skof, president of the Ottawa Police Association ("OPA"), submitted an invoice to the OPS for legal indemnification for one of its members to the Chief. The Chief advised Skof that he wished to have the word "criminal" removed from future invoices.
15. June 29, 2017, Skof advised Chief Bordeleau that his conduct in relation to have the invoices from the lawyer disguise the ongoing criminal investigation by the OPP constituted a breach of the Police Services Act and OPS' 'Respectful Workplace Policy.'
16. For the period of July 22 to August 13, the Chief signed an order for the temporary promotion of Superintendent Chris Rheaume to the rank of Acting Deputy Chief.
17. In July, 2017, when confronted on the subject, Chief Bordeleau told the Ottawa Sun he stands by his decision to temporarily promote a senior officer who is under provincial police criminal investigation.[8]
18. On July 13, 2017, Skof sent a letter to the OPSB regarding conduct of the Chief in relation to the reimbursement of legal expenses. The letter addressed the following acts of misconduct by the Chief:
    a. asking that the nature of the OPP investigation into the conduct of senior members of the OPS be disguised;
    b. sending internal communication to the media, un-vetted (June 16, 2017, formal notice to the OPS Executive, in regards to the OPA-OPS relationship);
    c. not abiding by OPS policy or Ministry of Labour regulations on July 1, 2017, while directing traffic in uniform and on duty;
19. The letter from Skof also addressed the conduct of a Superintendent:
    a. misleading the Board regarding said OPP investigation;
    b. his conduct towards a civilian member of the OPS;
20. On July 20, 2017, El-Chantiry forwarded Skof's letter to the board and included a response to the allegations. The following issues exist in this response:

[8] "Ottawa police chief stands by temporary promotion of officer facing OPP probe," Ottawa Sun, July 24, 2017.

c. El-Chantiry states that the only issue surrounding legal indemnification was whether or not the invoice would be paid, and he stated the issue is being handled through the grievance procedure;
d. El-Chantiry does not address the allegation that the Chief wanted the "criminal" aspect of the ongoing investigation to continue to be disguised for the board, (which was the major point of Skof's complaint, and shows that he and the chief are colluding to conceal the nature of the OPP investigation);
e. El-Chantiry also tells board members that "it is not uncommon for off-duty officers to assist in the community without their uniform/use of force if they witness an incident." El-Chantiry misleads board members since whether on duty or off-duty, when a police officer is in uniform they have several legal responsibilities under the Police Services Act, Occupational Health and Safety Act and internal OPS policy.

21. In September, 2017, an article in the Ottawa Sun revealed that members of the OPSB accepted the temporary promotion of Rheaume without realizing he was under criminal investigation.[9] The information only came to light when the Ottawa Sun obtained emails between board members. The emails show that some board members believe they were led to believe it was not a criminal investigation by Chief Charles Bordeleau.[10] In the article, board chair Eli El-Chantiry hides behind current Police Services Act legislation that prohibits the board from directing the chief in day-to-day operational decisions, and does not address the board's duty to monitor the chief's performance.
22. It is clear in the email from Allan Hubley, Ottawa City Councillor and member of the police services board, on August 1, 2017, that he was led to believe there was no potential for criminal charges for Superintendent Chris Rheaume when the board approved his promotion to Deputy Chief. Hubley's concerns were echoed by other members of the board (Sandy Smallwood, Tim Tierney, and Suzanne Valiquet).

[9] "Police board members didn't know promoted cop faced criminal probe, emails reveal," Ottawa Sun, Shaamini Yogaretnam, September 14, 2017.
[10] *Supra* note 9.

23. On October 27, 2017, it was announced that the OPP will lay no criminal or disciplinary charges against senior Ottawa police employees after nearly a five-month investigation into allegations of fraud and evidence manipulation.[11] Despite the earlier letter by Edelson, Chief Bordeleau said the OPP "found no evidence of any misconduct or wrongdoing that would support charges under the Criminal Code or substantiate charges under the Police Services Act on any of the nine members."[12] Chief Bordeleau did not release any other details of the OPP report.
24. Michael Edelson is a lawyer bound to the Law Society of Upper Canada's Rules of Professional Conduct. Any lay person can deduce that when a lawyer discloses to a chief of police and two provincial cabinet ministers that he discovered evidence of criminal offences, he is in fact telling the truth. I find it completely unacceptable that the response from the OPS and OPP does not address what prompted the letter from Edelson in the first instance. If Edelson had no evidence of wrongdoing and reported that he did, the public expect that his conduct will be reported to the Law Society of Upper Canada and appropriately investigated. If this step was not taken by the OPS or OPP then one has to ask why? If Edelson made a false statement to the OPS he should be held accountable.
25. In October, 2017, OPS Sergeant Marty Rukavina filed a $3.35M lawsuit against OPS. Among his allegations are:
    a. Malicious prosecution, misfeasance in public office, deceit, civil conspiracy and infliction of mental suffering by the OPS board and several police employees.
    b. A Staff Sergeant had operated a private business that provided unsanctioned training to members of the OPS.
    c. A systemic campaign was launched by OPS members to publicly discredit and humiliate Rukavina and implicate him in the explosion incident.[13]
26. On November 22, 2017, the female civilian mentioned in paragraph 2 above, sent information to the OCPC and specified her concerns regarding El-Chantiry's

[11] "No charges after five-month OPP probe of Ottawa police," Ottawa Citizen, by Shaamini Yogaretnam, October 27, 2017.
[12] *Supra* note 11.
[13] "$3.35M lawsuit alleges deceit, civil conspiracy and "campaign" of mistreatment against Ottawa cop," Shaamini Yogaretnam, Ottawa Citizen, October 3, 2017.

alleged personal relationship with a young female civilian. It is my understanding as well that this same female, who is El-Chantiry's protégé, had been arrested in the past, yet charges had all but disappeared; a check of police records would show. The belief at OPS is that El-Chantiry is using his influence and position as OPSB Chair to provide opportunities to this female; beyond any opportunities being offered to other residents of Ottawa; and other specific allegations of interference and obstruction of judicial proceedings and abuse of power. When I attended the OPSB in September, 2017, to present a delegation on the need for independent and impartial training of board members, I observed this female sitting at the "press" table within the council chambers.

Part IV - Allegations of Corruption, Misconduct and/or Unethical Conduct by WRPS Chief, Waterloo Regional Police Services Board and York Regional Police Service

27. In May, 2016, I wanted to complain about the conduct of several members of the Waterloo Regional Police Service ("WRPS") when conducting internal investigations. The WRPS' Public Complaints and Chief's Complaints procedure did not allow a member of the WRPS to be a Complainant of misconduct. I knew I was not permitted to make a complaint to the OIPRD since officers are not permitted to complain about officers at their service.
28. On May 4, 2016, I presented a lawful delegation to the WRPS Board revealing corruption and unlawful discretion during four internal criminal investigations.
29. On May 9, 2016, Chief Larkin directed me to not present myself in front of the board again, and placed me on administrative duties while professional standards investigated me for six Police Services Act ("PSA") charges.
30. On May 9, 2016, I notified the board members by email of the reprisal action taken against me. This email was shared by an unknown board member with Chief Larkin, (the email was not addressed to Chief Larkin). Board members have all sworn (or affirmed) an Oath of Office to discharge their duties impartially. I was then directed by Chief Larkin to not communicate in any way with members of the board and two additional charges were added to the internal investigation.

