

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

BETWEEN:

KELLY LYNN DONOVAN

Applicant

and

REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD

Respondent

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

**APPLICATION RECORD OF THE APPLICANT**

Pursuant to Rule 38

**VOLUME I**

September 25, 2018

Kelly Lynn Donovan, unrepresented  
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Email: kelly@fit4duty.ca

TO: Donald Jarvis, counsel for Defendants  
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**TAB 1**

Court File No. CV-18-00605 386-0000

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

BETWEEN:



KELLY LYNN DONOVAN

Applicant

and

REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD

Respondent

**NOTICE OF APPLICATION**

**TO THE RESPONDENT**

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing on \_\_\_\_\_, at \_\_\_\_\_,  
-393-  
at 361 University Avenue, Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the

applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date September 18, 2018 Issued by [Signature]  
Local registrar Mr. Brenton  
393-  
361 University Avenue  
Toronto, Ontario

TO: Donald Jarvis, counsel for Respondent  
Filion Wakely Thorup Angeletti LLP  
Bay Adelaide Centre  
333 Bay Street, Suite 2500, Box 44  
Toronto, Ontario  
M5H 2R2  
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SUPERIOR COURT  
OF JUSTICE  
393 UNIVERSITY AVE.  
10TH FLOOR  
TORONTO, ONTARIO  
M5G 1E6

COUR SUPÉRIEURE  
DE JUSTICE  
393 AVE. UNIVERSITY  
10E ÉTAGE  
TORONTO, ONTARIO  
M5G 1E6

#### APPLICATION

1. The applicant makes application for: A dismissal of the gag proceeding commenced by the Respondent, costs and damages.
2. The grounds for the application are: The proceeding commenced by the Respondent at the Human Rights Tribunal of Ontario ("HRTO") File Number 2018-33237-S is a means of unduly limiting expression by the Applicant on matters of public interest, contrary to section 137.1 of the *Courts of Justice Act, R.S.O. 1990, c. C.43*.
3. The following documentary evidence will be used at the hearing of the application:

HRTO File Number 2018-33237-S Form 18 filed by the Respondent

Affidavit of Kelly Lynn Donovan, sworn September 12, 2018

September 18, 2018

Kelly Lynn Donovan, self-represented  
11 Daniel Place  
Brantford, Ontario  
N3R 1K6  
Tel.: 519-209-5721  
Email: [kelly@fit4duty.ca](mailto:kelly@fit4duty.ca)

Form 4C  
Courts of Justice Act  
backsheet  
**KELLY LYNN DONOVAN** – and-  
Applicant

**REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD**  
Respondent

Court File No.

*CV-18-20605-386-0850*

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**PROCEEDING COMMENCED AT TORONTO**


**NOTICE OF APPLICATION**

**Kelly Lynn Donovan**  
11 Daniel Place  
Brantford, Ontario  
N3R1K6  
Tel. 519-209-5721  
Email: [kelly@fit4duty.ca](mailto:kelly@fit4duty.ca)

# TAB 2

AMENDED THIS SEP 21 2018 PURSUANT TO  
MODIFIÉ CE "A" CONFORMÉMENT À  
☒ RULE/LA RÈGLE 26.02 ( "A" )

☐ THE ORDER OF \_\_\_\_\_  
L'ORDONNANCE DU \_\_\_\_\_  
DATED / FAIT LE \_\_\_\_\_

  
REGISTRAR GREFFIER  
SUPERIOR COURT OF JUSTICE COUR SUPÉRIEURE DE JUSTICE

Court File No. CV-18-00605386-0000

ONTARIO

**SUPERIOR COURT OF JUSTICE**

BETWEEN:

KELLY LYNN DONOVAN

Applicant

and

REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD

Respondent

AMENDED

**NOTICE OF APPLICATION**

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing on \_\_\_\_\_, at \_\_\_\_\_, at 393 University Avenue, Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date "Sept. 18/18" Issued by "M. Brenton"

Local registrar

393 University Avenue

Toronto, Ontario

TO: Donald Jarvis, counsel for Respondent  
Filion Wakely Thorup Angeletti LLP  
Bay Adelaide Centre  
333 Bay Street, Suite 2500, Box 44  
Toronto, Ontario  
M5H 2R2  
Email: DJarvis@filion.on.ca

#### APPLICATION

1. The applicant makes application for: ~~A dismissal of the gag proceeding commenced by the Respondent, costs and damages.~~

- a. 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 Applicant at the Human



Rights Tribunal of Ontario ("HRT0") in Toronto, Ontario, HRT0 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.

- b. The costs of this Application, and of the proceeding, on a substantial indemnity basis, fixed and payable by the Respondent to the Applicant within 30 days, pursuant to Rule 57.03(1) of the Rules of Civil Procedure.
- c. Such further general and punitive damages as this Honourable Court may deem just in the circumstances.

- 2. The grounds for the application are: The proceeding commenced by the Respondent at the Human Rights Tribunal of Ontario ("HRT0") File Number 2018-33237-S is a means of unduly limiting expression by the Applicant on matters of public interest, contrary to section 137.1 of the *Courts of Justice Act, R.S.O. 1990, c. C.43.*

## **I. Facts**

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

6. The expressions made by the Applicant all relate to matters of public interest.
7. The Applicant 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.
8. On June 28, 2018, the Respondent brought an action against the Applicant 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.”
9. The proceeding alleges the Applicant has repeatedly breached the terms of her resignation agreement, relying on the assumption that any expression made by the Applicant has been a “complaint.”
10. The Applicant has not made any new complaints against the Respondent since the date of her resignation.
11. The proceeding brought against the Applicant violates the CJA “Prevention of Proceedings that Limit Freedom of Expression on Matters of Public Interest (Gag Proceedings).”
12. The proceeding is untimely and an effort by the Respondent to use litigation to limit expression on matters of public interest.
13. The Respondent is using the proceeding to limit the Applicant’s freedom of expression by requesting an order by the Human Rights Tribunal for the following:
  - a. Direct the Applicant 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 Applicant removed from the public domain; and

- d. Order the Applicant to pay significant damages to remedy the ongoing damage to the reputation of the Respondent.

## II. Law

14. 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."
15. According to the SPPA, "proceeding" means a proceeding to which the SPPA applies, subsection 1(1).
16. The CJA prevents proceedings that limit freedom of expression on matters of public interest, section 137.1.
  - a. 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 Application will be filed with the Human Rights Tribunal of Ontario.

## III. The following documentary evidence will be used at the hearing of the application:

- a. HRTO File Number 2018-33237-S Form 18 filed by the Respondent
- b. Affidavit of Kelly Lynn Donovan, sworn September 12, 2018
- c. Such further and other material as the moving party may advise and this Honourable Court permit.

September 21, 2018

Kelly Lynn Donovan, self-represented  
11 Daniel Place  
Brantford, Ontario  
N3R 1K6  
Tel.: 519-209-5721  
Email: kelly@fit4duty.ca

Form 4C  
Courts of Justice Act  
backsheet  
**KELLY LYNN DONOVAN** – and-  
Applicant

**REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD**  
Respondent

Court File No. CV-18-00605386-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

**AMENDED NOTICE OF APPLICATION**

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

**TAB 3**

***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 13<sup>th</sup>. 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 public 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

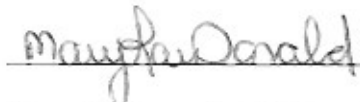
110. The culture of fear exists in the policing profession because of what police services have been able to do to anyone who has spoken up in the past.

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 Mattijisse 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 Mattijisse 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

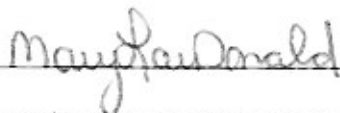
Brantford, Ontario on September 12, 2018

  
\_\_\_\_\_  
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.*

This is **Exhibit "A"** referred to in the affidavit of Kelly Lynn Donovan  
sworn on September 12, 2018.

A handwritten signature in dark ink, appearing to read "Mary Louise Donald", is written over a horizontal line.

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;

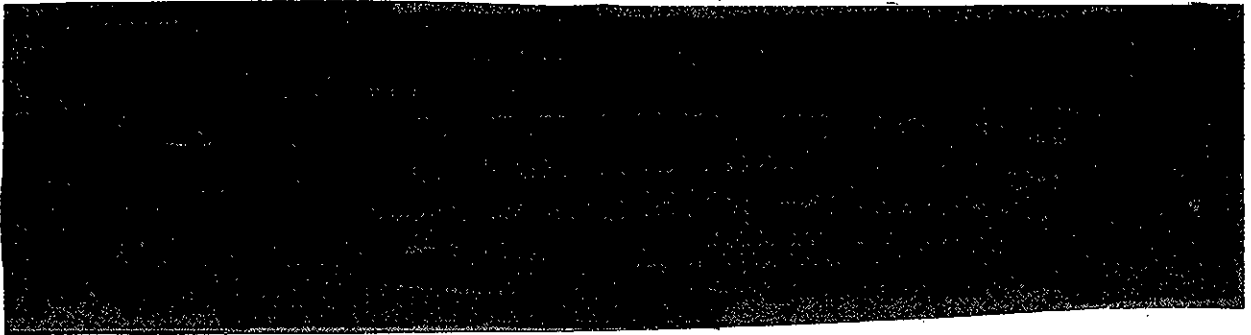
AND WHEREAS Donovan and the Board wish to fully resolve and settle the two outstanding matters between them, namely: (a) the application filed by Donovan with the Human Rights Tribunal of Ontario ("HRTO") on or about June 6, 2016 and having HRTO File No. 2016-24566-I (the "Application"); and (b) the 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.

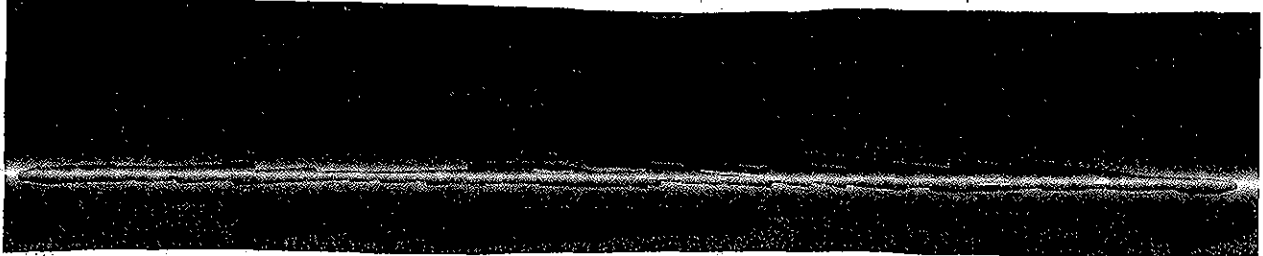
2.



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 PSD 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 25, 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.


14.

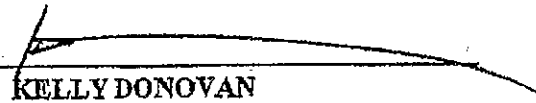
15. If any undertaking, provision or clause contained in this Resignation Agreement is found to be void or unenforceable, in whole or in part, it shall not affect or impair the validity or enforceability of any other undertaking, provision or clause contained herein.
16. Except where disclosure is required 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 ~~Cambridge~~ Ontario this 8<sup>th</sup> day of June, 2017.

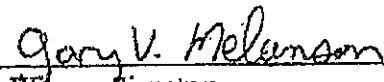
SIGNED AND WITNESSED  
in the presence of:

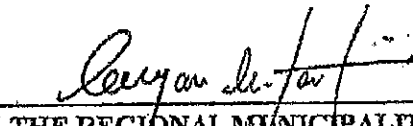
  
Witness Signature  
Print Name: Molly Kimpel

  
KELLY DONOVAN

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

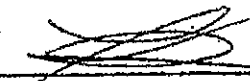
SIGNED AND WITNESSED  
in the presence of:

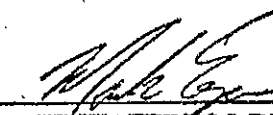
  
Witness Signature  
Print Name: GARY V. MELANSON

  
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 Regan U.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 6<sup>th</sup>, 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 8<sup>th</sup>, 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 8<sup>th</sup>, 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 8<sup>th</sup>, 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 8<sup>th</sup> 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 8<sup>th</sup> 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. 2016-24566-1.

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 8<sup>th</sup>, 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 8<sup>th</sup> day of June \_\_\_\_\_, 2017, in the City of Cambridge, Ontario.

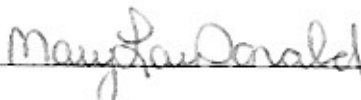
SIGNED AND WITNESSED  
in the presence of:

Gary V. Melanson  
Witness Signature

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

Print Name: GARY V. MELANSON

This is **Exhibit "B"** 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.*

<b>Complaints</b>		
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 19<sup>th</sup>, 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 Commander.
  - b. *Conduct Complaint*

*Stage 1 - Informal Resolution Contact Sheet*

    1. Gather the necessary information surrounding the complaint. Ensure the 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 Sheet process 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, including a 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 Commander.



## 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 Waiver form if 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.

Maintain a file of each policy or Service *complaint* forwarded to the Chief.
  - 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.

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 the Professional Standards Commander.
  - f.
  - 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 written report; and
- 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:
  - i. 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 with Act;
  - 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 A

# COMPLAINTS POLICY

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COMPLAINTS POLICY - PAGE 2

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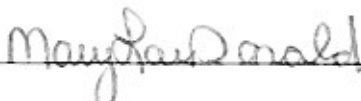
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This is **Exhibit "C"** referred to in the affidavit of Kelly Lynn Donovan  
sworn on September 12, 2018.

  
\_\_\_\_\_  
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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- L. Informal Resolutions (Public Complaints)
- M. Policy and Service Complaints
- 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
3. OIPRD Customer Service Resolution
4. OIPRD Local Resolution Agreement
5. OIPRD Withdrawal of Complaint
6. OIPRD Informal Resolution Agreement
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.

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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**

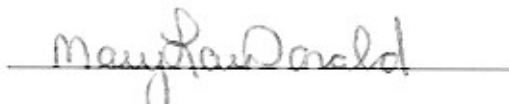
1. The Superintendent shall:
  - a. in consultation with their Divisional Inspector assess the seriousness of the complaint allegations and ensure the Professional Standards Branch Inspector is notified if the matter warrants immediate investigation;

- 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*.

This is **Exhibit "D"** 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.*



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.

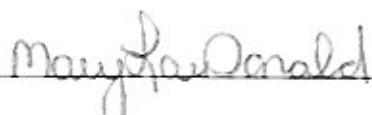
My friend did not want to report the incident to police for fear of retaliation by the male. Despite her wishes I reported the incident to my supervisor and offered to provide copies of the telecommunication because I was concerned for her safety. I was later advised by a Domestic Violence Investigator 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.

This is **Exhibit "E"** 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.*

**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 4<sup>th</sup> 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 4<sup>th</sup> 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.

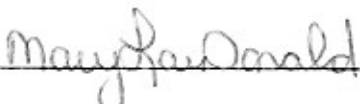
Section 35 of the Police Service Act states that police service board meetings SHALL be open to the public unless the board chooses to exclude the public under subsection (4). Police Service Board By-Laws allow for delegations to be presented. If the Chief has ordered me, under section 41(1) of the Police 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 4<sup>th</sup> 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 4<sup>th</sup>.

Respectfully,  
Kelly Donovan

This is **Exhibit "F"** 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.*

**From:** Machado Law pamela@pmachadolaw.com   
**Subject:** Re: Touching Base  
**Date:** May 1, 2017 at 3:45 PM  
**To:** Kelly Donovan donovandih@gmail.com  
**Cc:** Machado Law pamela@pmachadolaw.com

---

PM

Ok Kelly, can you please send me an updated medical so I can forward it to PSS? They will require this if your position is to postpone the interview further.

This is their offer - I am sure you will want to discuss this, so if so, we can schedule a call. There is A LOT of information here.

**OFFER –**

TERM - they have offered ten months, however, I am certain I can get them to twelve months

STRUCTURE - the option of

(A) a continuation of salary would be offered, which would mean you keep getting paid for a year, and you continue to receive benefits for one year

or

(B) you take a lump sum payment, which you will be taxed on (I could ask that this be set up as two sums - one would be lump sum (taxed on) and the other would be reimbursement of legal fees (not taxed) 0 this would still represent one year of salary, however you would end up with more in your pocket as it would be taxed less. In terms of benefits, they would have to go out and get third party benefits for you, which may not be exactly what you have now, for the duration of the agreed upon time; if they can get SunLife to agree to expand it would be the same, but if it's a third party, they would have to try to get it as close as you have right now.

**OFFER –** on top of that a \$5k education fund Total; that is important as it's part of what you have asked for in terms of changing your vocation; available for a period of two years to cover applications, tuition, books, residence – all fees associated with schooling would be approved to a max of \$5k.

**OFFER -** Wellness mental health fund available also at \$5k – for any treatment that you would otherwise get that is not covered by benefits – if they can't match out on the third party benefits – medication that would not otherwise be covered, would be included for coverage– also available for two years, submitting receipts. Right now you get \$4k annual – theory would be that if you do salary continuance (Option A) you would be locked in to that amount, but if lump sum, you may not get that total

**Resignation –** You are too young to retire, therefore, this would be a resignation; she can take the commuted value from OMERS and put that into a LIRA; depending on what her medical is, transporting OMERS disability pension;

Confidentiality clauses would apply to this settlement as well as to your overall ordeal (meaning no tell all books), and you would be required to withdraw your HRT0 application.

OMERS - On the issue of lump sum including OMERS contribution, to be honest, I am not totally versed on that. My understanding (and I just checked on their website), for lump sum severance payments, OMERS contributions must continue for the equivalent of the ESA notice period but the remainder of the severance payment is excluded from contributory earnings (<http://www.omers.com/pension/questions-and-answers.aspx>). That is why some people structure the deal as salary continuance with the resignation date at the end of the period or, will attribute some of the payment as reimbursement of legal fees (damages are unlikely something that they would agree to) so that that portion is tax free (almost like getting an additional 40 cents on the dollar), or directing some of the payments into RRSP's. OMERS would have to assist you with more specifics outside of this.

**NUMBERS -** To give you an idea, a First Class Constable makes \$8,056.52 a month ...or \$80,565.22 for ten months or for one year, \$96,678.26 – we would be in that envelope. The other two funds at \$10k total would place this offer over one year salary.

VS no severance and the PSA road, which I also asked about:

PSA ROAD – a lot will depend on your interview – Final interview does not help you they said, but did not outline specifics; they anticipate it will be a substantiated serious misconduct; doesn't know what they want from you in terms of penalty; he can't imagine they would be looking at demotion; clearly not dismissed; he would hope that unless something comes out of your interview that is

they would be looking at demotion, clearly not dismissal, he would hope that unless something comes out of your interview that is damaging, they would want hours from you

Please let me know what you think.

Pamela Machado,  
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Hi Pamela,

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Thanks,  
Kelly

On May 1, 2017, at 2:30 PM, Machado Law <[pamela@pmachadolaw.com](mailto:pamela@pmachadolaw.com)> wrote:

Hi Kelly.

I have instructions from the WRPS. Did you wish to discuss on the phone or do you prefer email? I am open to both at your convenience today or tomorrow.

Also, can you update me on your medicals?

Thank you

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**From:** Kelly Donovan donovandih@gmail.com  
**Subject:** Re: Touching Base  
**Date:** May 1, 2017 at 4:06 PM  
**To:** Pamela Machado pamela@pmachadolaw.com



I'm hoping to be back to work soon to give them an opportunity to "substantiate serious misconduct." That will be entertaining.

As for the offer... It all looks good and I appreciate you soliciting that on my behalf.

I'm not in a position right at this moment to make this decision, but I can tell you that I would not agree to any less than 1-year, paid in lump sum, I would not want the education or wellness funds, and I would not need benefits. I would withdraw my HRTTO complaint. However, I would not agree to a confidentiality clause.

So, maybe this is a moot point and I will just let this play out. I'll see what I can do about getting the forms.  
Kelly

On May 1, 2017, at 3:44 PM, Machado Law <pamela@pmachadolaw.com> wrote:

Ok Kelly, can you please send me an updated medical so I can forward it to PSS? They will require this if your position is to postpone the interview further.

This is their offer - I am sure you will want to discuss this, so if so, we can schedule a call. There is A LOT of information here.

#### **OFFER –**

TERM - they have offered ten months, however, I am certain I can get them to twelve months

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**Resignation –** You are too young to retire, therefore, this would be a resignation; she can take the commuted value from OMERS and put that into a LIRA; depending on what her medical is, transporting OMERS disability pension;

Confidentiality clauses would apply to this settlement as well as to your overall ordeal (meaning no tell all books), and you would be required to withdraw your HRTTO application.

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donary, or directing some of the payments into other funds. CMLN would have to assist you with more specifics outside of this.

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Thanks,  
Kelly

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Hi Kelly.

I have instructions from the WRPS. Did you wish to discuss on the phone or do you prefer email? I am open to both at your convenience today or tomorrow.

Also, can you update me on your medicals?

Thank you

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**From:** Kelly Donovan donovandih@gmail.com  
**Subject:** Re: Offer  
**Date:** May 5, 2017 at 1:07 PM  
**To:** Pamela Machado pamela@pmachadolaw.com



Hi Pamela,

Thinking about all of this is really causing me a lot of stress and anxiety, I really just want all of this to go away and to move on with my life.

Are you able to counter the offer of the WRPS with the following in hopes to resolve everything and allow me to move on with my life?

I would counter-offer the following:

- 1 year salary paid in a lump sum;
- No education or wellness funds;
- No benefits beyond the signing of the offer;
- Confidentiality on the amount of the settlement only, not a general confidentiality clause;
- I drop the HRT0 complaint and make no further HRT0/OCPC/OIPRD complaints

If you can get the WRPS to agree to the above I would sign and return all of my equipment/uniforms, etc and be able to move on with my life.

I am proposing the above based on what I know which is the following:

- I have a good case against the WRPS with my HRT0 complaint;
- It will be extremely difficult for the WRPS to substantiate serious misconduct at the OCPC level when I appeal a conviction, which would undoubtedly come after an internal prosecution;
- Justice Tulloch recently publicly encouraged whistleblower protection and impartial prosecution of officers by a public prosecutor;
- I am in a position to file a statement of claim against the WRPS for the manner in which they have treated me, and I would not do that if they agree to the above terms.

If the WRPS can put the above terms in writing, I am prepared to move on with my life outside of the WRPS.

Can you assist with this? I have really been feeling sick to my stomach recently (in addition to all of the other symptoms), over all of this.

Thank you,  
Kelly

On May 3, 2017, at 5:14 PM, Machado Law <pamela@pmachadolaw.com> wrote:

Thanks Kelly. That is great. I will relay this information to bill and he can reach out to them. I agree this should not be your burden unnecessarily.

Thank you

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*received this message in error, please notify us immediately and delete this message without reading, copying or distributing its contents to anyone.*

On May 3, 2017, at 5:10 PM, [donovandih@gmail.com](mailto:donovandih@gmail.com) wrote:

Pamela, I had asked the association to assist and VP Tim Reparone spoke to Heather Henning who said she would relay information to Professional Standards. I don't want to be charged with insubordination, but I also should not be compelled to disclose medical information directly to the service. I'll have to call my psychiatrist tomorrow because acclain said they have not yet received the last form, (although, with the last form he seemed to have issues with his fax machine).

I'll do what I can,  
Kelly

Sent from my iPhone

On May 3, 2017, at 2:44 PM, Machado Law <[pamela@pmachadolaw.com](mailto:pamela@pmachadolaw.com)> wrote:

Hi Kelly.

Bill Fisher emailed me just now asking for a status update regarding medicals. Can you get these to me by chance?

Thank you.