31. An Investigative Review was conducted by YRP into one of the criminal cases referenced in my delegation. I provided the investigating officer with thirteen clear points of issue with the investigation. The investigating officer ignored almost all of those points and in the final report made several false statements. Issues outstanding with said criminal investigation and negligent review are as follows:
    a. WRPS investigators and the Crown Attorney suppressed exculpatory evidence;
    b. Chief Larkin did not consult with the Crown Attorney prior to arresting the officer, yet stated publicly that he had;
    c. Several conflicts of interest existed in the investigative process and none were declared;
    d. Evidence obtained after the officer's arrest proved that key aspects of the unsworn witness statements obtained by investigators prior to the officer's arrest contained false statements.
    e. A WRPS Inspector made false statements to YRP Investigator.
    f. Crown Attorney made false statements to YRP Investigator.
    g. YRP Investigator did not conduct investigation of any issues I raised in my interview, yet concluded the WRPS investigation was full, fair and impartial.
    h. YRP Investigator made false statements in the report provided to Larkin.
32. During the 14-month period that the WRPS conducted their protracted disciplinary investigation (despite the 6-month limitation), I began to suffer from symptoms of post-traumatic stress disorder. Rather than be concerned for my wellbeing I was threatened by the professional standard branch with an additional charge of insubordination if I was not well enough to attend a compelled interview.

Neglect of Duty:

What I find most concerning is that the OCPC and OIPRD were made aware of these, and other serious issues of misfeasance in Ontario policing, and have done little to curtail the level of corruption that exists within senior leadership and oversight agencies. Specific complaints, of which I am aware, are detailed below, in chronological order:

- December 1, 2010 – The OCPC, OIPRD and the Solicitor General at the time, Ian Davidson, were made aware of several acts of misconduct and criminal behaviour by members of the Orangeville Police Service. Some of those allegations included:
  - A member offered to not show up for criminal trial if he could be served alcohol after last-call;
  - A member refused to provide services while on duty, but offered the services through a private business the member owned;
  - A member made an order to destroy evidence and remove criminal charges against a friend;
  - Members saving pornography to work computers;
  - A member arriving for duty and operating a police vehicle while in a "drunken state;"
  - Members engaging in repeated "bullying" with no intervention by management;
  - General inconsistent discipline;
  - Outdated policies;
  - Inadequate training.
- June 28, 2016 – The Commission refused to investigate the Chief of the WRPS for refusing to initiate a Chief's complaint into a negligent criminal investigation that saw Constable Jeremy Snyder charged and suspended for 2-years only to later be acquitted by an Honourable Justice and the investigation to be criticized. The Commission determined that an investigation was not warranted, and Snyder in turn filed a civil lawsuit.
- August 8, 2016 – The OCPC cleared Chief Bordeleau of misconduct when he phoned the Provincial Offences Court office on January 25, 2016, to find out the name of the prosecutor assigned to his father-in-law's careless driving charge. The

OCPC determined that Bordeleau "did not attempt to use his position to influence the outcome of the Highway Traffic Act matter nor to communicate with the prosecutors."

- August 25, 2016 – The Commission refused to investigate the Ottawa Police Services Board holding meetings which were not open to the public, contrary to Police Services Act s. 35(3).[14]
- March 6, 2017 – The Commission decided to not commence an investigation into my complaint of members of the WRPS board for suppressing my complaint of corruption during internal investigations and failing to properly monitor the performance of the Chief, and the Chief of WRPS for taking reprisal action against me for merely uncovering internal corruption and reporting it to the board.
- March 29, 2017 – The OIPRD determined it was not in the public interest to investigate my complaint of negligence, collusion and deceit by members of the YRP in conducting an Investigative Review for WRPS. Despite the fact that the officers in the complaint were YRP officers, the OIPRD stated I was not permitted to make the complaint.
- August 17, 2017 – The Commission refused to investigate the OPSB chair Eli El-Chantiry for misconduct in relation to false and misleading information provided to other board members and not adequately monitoring the performance of the Chief.
- On October 27, 2017, the civilian mentioned in paragraph 1 above, received a response to her letter to Hon. Minister Lalonde written by Matthew Torigian, former Chief of WRPS, advising her to address her concerns to the OPSB directly and the OIPRD.
- November 29, 2017 – The OIPRD refused to investigate Chief Charles Bordeleau when he failed to advise the Board of the nature of an ongoing OPP investigation into members of the OPS and his request of the OPA to disguise the nature of the OPP investigation.
- The OIPRD has very recently advised Matt Skof, in a general statement, that it will not conduct any investigations into the conduct of Chief Bordeleau.

[14] R.S.O. 1990, c. P.15.

As a result of the systemic neglect by the oversight agencies, officers are resorting to the only remaining avenue for justice; civil litigation. Here is a list of *some* of the ongoing litigation which will cost the taxpayers of Ontario millions of dollars and could have been prevented with adequate oversight:

- ✓ Constable Mike Sladek, London Police Service
- ✓ Constable Jeremy Snyder, Waterloo Regional Police Service
- ✓ Constable Paul Manning, Hamilton Police Service
- ✓ Sergeant Marty Rukavina, Ottawa Police Service
- ✓ Sergeant Gurdip Panaich, York Regional Police Service
- ✓ The Women of Waterloo Regional Police Service (Class Action)

All citizens of Ontario are facing a dawn of increased accountability in policing as a result of transparency achieved through access to information legislation and people like myself who are taking great risks to expose internal police corruption. When serious allegations are made about a person in a position of authority, the public need to trust that those allegations will be handled with due diligence, in a manner identical to that of a citizen-involved investigation. When it comes to internal matters within police services and oversight bodies, this simply has not been happening. What is being exposed in Thunder Bay and more recently in Montreal is happening everywhere. Trust in police is at an all-time low. Remaining in denial, and refusing to acknowledge the scope of the issue is not an improvement strategy.

If it is not completely evident, by the time you read this document, that a full review and inspection is warranted then please see Appendix A, at the end of this document, for a list of recommended interim solutions by way of directives for policy improvements. These recommendations can easily be implemented and will ensure that abuses are detected through better reporting and those committing these acts of misconduct or misfeasance will no longer be protected by other officers' oaths of secrecy.

I will make myself available should an advisory committee be formed to address any of the issues contained herein. I have taken on this initiative to not only expose the problems I am also very interested in being part of the solution.

Most sincerely,

Kelly Donovan

Copied To:
Hon. Marie-France Lalonde, Minister of Community Safety and Correctional Services
Mr. Benson Cowan, Ontario Civilian Police Commission
Mr. Graham Boswell, Ontario Civilian Police Commission
Mr. Gerry McNeilly, Ontario Independent Police Review Director

Appendix "A"

Directives to improve accountability and transparency:

These are suggestions only, and further dialogue will ensure understanding of the objectives of each recommendation.

Mandatory Reporting

The following must be reported to the public on an annual basis and can be produced without the names of members of the service or public.

1. Police Services must report all expenses related to the prosecution (misconduct or criminal) of its members, (this includes all FTE involved in the investigation and prosecution).
2. Police Services must report all legal expenses paid to defend Human Rights of Ontario ("HRTO") complaints made by members of the public.
3. Police Services must report all legal expenses paid to defend HRTO complaints made by its members.
4. Police Services must report all legal expenses paid to defend lawsuits filed by members of the public.
5. Police Services must report all legal expenses paid to defend lawsuits filed by its members.
6. Police Services must report all settlements paid to members of the public divided by HRTO complaints and lawsuits.
7. Police Services must report all settlements paid to its members divided by HRTO complaints and lawsuits.