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**From:** Machado Law [pamela@pmachadolaw.com](mailto:pamela@pmachadolaw.com)   
**Subject:** Re: Offer  
**Date:** May 5, 2017 at 1:16 PM  
**To:** Kelly Donovan [donovandih@gmail.com](mailto:donovandih@gmail.com)

PM

I am happy to convey these terms. Questions: you do not require any benefits coverage beyond the signing of the offer? Also, what is your idea in terms of the willingness to sign a confidentiality agreement in relation to these terms but not an overall confidentiality clause?

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On May 3, 2017, at 5:10 PM, donovandih@gmail.com wrote:

Pamela, I had asked the association to assist and VP Tim Reparson spoke to Heather Henning who said she would relay information to Professional Standards. I don't want to be charged with insubordination, but I also should not be compelled to disclose medical information directly to the service. I'll have to call my psychiatrist tomorrow because acclaim said they have not yet received the last form, (although, with the last form he seemed to have issues with his fax machine).

I'll do what I can,  
Kelly

Sent from my iPhone

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Hi Kelly.

Bill Fisher emailed me just now asking for a status update regarding medicals. Can you get these to me by chance?

Thank you.

Pamela Machado  
Barrister & Solicitor

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

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**From:** Kelly Donovan donovandih@gmail.com  
**Subject:** Re: Offer  
**Date:** May 5, 2017 at 1:20 PM  
**To:** Pamela Machado pamela@pmachadolaw.com



I do not want to have any connection to the WRPS whatsoever beyond my resignation. I don't want to know that I would have to submit receipts to them, or answer to them in any way. I have done some research and I understand why the amount of the settlement is beneficial to be kept secret, but I do not feel that anything else should be hidden. Should I choose to disclose to my next employer what happened with the WRPS, I do not want to live in fear that the WRPS will press civil action. I know they did that with David Flynn, and I want nothing to do with that. Otherwise, I will simply stay employed by them, and wait all of this out. Let it play its course, and certain things will become public whether they want them to or not.

Does that make sense?

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Are you able to counter the offer of the WRPS with the following in hopes to resolve everything and allow me to move on with my life?

I would counter-offer the following:

- 1 year salary paid in a lump sum;
- No education or wellness funds;
- No benefits beyond the signing of the offer;
- Confidentiality on the amount of the settlement only, not a general confidentiality clause;

- I drop the HRT0 complaint and make no further HRT0/OCPC/OIPRD complaints

If you can get the WRPS to agree to the above I would sign and return all of my equipment/uniforms, etc and be able to move on with my life.

I am proposing the above based on what I know which is the following:

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**From:** Machado Law [pamela@pmachadolaw.com](mailto:pamela@pmachadolaw.com)   
**Subject:** Re: Offer  
**Date:** May 5, 2017 at 1:22 PM  
**To:** Kelly Donovan [donovandih@gmail.com](mailto:donovandih@gmail.com)

PM

yes it does, I will submit your counter offer and advise as soon as I hear, which I anticipate is next week.

You are a warrior Kelly, don't forget this. We will get this resolved one way or the other, and you are not alone. I am here for you every single step of the way for whatever you need. Just reach out.

I will update you as soon as I hear.

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

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**From:** donovandih@gmail.com  
**Subject:** Re: Reply from WRPS  
**Date:** May 8, 2017 at 7:29 PM  
**To:** Machado Law [pamela@pmachadolaw.com](mailto: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](mailto:pamela@pmachadolaw.com)> wrote:

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1 877 823

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**Subject:** Re: Reply from WRPS  
**Date:** May 8, 2017 at 7:34 PM  
**To:** [donovandih@gmail.com](mailto: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 HRT0 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,  
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**From:** Machado Law [pamela@pmachadolaw.com](mailto:pamela@pmachadolaw.com)   
**Subject:** Settlement  
**Date:** May 9, 2017 at 5:40 PM  
**To:** [donovandih@gmail.com](mailto: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 25<sup>th</sup>](#), a Sunday for the purposes of the pay period so you can use your holiday and/or stat time effective [June 9<sup>th</sup>](#) 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.

Pamela Machado  
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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](mailto:pamela@pmachadolaw.com)   
**Subject:** Re: Agreement  
**Date:** May 15, 2017 at 5:44 PM  
**To:** Kelly Donovan [donovandih@gmail.com](mailto: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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Can you please clarify?  
Kelly



**From:** Machado Law [pamela@pmachadolaw.com](mailto:pamela@pmachadolaw.com)   
**Subject:** Update  
**Date:** June 2, 2017 at 4:28 PM  
**To:** [donovandih@gmail.com](mailto: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 7<sup>th</sup>](#) (or such date that you and Don extend), our offer will be removed from the table and we will simply 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.

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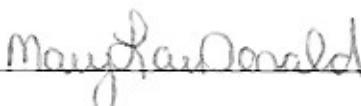
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This is **Exhibit "G"** referred to in the affidavit of Kelly Lynn Donovan  
sworn on September 12, 2018.

  
\_\_\_\_\_  
Commissioner for Taking Affidavits

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

**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@oapssb.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@gspss.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

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](http://www.fit4duty.ca)



Report\_v13.pdf



**REPORT OF SYSTEMIC MISFEASANCE IN ONTARIO POLICING  
AND THE COORDINATED SUPPRESSION OF WHISTLEBLOWERS**

BY

KELLY DONOVAN

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## EXECUTIVE SUMMARY

This report of systemic misfeasance in Ontario policing and coordinated suppression of whistleblowers was prepared to give a voice to the thousands of police officers across the country who have fallen victim to legislation that disproportionately empowers those who have risen through the ranks and allows transparency to be subjective and perfunctory promises of accountability.

This report will provide insight into current legislation governing municipal police officers in Ontario and point out deficiencies. As government officials prepare revisions to legislation it is imperative that all stakeholders are heard.

The Royal Canadian Mounted Police (RCMP) have received plenty of media attention recently with reports released by the Civilian Review and Complaints Commission for the RCMP<sup>1</sup>. What has been pointed out by people like Lesley Bikos, ex-police officer and current PhD student, is that the culture is no different at other Canadian and Ontario municipal police services.<sup>2</sup> As the RCMP Workplace Harassment report points out, over the past decades there has been no shortage of reports, internal and external reviews, studies and surveys examining the RCMP and making recommendations for organizational reform.<sup>3</sup> Despite the time, energy, and expertise that has been dedicated to resolving these problem, the RCMP and its senior leaders are resistant to meaningful change.<sup>4</sup> Even more recently, a class action lawsuit was filed against the Waterloo Regional Police Service for gender discrimination, sexual harassment and sexual assault. As much as the police chief denies the allegations and the legitimacy of the suit itself, one of the plaintiffs was a Superintendent up until April, 2017, and has publicly stated that while he was in charge of the human resources department he raised many of those same issues and was ignored.<sup>5</sup> According to the Waterloo Regional Police Service, they take these allegations seriously. The service claims to have progressive policies, procedures and training to ensure that any such allegations are dealt with in accordance with the law.<sup>6</sup> Who is the public supposed to trust?

There have also been media campaigns by police services promoting their progressive mental health policies, which they say are in the interests of their members and promoting healthy workplaces. The Waterloo Regional Police Service recently promoted their Post-Traumatic Stress Disorder (PTSD) Prevention Plan, (something all police services in Ontario were required to submit), in the Waterloo Record<sup>7</sup>. Part of this plan is to provide outreach to its members who are away from work “due to positive or challenging

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<sup>1</sup> <https://www.crc-cetp.gc.ca/en/newsroom/crc-releases-report-workplace-harassment-rmp>

<sup>2</sup> “It’s not just the RCMP: Police culture is toxic,” Lesley Bikos, Contributed to the Globe and Mail, May 17, 2017.

<sup>3</sup> Ibid. note 1.

<sup>4</sup> Ibid. note 1.

<sup>5</sup> <http://kitchener.ctvnews.ca/lawsuit-launched-against-wrps-over-sexual-assault-harassment-discrimination-1.3439341>

<sup>6</sup> <http://www.wrps.on.ca/news/wrps-police-services-board-and-wrpa-respond-class-action-suit>

<sup>7</sup> “Waterloo police’s PTSD prevention plan focuses on education and early intervention,” by Samantha Beattie, Waterloo Chronicle, July 6, 2017.



circumstances.”<sup>8</sup> Services, such as the Waterloo Regional Police, never disclose how often officers who are off work on the advice of their doctors are often forced back to work, or that in some cases of PTSD the symptoms are brought on by operational stress caused by management. Even when the Workplace Safety and Insurance Board (WSIB) approves a claim for PTSD, the police service will pay lawyers to appeal that decision. What appears to be a supportive and healthy environment on the surface is in some cases highly toxic and in contributing to the deterioration of some police officer’s mental health.

It has long been understood that the culture in policing needs to evolve to accommodate expectations of not only the public but also the changing demographic enlisting in policing. Improving diversity in policing is not only about recruiting talent it is also about retaining it. Police services have a responsibility to be representative of their communities and yet consistently struggle with meeting this objective; specifically, with retaining female police officers.

Case studies presented herein are derived from public documents and represent the mere tip of the iceberg of the collateral damage that has occurred in policing across Ontario and even Canada.

This report would not have had to be prepared if legislation allowed for true transparency and accountability. When legislation undergoes changes, it is necessary in the interest of the public that the issues identified in this report be addressed to improve fiscal and ethical responsibilities of police services.

While we wait for legislative changes, there is Fit4Duty™. To show your shareholders, the public, and your employees that integrity, accountability and transparency are important to you and your organization, you can contact Fit4Duty™ to start building your anti-corruption programme. Fit4Duty™ will heighten your Ethical Standard™.

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<sup>8</sup> *Supra* note 7.

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## INTRODUCTION

Policing has undergone some major changes in recent years and even more change looms on the horizon. Public pressure is building for police leaders to live up to their promises of transparency and accountability.

In order to maintain transparency and accountability to all communities of Ontario, Acts and Regulations governing police services need to be clear and concise, with no room for interpretation or inconsistency. For the public to trust the judicial system, the system has to treat all participants the same; the public and police alike. The Acts and Regulations need to make **every** police officer accountable upon taking their oath of office as well as giving protection to officers from what can be best described currently as a culture of internal bullying. Changes to legislation are required to ensure that protections are built into the legislation to make the complaint procedure and disciplinary action against officers fair, impartial and expedient. By doing this, police officers have trust in the process, the public have trust in the police, and officers do not live in fear of arbitrary prosecution that can last for years and cost taxpayers across the province millions of dollars. Preventing this would make police services more accountable to the taxpayer and would allow more of police services' budgets to be allocated for use in everyday policing rather than wasting it in legal matters.

The level of supremacy afforded to Ontario's chiefs of police under the current Police Services Act, R.S.O. 1990, c. P.15 (hereafter known as the PSA), places an exorbitant amount of trust in the personal integrity of the chief since there are no legislated mechanisms in place for complaints to be made regarding the conduct of the chief from his or her subordinates within the same service and the chief has full control over what information is publicly released. It is the responsibility of the Police Services Board to monitor the performance of the chief of police and yet all communication from the service to the Board is channeled through the chief for approval.

Despite the recent attention given to civilian oversight of police there have been statutes in place for years that not only allow for complaints from members of the public but also allow for escalation of disputes arising from the disposition of a complaint. The public complaint process needs to be more accountable and transparent to the public, but at this point only fine tuning is required. Justice Michael Tulloch's report, released to the public on April 6, 2017<sup>9</sup>, addressed many of the public and the police communities' concerns. However, since every police officer in Ontario has sworn an oath of secrecy, the internal dealings of police services have been protected. A large majority of police officers have been exposed to some form of unethical or corrupt behaviour within their police service and have not reported the behaviour for fear of reprisal. A very small number of police officers have chosen to report the behaviour and have been forced out of the profession.

A portion of this report focuses on police whistleblowers and the desire of police leaders to 'shoot the messenger' rather than face the underlying issues. There are also many

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<sup>9</sup> The Report of the Independent Police Oversight Review, The Honourable Michael H. Tulloch, 2017.

cases of misfeasance to intimidate, bully and harass employees who have filed Human Rights or workplace harassment complaints or have simply fallen out of favour.

Ultimately, the chief of police has full discretion to decide which police officers to prosecute, and which police officers not to prosecute. In addition to work-related discipline matters, a chief of police can also choose to criminally investigate and charge a police officer. The cases cited here suggest that these decisions are not made consistently or according to the principles of justice.

In addition to Tulloch's recommendations to improve transparency and accountability of the public complaints process, there need to be legislative changes that favour transparency and equal treatment of all people. Most of the cases referenced in this report are derived from legal documents and published media and all are sourced throughout. Here in Canada officers have been subjected to searches of their residences and wiretaps of their personal phones – not because they were the subject of serious criminal investigations, but because they reported corruption or filed harassment complaints against superior officers. It's no surprise to politicians that police business is expensive. As one Toronto City Councillor put it, the \$1 billion Toronto Police Service budget is "out of control."<sup>10</sup> However, when taxpayers learn that police services are directing resources to handle personal vendettas as opposed to community directed crime prevention and enforcement initiatives, the public must demand more transparency and internal oversight. If change does not come for ethical reasons; then change should absolutely come for financial reasons.

The problems identified in this report are not isolated to Ontario; they are happening all over the Country. Police officers are not provided an impartial judicial process and are investigated by officers who are promoted if the outcome is favourable to their superiors or whose careers are stalled if the outcome is not favourable. What results are cases that may not have resulted in any charge at all against a civilian, are turned into homicide-scale investigations costing the taxpayers hundreds of thousands of dollars. In the rare cases when the officer has the means of seeing a criminal trial through to acquittal, there are law suits settled in silence by police services. This report does not suggest that there won't be times when a police officer must be investigated for serious misconduct or criminal behaviour, only that all people of Ontario must be measured by the same scale of justice, tried by the same impartial body and not receive any inherent protections due to profession or rank.

This is also not a problem faced only by police services. As is illustrated in the case studies contained herein, neither the Ontario Civilian Police Commission, Office of the Independent Police Review Director nor the Ministry are willing to truly address the intertwined and unilateral hierarchy that exists in the justice system. Even when an officer can afford to defend their case all the way to Divisional Court and challenge the apparently biased decisions made by the involved organizations, decisions are always made in the interest of preserving trust in the judicial system. Historically, there has been a reluctance

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<sup>10</sup> "Council passes 2016 budget with 1.3% property tax hike," CBC News, February 17, 2016.

by the courts to admit, or even investigate, the possibility of misfeasance in police administration.

Aside from the financial impact of this misfeasance, why should this issue be of public concern?

The public depend on police officers to show up for work every day, mentally and physically fit for duty. More attention is being paid to first responders suffering from PTSD due to the nature of their jobs. What the public do not know is that at times it is the operational stress an officer is facing that causes them to deal with PTSD symptoms. In some cases, the internal issues created by management can leave effects that last far longer than the difficult calls for service. Denise Revine worked as a civilian for the RCMP for 33 years and experienced PTSD after blowing the whistle on the RCMP pension scandal, see page 78. The number of officers off on sick-leave is not a figure that is regularly reported to the public, yet those numbers are staggering and continue to increase. If more and more officers are coming off the road for mental health reasons, and some of that is attributable to operational stress caused by misfeasance, then this absolutely becomes a matter of public concern.

What makes matters worse and another way the system is failing police officers is the lack of support from police associations. When a police officer has a complaint about another officer or a malignancy within their service, their only option is to file a grievance. However, if that grievance involves the conduct of other members of the same association they lose the support of the association who does not want to be seen as assisting a complaint against one of their own. This renders the association redundant for that police officer who is trying to do the right thing. Without the support of their association (as Inspector Steven Patrick Dolan of the Peel Regional Police learned), the officer can no longer proceed with their grievance and becomes the black sheep, see page 72. Despite this fact, the Waterloo Regional Police Service recently responded to allegations of systemic and institutional gender-based discrimination and harassment, sexual harassment and sexual assault made in a class action lawsuit by stating that the "Police Services Act provides for a grievance/arbitration system pursuant to the collective agreement and would have been the appropriate means to deal with the allegations."<sup>11</sup> Any reader can conclude that, since the officers' association is named in the class action lawsuit, there must be more than a shred of evidence that the association did not support these women when their issues came to light.

For the most part, these 93 pages will introduce you to the brave men and women who have done nothing but try to do their jobs to the best of their abilities and were simply unwilling to turn a blind eye or participate in the abuses of power that have occurred in policing for years. Unfortunately for the public, most of them have since left the profession.

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<sup>11</sup> WRPS, Police Services Board and WRPS Respond to Class Action Suit, Media Release, June 1, 2017.

Almost all of the issues discussed in this report could have been prevented with better internal oversight by police services boards and transparency to the public. The report concludes with recommendations to improve transparency and accountability.

It's a mad world when a person is too ethical to stay a police officer.

Acronyms used throughout this report:

OIPRD – Office of the Independent Police Review Director

OCPC – Ontario Civilian Police Commission

SIU – Special Investigations Unit

## AUTHOR AND ACKNOWLEDGEMENTS

In 2008, I was working as a banker when I witnessed collusion by police officers in the handling of allegations against one of their own. I've always believed that police officers need to be objective and maintain the highest level of integrity because of the responsibility entrusted to them by society. After all of the experiences I have had in life and all of the difficult lessons I have learned, I knew I would make a good cop. I believed the best way to change the culture in policing was from within. In 2010, I became a police officer.



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 OIPRD 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 and 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.

In the 1970's, widespread corruption was uncovered in the New York Police Department, much to the credit of whistleblowers. Had it not been for those brave few officers who spoke up, internal issues would not have been exposed.

I spoke with Justice Michael Tulloch regarding my case and the systemic issues I uncovered and was extremely pleased to see that many of them were transformed into recommendations in his final report. Although, historically, report recommendations have not entirely been adopted into legislation. After a year of constructive dismissal, and more



recently a medical leave from work due to stress and PTSD resulting from a shooting incident while I was a recruit at the police college, I have come to the difficult conclusion that my attempts to affect change from within have been in vain. I have chosen to leave the policing profession in order to provide my services directly to police services boards, other government agencies and corporations. I know firsthand what a police officer stands to lose when they choose integrity over loyalty, and I will do everything in my power to ensure that both become synonymous.

Despite advice I received from my supervisors, lawyers, colleagues and even family that this is “just the way policing is, and always has been” I am unable to turn a blind eye to the misfeasance and I am determined to change the culture, improve accountability and ensure that policing continues to recruit and retain the best of the best. I still believe that policing can be one of the best careers out there. In my short policing career of only 6 years I 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. I also saw women be promoted and yet do nothing from their positions of power to improve the system for those beneath them.

I conducted extensive research, outside of my employment as a police officer, and located public documents detailing the history of the differential treatment of police officers and inefficiencies and inadequacies in the apparent oversight bodies.

Justice Tulloch has recognized the need to have training provided to police services boards from an independent and impartial source, as well as a whistleblower program for those reporting misconduct.

For this reason, I created **Fit4Duty™** which will become **The Ethical Standard™** for police services boards and corporations when it comes to transparency, accountability, training, ethics and community mobilization. **Fit4Duty™** will also provide an independent whistleblower program to police services, government agencies and private corporations. What differentiates the **Fit4Duty™** whistleblower program from any other program is that we will not only collect the anonymous reports from your employees, we will also investigate the allegations to attempt to substantiate them. If these reports were sent back to employees paid by the organization to investigate (which occurs in most whistleblower programs), then there is little impartiality and the integrity of the entire system is compromised.

Over 2017 and 2018, I will tour the province of Ontario making presentations to police services boards and offering my services which will include; speaking engagements, training, policy development and evaluation, community outreach, quality assurance and whistleblower programs. Through **Fit4Duty™** I will train police services board members to be knowledgeable and effective and raise the standard of police governance and community mobilization. To me, having integrity is always doing what's right even when no one is watching. I believe that by exposing the issues in this report, police services board members will better understand the importance of internal oversight. By taking initiative to address these issues the Board will regain the trust of police officers and

taxpayers. This is a crucial time for legislative changes, and it is equally important that legislators understand the ongoing cost of inadequate oversight in policing.

As stated multiple times throughout this report, police officers are often prosecuted for discussing any police issues with anyone outside of the police service. As such, I will not name those police officers who have given me moral support and encouragement throughout this process; you know who you are. I do not represent any police service or association and none of the information in this report was obtained using police resources. Despite this fact, I fully expect there to be a smear campaign against my new initiative and to be harassed by certain members of police services for having released this report. My hope is that attempts to discredit me as I move into a new career will fall on deaf ears.

I dedicate this report to the memory of my mother who, before her death in 2004, encouraged me to always stand up for myself and what I believe.

Kelly Donovan  
www.fit4duty.ca - The Ethical Standard™

I modified a quote from Chris Kyle's autobiography (American Sniper)  
to what I believe is accurate for policing:

*Police officers are the sheepdogs of the world,  
sent to protect the sheep from the wolves,  
but they do not reach the top by being sheepdogs.  
They must be capable of being the wolf.*



*The Runaway, 1958*

## PREFACE

It is not for the leaders of police services that men and women continue to be committed to the profession and protect you and I. It is the passion one has to serve his or her community and that is not challenged in this report. There are thousands of outstanding police officers across Ontario whose conduct is not addressed in this report as it does not need to be. It is their dedication and commitment that is keeping this ship afloat.

# CHAPTER 1: POLICING THE POLICE

## CONSTITUTIONALITY OF THE PSA

Police officers hold the power to deprive persons of their fundamental rights and charge them according to law. When a police officer abuses their authority against a member of the public, there are several checks and balances, in the form of civilian agencies, to adjudicate the lawfulness of the officer's conduct. The public have several avenues to lodge a complaint against the police. Those avenues are discussed and illustrated, starting on page 19.

In the case of the arrest, detention and charging of a police officer, there are no means of independent oversight. Police officers have historically been denied their right to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal.<sup>12</sup> Arguments have been made on many occasions that the PSA violates fundamental rights of police officers and the courts have successfully defeated those arguments by relying on the integrity and objectivity of the chief of police, (or designate). When a police officer is charged by their chief of police, for a PSA offence, it is the chief who chooses the prosecutor and judge (hearing officer). It has been said that this process has been used to rid the force of officers who are unsuitable.

The courts have never recognized the inherent bias that exists when the person in charge of the proceeding has an interest in the protection of the reputation of themselves and their institution. If there was no bias in the current PSA, then hearing officers hired by police services who acquit officers would be selected to oversee just as many proceedings as those who convict officers. There have been no studies to examine this statistic and the suggestion is that by affording chiefs of police this discretion, certain hearing officers are not as popular as others.

The objectivity of the PSA proceeding process has been compared to that of surgeons and physicians. However, the courts have failed to address one major difference. When a doctor is tried before a tribunal of the College of Physicians and Surgeons they have the ability to appeal disciplinary decisions to Divisional Court<sup>13</sup>. This system allows a doctor the opportunity to be tried before a body that is independent of their profession, their appeal is adjudicated in the judicial system. From the time a police officer is accused of an offence to their highest possible level of appeal, all of the participants in the process are members of the judicial system; a police officer is never given the opportunity to have their case heard by a member of the medical profession, as an example. Each participant in the process has a vested interest in the preservation of the reputation of the judicial system and as such there is no way to tell if decisions are made impartially, or to protect that reputation.