**The Ministry of the Attorney General reports each year on how much of their budget was dedicated to the Human Rights Legal Support Centre, Prosecuting Crime, (as examples). It is reasonable for police services to report the above figures in order for the public to better understand where budgets are being spent, and assist in reducing the cost of policing.*

Policy

1. Members of police services shall be provided means of reporting misconduct of other members, including the Chief of police.
2. Members of police services shall be provided a means of appeal for all allegations of misconduct or criminal conduct that are not investigated.
3. A member of a police service alleging reprisal for having filed an HRTO complaint or complaint of misconduct or criminal conduct of another member, shall have the ability to complain to the OIPRD.
4. When an allegation of criminal conduct was made about a senior member of a police service and no charges are laid, the case is always referred to the office of the Attorney General to be reviewed.

TAB P

This is **Exhibit "P"** referred to in the affidavit of Kelly Lynn Donovan

sworn on September 12, 2018.

Mary Louise Donald

Commissioner for Taking Affidavits

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

AUDIO

'It's OK to to talk about it:' Waterloo Police on new PTSD plan

Waterloo Regional Police's new plan hopes to show how awareness can help minimize PTSD

CBC News · Posted: Jul 17, 2017 1:31 PM ET | Last Updated: July 17, 2017

Waterloo Regional Police are looking at new approaches to dealing with and preventing PTSD among officers. (Colin Butler/CBC)

The Waterloo Regional Police Service is taking new steps to ensure the mental and psychological wellbeing of its officers.

The service's new PTSD prevention plan looks at ways of preventing and helping treat PTSD among officers. It's based on a similar model used by the Armed Forces.

"Our members deal with traumatic incidents daily," Staff Sgt. Dean Smith told *The Morning Edition*'s Craig Norris. "We want to make sure that they have the resources available to address those."

- **Support to prevent PTSD in police needed, says Chief Larkin**
- **PTSD an unseen but real workplace injury, Cambridge woman says**

For the WRPS's wellness unit, the big focus is on preventing the illness, and being open about some of the warning signs.

"We want them to feel comfortable talking to people about this," Smith said.

The project is already underway within the service and for Smith and his colleagues, the hope is that this will foster more open and honest dialogue about mental health in their police service.

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Visitez Radio-Canada.ca

TAB Q

This is **Exhibit "Q"** referred to in the affidavit of Kelly Lynn Donovan

sworn on September 12, 2018.

Mary Louise Donald

Commissioner for Taking Affidavits

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

DC Nutrition Group, Inc.

08-01 -2018

Re: Ms. Kelly Donovan VS Waterloo Regional Police Service (WRPS) 'Non-

Disclosure' dispute

To: All concerned or any Interested Parties Specifically but not Limited to: The Human
Rights Tribunal, MPP's and MP's, WRPS and Canadian Media Industry

Dear Interested Parties,

As a respected hard working, law abiding veteran Canadian tax payer who has grown our economy by proving and facilitating upwards of 50 good paying jobs for my fellow citizens, l/we demand transparency with regards to how my/our tax dollars are spent relative to the public services that they pay for. Specifically, transparencies for essential services such as Police services are absolutely critical to ensuring the safety of tax payers and ensuring a higher degree of public trust.

To those who disagree with a higher degree of transparency within the Canadian Police Services industry and in this particular case (The WRPS and the OPS), l/we say that it is abhorrent and unacceptable for our Police services to engage in cover-ups with regards to illegal or immoral behavior performed by any officer who deliberately silences another officer who is simply trying to inform the public of internal corruption by our Police services.

Ms. Kelly Donovan, as everyone knows, is an excellent Canadian citizen who only speaks the truth as is evident in everything she has done in her career within Police services. She is an upstanding citizen to whom any tax payer would be proud of as a public service officer who truly fights corruption and crime. A tax payer could only dream of actually having a police force that approaches a 100% employment policy that hires officers with the integrity, moral conviction and work ethic that officers such as Ms. Donovan has proven herself to be.

Furthermore, it is absolutely unacceptable for our high ranking public police officers or legal officials such as Gary Melanson to publicly and internally engage in bully and abuse tactics thereby abusing our tax dollars by promoting lies and distortions about the quality of officers that Kelly Donovan exemplifies as she has proven to be to all Canadians. Gary and the upper echelon related personnel of the WRPS must not be allowed to silence Ms. Donovan despite whatever resignation agreement or non-disclosure agreement that may or may not have been signed for the sole reason that everything that Ms. Donovan is doing, is for the purpose of protecting tax payers essential services. Ms. Donovan has been reasonably transparent in all her media disclosures which in no way has jeopardized the safety or integrity of neither public safety nor fellow police service investigations. Kelly has been careful to divulge only those details which concern internal upper echelon corruption, corporate bullying and corrupt police department policies that clearly rip-off the tax payers within the jurisdictions that they represent.

We fully support everything that Ms. Kelly Donovan is doing, her right and our Canadian constitutional right to read any of her future publications

I appreciate your attention on this matter.

Regards,

David C. Clark

To Whom this May Concern,

From Karyn Graham

Some time ago I heard of Kelly Donovan's experience with the Waterloo Regional Police as an employee of theirs and I really felt for her. It's a sad situation when someone with ethics and good solid morals tries to stand up to the bullies of our society and is damaged as a result. Our Province of Ontario should be consulting with this fine woman who knows right from wrong and good from bad to overhaul our police who show us time and time and time over time that they do not understand what this means. It's very tragic.

I am the mother of Trevor Graham who was shot dead by a WRPS officer, Laurie Cartwright November of 2007. The public death and quotes in the Waterloo Regional Record newspaper by WRPS were inhumane and cruel, something Ms. Donovan has a full understanding of with heartfelt sorrow. I organized a peer support group called Affected Families of Police Homicide. We have consulted with our Attorney General Yasir Naqvi, Minister of Community Safety and CS Marie-France Lalonde, we were the first group to be asked to consult with provincially directed Justice Michael Tulloch to produce his report on Independent Police Oversight Review also for Bill 175. We have been supporting each other for years now in our grief and with some families doing independent investigations we have concluded that police and the SIU have deep systemic corrupt practices which hurt all Ontarians. The details are so very troubling that in meeting with Kelly Donovan and seeing her as a good cop who actually was as troubled as we are. I have to thank her.

Kelly Donovan and I both presented to the Standing Justice Committee at Queen's Park in Toronto regarding our ideas to improve Bill 175 The Safer Ontario Act. We both agree that police chiefs have too much power and do not have to answer to the police boards. We both agree that most police services are corrupt with evidence to show to prove this, however, I want anyone to know that I stand behind her 100% on her whistleblowing. We all should value these brave people who are standing up for those being harassed by their higher ups...its BULLYING and we all know it is wrong. So why are the WRP trying to silence her...well it's obvious to most people...Kelly is right.

Good Luck to you Kelly Donovan!

Karyn Graham
Organizer of "Affected Families of Police Homicide", Ontario
Port Dover, ON
Cell 289-880-9950

July 31, 2018

I send this in support of your efforts through your business and purpose. It has provided support to persons who have found themselves on the outside of the police establishment in general which can be a very alienating experience given the us and them that still exists in policing.

Police associations do not provide an effective voice given the limitations of the Police Act. The recent recognition that the Police Act is antiquated and requires revision is a sign that the work of yourself through this forum is a relevant and important element in ensuring individual rights are recognized and supported.