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<sup>12</sup> *Constitution Act, 1982, Section 11(d).*

<sup>13</sup> *Regulated Health Professionals Act, 1991, S.O. 1991, c. 18, section 70(1).*

In 2012, Canadian whistleblower Edgar Schmidt, former general counsel in the Legislative Services Branch of the Department of Justice, served his own Ministry with a statement of claim for acting unlawfully by failing to properly review the constitutionality of draft legislation. Schmidt alleges that he had been responsible for ensuring, through pre-enactment examinations, that new legislation conformed to the Bill of rights. Schmidt alleges that what had been happening is that the burden of disciplining state law-making has virtually entirely been up to the citizen.<sup>14</sup>

Schmidt's whistleblowing becomes relevant because it uncovers questions regarding what provisions were in place when the Police Services Act came before the House of Commons. Did the first Police Services Act have to be "manifestly" inconsistent with the Charter or Bill of Rights? Or, did it have to be "likely or even almost certainly" inconsistent with the Charter in order to be declared not constitutionally compliant? Before any level of court considers an argument for or against the constitutionality of the Police Services Act, Schmidt's allegation that the Attorney General may not have acted lawfully by failing to properly review the constitutionality of the draft legislation prior to enactment should be addressed. Schmidt's case is scheduled to be heard in 2017.

Schmidt, like many other whistleblowers contained in this report, was suspended without pay the day after he brought about his lawsuit against the Ministry. Because Schmidt is not a police officer his case is not detailed in the Whistleblower section of this report.

*"There is a valuable role for the state but I think citizens need to be vigilant and be aware that the institutions that they create, particularly the state institutions that they create, sometimes abuse the powers that are entrusted to them."*

- Edgar Schmidt<sup>15</sup>

## **HISTORY OF COMPLAINTS SYSTEM**

Without detailing the full extent of the history of the handling of complaints against the police, I will highlight the history since 1990 when the Police Services Act<sup>16</sup> was passed. Over the next 15 years many reports and reviews were conducted to examine the human rights issues and overall effectiveness of the current complaints process.

Even as far back as 1992, the issue of the handling of internal complaints of misconduct has been debated. The mandate of the 1992 Report by the Ontario Civilian Commission on Police Services was:

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<sup>14</sup> "The whistleblower," Roderick MacDonell, Canadian Bar Association National, November-December, 2013.

<sup>15</sup> *Supra* note 14.

<sup>16</sup> *S.O. 1990, c.10.*

*“...to examine the administration of the Metropolitan Toronto Police Force as it relates to internal investigations into allegations of wrongdoing by members of the force.”<sup>17</sup>*

The Inquiry panel considered whether the management, supervision and enforcement of policies and procedures for handling alleged wrongdoing by officers of the Metropolitan Toronto Police Force were adequate in light of the need for:

- accountability to the community;
- vigilance in the maintenance of high standards of professionalism and integrity of policing;
- fairness in the exercise of authority; and
- openness to public scrutiny.

The Inquiry revealed serious mismanagement on the part of the Metropolitan Toronto Police Force in the handling of alleged misconduct by members of the force. The evidence put before the Inquiry revealed that (*excerpt*):

- In an effort to rid the force of an officer who was considered unsuitable, expediency has taken precedence over principle.
- Accountability for police discipline and civilian review has been compromised.

The role of Internal Affairs is crucial in maintaining public trust in the police. An excerpt from the American Law Enforcement Accreditation Manual states:

*“The internal affairs function is important for the maintenance of professional conduct in a law enforcement agency. The integrity of the agency depends on the personal integrity and discipline of each employee. To a large degree, the public image of the agency is determined by the quality of the internal affairs function in responding to allegations of misconduct against the agency or its employees.”<sup>18</sup>*

The primary aim of the Report was to prevent a recurrence of the mismanagement revealed by the evidence given to the Inquiry. The inquiry made 24 recommendations to the Metropolitan Toronto Police Services Board, Chief and Solicitor General of Ontario. Recommendation 23 reads:

*“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.”*

It is unknown if the recommendations of the Inquiry were implemented at Metropolitan Toronto Police Services (now Toronto Police Service), or elsewhere.

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<sup>17</sup> Report on an inquiry into administration of internal investigations by the Metropolitan Toronto Police Force, The Ontario Civilian Commission on Police Services, August 1992.

<sup>18</sup> *Supra* Note 17.

In 1996, Rod McLeod, Q.C., was asked to review civilian oversight of police in Ontario. Shortly after the McLeod report was released came Bill 105; Part VI of the PSA was repealed by Bill 105, *An Act to renew the partnership between the Province, Municipalities and the Police and to enhance community safety*.<sup>19</sup> However, the numbering of other Parts of the Act remains unchanged.

In August, 2002, the City of Toronto's Auditor issued a performance audit of the handling of complaints by the Toronto Police Service. The audit indicated a concern for the lack of independence in the investigative process, stating:

*"The lack of an investigative process independent of the police is regarded as a significant impediment in regard to public confidence in the system."*<sup>20</sup>

It was in 2004 that the Honourable Patrick J. LeSage was mandated by the Ontario Government to advise on the development of a model for resolving public complaints about the police, to ensure that the system is fair, effective and transparent. The current structure became what it is now based on the recommendations included in the LeSage Report released in 2005.<sup>21</sup>

The Standing Committee on Justice Policy held public sessions in 2007 to discuss proposed changes to the PSA, Bill 103, (*the Independent Police Review Act*). The late Mr. Peter Kormos, NDP MP Niagara Centre, a member of the Standing Committee on Justice Policy at the time, expressed concerns over the lack of oversight of the oversight bodies themselves. Despite Kormos' concerns, echoed by many who attended the public sessions on January 30, 2007, and January 31, 2007, section 97 remained in the proposed Bill 103, which states:

PSA, s. 97. The *Ombudsman Act* does not apply to anything done under this Part. 2007, c. 5, s. 10. (Regarding Part V).

Kormos had also expressed concern regarding the prohibition of a police officer from making a complaint against another member of the same service in the public debate held on January 30, 2007. Kormos asked:

*"Why can't a police officer complain to the director about the conduct of another police officer in that same service?... Why would you bar that officer access to the independent director, the arm's-length director? If a police officer has concern about, let's say, a malignancy within his own police service, surely the independent arm's-length director is a suitable destination for that concern if, in fact, the concern is about a malignancy that could well interfere with, impede or obstruct that police*

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<sup>19</sup> 1st Sess., 36th Leg., Ontario, 1997 (assented to June 26, S.O. 1997, c.8) [hereinafter Bill 105]

<sup>20</sup> <https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/LeSage/>

<sup>21</sup> *Supra* note 20.

*officer's complaint.*"<sup>22</sup>

Mr. Graham Boswell, counsel, policy division for the Ministry of the Attorney General (at the time), responded by stating that the OPP was pursuing whistleblower protection and other municipal police services would have policy to address internal complaints.<sup>23</sup> However, it has never been a requirement for police services in to develop and maintain policy of accepting internal complaints. Therefore, if a police service chooses to exclude members of the service from being a complainant of internal misconduct, current legislation would allow the complaint to be suppressed, and some have. Without a legislated process by which a police officer can make a complaint and ensure the complaint is adequately addressed, there will continue to be differential treatment of cases of internal misconduct.

Since the changes to legislation that were intended to improve public confidence in policing, we have not seen a significant change. Canadians were 79% confident in police in 2000<sup>24</sup>, and 76% of Canadians had either a great deal or some confidence in the police in 2013.<sup>25</sup>

In 2016, the Honourable Justice Michael Tulloch was tasked with conducting a review of oversight of police in Ontario. Contained in the Order of Council, approved on October 19, 2016, and of particular interest is the following excerpt:

**"Mandate**

1. The Independent Reviewer shall conduct a review and make recommendations on how to:
  - a. Enhance the transparency and accountability of the police oversight bodies, while preserving fundamental rights;"<sup>26</sup>

The report was released to the public on April 6, 2017, and is detailed on page 26.

Unfortunately, Justice Tulloch was not tasked to review the transparency and accountability of police services themselves, only the oversight bodies.

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<sup>22</sup> Legislative Assembly of Ontario, Second Session, 38<sup>th</sup> Parliament, Official Report of Debates (Hansard), Tuesday 30 January, 2007, Standing committee on justice policy, Independent Police Review Act, 2007.

<sup>23</sup> *Supra* note 22.

<sup>24</sup> Research Brief – Public Confidence in the Police in Canada, 1981-2000: Evidence from the World Values Survey, Tamara Candido, Senior Analyst Strategic Policy and Planning Branch, Royal Canadian Mounted Police.

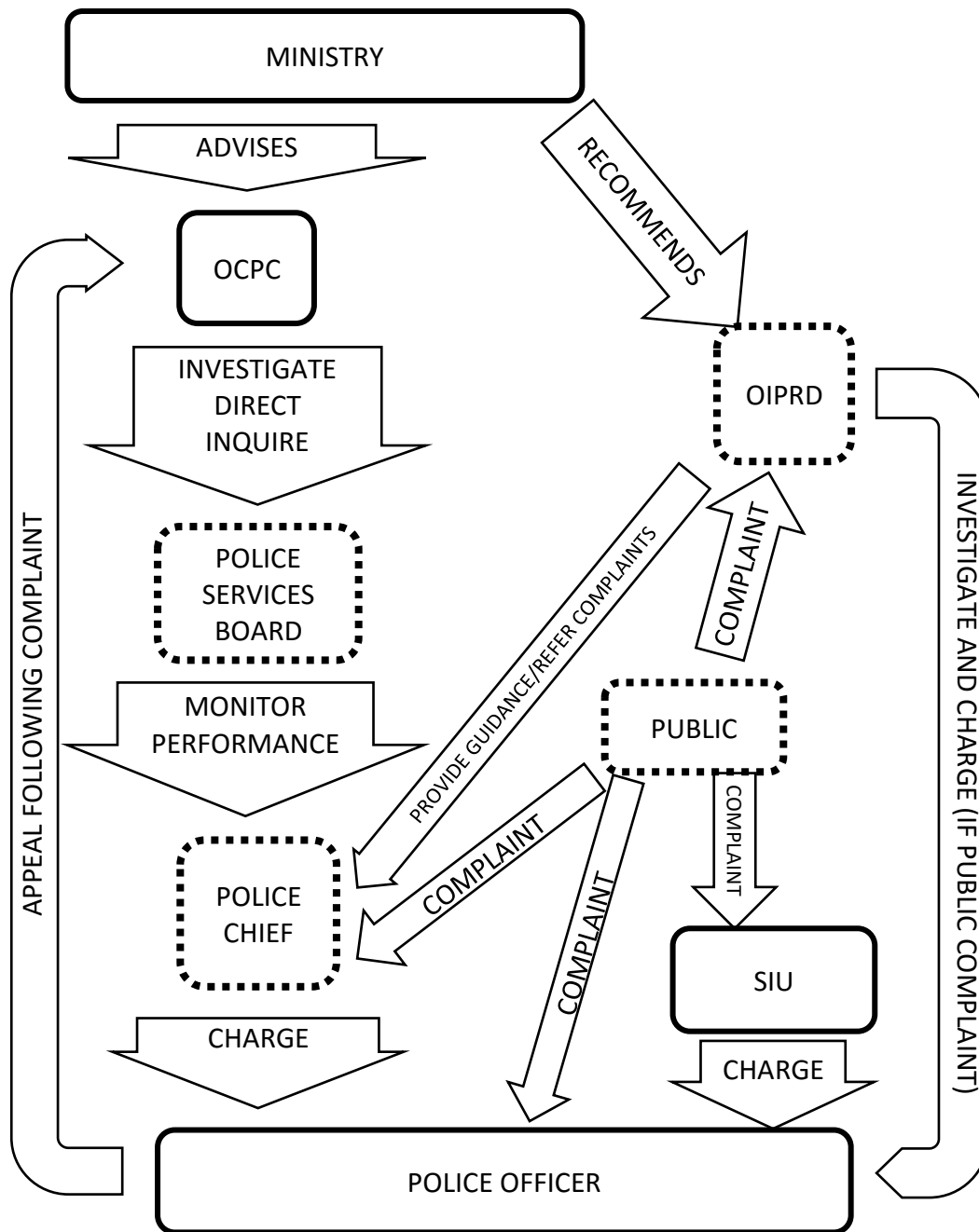
<sup>25</sup> Spotlight on Canadians: Results from the General Social Survey Public confidence in Canadian institutions, Adam Cotter, StatsCan.

<sup>26</sup> <http://www.policeoversightreview.ca/orderincouncil.pdf>



## CURRENT LEGISLATIVE STRUCTURE

(Regarding oversight of police officer conduct)



 = Eligible to make a complaint against an officer under Part V, Police Services Act

**Figure 1:** The above graphic aims at illustrating that the only avenue available to a police officer to escalate a concern is the OCPC, and only after a disciplinary decision. The public have the most opportunity to complain about police and the police can be charged by many involved parties.

## WHO CAN COMPLAIN?

Depending on where the complaint originates, there are either several or very few ways to complain about the police in Ontario. As illustrated in the previous page's diagram, the agencies with the most independence are the Office of the Independent Police Review Director (OIPRD) and the Special Investigations Unit (SIU). As noted in this section, police officers do not have access to the OIPRD, unless their complaint relates to the conduct of a police officer from another police service, and even then, complaints can be refused by the OIPRD.

The public have always depended on civilian oversight to ensure that complaints about the police are investigated objectively and transparently. The public want to know that if it is alleged that a police officer has behaved egregiously, they will be held accountable, regardless of their fraternity. Current legislation only requires transparency of the handling of a complaint if it originates with a member of the public. The next section will discuss specific deficiencies in legislation.

### Public:

A member of the public has the broadest range of options to make a complaint against the police. In addition to making a complaint, a member of the public is protected against harassment, coercion or intimidation as a result of having filed a complaint,<sup>27</sup> and has legislated ability to escalate a refusal to investigate a complaint. A member of the public can complain in the following ways:

- directly to a police officer, including the Chief of police;
- to the OIPRD;
- to the OCPC, if it relates to the disposition of a complaint under Part V of the PSA;
- to the SIU

### Police Officer:

A police officer has very limited means of making a complaint against the police. A police officer has no legislated protection against harassment, coercion or intimidation and no means of appealing decisions made by the police service in relation to a complaint. A police officer can complain in the following ways:

- to the OIPRD if the complaint relates to the conduct of a police officer at a different police service, and even then, the OIPRD can refuse to investigate
- as permitted, based on their service's policy

### Chief of Police:

Chiefs of police have the authority to make a complaint about the conduct of a police officer employed by his or her service, other than the deputy chief. In addition to this blanket authority, a chief of police can also make a complaint:

- to the OCPC, if it relates to the disposition of complaint under Part V of the PSA;
- to the SIU

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<sup>27</sup> Police Services Act, R.S.O. 1990, c. P.15, Section 79(1).

#### Police Services Board:

The Police Services Board (PSB) is made up of typically the head of the municipal council, one (or more) person(s) appointed by the council and one (or more) person(s) appointed by the Lieutenant Governor. The composition of a PSB depends on the size of the municipality and is laid out in legislation. A judge, justice of the peace, police officer and a person who practices criminal law as a defence counsel are ineligible to be members of a board. The Police Services Board can:

- choose to initiate an investigation into the conduct of the chief of police or deputy chief of police
- request the OCPC investigate the conduct of a police officer, a chief of police or member of the Board

#### OIPRD:

The Review Director is appointed to provide civilian oversight of the complaints process. The Director cannot be a current or former police officer, although investigators for the OIPRD can be former police officers. In addition to the Review Director having the authority to initiate its own investigation into the conduct of a police officer, the Review Director:

- can request the OCPC investigate the conduct of a police officer, a chief of police or member of the Board
- must refer complaints regarding the conduct of the chief of police or deputy chief of police to the Board for investigation

#### OCPC:

Members of the OCPC are appointed by the Lieutenant Governor in Council. The Commission can, on its own motion, investigate the conduct of a police officer, a chief of police or member of the Board.

#### Ministry of Community Safety and Correctional Services:

The Minister can, on its own motion, request the OCPC investigate the conduct of a police officer, a chief of police or member of the Board.

## DEFICIENCIES IN LEGISLATION

With regard to complaints of misconduct of a police officer, including the Chief of police, below are some deficiencies in legislation that restrict transparency and accountability. For excerpts from the PSA regarding the responsibilities, duties and powers of the agencies below, see Chapter 5 (page 89).

### **Ministry of Community Safety and Correctional Services**

No legislated accountability (under PSA):

- Does not require police services to maintain policy on ethics
- Does not specify how police services are to conduct internal investigations
- Does not require police services to maintain policy on internal complaints
- Does not specify what information must be made public by the police service
- Will not investigate or conduct inquiries from public or police officer complaints, will only conduct inquiries or investigations on its own motion<sup>28</sup>

### **Ontario Civilian Police Commission**

No legislated accountability:

- Ombudsman Act does not apply to complaint proceedings under PSA
- Will not investigate or conduct inquiries from public or police officer complaints, will only conduct inquiries or investigations on its own motion<sup>29</sup>
- Does not have its own standard of ethics
- Does not define conflict of interest

No appeal process:

- Must request Judicial Review at Divisional Court

### **Office of The Independent Police Review Director**

No legislated accountability:

- Ombudsman Act does not apply to complaint proceedings under PSA
- No change in accountability whether Director takes on investigation or refers it back to the subject police service of the initial complaint
- Does not conduct investigations into conduct of chief of police or deputy chief of police
- No standard of ethics
- No definition of conflict of interest
- Police officers cannot make a complaint of misconduct against another member of the same service

No transparency:

- Documents produced during a public complaint investigation are inadmissible in civil proceeding

Poor appeal process:

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<sup>28</sup> *Dolan v. Ontario (Civilian Commission on Police Services)*, 2011 ONSC 1376, para 101.

<sup>29</sup> *Supra* Note 28.

- If a public complainant is not satisfied with the outcome of their complaint, they can ask the Board to review the decision only
- When the OIPRD refuse to investigate a complaint from a police officer the only appeal is Judicial Review at Divisional Court

### **Police Services Board**

No legislated accountability:

- Ombudsman Act does not apply to complaint proceedings under PSA
- In the absence of legislated standards, no requirement to establish policy on ethics or conflicts of interest (other than pecuniary)
- Not required by legislation to deal with complaints brought to the Board by members of the public or police
- No representation at Board level by members of police service other than Chief

No transparency:

- Despite being responsible for the provision of adequate and effective police services in the municipality, the information presented to the Board is redacted by the Chief

## **SERVICE POLICY**

In addition to the laws that are in place, police officers must follow the directives and policies established by their police service or they are insubordinate and can be charged with offences under the PSA. The government sets out what policies need to be maintained by police services, although the legislation is vague, basic and allows for inconsistencies from service to service.

An excerpt from the PSA, (more detail in Chapter 5), regarding a Board's responsibility to maintain policy is as follows:

31. (1) A board is responsible for the provision of adequate and effective police services in the municipality and shall,

(c) establish policies for the effective management of the police force;<sup>30</sup>

The Minister of Community Safety & Correctional Services specifies what policies the police service shall provide in Police Services Act Ontario Regulation 3/99.

Those policies are broken down into the following subcategories:

- Crime Prevention
- Law Enforcement
- Victims Assistance
- Public Order Maintenance
- Emergency Response Services

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<sup>30</sup> *Police Services Act, R.S.O. 1990, c. P.15.*

- Administration and Infrastructure

As is evident in the dozens of reports and inquests that have been done over the years focusing on police training in de-escalation, change in policing waits for Ministerial direction and as the Ombudsman pointed out in “A Matter of Life and Death” released on June 29, 2016:

*“The Ministry of Community Safety and Correctional Services has the power, opportunity and duty to address these problems. Yet thus far, it has mostly taken a hands-off approach.”<sup>31</sup>*

Unless police services are explicitly directed or legislated to establish a policy, inconsistencies will remain and change will come at the discretion of the chief of police or police services board.

## Complaints

Section 34 of the Police Services Act Ontario Regulation 3/99 (under Administration and Infrastructure) requires the establishment of procedures for the investigation of complaints. Since specific requirements are not provided in this Regulation, different services have very different procedures.

For example, York Regional Police has a procedure for Public Complaints and a separate procedure for Sworn Misconduct Management. The YRP Sworn Misconduct Management procedure section C. 2. States:

*“All members are responsible for reporting incidents of potential misconduct involving other members to their immediate Supervisor.”<sup>32</sup>*

Similarly, Peel Regional Police Service has a procedure on Complaints Against Police which contains the following:

*“Section M. 1. All matters which could become the subject of an internal investigation shall be reported immediately through the appropriate chain of command, unless to do so would prejudice the investigation.”<sup>33</sup>*

There are police services that do not have a procedure that would allow a member to make a complaint about the misconduct of other members; only members of the public. Even the services who do have these procedures, they have not accounted for a complaint relating to the conduct of the officer’s supervisor, or even the chief. These procedures are written in such a way that discretion is afforded to senior management with no appeal process, allowing complaints to be suppressed, with no means of appeal.

<sup>31</sup> The Ombudsman Report: A Matter of Life and Death, Paul Dubé, June, 2016.

<sup>32</sup> York Regional Police Service, General Procedure; Sworn Misconduct Management, Issue Number AI 330.

<sup>33</sup> Peel Regional Police Directive; Complaints Against Police, Issue Number I-B-101 (O).

Despite the Board being responsible for oversight of the police service, they may not be aware of internal dealings when issues have been suppressed.

This is just one example of the inconsistencies.

## **Ethics**

When it comes to ethics in policing, most police services rely on a police officer's Oath of Office to be the benchmark of ethical conduct, and do not have internal policy addressing ethics.

In 2012, the Ottawa Police Service (OPS) recognized a need for service procedure on Ethics and developed its Ethics Program.<sup>34</sup> The OPS program was highlighted at the 2016 Canadian Association of Police Governance Conference. Since then other police services' Boards have expressed an interest in following suit, yet many services still do not have procedures or policy on Ethics. The OPS should be applauded for its leadership in developing a program that addresses the issues of ethics in policing. However, on its face, the OPS program resonates the importance for members to remain loyal to the service. The OPS program does not specifically outline a process for a member to report unethical conduct either protected or anonymously. When the OPS program was rolled out to its members by way of booklet, costing taxpayers \$6,700, Ottawa Police Association President Matt Skof was quoted as saying:

*"...if the members don't believe decisions are being made ethically, that's the problem."*<sup>35</sup>

There are other police services in Ontario who have implemented policies on ethics, although it is not a requirement under the PSA. At the September, 2016, meeting of the Waterloo Regional Police Services Board, Chair T. Galloway questioned if an ethics policy "should be on the radar" and the Chief "indicated that he would take this under advisement and report back at some future date."<sup>36</sup> There is no mention of ethics in Board minutes from that date to the date of this report.

## **Transparency**

The PSA currently provides public transparency of matters relating to the OIPRD, OCPC and SIU. Other than Freedom of Information legislation, there are limited requirements in the PSA to encourage police service transparency.

The Ministry requires police services to report to the Board on matters such as use of force, suspect apprehension pursuits, complaints, etc. There are no parameters as to how these reports are to be completed and precisely what information needs to be contained in the report. Therefore, as with every other aspect of policing, the discretion

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<sup>34</sup> Ottawa Police Service Ethics: Honour, Courage, Service.

<sup>35</sup> "Police ethics guide trashed: source," Kelly Roche, Ottawa Sun, May 29, 2014.

<sup>36</sup> Minutes, Regional Municipality of Waterloo Police Services Board, September 14, 2016, page 7.

is afforded to the chief of police by whom all reports are filtered before they are released to the Board. A quick survey of annual board reports will show that there is no consistency service to service regarding precisely what data is released to the public.

When it comes to the release of police service business to the media, only the chief of police or their designate is permitted to communicate to the media. As with other policies, different police services have difference policies on what is divulged to the media; either limiting transparency or violating the privacy of the officer. For example, the Hamilton Police Service and Halton Regional Police Service always issues a press release when one of its officers is charged, regardless of the severity of the charge or if another police service did the investigation. Ontario Provincial Police will only issue a public release when one of its officers is charged and OPP led the investigation.<sup>37</sup>

For police services to be truly transparent, the decision to release information should be made by someone who does not have an interest in its secrecy and who can objectively identify matters of public interest. Otherwise, transparency will never exist if the holder of the information can withhold anything unfavourable.