I support your efforts and do not believe that you have crossed any policing sensitive issues or conflict of interest lines pertaining to public security. It is possible that egos and entitlements may have been compromised however that is what this work needs to challenge.

I believe your continued work can only assist in making policing a profession that is attractive to all members of the community by making it more transparent to officers and the community

Paul Heffler
Ottawa Police Service

To Whom It May Concern:

I fully endorse, support the endeavour of Kelly Donovan.

I strongly believe her voice, her integrity, her story, and her strength have the capacity to create true transformative social change.

She is the epitome of someone who is courageous enough to create change that will be of help to every one of us.

Sincerely,

Arthur Lockhart, Professor
The School of Social and Community Service, Humber College
Founder Emeritus, The Gatehouse

To Whom it may concern:

My name is Alan Marshall. I live at 99 Church St. W. Elmira, Ontario N3B3K7. My phone number is 519 6692801. e-mail address is agmarshall@rogers.com

I am writing in support of Kelly Donovan and her remarkable efforts to improve accountability and transparency at the Waterloo Regional Police Service. In my decades of watching, learning and participating in public interest issues ranging from environmental, political, human rights, free speech and police accountability I have seen and met very few individuals with even a fraction of Ms. Donovan's heart, sincerity and professionalism. Major reform is decades overdue with our local police going back to the days of the Henchmen raid and the Syd Brown affair. While I believe that the large majority of rank and file police officers are of commendable ethics and morality, I have long been disappointed with the behaviour and actions of the hierarchy.

WRPS as well as the civilian Police Board and our Regional politicians have not been doing their due diligence on behalf of the citizens of the Region of Waterloo. Instead of attacking a person such as Ms. Donovan for her exemplary efforts they should be taking her criticisms and many others criticisms to heart and trying to change for the better.

Sincerely Alan Marshall

Good morning,

I would like to provide a brief statement of support for Kelly Donovan.

Kelly is a personal friend, who is a complete professional and has my complete support.

Her efforts to improve accountability and transparency in policing, are needed and are completely necessary. I am not aware of anyone else who is trying to expose it all, and it is desperately needed presently.

Kelly's work is in the public interest and is in the interest of transparency.

She has never divulged secrets WRPS information about civilian cases or investigative techniques, only what She believes was allowing internal corruption to flourish, in an attempt to end it.

In my opinion her efforts have not been focused only on Waterloo. They have focused on several police services throughout Canada and the ongoing corruption that is taking place.

Thank you,
Jessica McInnis,
Toronto Police Service
905-706-6478

To whom it may concern,

Kelly Donovan has been advocating for ethical standards, integrity and transparency in ways no one else can in Ontario being the voice for many officers suffering in silence.

I am an officer going through the Human Rights Tribunal for two and a half years now, the only place left to be heard for police officers as under the Police Services Act, I cannot be a victim along with all other police officers which is against our human rights.

What Kelly Donovan aims for is not only accountability for police officers but for public interest as well. If police are going to be found covering up for each other, collusion and corruption, then the public deserves better and so do we as a whole.

Speaking from lived experience, past and current, police organizations have too many problems internally and are targeting police officers and their families who stand up to their criminal acts. We cannot especially as officers of the law previous or present allow that abuse and abuse of power to continue in Canada. It has been going on for decades and female officers just like survivors of abuse have been courageously fighting to end abuse against police women and the abuse of power/ reprisals against our safety that come along with it with no place of safety.

The government has given us no place of safe haven and the only place that allows us safety currently is freedom of speech. Taking that away from victims, especially when the abusers are the police, is only going to harm victims further.

Please be a supporter of Kelly Donovan and see that this is in the public's interest and not to allow police organizations to continue bullying and intimidating our only avenue of safety; free speech.

Sincerely,

Heather McWilliam
Toronto Police

Ricketts Consulting
Experience Counts

31 July 2018

Human Rights Tribunal of
Ontario 655 Bay Street, 14th
floor Toronto, ON M7A 2A3

I am writing in support of Kelly Donovan, former member of the Waterloo Regional Police Service, who is being harassed by the WRPS for her advocacy for more transparency and accountability by police services across Canada.

I am member and former President of an organization called Canadians for Accountability. One of our objectives is to promote a culture of truth, transparency and integrity in Canada's public and private sector institutions and Canadian society in general. In our advocacy, we are constantly in touch with whistleblowers and persons, like Ms. Donovan, who are being punished for their integrity and honesty, something that many employers, like WRPS, seem to find offensive.

In the time that I have known Ms. Donovan, she has never discussed, with either me or my colleagues, any police issue that was not already public knowledge whether about herself or any other former police member.

My feeling is that Ms. Donovan is a beacon of hope for anyone, and there are many, who is being treated unjustly by their employer whether public or private sector.

The allegation of breach of agreement which WRPS has filed against Ms. Donovan is another example of harassment by police on whistleblowers and should not be tolerated.

Kelly Donovan is an honest person and transparent in her criticisms of police culture. It is crucially in the public interest that you support her and rule that the WRPS should not and cannot silence her.

Bruce Ricketts 56 Baypointe Cres Ottawa, ON K2G 6R1 613 292 1061
rickettsconsulting@gmail.com

Curtis Rutt M.B., C.D.

75 Torrance Lane, Belwood, Ontario N0B 1J0 | (519) 787-0503 | curtis.rutt@hotmail.com

July 31, 2017

Fit4Duty
Brantford, Ontario

Dear Recipient Name:

I have read your book and have had the pleasure to hear you speak in public. As a former police officer, I commend your efforts to hold accountable those in power at various levels of government.

In the past, I have attempted to do the same by holding certain public servants in powerful positions to account for various acts which, in my professional opinion, bordered on criminal behaviour. I have learned that established organizations react to whistleblowing in similar fashion. As they circle the wagons for institutional protection, they demonize the person who raised the issue. Often, the person making the complaint does so for noble reasons; to actually improve a workplace – not destroy it. I have seen thin-skinned heads of institutions take constructive criticism as a personal affront and then seek out to destroy the careers of those who are brave enough to speak out. The lengths that some will go to will never surprise me.

To take on an altruistic course of action and stand up to an institution requires strength of character, intestinal fortitude and unwavering resolve. You have shown these qualities.

I hope you would reach out to me for assistance in your struggle. I applaud your determination and I am proud to know you.

Sincerely,

Kelly Donovan

To whom it may concern,

As a 20+ year member of an Ontario police service, and as a member of the public I can think of no other person who has tried to improve the accountability and transparency in policing other than Kelly Donovan.

Kelly has fought tirelessly to bring some system of the checks and balances that are lacking in the current system for police accountability. Currently, there are no measures to ensure the upper echelon of policing are policed themselves. All Uniform members of policing are held to a higher standard. Why is it that the Chief and his administration are also not held to that higher standard?

I have personally seen this system fail and have witnessed senior members of my police service not been held accountable for criminal activity. Any member that speaks up is punished. There is also no protection afforded for people that want to come forward and report this type of behavior in their workplace.

If people like Kelly do not speak up and try to improve things than who will? These are issues that the public may not be aware of, but definitely need to know. Kelly's efforts are desperately needed and I can't think of any other person who is better suited for this task.

Sincerely,
Mike Sladek
London Police

A statement from Mr. Bob Stenhouse,
Retired RCMP Staff/Sergeant (Whistleblower)
Current Workplace Investigator and Advocate

To whom it may concern,

It has come to my attention that the Waterloo Police Service is attempting to silence Police Accountability advocate, Kelly Donovan. While this is not surprising, as a Canadian who values freedom of speech, this is abhorrent behavior. Kelly Donovan, to my understanding, did not sign a non-disclosure clause upon her resignation from the Waterloo Police Service. Frankly this type of administrative bullying and attempted gagging of a speaker of truth should shock all Canadians. If the WRPS is wanting to challenge the truth of what Kelly Donovan has exposed then they should do so transparently, with fact, evidence and within the principles of fairness and natural justice. Attempting to gag a civilian with a passion for police reform is draconian and a gross abuse of power and authority. As a Canadian, as a passionate advocate of fairness, police accountability and reform, I add my voice to the many who are appalled at this action by the Waterloo Police Service.

Bob Stenhouse – Edmonton Alberta

My name is Thomas Vann.

Married 38 years and am 62 years of age. I live at 1385 Thorman Drive Cambridge, Ontario. 519-653-9156. E-mail ltvann@rogers.com.

I have been a volunteer in my community for 35+ years.

My wife and I have had the pleasure of speaking in person with Kelly Donovan. Kelly never once spoke of police business other than what she has written in her book in which we have a copy of.

We respect this woman for what she is, a fine person of high standards. I got to know a great many people over the years and some are or were police officers. I am well aware of what goes on behind the badge in the police department. I played sports with numerous police and heard the stories of what Kelly wrote about. I was not at all surprised to hear about a lawsuit being launched.

If I can be of further assistance please feel free to contact me as I offer my 100% support of Kelly Donovan. I hope that her efforts create an improved environment inside the police force that will transfer to a better community.

Thomas Vann.

July 31,2018

TO WHOM IT MAY CONCERN;

My name is Debbie Vitez
11B Third Ave
Cambridge On
N152C5
519-654-2480
EMAIL: debbievitez@hotmail.com

I am writing this in FULL support of Kelly Donovan. I think what she is doing is commendable.
I fully support her efforts to improve accountability and transparency in Policing.
I firmly believe this is badly needed.
She has firsthand experience on this subject from her time while working as a Police Officer.
For her to be doubted or punished for speaking out is not right.
We demand transparency with all levels of our Government Employees.

Yours truly,
Debbie Vitez

TAB R

This is **Exhibit "R"** referred to in the affidavit of Kelly Lynn Donovan

sworn on September 12, 2018.

Mary LouDonald

Commissioner for Taking Affidavits

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

Ex-Mountie Krista Carle, who helped bring to light abuse and harassment in RCMP, has died

Friends and colleagues stunned after learning former constable took her own life

Manjula Dufresne · CBC News · Posted: Jul 09, 2018 8:31 PM PT | Last Updated: July 10

Krista Carle came forward to CBC News after her friend Catherine Galliford went public about sexual harassment within the RCMP. In a subsequent letter to Public Safety Minister Ralph Goodale, she listed 35 instances of harassment, sexual assault and bullying by co-workers and superiors. (CBC)

A woman who fought to bring attention to harassment within the RCMP has died.

Friends and colleagues confirmed that former constable Krista Carle took her own life on Friday. She was 53.

troopmate Catherine Galliford went public about sexual harassment in November 2011.

She was also public about her struggles with post-traumatic stress disorder (PTSD) and eventually left the RCMP after 19 years with a medical discharge.

Turning negatives into positives

In a letter to Public Safety Minister Ralph Goodale in May 2016, Carle said she had endured 35 instances of harassment, sexual assault and bullying by co-workers and superiors. She served with the RCMP in Alberta.

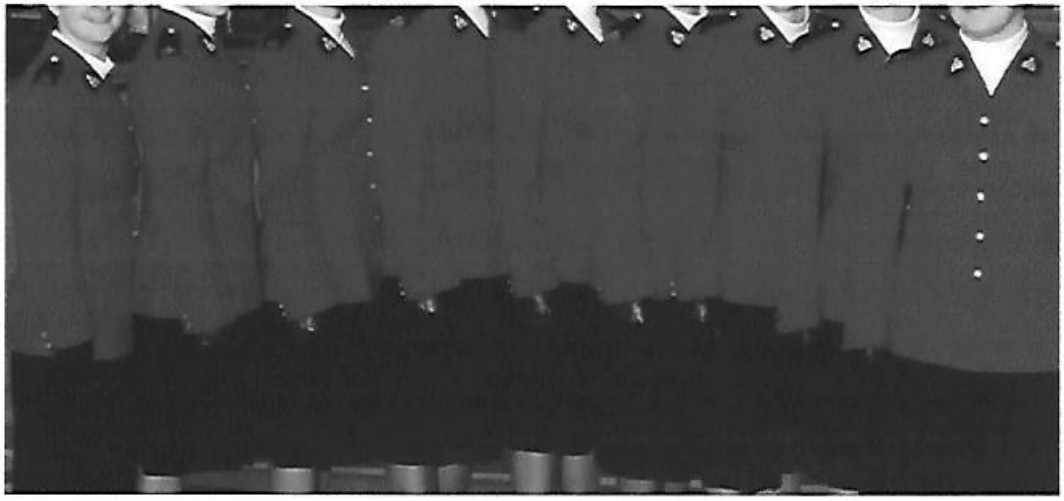
Carle tried to restart her career in B.C. after settling a lawsuit in Alberta but she told Goodale "due to my PTSD I was unable to cope and eventually lost my marriage, my kids and my career." She settled on Vancouver Island.

- CBC INVESTIGATES **RCMP faces $1.1B lawsuit over bullying, harassment claims**
- EXCLUSIVE **Ottawa expected to compensate 500 past and present female RCMP employees**
- **More B.C. Mounties complain of harassment**

Tori Cliffe met Carle during an investigation into assaults committed on them by a senior colleague in Alberta in 2004.

"She turned all the negativity into something positive. She didn't let it beat her," Cliffe said.

"She made and was making a huge difference for not just women in the RCMP for everybody. For making it a better work environment and ensuring that people were held accountable. That was her goal: accountability for the employees."



Janet Merlo, left, next to Catherine Galliford and Krista Carle, sixth from left, when they graduated from RCMP training college in 1991. (Janet Merlo/Submitted photo)

Carle trained as an RCMP officer in 1991. She graduated with Galliford and Janet Merlo, who was the lead plaintiff in a class-action lawsuit into gender-based harassment and sexual abuse within the RCMP.

That suit was settled by the federal government in 2016 for $100 million.

A new potential class-action lawsuit over bullying and harassment claims was filed against the RCMP last month claiming $1.1 billion in damages; its claims have not been proven in court.

Galliford told CBC News she was devastated to learn Carle had died.

"Krista was one of my best friends," she said. "[She] was going through PTSD, but I can tell you the last time I spoke with her she sounded upbeat and happy, but that could have been 'fake it until you make it.'"

'The sweetest, kindest person you ever met'

Indeed, in recent posts on social media, Carle wrote about being a proud mother.

Merlo described Carle as her lifeline — someone who was always strong for someone else.

"She was the sweetest, kindest person you ever met. I would cry on her shoulder and she would never show any weakness," she said.

Merlo and Carle checked in on each other regularly and says she, like others, is shocked because she didn't see it coming.

She also says recent comments by RCMP Commissioner Brenda Lucki that the RCMP is not broken have stunned those who do believe that.

"It was like a kick to the belly," Merlo said.

"People are still suffering as there is no union, no collective agreement, there is no process within the RCMP to make things better right now."

- **Modernize and reform RCMP's culture, Trudeau government tells new top Mountie**

Merlo said she was so upset after hearing about Carle that she has written to Goodale reminding him that he promised change in 2016.