## OVERSIGHT REVIEW

In April, 2017, Justice Tulloch's report was released to the public.<sup>38</sup> Justice Tulloch identified that many aspects of policing could be reviewed and potentially improved, such as hiring practices, training, performance evaluation, promotion, internal discipline and external oversight. Tulloch's mandate was to examine only Ontario's external police oversight.

Since April, 2016, Tulloch engaged 1,500 individuals in 17 public consultations and over 130 private meetings. Tulloch made 129 recommendations to the Attorney General, Honourable Yasir Naqvi, to improve transparency and accountability in police oversight.

Below is a list of Tulloch's recommendations that, if incorporated into legislation by the Attorney General, will contribute to solving some of the issues identified in this report:

- Recommendation 4.20: The Ombudsman should have jurisdiction over all three police oversight bodies;
- Recommendation 7.9; The Ministry of Community and Correctional Services should review the process for members of a police service to make internal complaints to ensure there are effective whistleblower protections;
- Recommendation 7.14; The "public interest" ground for screening out complaints should be removed or, if retained, legislatively defined;
- Recommendation 7.20; Within five years, the OIPRD should be the sole body to investigate public conduct complaints;

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<sup>37</sup> "What happens when police officers face criminal charges in Ontario?" Nicole O'Reilly, Hamilton Spectator, August 17, 2015.

<sup>38</sup> *Ibid.* note 9.



- Recommendation 7.22; Over the next five years, until the OIPRD is able to conduct all public conduct complaint investigations, the OIPRD should be able to refer complaints to police forces for investigation. During this interim period, the OIPRD should be solely responsible for laying disciplinary charges and should have the authority to order further investigation or to take over an investigation conducted by a police force;
- Recommendation 7.23; The OIPRD should be solely responsible for investigating complaints against municipal chiefs of police, the OPP Commissioner, and their deputies;
- Recommendation 8.1; Independent public complaints prosecutors who work at the Ministry of the Attorney General should prosecute public complaints. After the OIPRD lays a disciplinary charge, the independent public complaints prosecutor should be given carriage of the file;
- Recommendation 8.3; The OCPC should conduct all first instance hearings of public complaints;
- Recommendation 8.4; Internal complaints should be governed by the Police Services Act. Consideration should be given to what role, if any, the OCPC should have in the internal disciplinary process and how the internal and public disciplinary processes interact;
- Recommendation 12.1; The Ministry of Community Safety and Correctional Services should establish selection criteria for police services board appointees.

The Ontario Superior Court of Justice has dismissed applications for judicial review by police officers because there is a presumption of impartiality on the part of a judicial decision-maker, (the chief of police). Interestingly, following Justice Tulloch's public consultation period he concluded the following:

*"Chapter 8, Paragraph 13. There is broad consensus from both the public and the police that an adjudicative process where the chief of police chooses both the adjudicator and the prosecutor is not fair and does not meet the appearance of fairness test. Although the Divisional Court has said the existing regime complies with the Canadian Charter of Rights and Freedoms, it is not ideal. There can be no serious argument that the current process appears free from bias and completely impartial."*

*"Chapter 8, Paragraph 18. Some members of the public noted that having the chief of police choose the prosecutor created a perception of bias. They believed that prosecutors may be unduly influenced by chiefs to produce certain results because they serve at their request."*

## CHAPTER 2: ISSUES

### CHANGING THE CULTURE

For decades, it has been recognized that the police culture is to blame for many of the roadblocks to change and little has been done about it. Those in policing are entrenched in the culture and at times are out of touch with the perception and expectation of the public. When external reviews or inquiries are conducted, and recommendations are made, they are often ignored by the policing community who give little weight to the opinions of civilians on police issues. The police are often frustrated with what they perceive as a lack of understanding by members of the public and the public are frustrated with the lack of empathy and self-criticism in the policing community.

In the 1992 Report by the Ontario Civilian Commission, the Inquiry succinctly put it this way:

*"It is unfortunate that the Internal Affairs unit has chosen, in the final analysis, to defend its actions as "totally proper, totally correct and totally legal". As we have already noted, Internal Affairs 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."<sup>39</sup>*

It is not a topic for debate; there absolutely is a fraternity in policing, although it affects everybody differently. The public perception is that police officers are always going to be protected by other police officers because of this kinship. If that was the case, there would be no police officers charged by their own. The truth is, and if you survey officers who have been or are repeatedly charged by their police service, an officer's sheltering will depend on 4 things:

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<sup>39</sup> *Ibid.* note 17.

1. The officer, (their history with the service/their gender/their race/their sexual orientation)
2. The political advantages/disadvantages of prosecuting the officer
3. The political advantages/disadvantages of not prosecuting the officer
4. The desire of the police service to promote the officer

The decision to charge a police officer with either criminal or misconduct charges rests solely with the chief of police (or their designate) and there are no legislative bounds for those decisions, only appeal processes once the damage has been done. To charge any person with a criminal offence, a peace officer must have reasonable grounds:

“A set of facts or circumstances that would satisfy an ordinary, cautious, and prudent person that there is reason to believe an offence has been committed and which goes beyond mere suspicion.”

It is common practice in policing that an investigator, in deciding whether or not there are reasonable grounds for any action contemplated, must review all the evidence, inculpatory as well as exculpatory, and then decide if these facts satisfy the interpretation. Rarely are police officers under investigation interviewed and given the opportunity to present exculpatory evidence, prior to the establishment of grounds for arrest.

It is widely accepted in the policing world, (yet never discussed for fear of reprisal), that some investigators have been ordered to render a specific outcome in an internal investigation, regardless of the evidence. Whether or not grounds exist for a criminal charge may not be the deciding factor in a case against a police officer if there is personal motivation or even fear of Crown prosecutors appearing to favour the officer.

There is no independent and external oversight in the process of deciding whether or not charges are warranted against a police officer. Instead, there are officers who are charged, acquitted, and eventually sue the police service. Notwithstanding the negative publicity, the cost to taxpayers and misuse of resources for this abuse of process is significant and concerning.

There are enough stories to fill several novels of officers who have received favouritism because of their profession, if only those stories could be told. Every police service has a little black book of incidents involving senior management that, had it involved a member of the public, would have been handled very differently. As much as we expect our police officers to respect their duty to the public, most officers will not arrest or charge the very person who will decide their future career path. Police officers receive a very generous salary for the dangerous work they do and will retire on a very comfortable pension; this is no secret. Most police officers remain silent about anything that could result in discipline or even conflict simply to protect their livelihood, and not at all because of a “brotherhood.” However, corruption doesn’t change whether a police officer is accepting pay to turn a blind eye to misfeasance by colleagues or criminal behaviour by a known drug dealer; it’s still corruption.

In cases where a police officer does report serious misconduct or criminal behaviour by another police officer they are often prosecuted, sometimes suspended and have to pay a lawyer tens of thousands, if not hundreds of thousands of dollars. At the end of their ordeal, their professional reputation is quashed and they either choose to leave the profession or are bullied out by colleagues and supervisors who now see them as a “rat.”

So, police officers are given a choice at some point throughout their career. Most police officers will choose to perform their duties to their own level of integrity and not be bothered by the conduct of management, continue to receive their \$90,000-\$100,000(+) per year salary and work up the ranks. This choice will lead to much higher paid positions of Sergeant, Staff Sergeant, Inspector, or maybe even Chief. Over a 30-year career, this figure, and fringe benefits, are irreplaceable for someone with a high school education.

Below is a list of salaries and taxable benefits for 2016 for the Chiefs of the ten largest police services in Ontario, in ascending order:

- Hamilton Police Chief Eric Girt; \$236,121.77 (Chief since May, 2016) and \$9,979.13 in taxable benefits
- Durham Regional Police Chief Paul Martin; \$247,274.20 and \$1,240.83 in taxable benefits
- OPP Commissioner Vincent Hawkes; \$268,428.16 and \$369.96 in taxable benefits
- York Regional Police Chief Eric Jolliffe; \$272,696.60 and \$12,545.50 in taxable benefits
- Halton Regional Police Chief Stephen Tanner; \$277,968.91 and \$19,010.88 in taxable benefits
- Ottawa Police Chief Charles Bordeleau; salary of \$281,511.93 and \$12,149.54 in taxable benefits;
- Peel Regional Police Chief Jennifer Evans; \$283,349.20 and \$18,905.52 in taxable benefits
- Waterloo Regional Police Chief Bryan Larkin; \$283,984.69 and \$13,289.94 in taxable benefits
- Niagara Regional Police Chief Jeffrey McGuire; \$295,922.99 and \$34,433.88 in taxable benefits
- Toronto Police Chief Mark Saunders; \$332,511.59 and \$2,677.12 in taxable benefits

For comparison, the Mayor of Toronto John Tory was paid \$184,666.04 and \$1,378.28 in taxable benefits, and even the Premier of Ontario Kathleen Wynne was paid less than the Chiefs listed above earning \$208,974.00 and \$384.33 in taxable benefits.<sup>40</sup>

If, upon completion of this report, the reader has difficulty understanding why such a large community of police officers would remain silent about such serious issues, please revisit this section and perform the calculations of what a successful career in policing is worth, versus the cost of disobedience. The police culture is bred by individuals who do not

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<sup>40</sup> <https://www.ontario.ca/page/public-sector-salary-disclosure-2016-all-sectors-and-seconded-employees>

want to take any action that could disrupt their financial security and opportunity for future wealth. Unfortunately, those who do not tolerate the culture become labelled, their careers stalled or worse, they are bullied out of the profession entirely. A police officer should never have to make such a choice.

## **PARA-MILITARY**

The perpetuity of the policing culture has been tolerated since it is perceived as quasi-military. Although, even due obedience in military law requires soldiers to be critical of orders given, obeying only those orders they believe, honestly and reasonably, are lawful. Military law has been dramatically civilianized since the days of court martialing with corporal punishments. Like all public bodies the military has evolved. Here in Ontario, police officers are often charged with insubordination under the PSA and disciplined for being critical of their superiors or service.

In 2013, Toronto Inspector Richard Hegedus was acting unit commander at 33 Division. Toronto Constable Kevin Drake investigated a motor vehicle collision involving a police cruiser and civilian vehicle. Drake concluded that the civilian driver was at fault and completed the official Ministry of Transportation Motor Vehicle Collision Report. Shortly thereafter, Hegedus ordered Drake to change that finding and conclude the police officer was at fault. Drake refused to do so because he did not believe that to be true. As a result of this alleged insubordination, Drake was charged with misconduct and the matter went to a police disciplinary hearing. Drake was found guilty at the PSA tribunal, and he appealed to the Ontario Civilian Police Commission (OCPC). The OCPC overturned the finding of guilt and found that Hegedus had ordered a subordinate to falsify an official record, placing Drake in the position of knowingly making a false statement and, arguably, committing an act tantamount to Deceit.<sup>41</sup> Despite this finding by the OCPC, one year later, Hegedus was promoted to the position of permanent Hearing Officer for the TPS disciplinary tribunal.

In October, 2016, Toronto Police Constable Adam Lourenco filed a motion to have Hegedus removed as hearing officer in his PSA proceeding, citing Drake's case and the reasonable perception of bias. Lourenco's lawyers, Peter Brauti and Lawrence Gridin, stated "the appointment of Hegedus to a prestigious position as the sole permanent hearing officer, so soon after he had apparently committed serious misconduct which the TPS took no steps to investigate, is itself likely to bring discredit upon the police service." Lourenco's PSA case involves the controversial arrest of four teens in Toronto in 2012 and has been ongoing for 5-years. Even counsel for the four complainants in the discipline proceeding supports the spirit of Lourenco's motion, which raises larger questions about the inherent lack of independence involved in police discipline proceedings.<sup>42</sup>

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<sup>41</sup> Drake and Toronto Police Service, 2015 ONCPC 5

<sup>42</sup> "Fellow cop wants hearing officer removed from Neptune Four case," Wendy Gillis, The Star, October 31, 2016.

When the Standing Committee on Justice Policy met on February 1, 2007, to vote on amendments to Bill 103, (*the Independent Police Review Act*), the late Mr. Peter Kormos, NDP MP Niagara Centre, was quoted as saying:

*“A whole lot of things have transpired since the origins of policing based on a military or a quasi-military model: due process; natural justice; the expectation of everybody that an adjudication is going to be conducted by somebody who’s neutral and impartial. Police officers have that right when they are the subject matter of a complaint and when their incomes, their careers, their reputations are at stake.”*<sup>43</sup>

The invincibility and immunity afforded to police chiefs in Ontario is unprecedented and archaic even when compared to the stalwart US Military. In 2016, reprisal was the “number one allegation” that the inspector general’s office investigated and a growing percentage of the cases were substantiated.<sup>44</sup> The Uniform Code of Military Justice, Subchapter XI, allows any member of the armed forces to complain to any superior commissioned officer if they believe themselves wronged by their commanding officer, and who, upon due application to that commanding officer, are refused redress.<sup>45</sup>

In Ontario, if a police officer alleges reprisal their complaint is adjudicated by the same people against whom the complaint relates, (if it is investigated at all). There is typically no appeal process which allows complaints of this type to be suppressed within the administrative structure of the police service. Historically, even when the officer’s complaint is examined by an arm’s length agency, (such as the OCPC, Human Rights Tribunal, or Divisional Court), the complainant is not provided equal benefit of the law and those agencies refuse to get involved in what they see as an employment matter.

As far back as 1963, the Committee on the Judiciary, United States Senate, has been examining the Constitutional Rights of Military Personnel. The 1963 report addressed several issues such as; Negotiated Pleas, Non-judicial Punishment, Records, Right to Counsel, and Confinement.

At that time, the Air Force had not utilized a procedure for negotiated guilty pleas in courts-martial. The Air Force pointed to the danger that a conviction based on a guilty plea might be attacked on the grounds that the plea was improvident or that the accused had been pressured into pleading guilty, a sentiment that has been shared by some police officers in Ontario who have been charged criminally and investigated by their own service. Judge Homer Ferguson agreed and said “there is a great temptation to take a lighter sentence, rather than contest guilt even though the accused does not believe he is guilty.”<sup>46</sup>

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<sup>43</sup> Legislative Assembly of Ontario, Second Session, 38<sup>th</sup> Parliament, Official Report of Debates (Hansard), Thursday 1 February, 2007, Standing committee on justice policy, Independent Police Review Act, 2007.

<sup>44</sup> “Army Says Some Misconduct Trends Are Increasing,” Lolita C. Baldor, Associated Press, December 16, 2016.

<sup>45</sup> 10 U.S. Code § 938 – Art. 138. Complaints of wrongs

<sup>46</sup> “Constitutional Rights of Military Personnel,” Summary Report of Hearings by the Subcommittee on Constitutional Rights of the Committee on the Judiciary, United States Senate, 1963.

## SECRECY

Since no one inside a police service is allowed to discuss any matter connected with the service without proper authority<sup>47</sup>; the chief of police has full control over the level of transparency that exists. Every single police service around the province will say they are transparent and accountable to the public. As access to certain documents becomes available, the public are learning those statements have been highly subjective.

Canadian Freedom of Information legislation did not come into effect until 1983.

Sweden not only gave us the world's first Ombudsman, it also created the first freedom of information legislation in 1766.<sup>48</sup> Sweden is currently ranked fourth on Transparency International's Corruption Perceptions Index 2016 with a score of 88, (0 being highly corrupt and 100 very clean). Canada is currently ranked ninth with a score of 82.<sup>49</sup>

Even with a 217-year head start, Sweden has not significantly improved their Corruption Perceptions Index rating over that of Canada. One can easily deduce that lack of transparency and accountability in government may be a problem we cannot legislate our way out of. Even since 1983, our information statutes still tend to allow for multiple loopholes and opportunities for governments to dispute and delay access to information.<sup>50</sup>

*"Openness facilitates accountability; secrecy defeats it. Knowledge is power. Those who have it can hide. Those who lose control of it cannot hide. If facts are known, decisions and actions can be judged and actors can be called to account. Openness therefore advances moral and ethical government. It also promotes honesty and enables the rule of law to apply."*<sup>51</sup>

- André Marin, Former Ontario Ombudsman

The 1992 Report of the Ontario Civilian Commission on Police Services states:

*"Secrecy is inimical to our justice system. Law enforcement is an important part of that system. It is a matter of public concern how police forces handle criminal and serious disciplinary matters that involve their own members, who are sworn to serve and protect the public."*

*Those who are responsible for the quality of policing must be accountable to the public. Our whole system is predicated on accountability. The Chief of Police is accountable to the Police Services Board and through the Board to the community."*

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<sup>47</sup> *Police Services Act, Ontario Regulation 268/10, section 2(1)(e)(iii).*

<sup>48</sup> <http://open.canada.ca/en/idea/enhancing-whistleblower-protection>

<sup>49</sup> Transparency International Corruption Perceptions Index 2016, [www.transparency.org](http://www.transparency.org).

<sup>50</sup> *Ibid.* note 48.

<sup>51</sup> *Ibid.* note 48.

*The Police Services Board is responsible for providing civilian monitoring of the force and setting policies for its operation. Because of this obligation to monitor and because police investigate allegations against their own members, expectations for scrutiny by the Police Services Board, as representatives of the community, are high.”<sup>52</sup>*

In 2014, The Toronto Star began the Breaking Badge Investigation into the handling of internal discipline matters by police services. What had been believed to be a transparent and formal process was found to be very secretive. Star reporters Jesse McLean and Jayme Poisson found that from 2010 to 2015, 640 Peel Regional Police officers, roughly 30% of the force, had been sanctioned under the secretive (informal) system, some multiple times.<sup>53</sup> The OPP, a force three times the size of Peel, informally disciplined almost the same number of officers over that time period. During the investigation, Toronto, Durham and York Region police refused to even say how many of their officers have been disciplined for internal matters under the informal process. The OPP, Peel and Halton released the numbers.<sup>54</sup> The disciplinary decisions received detailed the officer’s alleged misconduct and, if guilty, the penalty. As a whole, the decisions provide a look never seen before at a system insiders and critics say isn’t working. The Star analyzed thousands of pages of decisions, finding patterns of misconduct across police services as well as disparities in how certain forces punish officers for the same type of offence.<sup>55</sup>

One Peel officer, Shehab Balh, was informally disciplined seven times in four years and even charged criminally, (those charges were withdrawn). Balh told the Star he felt the force was using “progressive discipline” to push him out of the service. Balh resigned from Peel police:

*“Manipulated discipline and internal hearings for the disliked officers and uncontested promotions and advancements for the well-liked officers has nothing to do with good or bad policing. That is why I left,” Balh said.*

What McLean and Poisson learned, through their investigation, was that although informal discipline was reserved for benign employer-employee matters, it was being applied to much more serious offences. According to Toronto police, the informal system allows the force to efficiently deal with misconduct that is serious, but not necessarily so serious that it warrants public airing in a formal hearing. The price of secrecy is not cheap. According to Inspector Peter Callaghan, a prosecutor for Toronto police’s disciplinary hearing, “The officer is willing to agree to a much higher penalty than they get in the tribunal to settle it informally.”

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<sup>52</sup> *Ibid.* note 17.

<sup>53</sup> “Serious police discipline cases often handled in secret: Star investigation,” Jesse McLean and Jayme Poisson, The Star, January 11, 2016.

<sup>54</sup> *Supra* note 53.

<sup>55</sup> “Hundreds of officers in the Greater Toronto Area disciplined for ‘serious’ misconduct in past five years,” Jesse McLean and Jayme Poisson, The Star, September 19, 2015.



The informal process also allows the force to discipline officers when they may not feel they have a reasonable chance of getting a guilty verdict at a disciplinary hearing, police told the Star.<sup>56</sup> The Province of Ontario Ministry of Attorney General Crown Policy Manual states that when considering whether or not to continue the prosecution of a charge the first step must be to determine if there is a reasonable prospect of conviction. Randy Henning, President of the Durham Regional Police Association told the Star that some officers are faced with swallowing an “exorbitant” penalty for not-so serious misconduct without even seeing any of the evidence against them.<sup>57</sup>

There have been high-profile cases, such as that of Dameian Muirhead, York Regional Police, that were tried at a hearing, during which the Chief was quoted in media articles stating that the preference would have been to resolve the issue by way of informal discipline but Muirhead refused. Exercising one’s right to a hearing to examine evidence should not mean the stakes change, however, the publicity of the actions taken by the service against the officer seems to worsen the jeopardy for the officer involved.

### **Open and Transparent?**

In March, 2013, Durham Regional Police Chief Mike Ewles seemed more concerned over a leak of information to the Toronto Star than the conduct of an off-duty officer after leaving a pub and driving his vehicle into a ditch.

Police said the off-duty officer called an on-duty officer to pick him up at a location near the accident. Two of The Star’s sources familiar with the incident said the on-duty officer was working on a local RIDE check. That officer drove him to downtown Oshawa. Ewles referred to the off-duty conduct as an internal discipline matter, and the sharing of the information with the media was a “clear breach” of the service’s directives that “can’t be tolerated.”

Toronto lawyer Clayton Ruby, a strong advocate of freedom of the press, said the police misconduct in the case underlines a “complete double standard” in how the force treats its staff in a vehicle accident compared to the handling of other drivers and the public should know about it. Another Toronto lawyer, James Morton, said he thinks the public should be entitled to know about details of breaches by officers, it would instill more public confidence in a force’s fairness and impartiality. Morton noted the case suggests the need of more protection for police whistleblowers.<sup>58</sup>

In July, 2015, an off-duty Durham officer was charged with impaired driving after rear-ending a vehicle causing minor injuries to two of the occupants. The officer’s name was released to the media and he was assigned to administrative duties pending the case’s outcome.<sup>59</sup>

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<sup>56</sup> *Ibid.* note 53.

<sup>57</sup> *Ibid.* note 53.

<sup>58</sup> “Durham police seek source of information leaks,” Tony Van Alphen, The Star, March 18, 2013.

<sup>59</sup> “Durham cop charged with impaired driving in off-duty crash,” Jeremy Appel, Toronto Sun, July 21, 2015.

In November, 2015, a member of the Durham fraud unit was charged with impaired driving and failing to report an accident after his vehicle struck a tree and the canine unit and police helicopter were called in to attempt to locate him. The information and officer's name was released to the media.<sup>60</sup>

In December 2015, an off-duty Durham officer was stopped by another Durham officer conducting RIDE checks and was charged with impaired driving and exceeding blood alcohol level of 0.08. This information, and the officer's name, was released to the media. The officer was assigned to administrative duties pending the resolution of the charges against him.<sup>61</sup>

The December 2015 incident was the fourth-time Durham officers were charged with impaired driving in months. In a Global News article, Durham Regional Police Service spokesman Dave Selby said "anytime we charge any of our employees with a criminal charge we make sure we issue a media release, so that we're **open and transparent**."<sup>62</sup>

So, who decides what police business is in the public interest and what is not?

The Ontario Civilian Commission on Police Services stated in 1992:

*"It is a matter of public concern how police forces handle criminal and serious disciplinary matters that involve their own members, who are sworn to serve and protect the public."*<sup>63</sup>

Despite the Commission's statement in 1992, for the next 25 years the extent of information released by a police service to the public has remained the discretion of the chief of police.

In 2015, the Chief of the Waterloo Regional Police Service released a personal email sent by Constable Craig Markham to the organization's director of legal affairs. The Chief told reporters the letter was an example of why police chiefs should be given the option of suspending officers without pay. The content of the letter clearly brings disrepute to the policing profession, however, was addressed and intended only for the eyes of the service's director of legal affairs. Markham responded by telling CTV News the email was "private" and "never intended to be made public." Markham stated he sent the email out of frustration since he had been denied the opportunity to return to administrative duties "numerous" times during his three-year suspension.<sup>64</sup> The decision to publicize the letter had nothing to do with public safety and was done following Markham's dismissal from

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<sup>60</sup> "Off-duty Durham cop Scott Robertson charged with impaired driving after vehicle crashed into tree," Port Perry Star, November 24, 2015.