Merlo said that she is hearing from new people every week who are pushed to the brink of suicide.

Watch Carle discuss her harassment claims:

More members of the RCMP in British Columbia have come forward with serious allegations of harassment 3:17

Where to get help:

Canada Suicide Prevention Service

Toll free: 1-833-456-4566

Text: 45645

TAB S

This is **Exhibit "S"** referred to in the affidavit of Kelly Lynn Donovan

sworn on September 12, 2018.

Mary MacDonald

Commissioner for Taking Affidavits

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

CBC

OPP launching internal review of officer suicides

'We deal with the best and worst of humanity, and it can take its toll'

Ashley Burke · CBC News · Posted: Aug 30, 2018 12:44 PM ET | Last Updated: August 30

OPP Commissioner Vince Hawkes says the force has made strides in its mental health services for members, but that more needs to be done. (CBC)

The OPP's commissioner, Vince Hawkes, says the force will conduct an internal review of member suicides and attempted suicides after three officers recently took their own lives.

In the last 30 years, at least 24 active members and nine retired members have reportedly committed suicide, he said.

three by his widow. Sarah Routhier shared her story publicly over concerns that if her husband could struggle with a mental illness, then anyone could.

- **Widow wants force to set aside time for officers to talk about difficult calls**
- **Retired officer warns OPP to listen to mental health concerns**

In response to the deaths, Hawkes held a press conference in Orillia, Ont., Thursday, saying he's launching a new strategy to review barriers OPP members face accessing the force's mental health services.

"Clearly we need to do more," said Hawkes. "There are serious gaps and barriers that require further review and examination."

"We deal with the best and worst of humanity, and it can take its toll on the wellbeing of our members. I know from personal experience the impacts of cumulative, critical incidents and operational stress, all that can have an impact on a police officer."

The three-part plan that includes reviewing the force's suicide cases and attempts over the past five years. Hawkes has tasked a detective superintendent within the OPP to find links and commonalities between the deaths by looking at the stresses officers faced, the psychological services they accessed, and their training. The province's chief coroner is assisting with the review.

Sylvain Routhier took his own life on July 31, 2018, in Belleville, Ont. He had been a member of the Ontario Provincial Police for 13 years. (Sarah Routhier)

Current system too complicated

Hawkes said the force has made strides helping officers access mental health services since a 2012 report by the province's watchdog revealed the force had failed to support police officers. However, it's not enough,he said.

"We don't have to throw a couple sticks of dynamite and start from scratch," he said. "We have a very, very good process ... what we have to do is add components to that."

The current services include a wellness program, mental health training, and a website that allows members to screen themselves for signs of distress. At least 95 people have used the anonymous online tool that encourages early intervention, said Hawkes.

One of the biggest concerns he's heard since the recent suicides is that the current triage system of accessing help is "very complicated."

"If they're in trouble they don't want to get on a phone line and be put off to somebody else," he said. "There's a high sense of frustration and that adds to the stress."

"What we need to do is make it simple," he added.

He also noted that could include helping members with their Workplace Safety and Insurance Board claims.

Worst fear is officers losing their gun

Officers are also afraid of coming forward with mental health issues because of the stigma, said Hawkes.

When he was a young officer 30 years ago, there was an attitude that if you wanted "to be a good cop" you had to "get over it," he said. That meant not talking about difficult incidents.

> **"One of the worst fears I hear from members is 'if I say that I'm going to lose my gun"**
>
> *- OPP Commissioner Vince Hawkes*

"Unfortunately, there's still some of that [attitude] left," said Hawkes.

"One of the worst fears I hear from members is 'if I say that, I'm going to lose my gun.' The gun is the authority of the police officer. It's the perception that if I lose my gun, I lose my authority as a police officer, and that's devastating for a police officer."

Hawkes said the force needs to make sure that if it takes an officer's gun, it's for the right reason — and that the officer has the chance to get it back. He says there have been many success stories of officers who have come back to work after suffering from a mental illness and have been successful in their careers. But those stories aren't getting out there, he said.

OPP commissioner Vince Hawkes says many officers still choose not to talk about their struggles out of fear they may lose their gun. 0:54

'We deal with the best and worst of humanity'

The OPP's new approach will also include evaluating the current system and holding mental health round tables.

An assessment team made up of internal OPP members, family members, external stakeholders and mental health experts will focus on breaking the silence. The force hopes members will come forward and tell their stories and share the challenges they've faced.

Everything is on the table to fix problems within the system, said Hawkes. He hopes that in less than a year the OPP is in a position to change things.

The press conference ended with Hawkes pleading with OPP members to seek help if they are in distress.

"No one should suffer in silence," he said. "I want you to talk to somebody — a friend, a colleague, a supervisor, a loved one. We need to do this together."

The Commissioner is launching an internal review to prevent further loss. 9:26

Need help? Here are some mental health resources:

Canadian Association for Suicide Prevention website

Association québécoise de prévention du suicide: 1-866-APPELLE (1-866-277-3553)
Ottawa Suicide Prevention: 613-238-3311

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TAB T

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sworn on September 12, 2018.

Mary Louise Donald

Commissioner for Taking Affidavits

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

“In The Line of Duty” Ombudsman Report, October, 2012, is attached separately (due to size)

TAB U

This is **Exhibit "U"** referred to in the affidavit of Kelly Lynn Donovan

sworn on September 12, 2018.

Mary Louise Donald

Commissioner for Taking Affidavits

Mary Louise Donald, a Commissioner, etc.,
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Ministry of the Attorney General.

CBC

Montreal police Chief Philippe Pichet suspended, replaced by SQ director

Public Security Minister Martin Coiteux says Bouchard report paints 'worrisome portrait' of internal affairs

Kalina Laframboise · CBC News ·
Posted: Dec 06, 2017 10:26 AM ET | Last Updated: December 6, 2017

Montreal Chief of Police Philippe Pichet has been suspended from his duties, effective immediately, as a result of the findings of the Michel Bouchard report into the SPVM's internal affairs. (Ryan Remiorz/Canadian Press)

Montreal police Chief Philippe Pichet has been suspended with pay from his duties following a damning report into the force's internal affairs.

Sûreté du Québec Chief Martin Prud'homme will take over as both the interim chief and temporary administrator of the Montreal police for a one-year mandate, effective

immediately. Prud'homme will take a leave of absence from his position at the SQ, during which time the provincial police force's associate director, Yves Morency, will take over his job.

The decision comes after a report by Quebec's former deputy justice minister Michel Bouchard, highlighting the need to put "an end to a climate of tension and suspicion that has developed within the SPVM."

A former Crown prosecutor, Bouchard has also worked as associate deputy minister of justice at the federal level.

"It's impossible for the government of Quebec to remain passive, inactive, considering the gravity of what's in the report," said Quebec Premier Philippe Couillard. "The response needs to be proportional."

- **Montreal police accused of fabricating evidence to silence whistleblowers**

Public Security Minister Martin Coiteux tasked Bouchard with examining how the SPVM's internal investigations work last March.

Coiteux said the report, which he received on Nov. 30, paints an "eloquent and extremely worrisome portrait" of the inner workings of the SPVM and required the provincial government to take "exceptional measures."

> **"There's a sense ... some people within the SPVM had special treatment, others were treated differently, some investigations botched."**
>
> *- Public Security Minister Martin Coiteux*

"The findings — which cover a period from 2010 until today — are troubling," said Coiteux, flanked by Montreal Mayor Valérie Plante, during a news conference Wednesday.

The report covers the tenure of more than one chief, as Pichet was only appointed to the job in 2015.

The report shows that several criminal allegations that should have been investigated never were, and were never flagged to the province's public security ministry as the police act requires, said Coiteux.

"There's a sense that in many instances, that some people within the SPVM had special treatment, others were treated differently, some investigations botched," said Coiteux.

Martin Prud'homme, chief of the Sûreté du Québec, will take a leave of absence from that job to head the Montreal police service until the end of 2018. (CBC)

"Important information was deliberately left out of investigative reports, in order to make sure that certain police officers would not be brought before the courts or face disciplinary proceedings," he said.

As part of the report, Bouchard also recommends the government revise the province's Police Act. He concludes that an "enormous challenge" lies ahead for the administration of the police force to regain the confidence of officers and Montrealers.

Radio-Canada tried to speak with Pichet, but Montreal police said he was not available for comment.

- **Deputy director of Montreal police relieved of duties during whistleblower inquiry**

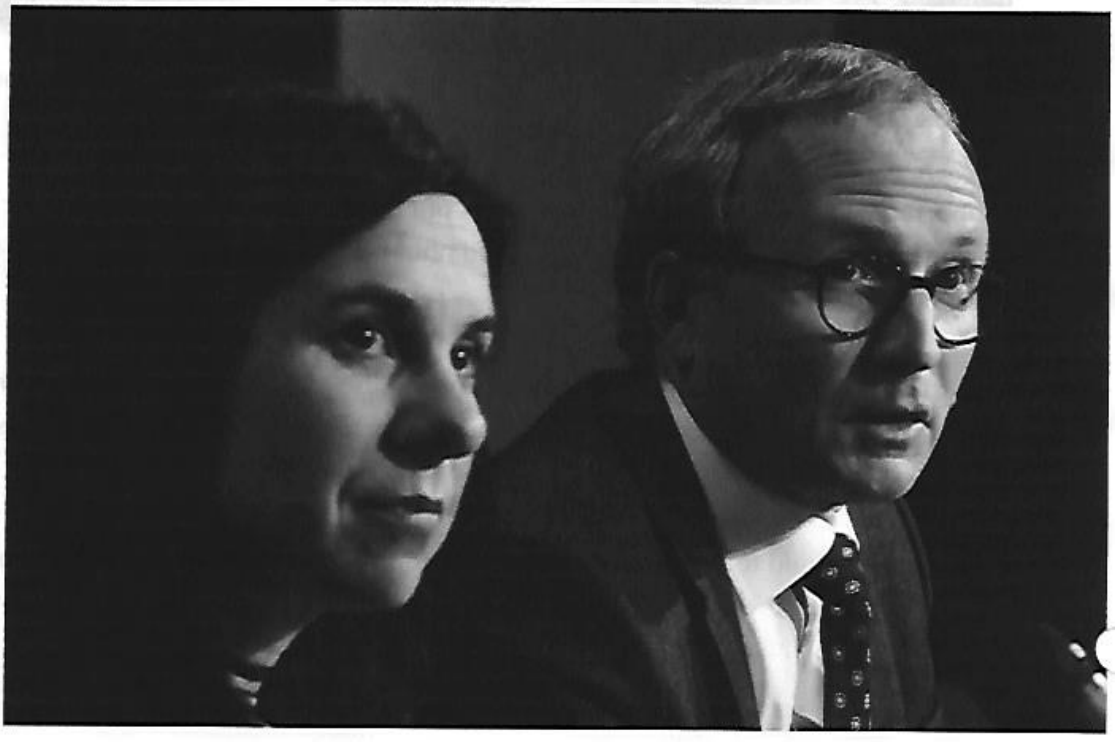
'We had to act now'

The report, made public Wednesday, also says there was a lack of leadership on the part of Pichet.

After joining the force in the early 1990s, he was promoted to positions in operation planning and worked with the counter-terrorism unit. Pichet was also part of the team co-ordinating the police response during months of student protests in 2012.

The decision to suspend Pichet was not taken lightly, said Coiteux, but it was necessary given that Bouchard's report expressed "very important doubts about the capacity" of the chief to "improve the situation" within the police service.

"During our meetings with members of the Montreal police, a consensus among a large group of them was that there has been an absence of leadership shown by the head of the force in the last few years," the report said.



Quebec Public Security Minister Martin Coiteux and Montreal Mayor Valérie Plante held a news conference after Montreal's police chief was suspended and replaced by the head of the provincial force. (Paul Chiasson/Canadian Press)

Coiteux said Prud'homme has a clear vision of what a police force should be and "all of the necessary leadership" to implement changes.

"We had to act now, and we found the best person to do it," said Coiteux.

While he could not say whether Pichet could be reinstated, he did say a successor would eventually be proposed.

The Parti Québécois, however, questioned appointing Prud'homme to head the Montreal police.

"There was one police force with an unstable administration. Now there are two," said Pascal Bérubé, the PQ critic for public security.

"We decided to transfer the director of our national police service to the SPVM. Why didn't we choose a civilian to head the SPVM? It's unbelievable."

- **Is the Montreal police department in crisis?**

Plante, for her part, said that she didn't see the situation as a crisis, but as an opportunity.

Her administration is dedicated to working with Prud'homme, she said, and she hopes to restore the public's faith in the city's police service.

"This is the right thing to do because we want to move forward, we want to make sure we can change the organizational culture so that trust for the police force is back."

Decision welcomed by Police Brotherhood

The Montreal police's union said it is offering "its full collaboration to improve the SPVM" and welcomed the decision to suspend Pichet.

Montreal Police Brotherhood president Yves Francoeur said it was time that the police force be involved in a process to win back the confidence of the public and of the police officers.

Francoeur has also repeatedly criticized Pichet since October 2016, saying that he couldn't lead the Montreal police.

Montreal Police Brotherhood president Yves Francoeur said the union wants to meet with the new chief as quickly as possible. (CBC)

"Police officers paid the price for the incompetence and the irregularities of the administration and were bullied by unjustified processes," said Francoeur.

The union said it also wants to meet with Prud'homme as soon as possible.

With files from Sarah Leavitt and Radio-Canada

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Mary Louise Donald

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The « Rapport d'enquête administrative sur la Division des affaires internes du Service de police de la Ville de Montréal » Par Me Michel Bouchard, Ad. E attached separately (due to size)

TAB W

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10.

Conclusion

demonstrated skill and thoroughness in the gathering of evidence in the Junger and Whitehead cases. But, as has been documented throughout this report, its subsequent performance was anything but perfect.

The attitude of Internal affairs, as expressed in its final submission, seems to be that its members have learned nothing from this Inquiry, and have nothing to learn.

That is an attitude that has to change.

All police officers must be cognizant of their duty to the public. But officers who handle investigations into alleged wrongdoing by members of their own force must be especially sensitive to the need to be fair, open and accountable and to demonstrate the highest standards of integrity and professionalism.

Our hope is that this Inquiry will lead to a more responsible and accountable police force and Police Services Board. But that will only happen if those involved are willing to accept criticism, recognize that errors were made and make changes.

To be effective, police need community support and cooperation. That support and cooperation is based in part on confidence in the integrity of the force to police its own. It must be made clear to all the people who live and work in Metro and who visit here that the Metropolitan Toronto police Force is determined to investigate alleged wrongdoing by officers and prosecute substantiated cases vigorously and expeditiously. Public confidence depends on it.