<sup>61</sup> "Off-duty Durham Regional Police officer charged with impaired driving," The Canadian Press, December 4, 2015.

<sup>62</sup> "Off-duty Durham cop charged with impaired driving, 4<sup>th</sup> since July," Adam Miller, Global News, December 4, 2015.

<sup>63</sup> *Ibid.* note 17.

<sup>64</sup> "Email to police lawyer never meant to be made public, Markham says," CTV Kitchener, July 9, 2015.

the service and unsuccessful appeal. The Chief used an internal service document to garner support for an Ontario Association of Chiefs of Police position with the Ontario government. If a police officer had used an internal document to garner political support they would have been disciplined. This internal letter was used once again in April, 2017, this time by police services board Chair Tom Galloway in support of the political position of the Ontario Association Chiefs of Police, which violates his oath to remain impartial.

Chapter 3 examines what happens when a police officer releases or reports information and is not afforded the same protection as a chief of police or member of a police services board.

## ETHICS

Provincial public servants have designated ethics executives, under the Public Servants of Ontario Act, who are responsible for determining and addressing conflicts of interest. The Conflict of Interest Rules for Public Servants (Ministers' Offices) And Former Public Servants (Ministers' Offices)<sup>65</sup> goes a long way in defining prohibited conduct. Although, even with concise legislation, Chapter 3 discusses how an alleged wrongdoer can remain anonymous and free from discipline for taking reprisal action against a complainant. There is little to deter the conduct listed in the Regulation and protect whistleblowers.

There is no designated ethics executive for municipal police officers in Ontario.

There is also no requirement for police services to maintain policy on ethics, as explained in Chapter 1.

The training that is provided to police officers in Ontario on ethics is extremely basic and unrealistic, and in some cases provided to officers by a member of the service with a questionable or even scandalous past – *'do as I say, not as I do.'* In the simplest of terms, officers are trained to have a very rigid set of ethical rules and to never deviate since the most minor deviation could lead to corruption. For example, officers are to never accept a free coffee. In an officer's first week on the job, they learn that the training provided around ethics is not what is practiced. The scale of ethical conduct that they once saw as black and white becomes as grey as their comfort level allows. For the most part, the officer's commitment to any kind of code of ethics is left up to their own personal level of integrity.

Once out of training and on the job, officers quickly learn to follow the lead of more senior officers and fit-in. It is at this early stage in an officer's career that the policing culture is embedded. They don't want to be labeled as a "rat" so they turn a blind eye to little dealings such as accepting gifts or violating traffic laws by their peers. A trainee will not last long with a police service if they report their coach officer for accepting a free coffee in their first week on the job.

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<sup>65</sup> *Public Service of Ontario Act, 2006, O. Reg. 382/07.*

In 1994, during the Mollen Commission<sup>66</sup> involving NYPD corruption, Michael Dowd articulated the ethical dilemma best when he was questioned about what it meant to be a “good” police officer:

*“Being good is a cop that would never give up another cop. A cop that if he witnesses something go down, he’s 100% behind anything a cop does, no matter what it is.”*

Michael Dowd may be considered “one of the dirtiest cops in New York City history,” but his testimony rings true when you learn the fate of the whistleblowers in Chapter 3. If Dowd did not perfectly articulate the police culture then why is it that police services are prosecuting those who speak up about misconduct of other officers? In 2014, the story of corruption at the 75<sup>th</sup> Precinct was documented in “The Seven Five.”

In 1992, the Defense Personnel Security Research Center (PERSEREC) began the Police Integrity Study. The objective was to determine if characteristics indicative of public trust betrayal could be assessed through personality tests already being used by law enforcement agencies. The study proved that there was a relationship between the subjects’ Psychopathic Deviance scales and violations later on in their careers. Some police services in the United States of America still use pre-screening personality tests during candidate selection. The study also found there was a need for professional and departmental integrity standards to be clearly established and consistently administered at all levels of an organization.<sup>67</sup>

## SUSPENSIONS

The sole discretion for suspending a police officer rests with the chief of police. The Ministry does not stipulate when an officer should or shall be suspended, leaving a broad spectrum of decisions to suspend throughout the province. There are no established parameters of when the suspension of a police officer is required in the interest of public safety. Pending changes to the PSA could see chiefs of police having the ability to suspend police officers without pay, perhaps as arbitrarily as those decisions are being made today.

There are provincial statutes that allow chiefs of police to suspend officers without pay, although those statutes are written in such a way that the police officer has several opportunities to present evidence in their defence and challenge allegations prior to the decision to suspend without pay. The British Columbia Police Act, allows a chief of police to suspend a member without pay once adequate investigation has been conducted and challenged by the subject member and it is clear that there is the prospect of conviction of serious misconduct or criminal activity.<sup>68</sup>

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<sup>66</sup> Formerly Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department, chaired by Milton Mollen, 1994.

<sup>67</sup> “Police Integrity: Use of Personality Measures to Identify Corruption-Prone Officers,” PERSEREC, PERS-TR-97-003, September, 1997.

<sup>68</sup> *Police Act, RSBC 1996, Chapter 367.*

Suspending an officer takes a body off the road, no matter how you look at it. Obviously, there are times when an officer may have to be reassigned during the course of an investigation, but the decision to suspend officers is discretionary.

In recent years, as the role of police chiefs is increasingly politicized, the Ontario Association Chiefs of Police (OACP) have been on a campaign to garner support for unpaid suspensions.

On June 25, 2014, the OACP approved Resolution 2014-02 calling upon the Government of Ontario to allow unpaid suspensions of police officers.<sup>69</sup>

To give this resolution some perspective and to help the reader understand the breadth of discretion afforded to chiefs of police, in 2013, following the shooting death of Sammy Yatim in Toronto, Constable James Forcillo was placed on administrative duty. It was not until a jury found him guilty of attempted murder in 2016 that Forcillo was suspended with pay.<sup>70</sup>

In October, 2014, Ontario Provincial Police Constable Jamie Porto was traveling 133km/h in a 50km/h zone in an unmarked police cruiser when he crashed into a civilian vehicle causing the young male driver bodily harm. Porto was charged and convicted of dangerous driving causing bodily harm. He has since appealed that conviction. During the prosecution, Porto was not suspended.

In May, 2014, London Police Service Constable Mike Sladek was arrested for off-duty conduct, allegedly uttering a threat to cause death. Sladek was immediately suspended with pay. Despite Sladek's acquittal in criminal court on December 16, 2015, he remained on paid suspension (almost three years later) while he was investigated for PSA offences, see page 50.

The opposition by police associations to the position taken by the OACP has not been effective in informing the Government and the public the impact such a decision would have on the police officer community. This report aims to illustrate the lack of independent oversight, policy and procedure involved in internal investigations and discipline. As Kormos said best, the income, career and reputation of every police officer is at risk.

In 2016, the CBC reported that Toronto Police had 14 members on suspension, the Ontario Provincial Police (OPP) had 29, Ottawa had 6 and Windsor had 1.<sup>71</sup> Not coincidentally, the chiefs of Toronto and OPP (Commissioner) are both directors for the OACP, and the chief of Ottawa is the President of the OACP.

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<sup>69</sup> [http://www.oacp.on.ca/Userfiles/Files/NewAndEvents/Resolutions/Resolution%202014-02\\_Final.pdf](http://www.oacp.on.ca/Userfiles/Files/NewAndEvents/Resolutions/Resolution%202014-02_Final.pdf)

<sup>70</sup> "Forcillo suspended with pay after guilty verdict," Shawn Jeffords, Toronto Sun, January 25, 2016.

<sup>71</sup> "At least 50 police officers currently suspended with pay in Ontario," Mike Crawley, CBC News, January 28, 2016.

Instead of examining the reasons why police chiefs choose to suspend police officers or the effect of suspensions on public safety, the media coverage has centered on the cost to taxpayers. The very individuals who control the number of officers currently suspended with pay are ensuring that the cost to taxpayers is so great there is no other solution than to allow unpaid suspensions.

## DISCRETION

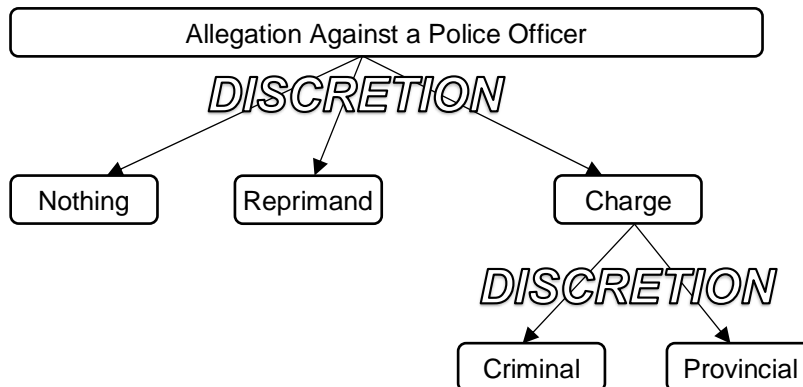


Figure 2: The above diagram shows the decision process taken by a Chief (or their designate) in deciding the outcome of an internal investigation where there is a finding of wrongdoing. The same process takes place during any interaction the police have with the public (in most cases). It is a basic illustration of the discretion afforded to police.

Discretion is the freedom to decide; in general terms.

From *Baker v. Canada (Minister of Citizenship and Immigration)*<sup>72</sup>:

*“The concept of discretion refers to decisions where the law does not dictate a specific outcome, or where the decision-maker is given a choice of options within a statutorily imposed set of boundaries...”*

*...Though discretionary decisions will generally be given considerable respect, that discretion must be exercised in accordance with the boundaries imposed in the statute, the principles of the rule of law, the principles of administrative law, the fundamental values of Canadian society, and the principles of the Charter.”*

If a police officer is charged with a PSA offence (provincial) the matter is overseen by a Police Services Act Tribunal. The statutory power of decision is conferred upon the Police Services Act tribunal by the Law Society Act.<sup>73</sup> As such, the tribunal, along with a federal or provincial court, are adjudicative bodies and have an obligation to maintain public confidence in the administration of justice.

The Crown Policy Manual sets out how criminal charges are to be handled by the courts and is accessible to the public on the Attorney General’s website, thus enhancing public

<sup>72</sup> [1999] 2 SCR 817.

<sup>73</sup> Law Society Act, R.S.O. 1990, c. L.8, Part 0.1, Section 1(1)(b).

confidence in the operation of the criminal justice system. Crown counsel is expected to exercise their discretion in accordance with overall priorities in the Manual. Notwithstanding the importance of discretion, it is also necessary in the public interest to have uniform prosecution policies applicable across the province.<sup>74</sup>

Most times, when there is conflict between the public and the police it is due to a disagreement over the use of discretion; the criticism of decision-making.

In the case of the SIU, the statutorily imposed boundaries are fairly strict; either it is decided that an officer has committed a criminal offence, or not. Although, having said that, it is still the Director of the SIU who decides if he or she believes the threshold of a criminal offence has been reached. The public are always made aware when the SIU have invoked their mandate and are investigating an incident. If the public learn that the SIU has decided not to charge an officer in a situation where the public perception is that charges are warranted, the public can influence political pressure. In 2008, public pressure resulted in the Ombudsman report; "Oversight Unseen."

The public push for more transparency and accountability in the police oversight bodies is what lead to the Independent Police Oversight Review in 2016, led by Justice Michael H. Tulloch. The public perception is that discretion is used far too often in favour of police officers and objectivity and impartiality is lost when police investigate police. Despite all of the reviews that have occurred over the years and the government's attempts to improve transparency and accountability, police services themselves have remained invincible and fairly immune to criticism; especially from within.

Under the current legislative structure, the public can find out when a police officer has been:

- charged by the SIU;
- tried at a PSA hearing;
- charged by the OIPRD;
- charged criminally or provincially for on-duty or off-duty conduct, where the officer's chief of police authorizes the release of information.

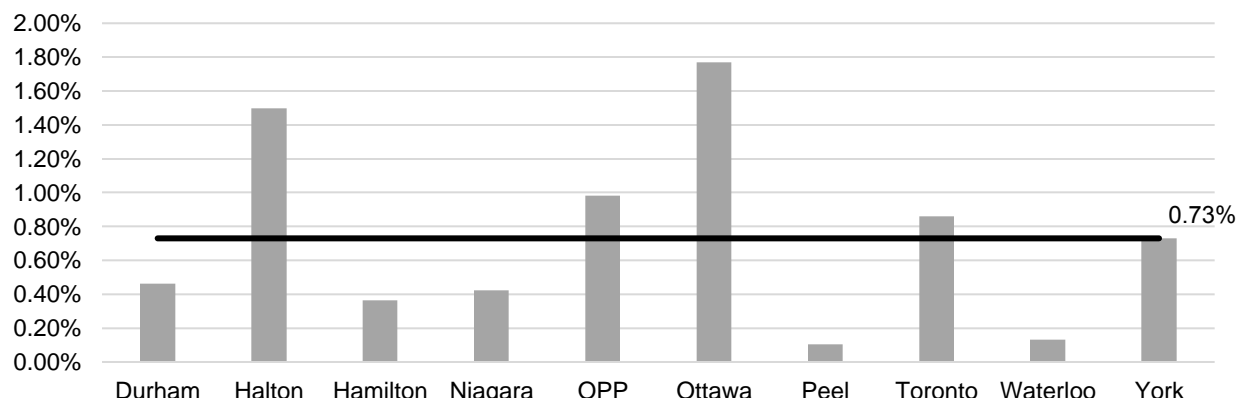
If a member of the public makes a complaint either directly to the OIPRD, or the complaint is referred to the OIPRD, the statistics are recorded in the OIPRD Annual Report. Although the OIPRD does retain and conduct some investigations of misconduct, the majority are referred back to the police service to which the complaint relates for investigation. A brief analysis of the data for the period from April 1, 2014, to March 31, 2015, shows that public complaints result in findings of misconduct much more frequently at some services than others. Below are the ten largest police services in Ontario, and the percentage of substantiated misconduct complaints from the public per total number of sworn members.<sup>75</sup>

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<sup>74</sup> The Royal Commission on the Donald Marshall Junior Prosecution; the Canadian Law Reform Commission Working Paper entitled Controlling Criminal Prosecutions; the Attorney General and the Crown Prosecutor; The 1998 Report on Proceedings involving Guy Paul Morin

<sup>75</sup> Office of the Independent Police Review Director Annual Report 2014-2015.

### Substantiated Misconduct as % of Total Officers



**Figure 3: These are the substantiated public complaints represented as a percentage of total officers at the service during the reporting period, April 1, 2014, to March 31, 2015, OIPRD Annual Report.<sup>76</sup> Average = 0.73%.**

According to the figures for this time period, and based on complaints from the public, officers were more than ten times more likely to commit misconduct at Halton or Ottawa than Peel or Waterloo. Obviously, the Province does not have misfit police services, so why the inconsistency?

No studies have been done to attempt to examine a police service's inclination to charge, or even investigate its own member. In some cases, members are charged, in others they are not. The public's perception is that because of the "brotherhood" that exists, all police officers have a certain level of protection; that when they make a complaint it is not investigated impartially. But, it is clear from the chart above that not all officers are protected and not all behaviour is protected, and some Chiefs handle those complaints differently.

What has never been examined or reported to the public is how discretion is applied internally; this would greatly improve the public confidence in police. Figure 3 shows only complaints made by members of the public to the OIPRD. When we look at complaints initiated internally by the Chief of Police, it is a different story.

For the time period above, April 1, 2014, to March 31, 2015, the OIPRD determined that out of the 37 public complaints of misconduct against a Waterloo Regional Police Service (WRPS) officer, only 1 complaint was substantiated. Although, the WRPS reported that between January 1, 2014, and December 31, 2014, (slightly different reporting periods), there were 21 substantiated complaints of misconduct, (for that time period there were 21 Chief's Complaints). This means, 36.2% of all complaints of misconduct were initiated by the Chief (21 out of 58), and 95% of the substantiated complaints were initiated by the Chief (20 out of 21).<sup>77</sup> Historically, the Chief of the WRPS initiates a large majority of the total complaints of misconduct (34% in 2013 and 61% in 2012).

<sup>76</sup> *Supra* note 75.

<sup>77</sup> Waterloo Regional Police Services Board, Professional Standards, Annual Report: 2014 Complaints Statistics.



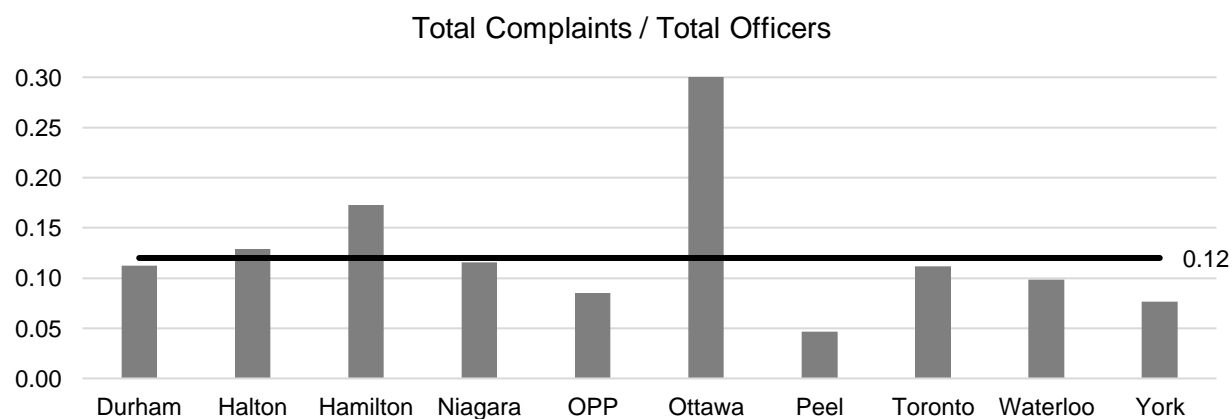
Other police services such as Halton reported that in 2014 there were 17 Chief's Complaints versus 69 total complaints from the public, (19.8% of total complaints were initiated by the Chief).<sup>78</sup>

Ottawa reported that in 2014, 183 out of 392 complaints were Chief's Complaints (46.7%). In 2015, an even larger percentage were Chief's Complaints (50.6%), and these figures include policy or service complaints. Ottawa does not report how many of these complaints were substantiated versus unsubstantiated in their annual report.<sup>79</sup>

Peel Regional Police does not report the breakdown of misconduct investigations that resulted from Chief's Complaints on their website, although as listed in the section starting on page 33, Peel have internally disciplined roughly 30% of their workforce over a 5-year period.<sup>80</sup>

It is difficult to determine a reasonable percentage of Chief's Complaints versus public complaints, although one has to question why officers at one service would be more likely to be disciplined than officers at another service.

It is plain to see that there is inconsistency between police services when it comes to internal discipline. Using the above data, in 2014, the WRPS had only 1 substantiated complaint of misconduct from a member of the public, yet 20 of the 21 Chief's Complaints were found to be substantiated. This explains why the public may be satisfied with the level of service provided by the police service at a time when officer morale is at an all-time low. Not to say some of these complaints were not warranted, however, as you will see in Chapter 3, many officers find themselves the subject of a complaint for reasons other than their compliance with a code of conduct.



**Figure 4: These are the total complaints represented as a percentage of total officers at the service during the reporting period, January 1, 2014, to December 31, 2014. Average = 0.12.**

<sup>78</sup> Halton Regional Police Service, Annual Report 2014.

<sup>79</sup> Ottawa Police 2015 Annual Report.

<sup>80</sup> *Ibid.* note 53.

If you look at total complaints received by a police service, (and these numbers include whatever is reported as “total complaints” by the service in their annual report), the average is about 1 complaint for every 8 officers. Ottawa is the anomaly with just about 1 complaint for every 6 officers. Again, these may or may not include Chief’s Complaints and they also include all of the unsubstantiated complaints.

Peel Regional Police is low in both Figure 3 and Figure 4, while Ottawa Police is high in both Figure 3 and Figure 4. No police oversight body has ever delved into the problem of inconsistency service to service. As noted in the investigation by The Star, Peel Regional Police was one of the services with the highest percentage of officers disciplined “informally” as opposed to formally, (almost 1 complaint for every 3 officers).<sup>81</sup> So, the figures reported to the public may not be a true reflection of what is really happening within.

The services with a high number of complaints (Figure 4) and a high proportion of substantiated public complaints (Figure 3) would tell us that not only does the public complain about those officers more, but that a larger majority of those complaints are found to be substantiated, (Ottawa). Similarly, some cities may complain about their police service more often, but they are less often substantiated complaints, (Hamilton). This may indicate a problem with officer behaviour, or it may indicate a difference in how internal investigations are conducted by each service.

So, why should the public be concerned about the discretion exercised by police services when it comes to misconduct?

For starters, a PSA hearing (meaning a police officer is charged with misconduct offences under the PSA and is afforded their right to a fair and open hearing), could cost taxpayers over \$150,000.00.<sup>82</sup> Because of this, officers are often advised that penalties will increase if a matter is not resolved informally. There have been many officers who have chosen to fight their cases, been found guilty at a PSA tribunal and are later acquitted by the OCPC on appeal - although this process can take years and cost officers in excess of \$100,000.00 in legal fees, not to mention the reciprocal cost to taxpayers. Even though officers are afforded the opportunity to be heard in a “fair and impartial tribunal,” many choose to save themselves the legal expense and accept whatever is put before them informally, whether guilty or not, since seeing an allegation all the way to appeal can be financially crippling.

If police officers were only being charged and prosecuted for the most egregious offences, then the public would trust that taxpayer dollars were being spent wisely to ensure police officer conduct remained in check with expectations. However, at some police services officers are tried for such trivial acts as not completing their notes properly, failing to pay a parking ticket, sending a personal fax from work or even reporting misconduct of other officers. Is a PSA prosecution really the most efficient use of police resources in these

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<sup>81</sup> *Ibid.* note 53.

<sup>82</sup> “Timmins police hearing cost \$150,000,” Len Gillis, The Sudbury Star, August 24, 2016.

cases? It was identified as far back as 1992 that internal affairs departments lacked accountability when it came to internal investigations of misconduct.<sup>83</sup>

What is most concerning being that some police services are using informal discipline to handle allegations of criminal behaviour by their members, which is not intended to be disclosed to the public. There simply is no consistency.

Police Chiefs (or their designate) have the authority to decide which officers to prosecute. Perhaps it's time that this discretion was analyzed and criticized to not only to save money but also to improve the morale and trust of police officers in the very system they are sworn to uphold.

In 2011, York Regional Police Constable Dameian Muirhead was dispatched to a rural property to investigate allegations of domestic abuse. Party-goers refused to identify themselves and Muirhead moved a leather jacket on the seat of a motorcycle so that he could see the licence plate. The jacket fell to the ground and Muirhead refused to pick it up. During the interaction, Muirhead was the subject of racial comments made by attendees at the party. The owner of the jacket filed a formal complaint over Muirhead's refusal to pick up the jacket with the OIPRD.<sup>84</sup> The owner of the jacket was offended when Muirhead ignored his request to "Pick up my (expletive) jacket!" The OIPRD initiated investigation resulted in two PSA charges against Muirhead although the York prosecutor charged Muirhead with three PSA offences. Gerry McNeilly, head of the OIPRD, sent a letter to York Chief Eric Jolliffe regarding the third charge stating that those concerns ought to have been the subject of a Chief's complaint and a separate investigation.<sup>85</sup>

In 2012, while Dameian Muirhead was facing the disciplinary issues, his wife Chantal Muirhead began to feel harassed by her supervisor.

In May, 2013, after Dameian Muirhead attempted to subpoena the Chief to testify at his PSA proceeding, the York Regional Police Association withdrew their financial support of his PSA proceeding because the case was considered "systemic." One of Muirhead's lawyers stated due to the fact "that Dameian seeks to interrogate his persecutors has ruffled the association's feathers."<sup>86</sup> Later that month, the matter was put to a vote before the York Association who voted in favour of restoring legal funding of the PSA proceeding.

In January, 2014, for reasons not explained, the Chief said York's command team has decided it was "no longer in the best interest" of the service, the community or the complainant to continue with proceedings against Dameian Muirhead. The Chief said

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<sup>83</sup> *Ibid.* note 17.

<sup>84</sup> "York police chief's testimony sought at racially charged police hearing," Peter Edwards, The Star, May 21, 2013.

<sup>85</sup> "OIPRD raises concern about racism-related charges facing York police officer," Staff, Torstar News Service, May 1, 2013.

<sup>86</sup> "York police association axes legal funding for officer in racially charged discipline hearing," Staff, Torstar News Service, May 22, 2013.

that he would have preferred to have dealt with the citizen's complaint informally with a written reprimand, but Muirhead refused.<sup>87</sup>

In July 2014, the workplace harassment investigator submitted her report and findings to the York police in the Chantal Muirhead matter. A month later, the service forwarded the report to Chantal Muirhead with a cover letter which stated that the service's harassment review committee agreed with the findings – that harassment had indeed taken place. The investigator found that the supervisor had engaged in "name-calling" using profanity, made "derogatory" comments about Chantal's work performance, spread "malicious" rumours about her personal life and did so with another supervisor in a "non-private" setting. The supervisor also made informal inquiries to Pearson Airport and Canadian Border Services Agency (CBSA) about Chantal's whereabouts. The service committee's recommendations were for Chantal and her supervisor to engage in mediation.<sup>88</sup>

On March 6, 2017, the Toronto Sun reported that a "Morale Survey" of the Toronto Police Association show 68% of respondents feel "overall morale is negative. Up 18% from the December 2016 survey."<sup>89</sup> According to Mike McCormack, (Association President), 20 officers left in early 2017 to pursue other employment, and in all of 2016, 29 officers left for other jobs. Other police services in the province have completed internal surveys, although if the results are unfavourable, the results are not released to the public. Research shows that most police officers in the province are experiencing the same diminishing enthusiasm for the job; which is very dangerous for police services with an aging complement and struggling recruiting efforts.

Another prevalent abuse of discretion by police Chiefs occurs when a whistleblower is prosecuted. An officer's Oath of Secrecy is to protect information that is trusted to the police in the administration of justice. However, when a subordinate officer reveals information that is unfavourable to the administration, the Oath of Secrecy is used as a means to prosecute the whistleblower for not remaining loyal to their employer and their Oath. It is extremely rare when allegations made by a whistleblower are properly investigated. What occurs most often, (and is illustrated in the case studies starting on page 67), is that the member brave enough to allege misconduct by officers of equal or higher rank is punished and jurisprudence is massaged to deny their fundamental rights by all involved agencies whose reputation relies on the continued secrecy of the allegations.

Without a truly independent and politically impartial body to which police officers can complain, there are no checks and balances for the exercise of authority and discretion entrusted to police leaders.

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<sup>87</sup> "Charges against York police officer Dameian Muirhead dropped," Robyn Doolittle, The Star, January 13, 2014.

<sup>88</sup> "York Regional Police officer harassed by her superior," Jim Rankin, The Star, October 12, 2014.

<sup>89</sup> "Low morale prompts exodus of officers: Toronto Police Association," Joe Warmington, Toronto Sun, March 6, 2017.

## Double-Standard

In June, 2016, Constable Lindsay Richardson, Ottawa Police Service, filed a workplace harassment complaint against Acting Superintendent Paul Johnston, in charge of the professional standards section which investigates officer misconduct. The bulk of the complaint alleged unethical and bullying workplace behaviour by Johnston, as a supervisor, toward Richardson. Within the workplace harassment complaint, Richardson also alleged two particular incidents between November 2015 and February 2016 that would be considered misconduct under the PSA. Since Richardson cannot bring a complaint of misconduct to the OIPRD, the Chief of the Ottawa Police Service would have to launch a Chief's complaint to have the misconduct properly investigated.

In August, 2016, Chief Charles Bordeleau made the determination that there were no grounds for a Chief's complaint into the conduct of Johnston. Johnston and Bordeleau were both students in the same recruit class when hired as police officers. Numerous officers of the Ottawa Police Service felt that, on the optics of their decades-long friendship alone, an outside organization should be assigned to investigate the allegations of misconduct.

The Ottawa Police Association brought attention to a clear "double standard" when it comes to the actions of police brass compared to that of their lower-ranking counterparts.

Rank-and-file officers of the Ottawa Police Service circulated a petition to express a vote of non-confidence in the leadership of Chief Charles Bordeleau.<sup>90</sup>

In September, 2016, Bordeleau asked the Ontario Provincial Police to probe misconduct allegations against a senior officer. Bordeleau had heard concerns from officers and their union that the decision to not subject Johnston to an internal affairs probe should be reviewed. Only after all of this had occurred, Bordeleau is quoted as saying:

*"Given the attention related to this file, both internally and externally, I think it is important that we ensure as much transparency as possible in this process."*<sup>91</sup>

Even when a police service seeks the investigative abilities of a neighbouring police service, to attempt to satisfy impartiality, it is not always achieved. Every police officer knows that throughout one's career they'll spend weeks camped out at the police college, getting to know other officers from other services. Friendships and connections are made. There is no way to ensure complete impartiality service to service even when a fair, full and impartial review is required. As you will see in Chapter 3, when police services need to silence whistleblowers and other police services become involved, those services are selected by the Chief.

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<sup>90</sup> "Police chief declines to investigate misconduct allegations against officer in charge of internal affairs," Shaamini Yogaretnam, Ottawa Citizen, August 16, 2016.

<sup>91</sup> "Chief reverses decision, senior officer will be subject to misconduct probe," Shaamini Yogaretnam, Ottawa Sun, September 9, 2016.

## UNION REPRESENTATION

The PSA legislates labour relations for policing in Ontario. Police services with at least 50% of their members belonging to an association can bargain for remuneration, pensions, sick leave credit gratuities, grievance procedures and certain working conditions.<sup>92</sup>

Each association has their own constitution and can decide how they treat all other matters. Without surveying all Ontario police associations, the specific differences in constitutions cannot be explained, however, most associations agree that on-duty conduct that results in criminal or PSA charges against an officer will be defended by the association. Most associations make the distinction that if an officer is charged for off-duty conduct they will pay for their own defense. The irony is that police services are quick to charge officers with PSA offences for off-duty conduct even though the conduct of the officer must be connected to the occupational requirements for a police officer or the reputation of the police force.<sup>93</sup> In those situations, the officer does not have a blank cheque signed by the association to defend themselves; they are most often on their own.

Regardless of whether the charges have any basis, the officer's financial resources will most often determine their innocence or guilt. An officer may accept a guilty plea and penalty within the first few months of a PSA investigation for the sole purpose of saving thousands in legal fees. In the case of criminal charges, an early guilty plea could save the officer more than \$100,000.00. It is naïve and parochial to assume that a police officer charged with a criminal offence has the right to a fair and public hearing by an independent and impartial tribunal. Without the support of their association, officers who are charged for off-duty conduct tend to make decisions based on their family's financial resources as opposed to the legitimacy of the charges.

When police whistleblowers have reported misconduct of other officers, associations have the ability to choose to not support the officer; which happens most often. As opposed to being critical of allegations or conduct, associations remain neutral and will not support the whistleblower.

Just as each association is different in their constitutions and priorities, they also have differences in strength of leadership and presence in the media. Some associations have maintained an oppositional stance, vocal with media, while others play a more passive role mediating relationships between the police service and their members. Some police associations in the province have stood behind police whistleblowers and supported requests of oversight bodies to investigate conduct. However, the courts have proven time and time again that the rigidity of current legislation does not allow for internal oversight, even if a whistleblower has the support of their association.

Police associations can file grievances with the police service on behalf of a member, or regarding a general issue affecting many members. However, police associations can

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<sup>92</sup> *Police Services Act, R.S.O. 1990, c. P.15, Section 119(3).*

<sup>93</sup> *Police Services Act, R.S.O. 1990, c. P.15, Section 80(2).*

choose when to file a grievance with the police service on behalf of a member and a member cannot file a grievance without the support of their association. All decisions by the Ontario Police Arbitration Commission are posted to their website.<sup>94</sup> It does not take long to find decisions that exemplify the inefficiencies and superfluousness of the current labour relations structure. The only currently legislated manner in which a police officer can file a complaint is through a grievance, and only if the association supports the complaint.

As an example, in the matter of Thunder Bay Police Services Board and James Mauro<sup>95</sup>, Mauro had filed two grievances against the Board with the support of his association. The nature of the grievances was Mauro being refused the opportunity for promotion. The association settled those two grievances, but obtained no remedy for Mauro. Mauro was not satisfied that no remedy was sought and he therefore filed his own grievance. Since legislation does not permit a member to file a grievance, the arbitrator appointed dismissed the grievance. Some mediator profiles on the site Mediator Dates<sup>96</sup> shows fees as high as \$1,500.00 for a half day and \$500 per hour thereafter. The expense of the arbitration process is shared among the parties.<sup>97</sup> If police services were able to resolve disputes prior to the need to involve a mediator, this would also save time and money.

## MISFEASANCE

*“...overarching unconstitutional action of the police...”*  
*“...breach of procedural fairness, natural justice and fundamental justice.”*

Nothing in this report suggests that police officers should not be subjected to legitimate investigations into their conduct. What the following case studies show is that there are systemic issues that are costing the public and police officers millions of dollars and could be eliminated if matters could be brought before an independent adjudicator.

The Crown Attorney has a fiscal responsibility to the public to not proceed with a case where the prospect of conviction is low. However, time and time again, police officers are charged, acquitted and the legitimacy of the investigation is called into question by Justices. Despite some officers receiving financial indemnification by way of civil lawsuit, their reputation undoubtedly suffers irreparable harm and in most cases, their professional careers end. Taxpayers are left funding the bill on behalf of the police service and the public are left confused, not knowing who to trust.

Despite police leaders preaching transparency and accountability, police officers are often charged with PSA offences for legitimately questioning or criticizing leadership, or are harassed and bullied for alleging discrimination.

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<sup>94</sup> [Policearbitration.on.ca](http://Policearbitration.on.ca)

<sup>95</sup> Ontario Police Arbitration Commission decision 09-012.

<sup>96</sup> [www.mediatordates.com](http://www.mediatordates.com)

<sup>97</sup> Police Services Act, R.S.O. 1990, c. P.15, Section 122(3.7).

The current police culture and the nonfeasance by the oversight bodies are the root causes for this collateral damage.

## **London**

On June 16, 2012, members of the St. Thomas Police Service were called to an address in that City regarding a domestic dispute between London Police Service (LPS) Constable Chad Power and a female officer, who was also employed with the LPS. The following day, June 17, 2012, members of the St. Thomas Police Service were called a second time to the same address as a result of a further domestic problem between Power and the same female officer. Power was allegedly disrespectful, unprofessional, condescending and aggressive towards the St. Thomas police officers. Power was arrested and charged with forcible entry and mischief under \$5,000 contrary to the Criminal Code of Canada. Those charges were withdrawn within a month.

In 2013, the LPS commenced a criminal investigation into the potential involvement of Power into a break and enter incident, and possession of stolen clothing. At the same time, the LPS initiated an internal Professional Standards Unit (PSU) investigation into the conduct of Power. The LPS decided that the two investigations would be conducted separately, yet that notion was abandoned from the outset as the investigators collaborated on each other's investigations almost immediately.

The PSU investigator monitored the criminal interview of Power and assisted the criminal investigator with preparing the information to obtain a search warrant on the residence of Power. At the conclusion of the search warrant, the criminal investigator reported his findings to the PSU investigator. During Power's compelled PSA interview with the PSU investigator, Power was ordered to produce emails to the criminal investigator. The PSA interview was later shared with the criminal investigator.

During the investigation, Power revealed that he had purchased the stolen clothing from someone on the online site "kijiji.com." Power declined to fully comply with some orders given over the course of the investigations, fearing he was being ordered unlawfully to incriminate himself in the aid of the criminal investigation.

On August 31, 2012, Power was convicted of neglect of duty and discreditable conduct and demoted to 2<sup>nd</sup> Class Constable for a period of 6 months.

On April 18, 2013, Power was found guilty of one count of discreditable conduct in relation to the June 17, 2012, incident in St. Thomas. On September 13, 2013, the Hearing Officer imposed a penalty of the forfeiture of 48 hours [6 days'] time off, and a written letter of apology to the Chief of Police for the St. Thomas Police Service.



On December 23, 2013, the OCPC ordered a stay of the August 31, 2012, PSA proceedings against Power citing that the error by the Hearing Officer amounted to a breach of procedural fairness, natural justice and fundamental justice.<sup>98</sup>

In July 16, 2014, Power appealed the penalty issued September 13, 2013, to the Commission and the penalty was reduced to 24 hours [3 days'] time off and the letter of apology.<sup>99</sup>

Constable Mike Sladek of the London Police Service was accused in 2014 of two criminal offences and investigated by his own service. Sladek was placed on paid suspension. On August 15, 2015, during his lengthy criminal trial that cost him over \$140,000.00, a *voir dire* took place during which all of the evidence obtained during the execution of a search warrant of his residence was excluded due to the legality of the officers' conduct and breaches of Sladek's Charter Rights. Honourable Justice Glenn was quoted as saying:

*"Police must not unilaterally augment their powers of search by deciding that an article named in a search warrant can be deconstructed into smaller parts.*

*Further, fair and accurate reporting by the police following the execution of the warrant to the justice who issued the warrant forms a crucial part of the check and balance of the intervention of the state into the privacy interests of the individual. While search warrants issued by a justice under s. 487 give special authority to the state to search for and seize specific items located in specific places at specific times, their equally important function is to set limits on the extent of the State intrusion. Providing misleading reports to a justice undermines the justice's ability to assess compliance with the search warrant. Any one of these missteps has the potential of undermining the rights of the individual and in turn, eroding public confidence in the justice system and bringing the administration of justice into disrepute.*

*However, these were exactly the missteps that occurred in this case. I do not condone the actions of the officers in this case and I wish to distance the court from any suggestion of approval.*

*In spite of the considerations that would have favoured the inclusion of the evidence produced by the execution of the search warrants, given the concerns raised by the overarching unconstitutional action of the police, all evidence that was produced pursuant to the searches that took place on May 7, 2014 will be excluded."*<sup>100</sup>

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<sup>98</sup> *Power v London Police Service*, 2013 CanLII 101392 (ON CPC).

<sup>99</sup> *Constable Chad Power and The London Police Service*, 2014 CanLII 100624 (ON CPC)

<sup>100</sup> *R. V. Sladek*, 2015, ONJC 467.

As the trial progressed and more and more inconsistencies and discrepancies were discovered, the Crown Prosecutor, (one designated for cases involving police officers), refused to drop the case against Sladek; even after Justice Glenn's ruling above.

Sladek was acquitted in 2015 yet remained on a paid suspension for another 2-years until he could be informally disciplined. Despite his complaints to the London Police Professional Standards Branch, no charges were ever laid against the officers who committed misconduct while executing the search warrant at his residence, provided misleading reports to a justice or provided false testimony.

Sladek did not receive any financial support from his Association.

It is unknown at this time how much it cost taxpayers to prosecute Sladek, (in addition to his salary for 3-years while on paid suspension, despite his acquittal).

## **Ottawa**

In 2009, Constable Paul Heffler, Ottawa Police Service, returned to patrol after spending 8 years in the Intelligence/High Risk section. Heffler began using the service's new records management system to maintain his notes, (which he says was done by many officers and known to his supervisors). Heffler's notetaking was investigated by professional standards and Heffler was advised no charges would be laid.

In 2013, Heffler sent a service-wide email addressing the need for traffic safety vests in cruisers and a better patrol shift schedule to assist with the transition out of night shifts. A week later, Heffler was advised he was being charged for his improper notetaking, (despite the conclusion of the previous investigation). Heffler was convicted at a PSA hearing for insubordination and neglect of duty for his improper notetaking and was demoted for 3 months to 2<sup>nd</sup> class constable.

In March, 2016, Heffler sent a mass email to all Ottawa Police users challenging the Ottawa Police Service Chief's leadership. Heffler stated in his letter that the force suffers from an "inbred system of self-promotion." Heffler made claims that actions by senior leaders at the service are affecting patrol officer morale. In reference to an internal "phantom ticket" probe, Heffler stated:

*"Your ghost warning investigation isn't a symptom of corrupt cops, it's a symptom of a corrupt system."*

In June, 2016, Heffler was advised he was once again under investigation for his notetaking and transferred to work the front desk at his division. Heffler successfully challenged the transfer with a workplace harassment complaint and was returned to patrol.

Heffler was late for a court appearance following a night shift and as a result was transferred off patrol once again. With the help of the OPS workplace harassment

representative, Heffler was once again reinstated to patrol. In early 2017, Heffler was convicted of neglect of duty, for being late for court, and surrendered 8 hours pay.

Heffler said he was made a “scapegoat” because he criticized the administration by internal email. Heffler stated:

*“Ironically, I have become a perfect example of this treatment. I was charged, not for losing cases or being corrupt, or any other worthy purpose. I was charged as a vindictive act.”*<sup>101</sup>

## Toronto

In June, 2016, Sergeant Jamie Clark, Detective Sergeant Steven Watts and Detective Sergeant Donald Belanger of the Toronto Police Service broke ground when they filed a lawsuit against the Crown. Their allegations included that the Crown knew there was “compelling evidence” that allegations against them were “complete lies and fabrication,” yet took no action.<sup>102</sup> The three senior officers say they took action against the Crown to restore their reputations. They say they were wrongly condemned in court for police brutality. The lawyers for the officers were quoted as saying:

*If it weren’t for negligence by the Crown, “the resulting irreparable damage to the officers’ livelihood and reputation never would have occurred.”*<sup>103</sup>

The officers allege that when the claim was made by the accused in a criminal trial that he had been beaten by the officers the Crown withheld evidence that could have exonerated them and did not even have the officers testify, despite calling them as witnesses for the trial.

Superior Court Justice Julie Thorburn reduced the sentence of the accused because of the “police brutality” in the case and that the Crown Attorney, Sheila Cressman, made no effort to challenge their accounts. In 2013, the accused appealed his conviction and a new Crown Attorney was assigned to the appeal, Amy Alyea. The officers allege that they attempted to tell the new Crown that an “egregious mistake had occurred,” but “she took no steps to investigate further.”<sup>104</sup>

In December, 2013, the Court of Appeal threw out the conviction and harshly denounced the officers for using beatings and threats to get confessions out of suspects, and as Chief Bill Blair stated Ontario’s top court only got one side of the story. Blair was quoted as saying:

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<sup>101</sup> “Officer challenges police chief in internal mass email,” Shaamini Yogaretnam, Ottawa Citizen, March 15, 2016.

<sup>102</sup> “Three senior Toronto officers sue Attorney General in rare case,” Wendy Gillis, News reporter, Shanning Kari, Special to the Star, June 24, 2016.

<sup>103</sup> *Supra* note 102.

<sup>104</sup> *Ibid.* note 102.

*“Quite frankly, I don’t understand why that decision was made. The officers were anxious to testify but were not afforded the opportunity to do that by the Crown Attorney.”<sup>105</sup>*

The SIU investigated the matter twice and did not find any wrongdoing by any of the officers.

## **Waterloo**

In September, 2012, Constable Jeremy Snyder, a 13-year member of the WRPS, was arrested for sexual assault by the WRPS for an off-duty incident. Snyder was immediately placed on paid suspension. In January, 2014, after an eight-day criminal trial, Justice Kim Carpenter-Gunn emphatically acquitted Snyder, repeatedly questioning the credibility and motives of his accuser. The WRPS had charged Snyder with discreditable conduct under the PSA.<sup>106</sup> Following the decision at Superior Court, that charge was dropped. The entire ordeal cost Snyder \$90,000.00 and led to his financial demise. Snyder had been on paid suspension for 2-years and did not receive any financial assistance from his association.

Snyder submitted an internal complaint and requested a Chief’s complaint regarding the criminal investigation started in 2012. At that time, WRPS internal policy allowed for a complaint to be brought by a member of the service through the chain of command. Snyder did not receive a response to his request. Shortly after, the WRPS internal policy was changed to no longer allow members of the service to file complaints.

Snyder filed a lawsuit against the WRPS for \$2M for negligent investigation.<sup>107</sup>

In January, 2016, Snyder was once again charged criminally by the WRPS for a domestic related, off-duty, incident, and once again placed on paid suspension.<sup>108</sup> Those charges were later withdrawn and Snyder entered into a peace bond. After a 10-month paid suspension, Snyder returned to work as a police officer. In January, 2017, Snyder pled guilty to discreditable conduct under the PSA and gave up 80-hours’ pay.

Snyder’s lawsuit is ongoing.

Snyder did not receive any financial support from his Association for the criminal matters brought against him by the WRPS.

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<sup>105</sup> *Ibid.* note 102.

<sup>106</sup> “Defence lawyer blasts system after Waterloo Regional Police officer acquitted of sexual assault,” Brian Caldwell, Waterloo Region Record, January 8, 2014.

<sup>107</sup> “Officer facing criminal charges is suing police,” Waterloo Region Record, February 6, 2016.

<sup>108</sup> “New charges for WRPS officer previously acquitted of sexual assault,” CTV Kitchener, published February 4, 2016.

It is unknown what the proceedings against Snyder have cost the Region of Waterloo, (in addition to the almost 3-year paid suspension he served and there was one less police officer on the road).

In January, 2015, Sergeant Bradley Finucan, a 26-year member of the WRPS, was arrested for domestic allegations by the WRPS, some dating back 2-years. One of the complainants was also a member of the WRPS, the other had recently resigned under questionable circumstances. Finucan was not interviewed prior to his arrest, and he was immediately suspended with pay. During his arrest, investigators obtained his personal cellphone from which the only real and objective evidence of the case was later retrieved. That cellphone contained evidence that contradicted allegations, and yet no charges were withdrawn. The WRPS maintained carriage of the investigation despite the obvious conflicts of interest.

Over the course of the next sixteen months, WRPS investigators went to great lengths to substantiate the criminal charges laid against Finucan. Despite Finucan's lawyer drawing the attention of the Crown Prosecutor, (the same Crown Attorney in the Sladek case), to significant evidence that contradicted the complainants' statements and called the allegations into question, the prosecution was determined to bring the case to trial.

In April, 2016, Finucan pled guilty to two charges, largely to prevent further financial ruin. As a result of all of the challenges Finucan has faced in the past four years, on his doctor's advice he took stress leave from his duty to sign-in at his division every work day. In early 2017, entering his third year of paid suspension, the WRPS forced him back to signing in so that they could compel him to be interviewed as part of their ongoing PSA investigation. Finucan filed a Human Rights complaint due to his treatment by the WRPS while suffering mental health issues, and the Tribunal allowed the WRPS to continue to prolong their PSA investigation and failed to intervene.

As of the date of this report, the WRPS have not prosecuted Finucan under the PSA (despite the 6-month limitation in the PSA), and he remains on paid suspension.

Finucan did not receive any financial support from his Association during his criminal matter.

It is unknown what the proceedings against Finucan have cost the Region of Waterloo, (in addition to his salary for the 31 months that he has been suspended, and there has been one less police officer on the road).

## **HARASSMENT/BULLYING**

Some officers have been subjected to discipline or have had their constitutional rights violated for alleging harassment by other members of their service. For some, the reprisal has been sufficient to warrant their resignation from the profession.

## Calgary

In 2013, Constable Jennifer Magnus had decided to stand up for other members as well as civilian staff who were trying to seek “equality and justice.” Magnus and another officer went to former chief Rick Hanson with their concerns, which led to a human resources audit. Since that time, some of these members were told by their supervisors that nothing would be done if they filed a grievance while others were advised by the police union it would not take on blue-on-blue complaints.