It will not be sufficient for the Police Services Board and the Chief to make statements to that effect. The commitment will have to extent to every unit commander and every division of the force. It will have to be demonstrated that mistakes of the past will not be repeated.

We direct that the Police Services Board and the Chief report to the Ontario Civilian Commission on the Police Services within six month on the actions taken in response to this report.

Education of Boards

Testimony at this Inquiry indicated a considerable amount of confusion and misunderstanding about the role of Police Services Boards -- how much they can become involved in management of the force, what information they are entitled to have, and what their responsibilities are.

The Solicitor General of Ontario should implement an educational program for members of Police Services Boards across Ontario to ensure that they are apprised of their authority and responsibilities. This is an opportune time for training for all board members, given that a new Police Services Act came into effect only last year.

Police Services Boards across Ontario should take into account the recommendations in this report which relate to policies of the

Metropolitan Toronto Police Services Board and practices of the force. In particular, Boards should review their own requirements for reporting by the Chief of Police, and policies and procedures for the laying of criminal or disciplinary charges against officers.

Recommendation 21

To indicate its resolve to exercise its responsibilities for the quality of policing in Metropolitan Toronto, the Police Services Board should review its policies and procedures to ensure that it is representing the expectations of the community, providing direction for effective management of the force, and fulfilling its function to direct and monitor the performance of the Chief. The Board should review the evidence presented during this Inquiry and take whatever action it considers to be necessary and appropriate.

Recommendation 22

The Metropolitan Toronto Police Services Board and the Chief of Police shall report to the Ontario Civilian Commission on Police services within six months on actions taken in response to this report.

Recommendation 23

The Solicitor General of Ontario should implement an educational program for members of Police Services Boards across Ontario to ensure that they are apprised of their authority and responsibilities.

Recommendation 24

Police Services Boards across Ontario should review their policies and procedures to ensure that they comply with the spirit of the recommendations in this report that affect the manner in which Boards carry out their responsibilities.

More about Jane Doe... Next ▸ Contents Gov. Reports

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Last modified: October 1, 1998

Commercial Sex Information Service
Box 3075, Vancouver, BC V6B 3X6
Tel: +1 (604) 488-0710
Email: csis@walnet.org

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Toronto police officer disciplined for texts she says prove harassment

By **WENDY GILLIS** Crime Reporter
Wed., Jan. 31, 2018

To support her claims that she worked in a "poisoned, sexist" environment, Sgt. Jessica McInnis handed over a trove of text messages and group chats to Toronto police's professional standards unit last year.

It was hard evidence, she felt, of the harassment she'd withstood for well over a year: a barrage of explicit photos, demeaning comments, a reference to her "sending nudes," and more, much of it in an ongoing group chat of mostly male colleagues on messaging app WhatsApp.

Sgt. Jessica McInnis, left, alleges she was subjected to harassment by Det.

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"It's the Black Jessica McInnis. I'd tap that," wrote her then-police partner, Det. Mark Morris in October 2016, commenting on a video of a woman dancing with her buttocks exposed, according to McInnis's human right claim.

"Lol ya I would too haha," responded another cop, McInnis's claim alleges.

But the provision of those messages has resulted in McInnis herself being penalized this week, docked eight hours' pay for participating in the chats and failing to report them sooner, according to her lawyer.

Instead of supporting an employee alleging harassment, Toronto police have "penalized" her for speaking out, Barry Swadron said, adding that whatever minimal participation she had was a necessary attempt at "fitting into the boys' club."

Toronto police spokesperson Mark Pugash said Wednesday he was unable to comment on internal discipline for McInnis, which occurred at the divisional level.

The "misconduct" finding was made by Toronto police's professional standards unit, but was not serious enough to merit a misconduct hearing under the Police Services Act.

According to Swadron, Morris — McInnis's former police partner at the downtown Toronto's 14 Division — was also penalized eight hours' pay for his participation in the group chats.

David Butt, Morris's lawyer, would not confirm that his client was penalized and said Morris would respond to McInnis's allegations at "the appropriate legal forum."

Butt has called McInnis's claims "either false or deliberately misleading" and said Morris will contest them "vigorously."

As first reported by the Star, McInnis filed an explosive human rights complaint in December that alleged sexual harassment and discrimination, both against her personally and generally within the Toronto Police Service. She alleged there is a "culture of sexism" within 14 Division that discourages women targeted by sexist behaviour from coming forward.

Alongside Morris, McInnis previously co-led a team of officers within the Criminal Investigations Bureau (CIB), which tackles a range of crimes including thefts and suspicious deaths within 14 Division.

McInnis alleged that Morris would call her vulgar and demeaning names, and

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repeatedly sent her sexually explicit messages about her and himself, in which he repeatedly referred to his own genitalia as "Anaconda."

"Remember if I slapped that ass it's not a sexual assault if I say nice game. That's what we do in sports," Morris is alleged to have texted McInnis, according to her claim.

McInnis, who has been with Toronto police for 20 years, has since transferred out of the division. She declined to comment through her lawyer Wednesday.

Swadron said that, especially as growing number of women are speaking out against harassment, he is alarmed to see his client facing reprisals for raising the alarm.

"I've never seen or heard of a case like this," Swadron said.

McInnis's penalty comes as a small but growing number of female police officers across Canada are complaining about workplace harassment.

The Human Rights Tribunal of Ontario is currently hearing the case of Toronto police Const. Heather McWilliam, who has also alleged sexual harassment in the workplace and claims she heard sexual or sexist comments every single shift.

A class-action lawsuit has also been proposed by members of the Waterloo Regional Police Service, alleging gender-based bullying, violence and sexual misconduct.

In response to McInnis's complaint, Toronto police board member Shelley Carroll asked Chief Mark Saunders for a detailed report on the force's sexual harassment policies. The report is expected in April.

Wendy Gillis can be reached at wgillis@thestar.ca

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TODAY'S NORTHUMBERLAND

Police Services Act Hearing For Cobourg Constable On Hold Indefinitely

IN LOCAL, NEWS VIEWS 2093

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545

A conference call between all parties involved in a Police Services Act hearing against a 12-year veteran Cobourg Police officer took place on Friday, September 7, 2018.

Constable Amy Mattijsse was charged with 19 counts of discreditable conduct on July 20.

Today's Northumberland learned the 19 discreditable conduct charges against the officer were put on hold pending a review by the Ontario Civilian Police Commission.

The Ontario Civilian Police Commission has made a decision to review the conduct of Chief Kai Liu and whether the charges Constable Mattijsse face, "are a form of inappropriate reprisal."

The Ontario Civilian Police Commission is also reviewing "the conduct of the Police Service Board and whether the Board neglected its duties under the Code of Conduct."

OCPC states it is only reviewing the materials and confirmed, it is not a formal investigation.

While the review is being conducted, "it has directed Chief Liu to suspend the current PSA proceeding."

On Friday the case against the officer was adjourned sine die.

A definition of sine die is "Without day; without assigning a day for a further meeting or hearing."

"A legislative body adjourns sine die when it adjourns without appointing a day on which to appear or assemble again."

Today's Northumberland sent e-mails to senior officers including Chief Kai Liu and Deputy Chief Paul VandeGraaf and the Chair and Vice-Chair of the Cobourg Police Services Board for comment.

E-mails to the Cobourg Police Service appeared to have been blocked and there has been no reply from the Police Services Board.

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Moving Party Non-Moving Party

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

AFFIDAVIT OF KELLY LYNN DONOVAN
SWORN SEPTEMBER 12, 2018

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