In January, 2017, Magnus publicly resigned at a Calgary Police Commission meeting. Magnus, and other employees, say the culture of the service protects those who are involved in abusive behavior in the workplace.

Magnus’ lawyer Rachel West stated:

*“They cannot turn to the individual and say, ‘Look, if you make a complaint, your complaint not only will not be heard, nothing will happen and this is a career-limiting move, do you really want to do this?’ That can’t be the culture.”*<sup>109</sup>

Magnus told the Commission that speaking out about the service’s workplace culture had led to her being branded a “chain jumper, challenging and not to be trusted.”<sup>110</sup>

## Ottawa

In 2013, a group of 10 officers working the Airport Unit for Ottawa Police Service started addressing issues of workplace bullying, under the Occupational Health and Safety Act, through their chain of command. In February, 2015, when nothing was done about their concerns internally, the officers attempted to file an official grievance, but could not garner the support of their union. In April, 2015, Constable Matt Clarke, Kelly Ryan and Sergeant Alex Bender were all transferred to different units. The reassigned officers complained to their union that they felt like they were being punished for speaking out about the bullying, but the association told them they did not have a legal basis to file the grievance.

In this case, the Ottawa Police Association said they negotiated for an investigation by a neutral investigator, but since the investigator would be chosen by management and the force would not disclose the findings, Clarke and Ryan refused to participate.

Ryan stated:

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<sup>109</sup> “13 Calgary police officers to submit formal complaints about bullying at work,” The Canadian Press, Winnipeg Free Press, February 21, 2017.

<sup>110</sup> “13 Calgary police employees file formal bullying, harassment complaints directly to police chief,” Meghan Potkins, Postmedia News, February 21, 2017.

*"I didn't sign up to be controlled and harassed and manipulated by management. Why would you do that to your own officer?"<sup>111</sup>*

## **Waterloo**

In 1989, Constable Rajiv Sharma was hired by the Waterloo Regional Police Service.

In 1995, Sharma was witness to an incident on the firing range involving the careless use of a firearm by another member of the tactical unit. As a result of this incident, Sharma and the other member were relieved from the unit. Shortly after, the other member was reinstated to the unit and Sharma was not. Sharma addressed the issue with his supervisor. From that point on, Sharma believed he was being treated differently because of his race and was targeted for discipline because he spoke up about the treatment he was receiving.

In 1997, Rajiv Sharma faced his first bout of PSA charges following a verbal argument he had with a former fiancée while on duty. Sharma was convicted of discreditable conduct and lost 20 hours' pay. Sharma was also charged with insubordination at that time, but was acquitted.

In 2004, Sharma was charged with neglect of duty, discreditable conduct, insubordination, corrupt practices and secondary activity. In concert with his second PSA hearing Sharma filed a complaint with the Human Rights Tribunal of Ontario alleging discrimination based on race. Sharma's complaint was dismissed by the HRTTO in 2008.<sup>112</sup>

In 2006, Sharma requested a judicial review of his PSA proceeding and the alleged biases that he believed existed in the PSA hearing procedures. Sharma's request was dismissed. Following that, Sharma experienced a lengthy medical leave of absence. Upon Sharma's return to work in April, 2009, he alleges he was discriminated against when his pay was cut because he could not perform full duties.

In 2012, Sharma filed a new complaint with the HRTTO.<sup>113</sup>

On September 5, 2012, a judicial authorization was granted by a Judge pursuant to Part VI of the Criminal Code to intercept private communications of Sharma for a period of four months, from September 5, 2012, to January 1, 2013.<sup>114</sup> Sharma was not notified of this authorization until approximately May, 2013. The notification Sharma received by mail did not indicate which police service was listening to his private conversations and for what purpose.

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<sup>111</sup> "Ottawa police officers break ranks over 'tyrannical' staff sergeant," Judy Trinh, CBC News, January 30, 2017.

<sup>112</sup> Ontario Human Rights Commission file no. NR1X-68QRK5.

<sup>113</sup> HRTTO File Number: 2012-10979-I.

<sup>114</sup> Department of Justice Canada File No. DOJ#F12-070/F12-089.

In May, 2013, the Human Rights Tribunal of Ontario dismissed some of Sharma's allegations against the Waterloo Regional Police Association and allowed some to proceed.<sup>115</sup>

In December, 2015, Sharma had applied to amend his HRTO application to include new allegations, including the violation of his privacy by way of interception of his personal communication by the WRPS. The HRTO dismissed the majority of Sharma's amendments to his ongoing application, including the allegation that the WRPS had requested the judicial authorization to intercept Sharma's personal communication. Mark Hart, Vice-Chair of the Tribunal, stated it was speculation that the WRPS had requested the authorization and Hart noted that Sharma had not requested a court order to obtain accurate information. The HRTO did not assist Sharma in obtaining a court order to determine whether the WRPS had used a Part VI authorization to intimidate or harass Sharma as a result of him exercising his rights under the Human Rights Code<sup>116</sup>, although Supreme Court of Canada ruling *R. v. Hynes*<sup>117</sup>, determined that an administrative tribunal (such as the HRTO) is a court of competent jurisdiction, and Hart was in a position to facilitate this investigation.

As time went on, Sharma became frustrated at how often the HRTO dismiss allegations of discrimination as opposed to investigate them. Sharma garnered public support to attempt to pressure the HRTO to finally proceed with his complaint of racial discrimination. In February, 2017, Sharma was notified by the HRTO that his application would proceed.

Sharma has not received any financial support from his Association and has spent over \$100,000.00 defending his PSA matters and Human Rights Application.

It is unknown what the proceedings against Sharma have cost the Region of Waterloo.

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<sup>115</sup> *Sharma v. The Regional Municipality of Waterloo Police Services Board*, 2013 HRTO 722.

<sup>116</sup> *R.S.O. 1990, c. H.19*.

<sup>117</sup> 2001 SCC 82.



## CHAPTER 3: WHISTLEBLOWERS

*“Whistleblowing is generally consistent with the principles of open government and the public interest. In fact, they have served as a major catalyst in the drive towards openness and transparency.”<sup>118</sup>*

- André Marin, Former Ontario Ombudsman

Frank Serpico was the first well-known police whistleblower, thanks to the 1973 movie “Serpico” starring Al Pacino. Serpico’s story became sensational since he was the first police officer to testify against another officer. In 1970, after only a 12-year career in policing, Serpico reported and exposed corruption in the New York Police Department.<sup>119</sup> Serpico became a marked man within the force. He received death threats for “ratting out” fellow cops. In 1971, he was shot in the face by a drug dealer during a police raid, a bullet lodged in his brain, leaving him deaf in his left ear. Serpico believed the department had set him up.

Serpico was assisted by Sergeant David Durk, who despite allegations made by the Mayor that Serpico was a “psycho who could not be trusted,” was successful in having Serpico’s allegations printed across the front pages of the *Times*. The Mayor was pressured into appointing an independent commission to investigate and what resulted was the Knapp Commission<sup>120</sup>; the Commission to Investigate Alleged Police Corruption chaired by Whitman Knapp.<sup>121</sup> The Commission concluded that corruption in the NYPD was endemic and institutionalized, reaching to its highest levels, even inside the police commissioner’s office. The police commissioner, Howard Leary, was forced to resign. Following the ordeal, Serpico moved to Europe for the next 10-years as a recluse.

Richard M. “Richie” Roberts began working as Detective for the Essex County Prosecutor’s Office in Essex County, New Jersey, in 1963. In 1976, Roberts was integral in the investigation, arrest, and prosecution of Frank Lucas, Harlem “drug kingpin.” Roberts’ investigation also uncovered police corruption connected with the drug trade.<sup>122</sup> In 2007, although criticized for its departure from the real story, the movie “American Gangster” represented the events.

In 1974, the exposure of the web of internal spies, secret surveillance, dirty tricks and cover-ups that led to the unprecedented resignation of President Richard M. Nixon, and to prison sentences for some of Nixon’s highest-ranking aides, was the work of a whistleblower; “Deep Throat.” In 1976, the blockbuster movie “All the President’s Men” brought attention to the suspenseful late-night encounters between Bob Woodward and his source. Three decades later, in 2005, the identity of The Washington Post’s secret

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<sup>118</sup> “Whistleblower Protection vs. Government Confidentiality,” André Marin, Ombudsman of Ontario, address to the International Conference of Ombudsmen, in Willemstad, Curaçao, June 14, 2011.

<sup>119</sup> <http://www.biography.com/people/frank-serpico-9542108>

<sup>120</sup> “David Durk: Another Lost Whistle-Blower,” NYPD Confidential, November 19, 2012.

<sup>121</sup> [https://en.wikipedia.org/wiki/Knapp\\_Commission](https://en.wikipedia.org/wiki/Knapp_Commission)

<sup>122</sup> [https://en.wikipedia.org/wiki/Richie\\_Roberts](https://en.wikipedia.org/wiki/Richie_Roberts)

source was revealed by his family as Mark Felt, who was a pillar of the FBI. At the time, Felt knew that Nixon's administration was willing to use wiretaps and break-ins to hunt down leakers, so no amount of caution was too great in his mind. Felt's identity and reputation were protected by Woodward and Carl Bernstein, in what has become one of modern America's best-kept secrets.<sup>123</sup> Felt died in 2008, at the age of 95.

In 2009, after reporting that the 81<sup>st</sup> Precinct of the NYPD was using arrest quotas and fudging crime stats<sup>124</sup>, fellow officers barged into NYPD officer Adrian Schoolcraft's home and hauled him off to a hospital where he was kept in a psychiatric ward for six days against his will.<sup>125</sup> He has been suspended without pay since that time. Schoolcraft's allegations were later substantiated and those involved were either disciplined or transferred.

In 2015, Schoolcraft settled his lawsuit with the NYPD for \$600,000.00 and has an outstanding \$50M suit against the city for his alleged unlawful detention at the hospital.

In 2013, after the largest leak of classified documents in U.S. history, Private Bradley Manning, (also known as Chelsea Manning), was sentenced to 35 years in prison. The verdict was based on several convictions, including violations of the Espionage Act. Civil liberties groups condemned the judge's decision, stating:

*"When a soldier who shared information with the press and public is punished far more harshly than others who tortured prisoners and killed civilians, something is seriously wrong with our justice system. This is a sad day for Bradley Manning, but it's also a sad day for all Americans who depend on brave whistleblowers and a free press for a fully informed public debate."*<sup>126</sup>

Even though historical whistleblowers have drawn the public's attention to the lack of internal oversight and protection for those who report corruption, whistleblower legislation has done little to improve transparency and accountability in municipal policing.

## WHISTLEBLOWER LEGISLATION

### Federal

In 2004, Criminal Code of Canada section 425.1 made it a criminal offence for employers, anyone acting on behalf of an employer, or a person in a position of authority over an employee, to take disciplinary action, demote, terminate, otherwise adversely affect the employee's employment or threaten any of these things, in order to force the employee

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<sup>123</sup> "FBI's No. 2 Was 'Deep Throat': Mark Felt Ends 30-Year Mystery of The Post's Watergate Source," David Von Drehle, The Washington Post, June 1, 2005.

<sup>124</sup> "NYPD whistleblower Adrian Schoolcraft settles suit for \$600G," Rocco Parascandola, New York Daily News, September 29, 2015.

<sup>125</sup> *Ibid.* note 120.

<sup>126</sup> "Bradley Manning sentenced to 35 years in WikiLeaks case," Julie Tate, The Washington Post, August 21, 2013.

to refrain from providing information to law enforcement officials about the commission of an offence by his or her employer or by an officer, employee or director of the employer. This section also makes it an offence to threaten or retaliate against an employee who has already provided information. However, employees are only protected if they approach a person whose duties include law enforcement.<sup>127</sup> No consideration was given to a situation that may arise if the disclosure that must be made to law enforcement is regarding the actions of a member of a law enforcement agency.

The Public Servants Disclosure Protection Act (PSDPA), S.C. 2005, c. 46, came into force in Canada on April 15, 2007. This act applies to RCMP officers (and other Federal employees). An excerpt from the preamble is as follows:

*“...it is in the public interest to maintain and enhance public confidence in the integrity of public servants; confidence in public institutions can be enhanced by establishing effective procedures for the disclosure of wrongdoings and for protecting public servants who disclose wrongdoings, and by establishing a code of conduct for the public sector; public servants owe a duty of loyalty to their employer and enjoy the right to freedom of expression as guaranteed by the Canadian Charter of Rights and Freedoms and that this Act strives to achieve an appropriate balance between those two important principles;”*

Under the PSDPA, it is the Office of the Public Sector Integrity Commissioner of Canada (the “Commissioner”) that receives all incoming complaints of wrongdoing and decides which complaints to investigate. The Commissioner can refer allegations of reprisal to the Public Servants Disclosure Protection Tribunal (the “Tribunal”) who can grant remedies in favour of complainants and order disciplinary action against persons who take reprisals.

The decisions of the Office of the Public Sector Integrity Commissioner of Canada (the “Commissioner”) are posted to their website.<sup>128</sup>

Since 2011, there have been 13 cases that concluded in a finding of wrongdoing; some of them taking up to 5 years to resolve. In that same time period, the Commissioner referred 7 recipients of reprisals to the Tribunal for investigation. What is concerning to Canadian taxpayers is that most of the investigations before the Tribunal are settled prior to any disciplinary action taken against persons who take reprisals against whistleblowers. Therefore, the spirit of the legislation, to encourage transparency and deter reprisals against whistleblowers has been circumvented by agencies able to pay the price to avoid public prosecution. Not to say that whistleblowers who have legitimately been disciplined for simply acting ethically do not deserve financial restitution, but to treat a public process intended to deter reprisals in the same manner as civil litigation, the government essentially continues to insulate those responsible for the wrongdoing; making the legislation redundant.

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<sup>127</sup> <http://www.slaw.ca/2013/06/06/the-state-of-whistleblowing-in-canada/>

<sup>128</sup> <http://www.psic-isp.gc.ca/>

In *Wayne Roberts and Atomic Energy Canada Limited*, Case #: T-2011-02, Roberts initially made a report of wrongdoing through internal channels at Atomic Energy Canada Limited in 2007. In 2008, Roberts' employment was terminated following a performance review during which it was noted he had become a "source of conflict." In 2009, Roberts filed a reprisal complaint with the Commissioner. It wasn't until 2011 that the Commissioner decided to commence an investigation. Upon completion of the Commissioner's investigation, Roberts was referred to the Tribunal. In 2016, Roberts accepted a settlement and his application was withdrawn, (7 years after Roberts' initial complaint).

In *El-Helou v. Courts Administration Service*, Cast #: T-2011-01, El-Helou was referred by the Commissioner to the Tribunal for remedy for reprisal action taken against him, but only for those allegations not previously dismissed by the Commissioner. Despite the Tribunal's mission including to ensure the parties are treated fairly and impartially, legislation does not give jurisdiction to the Tribunal to assist recipients of reprisal where the decision to dismiss has already been rendered by the Commissioner.<sup>129</sup>

In 2016, Canada's current legal framework for whistleblowing was criticized by Transparency International Canada in its submission to "Canada's Action Plan on Open Government 2016-18." According to Transparency International Canada, the legislation is outdated and out of step with internationally recognized best practices. The most serious deficiencies were identified as the lack of protection for public sector whistleblowers and lack of coverage of the legislation.

One example of the shortcomings of the PSDPA is that the onus is on the whistleblower to prove that adverse actions were intended by the employer as reprisals: almost an impossible task.

Transparency International Canada also identified that none of Canada's whistleblowing laws contains adequate measures for preventing or halting reprisals in the first place, before the whistleblower suffers serious harm.

The PSDPA requires that the President of the Treasury Board conduct a five-year review of the legislation and report on the review to Parliament and the Senate. Since 2007, no review has been conducted.<sup>130</sup>

The PSDPA does not apply to municipal police officers in Ontario.

## **Provincial**

Public Service of Ontario Act, 2006, S.O. 2006, c. 35, Sched. A, serves to establish procedures for the disclosure and investigation of wrongdoing in the public service of Ontario and to protect public servants who disclose wrongdoing from reprisals<sup>131</sup>.

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<sup>129</sup> *El-Helou v. Courts Administration Service*, 2011-PT-01.

<sup>130</sup> *Ibid.* note 48.

<sup>131</sup> *Public Service of Ontario Act*, 2006, S.O. 2006, c. 35, Sched. A, (excerpt).

It is the Integrity Commissioner of Ontario who receives complaints under the Public Service of Ontario Act. In 2015-2016, the Integrity Commissioner's office concluded 25 matters from public servants making disclosures of wrongdoing. Out of those 25 matters, only 8 were investigated. In the 17 abandoned matters, it was determined that the allegations could not possibly reveal a "wrongdoing" as defined in the Act, the circumstances were outside the Office's jurisdiction or there was insufficient information for the Office to pursue the matter. There is also a growing number of complaints of reprisals against disclosers of wrongdoing. Although the Act prohibits any person from taking a reprisal against any public servant who makes, seeks advice about or cooperates with an investigation into the disclosure of wrongdoing, the Act does not give the Commissioner any jurisdiction to deal with reprisals, if they occur.<sup>132</sup>

None of the disclosure summaries posted to The Office of the Integrity Commissioner's website include any names of public servants alleged, or even found, to have committed wrongdoing.<sup>133</sup>

This Act does not apply to municipal police officers in Ontario.

In 2016, the Ontario Securities Commission (OSC) instituted the Office of the Whistleblower. The OSC recognized the need for employees of financial firms to have an ability to report wrongdoing without the fear of reprisal. The OSC even pays cash rewards for information that leads to enforcement action.

The OSC program, obviously, does not apply to municipal police officers in Ontario.

Canadian courts have done little to protect whistleblowers. In *Fraser v. P.S.S.R.B.* 1985<sup>134</sup>, the Supreme Court observed that "the public interest in both the actual and apparent impartiality of the public service dictates a general requirement of loyalty on the part of the public servant to the Government of Canada, as opposed to the political party in power." Further, the Federal Court of Appeal, in *Anderson v IMTT-Quebec Inc.* 2013<sup>135</sup>, emphasized that in order for employees to uphold their duty of loyalty and fidelity to the employer, they must exhaust all internal whistleblowing mechanisms before going public. Practically speaking, most employees would be unwilling to report their employer's misconduct to their immediate supervisor, thus, the actual quality of this protection as interpreted by the courts is questionable.<sup>136</sup>

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<sup>132</sup> Office of The Integrity Commissioner of Ontario, Annual Report 2015-2016.

<sup>133</sup> <http://www.oico.on.ca/home/disclosure-of-wrongdoing/disclosure-summaries>

<sup>134</sup> [1985] 2 SCR 455, 1985.

<sup>135</sup> 2013 FCA 90.

<sup>136</sup> "The Neglected State of Whistleblower Laws in Canada," Obaidul Hoque of Rochon Genova LLP, November 13, 2015.



In the Supreme Court of Canada case of *Merk v. International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 771*, Justice Binnie stated:

*"Having a robust and transparent internal whistleblower protection policy will therefore protect the employer both in terms of early discovery of wrongdoing by its employees and in justifying taking disciplinary action against employees who breach confidentiality obligations and their duty of loyalty."*<sup>137</sup>

Police services in Ontario rarely venture outside of the guidelines provided by the Ministry of Community Safety and Correctional Services and enhance service policy beyond their requirements within the PSA<sup>138</sup>. There currently is no requirement for police services to maintain whistleblower protection policy.

Police services across the country rely on an officer's Oath of Secrecy to persecute whistleblowers. Police officers in Ontario must swear (affirm) to the following:

*...that I will not disclose any information obtained by me in the course of my duties, except as I may be authorized or required by law.*<sup>139</sup>

Police whistleblowers are put in an extremely difficult position since they have also sworn or affirmed an Oath of Office, which in Ontario requires them to:

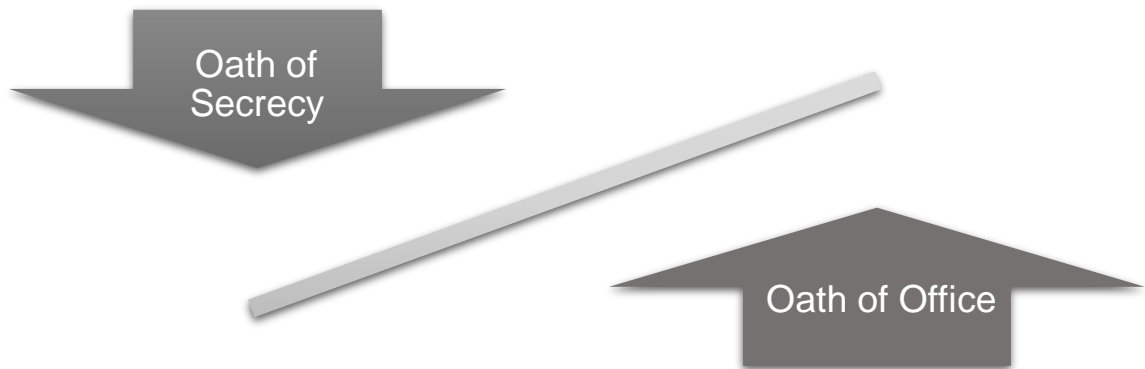
*...be loyal to Her Majesty the Queen and to Canada, and to uphold the Constitution of Canada and, preserve the peace, prevent offences and discharge other duties faithfully, impartially and according to law.*<sup>140</sup>

<sup>137</sup> [2005] 3 SCR 425, 2005 SCC 70, at para 25-26.

<sup>138</sup> *Police Services Act, O. Reg. 3/99*.

<sup>139</sup> *Police Services Act, O. Reg. 268/10*.

<sup>140</sup> *Supra* note 139.



Police whistleblowing results when an officer is guided by their moral obligation to their Oath of Office and their duty to report. Every whistleblower chooses to respect their integrity in the face of fear of retribution.

In 1978, the Honourable R. Roy McMurtry wrote in the RCMP Gazette, no. 12, "Police Discretionary Powers in a Democratically Responsive Society":

*"No one can tell an officer to take an oath which violates his conscience and no one can tell an officer to refrain from taking an oath which he is satisfied reflects a true state of facts."*<sup>141</sup>

In 2017, police whistleblowers are being prosecuted for bringing discredit to the profession by exposing internal wrongdoings and the suppressive powers of an officer's Oath of Secrecy are relied upon to perpetuate malignancies.

In most cases of police whistleblowing, an allegation is made by a member of the police service that another member has committed misconduct, or criminal acts. The chief of police then has a choice to make; do they properly and objectively investigate the allegations made, or do they prosecute the whistleblower?

Current legislation allows chiefs of police, who are vicariously liable for any internal wrongdoing, to allege misconduct by a whistleblower, and maintain full carriage over the disciplinary proceedings. Once an officer is alleged to have committed offences under the PSA, there are no independent bodies who are willing to intervene to protect the officer's rights. The officer is given an opportunity to defend allegations at a public PSA hearing, appeal to the OCPC and finally to a Divisional Court. This entire process can take years and come at a very high cost to both the officer and the police service, (and therefore, the municipality). In most cases where a plea was struck it was due largely in part to the officer's inability to continue to fund a defence. The pockets of the Ontario taxpayer are much deeper than any one individual police officer. In most cases of police whistleblowing the original allegations made by the whistleblower are rarely investigated;

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<sup>141</sup> Public Prosecution Service of Canada, Part III Principles Governing Crown Counsel's Conduct, Chapter 11, 11.2.1 The Common Law Principle.

instead, the officer who tried to do the right thing ends up suffering harassment, retribution and irreparable mental, financial and psychological damage.

The Courts of Justice Act<sup>142</sup>, section 137.1, prevents proceedings that limit freedom of expression on matters of public interest. However, it is left up to both parties to argue whether or not the matter in question is of public interest. To date, there is no public record of an attempt to dismiss a PSA proceeding that arose from an expression that relates to a matter of public interest. And, in most cases where a police chief uses prosecutorial means to silence a whistleblower, the officer's Oath of Secrecy is used as the overarching mechanism.

The municipal police whistleblower in Ontario has no choice but to consider the financial, emotional and psychological costs of exposing misconduct an occupational hazard. Police officers have a good, stable income and reliable pension. These are the most significant reasons most municipal police officers choose to turn a blind-eye to the misconduct and allow the abuses of power to perpetuate. Enough police officers have been prosecuted to date that those who remain are scared into silence.

It should be noted that, although Ontario does not have whistleblower protection for municipal police officers, Finland, (Transparency International's least corrupt country in the world<sup>143</sup>), also has no specific whistleblower protection system. Finland relies on its general principles of openness, transparency and accountability of public administration as the main guarantees against corruption. Finland does have a code of conduct for state officials focusing on traditional values such as equality, legality, responsibility and impartiality.<sup>144</sup>

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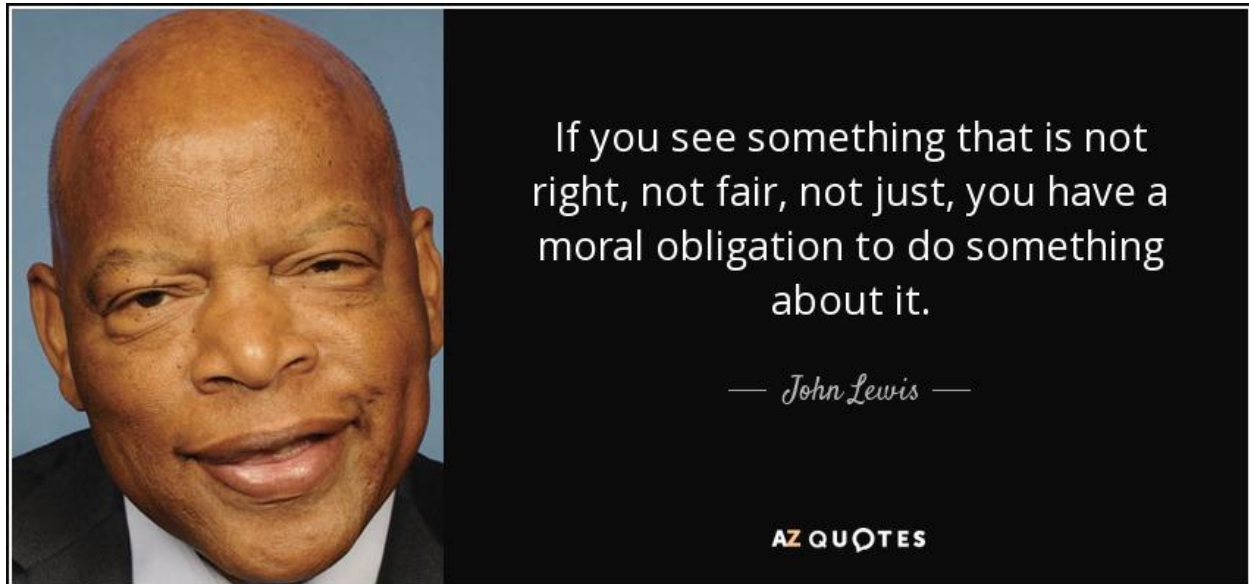
<sup>142</sup> R.S.O. 1990, CHAPTER C.43.

<sup>143</sup> *Ibid.* note 49.

<sup>144</sup> <https://blueprintforfreespeech.net/document/finland-overview>



## WHISTLEBLOWERS: COLLATERAL DAMAGE



The following cases outline situations when police officers have reported misconduct by other officers at the same police service or other participants in the justice system. In each of these incidents, the officer making the report is prosecuted as opposed to the alleged wrongdoer.

### ONTARIO

#### Ontario Provincial Police

In 2010, Detective Constable Salvatore (Sam) Amormino of the Ontario Provincial Police began an investigation titled Project Savage. Eighteen months later, several charges were laid against three men for allegedly fraudulently delivering vehicles to the Congo for eventual use by a listed terrorist group. In April, 2012, Amormino testified at an eight-week hearing at the Ontario Motor Vehicle Industry Council with respect to the licences of two of the accused. At this hearing, the two accused were represented by a lawyer who also happened to be the husband of the Regional Deputy Crown Attorney who had previously been assigned to the case.

In November, 2012, the criminal charges against one of the accused were withdrawn. Amormino alleges there were no discussions with any police investigators prior to the withdrawal of charges.

In June, 2013, when the third accused returned from Lebanon a plea deal had been arranged and he paid a \$300 fine.

Amormino complained about the withdrawal of the charges and what he perceived to be a conflict of interest. Amormino alleged that the criminal charges were dropped to protect

the Regional Deputy Crown Attorney and her husband against the consequences of obvious conflict of interest and, “in all likelihood a compromise of the investigation.”

On August 7, 2013, Amormino was suspended “pending criminal investigation” and was barred from the Courthouse and Crown Attorney’s office. By November 14, 2013, the OPP had concluded that there was no basis for criminal charges against Amormino.

However, in 2013, several Crown Attorneys involved in the case made “internal” complaints about Amormino to the Professional Standards Bureau of the OPP, including eight PSA offences.

On February 14, 2014, the allegations made by the Crown Attorneys came before an Adjudicator. On May 14, 2014, pre-hearing motions were scheduled for December, 2014, and the hearing was scheduled for January and February, 2015.

In September, 2014, OPP consented to adjourn the disciplinary proceedings for Amormino to pursue a Judicial Review. By December 14, 2015, the OPP ordered that pre-hearing motions commence. The hearing of the Application for Judicial Review was scheduled for December 7, 2015. As such, Amormino brought an application to Divisional Court to stay the disciplinary proceeding on the basis that the proceedings are retributive, have been brought in bad faith, in response to the Applicant’s own complaints against a number of individuals, and to deflect attention from their own improper conduct.

On November 27, 2015, Justice M.A. Sanderson J. granted Amormino the stay until after the Application for Judicial Review had been heard and decided.

On December 7, 2015, Amormino asked the court to quash the disciplinary proceedings on the basis that the proceedings contravene his rights under the Canadian Charter of Rights and Freedoms, or as an alternative, stay the proceedings, or in the further alternative make an order requiring the OPP Association to fund counsel of his choice. Not only did Justices Gordon R.S.J, Molloy and Sanderson JJ. not quash the disciplinary proceedings, Amormino’s application for judicial review was dismissed altogether.<sup>145</sup>

On September 22, 2016, Justices McLachlin C.J., Moldaver and Gascon JJ. dismissed Amormino’s application for leave to appeal.<sup>146</sup>

A Freedom of Information request has been submitted and appealed to obtain the figure of what it has cost tax payers to prosecute Amormino as opposed to investigate his claims impartially and objectively. As of the date of this report, the OPP have not provided the requested, public information.

## **Cornwall**

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<sup>145</sup> *Amormino v. Police Services Board (OPP) et. al.* ONSC 7718.

<sup>146</sup> *Detective Constable Salvatore Amormino (OPP) v. Police Services Board (OPP), et al.*, 2016 CanLII 61674 (SCC)

In 1993, 11-year police officer Perry Dunlop learned about an allegation of sexual assault that was made against a Father at his Parish and a probation officer.<sup>147</sup> Dunlop discovered that there had been no criminal investigation into the matter due to a financial settlement in the amount of \$32,000.00 paid by the local Roman Catholic Archdiocese. Dunlop felt obligated, under his Oath of Office, to report the matter to the Children's Aid Society to protect the safety of other children. Dunlop provided a copy of the victim's statement to the Children's Aid Society. Dunlop was charged under the Police Services Act for discreditable conduct, and two counts of breach of confidence.

In January, 1995, Dunlop was successful in having these charges stayed, and the Police Complaints Commissioner appealed, yet was not successful due to the duty to report to Children's Aid Society for police officers.

What happened over the next 6 years drove the family to uproot and move from Ontario to British Columbia. Initially, police were reluctant to lay any criminal charges. This was when Dunlop began to lose trust in the judicial system. Dunlop collected a series of victim statements in his own time and presented the Ontario Provincial Police with the explosive evidence. These statements alleged the existence of a widespread pedophile "clan" in the Cornwall area comprised of many leading citizens. Shortly after, the OPP formed Project Truth. As of January, 2001, Project Truth had resulted in 115 charges laid against 21 men.<sup>148</sup> In 1996, Dunlop filed a lawsuit against several agencies and men, including two former Cornwall Police Chiefs for \$1.2M in which he claims his whistle-blowing ruined his career. Dunlop's lawyer, Charles Bourgeois, stated:

*"He can't go back to work because he's been ostracized by all the officers."*<sup>149</sup>

After 3 years of stress leave Dunlop did return to work, but found himself confined to a small, windowless office with a single computer and no telephone. In August, 1997, there was a report by one of the victims of sexual assault that several alleged abusers were conspiring to murder the Dunlop family.

It was in 2001 that Dunlop moved his family to British Columbia. Dunlop applied to join the RCMP and was turned down. It is alleged that the recruiting officer in Vancouver stated Dunlop was lacking "Integrity & Honesty."<sup>150</sup>

A Public Inquiry was launched into the OPP investigation (the Cornwall Inquiry) where Dunlop and his wife became the focus of blame for those accused.

On September 27, 2004, the Dunlop's were visited at their home on Vancouver Island at 7:10a.m. by the two Ontario Provincial Police (OPP) officers investigating Project Truth and served with a photocopy of an Order of Production, despite already turning over 11

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<sup>147</sup> Centre for Free Expression, <https://www.cfe.ryerson.ca/key-resources/lists/prominent-canadian-whistleblowers>

<sup>148</sup> <http://www.projecttruth2.com/Perry%20Dunlop.htm>

<sup>149</sup> *Supra* note 148.

<sup>150</sup> [Theinquiry.ca/perry-dunlop/](http://Theinquiry.ca/perry-dunlop/)

bankers' boxes full of documents to the OPP. The two OPP officers stayed in Vancouver for a week, at public expense. Dunlop feared that the OPP were going to execute a search warrant on his home or arrest him. Despite the family seeking refuge on Vancouver Island they continued to be harassed.<sup>151</sup>

In one local media article, one of the lawyers of a former priest accused of sexual assault was quoted as saying:

*"I suggest to you, inspector," Neville told Hall [an OPP Det. Insp.], "that (Helen Dunlop's quote) is a complete, utter, bald-faced misrepresentation of what the document represented and what the Dunlops themselves knew."*<sup>152</sup>

In 2008, Dunlop was jailed for 7 ½ months for refusing to testify at the inquiry, saying he had lost confidence in the justice system.<sup>153</sup>

In December, 2009, (16 years after Dunlop first made his report), the Honourable G. Normand Glaude, Commissioner, released the Report of the Cornwall Inquiry in 4 volumes. The main theme in the Commissioner's recommendation was the requirement in policy at all involved police services and parishes to report alleged sexual assault against a minor.

To summarize how Dunlop feels about his initial disclosure he has this to say:

*"I've been asked, 'Would you do it again?' And I always answer, 'Yes, absolutely'" says Mr. Dunlop, who is currently looking for work with the RCMP in B.C. "And then they sometimes ask me, 'How do you feel?' And I tell them I feel that I've been shot down behind enemy lines. And that kind of says it all."*<sup>154</sup>

In 1999, the Vancouver Island Human Rights Coalition honoured the Dunlops with an award. In 2000, the Texas-based Southwestern Law Enforcement Institute gave Dunlop its Ethical Courage Award. In 2008, Dunlop was awarded the Golden Whistle Award for his service to Canada in pursuit of truth and accountability.

A Freedom of Information request has been submitted and appealed to obtain the amount of tax payer dollars that the City of Cornwall spent to prosecute Dunlop. As of the date of this report, they have not provided the requested information.

## Hamilton

Constable Paul Manning immigrated to Canada from England and was hired by the Hamilton Police Service in 2005. After dealing with mental health issues and experiencing incidents on the job that led him to lose trust in the Hamilton Police and even

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<sup>151</sup> *Supra* note 150.

<sup>152</sup> "Dunlop, Guzzo in inquiry spotlight," Trevor Pritchard, Standard-Freeholder, December 12, 2008.

<sup>153</sup> *Ibid.* note 150.

<sup>154</sup> *Ibid.* note 150.

uncover corruption, Manning turned to his police service for support. Manning was not given support to deal with his mental health issues and none of Manning's allegations of corruption were investigated. Manning notified then Chief De Caire in 2014 that he would be suing the service.

Soon after 21 officers stormed his house with a warrant alleging they had received an "anonymous tip" that he had a marijuana grow operation in his home. During the raid, they seized old notebooks Manning had kept from his undercover days which he planned to use as evidence in his lawsuit. No evidence of a marijuana grow operation was found.

Manning and his wife Sabrina filed a lawsuit in the summer of 2016 against the service for \$6.75M.

A Freedom of Information request has been submitted and appealed to obtain the amount of taxpayer money that has been spent to prosecute Manning. As of the date of this report, the requested information has not been provided.

## **Orangeville**

In 2010, the Orangeville Police Service charged Sergeant Curtis Rutt for insubordination and neglect of duty, under the Police Services Act, for his handling of a domestic violence complaint.

In December, 2010, Rutt released a 100-page report in which he alleged poor training and sloppy police work by members of the Orangeville Police Service. The report also called for an independent review and the suspension of the Chief. Rutt circulated his report to the Orangeville Police Services Board, Orangeville Town Council, the Ontario Civilian Police Commission, the Solicitor General and the Office of the Independent Police Review Director. In January, 2011, Chief Tomei announced a third-party review of Rutt's report would be conducted by Toronto Police. Following the release of this report, Rutt raised serious criticisms about the impartiality and thoroughness of the Toronto Police report; Rutt was not even interviewed as a key witness in this review.

Immediately following a finding of not guilty for the 2 previous PSA charges, Rutt was charged with an additional 4 charges as recommended in the Toronto Police review relating to his request for a Section 25 review. The review even contained a quote by Rutt that Rutt states was not even written by him. *"I had no consent. I had no knowledge of that. It was just put in."*<sup>155</sup> Peter Edwards, Star Reporter, was cited in the review as a witness to the investigation that led to charges against Rutt, although Edwards was not even contacted by the Toronto Police investigator.<sup>156</sup> Edwards went as far as contacting the other 2 journalists reported by Toronto Police to be witnesses; neither of them were contacted either. Chief Tomei reported that the Toronto Police review was fair. In regards

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<sup>155</sup> "Orangeville police sergeant caught in lengthy disciplinary process," Peter Edwards, Star Reporter, March 19, 2013.

<sup>156</sup> *Supra* note 155.

to Rutt's allegations against the Orangeville Police Service, Chief Tomei was quoted as saying:

*"I'm satisfied they were all without merit."*<sup>157</sup>

Rutt filed a complaint against the Orangeville Police Service with the Human Rights Tribunal of Ontario. The OPS requested the HRTTO matter be deferred pending the outcome of his disciplinary tribunal, and it was granted.<sup>158</sup>

In August, 2013, as soon as Rutt received his paralegal licence from the Law Society of Upper Canada, he resigned from the OPS.

The entire proceeding cost the taxpayers of Orangeville a reported \$ 596,294.46.

*"I think it is deplorable the amount of public money squandered by this police service to prosecute me for simply requesting a long-needed overhaul on how police services are provided to our community,"* Rutt wrote in his letter of resignation.

When asked if he regretted writing or releasing his report, Rutt stated *"not at all."*<sup>159</sup>

## **Peel Region**

Inspector Steven Patrick Dolan, Peel Regional Police (PRP), brought a complaint of misconduct of other senior members of the service to the Ontario Civilian Police Commission and requested the Minister of Community Safety and Correctional Services request the Commission to carry out an investigation.

Dolan alleged that he was targeted for harassment by a group of senior officers in the PRP from November, 2002, to 2007.

Dolan alleged that members of the senior officer group at PRP attempted to interfere with witnesses in a criminal trial in which he was a defendant. Dolan was ultimately acquitted.

Dolan alleged that members of the senior officer group at PRP prevented the proper investigation of allegations of a domestic assault against one of the members of the group.

When he refused to remain silent about the incident, he was charged with breach of confidence under the PSA. Those charges were ultimately withdrawn.

In 2007, Dolan commenced a civil action in which he advanced allegations of serious misconduct against the Board and the Chief, Acting Deputy Chief and Acting Staff Superintendent of the PRP. Dolan sought damages for breach of public duty or misfeasance in public office, malicious prosecution, conspiracy and intentional infliction

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<sup>157</sup> "Rutt resigns, Police Act charges dissolved," Bill Tremblay, Orangeville Banner, August 30, 2013.

<sup>158</sup> *Rutt v. Orangeville Police Service, 2011 HRTTO 1610.*

<sup>159</sup> "Orangeville Cop whistleblower resigns," Peter Edwards, Star Reporter, August 29, 2013.

of mental anguish. At that time, the Board took the position that a civil action was not the proper route, but that the matter should be addressed by way of a grievance under the collective agreement. During this time, the Peel Regional Police Association (PRPA) wrote to the Commission asking it to initiate an independent investigation of the allegations under s.25 of the PSA.

Dolan then abandoned the civil action in favour of the grievance route which was filed in January, 2008. In this same month, the Commission responded to the PRPA stating it had decided “not to take any action at this time.”

In February, 2008, the Chief took the position that Dolan’s documents did not constitute a proper grievance and refused to consider them. In this same month, the PRPA made a second request to the Commission that it conduct an investigation.

In May, 2008, Dolan sent the Commission two letters requesting an investigation.

In June, 2008, the Board took the position that Dolan did not have the capacity or standing to advance the grievances to arbitration.

In December, 2008, Dolan’s lawyer wrote to the Commission requesting an independent investigation. In January, 2009, the Commission responded that they are not considering the request.

In February, 2009, with the support of the Senior Officer Association (SOA), Dolan requested the Minister appoint a conciliator. The Board objected to the appointment. In May, 2009, the Minister appointed a conciliator, and the conciliation was not successful.

In June, 2009, Dolan requested the appointment of an arbitrator. In this same month, Dolan’s lawyer wrote the Minister requesting the Minister to request the Commission to investigate. The Minister responded in September, 2009, refusing to make a request to the Commission.

In October, 2009, the SOA withdrew their support of Dolan. On February 3, 2010, the Arbitrator ruled that Dolan could not arbitrate the issues without the support of the SOA and dismissed the grievances.

Finally, in May, 2010, Dolan initiated an application for judicial review and challenged the Commission’s refusal to investigate; the Minister’s refusal to request the Commission to investigate; and the Arbitrator’s dismissal of the grievances.

On March 10, 2011, the Honourable Justice of the Ontario Superior Court of Justice Herman concluded that Dolan did not have standing to challenge the decisions of the Commission and the Minister and dismissed Dolan’s application for Judicial Review. Dolan was ordered to pay legal costs of \$6,000.00 to the Commission.<sup>160</sup>

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<sup>160</sup> *Dolan v. Ontario (Civilian Commission on Police Services)*, 2011 ONSC 1376.

Later in 2011, Dolan applied for judicial review of the Arbitrator's decision to dismiss his grievances. It was decided that Dolan had to be supported by the SOA, not the PRPA, since he is a senior officer. No consideration was given to the fact that the membership of the SOA was largely comprised of officers whose names had surfaced in Dolan's complaints of misconduct. Since the other members of the SOA were not interested in incriminating themselves by way of allowing Dolan's grievance and complaint to proceed their support was withdrawn. On November 22, 2011, the Superior Court of Justice of Ontario ruled to dismiss Dolan's application for judicial review of the Arbitrator's ruling and ordered he pay \$4,000.00 in legal costs to the Commission.<sup>161</sup>

Dolan did not receive financial assistance from the Peel Senior Officers' Association and the entire ordeal cost him \$200,000.00.

It is unknown what it cost the regional municipality of Peel to prosecute Dolan and suppress his allegations.

Dolan is no longer employed by the Peel Regional Police Service; he operates his own business. A Freedom of Information request was submitted and appealed to obtain the amount of tax payer dollars that were spent to prosecute Dolan as opposed to objectively investigate his allegations against other members of PRP. As of the date of this report, the requested information has not been provided.

## **Waterloo**

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

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<sup>161</sup> *Dolan v. Ontario Civilian Commission on Police Services, 2011 ONSC 6720.*



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.<sup>162</sup>

In May, 2016, Donovan addressed the WRPS Board by way of delegation regarding the inconsistencies in internal investigations.<sup>163</sup> 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.<sup>164</sup>

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."<sup>165</sup> 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.<sup>166</sup>

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

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<sup>162</sup> PSA, R.S.O. 1990, c. P.15, section 31(1).

<sup>163</sup> "Officer criticizes detectives for improper investigation at police board meeting," Waterloo Region Record, May 5, 2016.

<sup>164</sup> PSA, R.S.O. 1990, c. P.15, section 35(4).

<sup>165</sup> "Local police officer accuses department of unfair discipline," Cambridge Times, May 11, 2016.

<sup>166</sup> Supra note 165.

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.

In August, 2014, Donovan was made aware that the YRP report had been submitted to the WRPS, she therefore filed a request to obtain the report, pursuant to the Municipal Freedom of Information and Protection of Privacy Act, (MFIPPA).<sup>167</sup> Donovan received a refusal letter stating the WRPS did not have the report. Donovan filed an appeal with the Privacy Commissioner and the report was immediately disclosed.

The report only addressed one of several allegations reported by Donovan and that one allegation was proven to be accurate. Without conducting investigation into the remaining allegations brought forward by Donovan, the report concluded that the WRPS conducted a full, fair and transparent criminal investigation against the officer. Despite the subject officer being willing to participate in the review process, he was not contacted until after the report was submitted. Despite evidence of his willingness to participate in the review process, the investigator falsely stated in the report:

*“...at the time of this report he has chosen not to participate.”<sup>168</sup>*

The report revealed that the WRPS did not consult with a crown attorney before the officer was arrested but did consult with senior command, (included in this group of senior officers is an individual who was rumoured to have had off-duty contact with one of the victims in the case, and has since been removed from the subject officer’s PSA investigation as a result of this conflict). Despite all of the obvious and apparent personal and professional relationships involved in the case, no conflict of interest was ever identified in the criminal investigation of the officer and no objective or impartial opinion was sought prior to the officer’s arrest.

Despite numerous emails from the officer to the Crown Attorney on his case outlining evidence that contradicted the statements of the victims, the report quoted the Crown Attorney as stating:

*“he spoke to the defense counsel many times through emails and phone calls and he was never advised of any issues that arose regarding the criminal case against [the officer].”<sup>169</sup>*

Donovan submitted a complaint to the OIPRD due to the bias, negligence and false statements of the senior investigator with York Regional Police.

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<sup>167</sup> R.S.O. 1990, c. M.56.

<sup>168</sup> PSB Investigative Report, Waterloo Regional Police Service, PSB # INQ2016-017.

<sup>169</sup> *Supra* note 168.

Donovan's Human Rights Tribunal of Ontario (HRT) 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 HRT 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 the WRPS, alleging that a deferral of her HRT 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 HRT delivered a decision to allow WRPS the continued deferral of Donovan's Human Rights complaint. The HRT's decision did not address Donovan's allegations of violations of her Charter Rights or reprisal.<sup>170</sup>

On March 6, 2017, Donovan received a letter from the Commission regarding her complaint against the WRPS and the Board that stated:

*"Your concern stems from the result of a change in Policy at the Waterloo Regional Police Service and the manner in which the Chief of Police and the Police Services Board have handled a complaint made by a member of the police service..."*

*The Commission, however, has decided not to commence an investigation into your complaint."*<sup>171</sup>

In March, 2017, the OIPRD concluded that it was not in the public interest to send Donovan's complaint of the senior investigator with York Regional Police for investigation. The decision stated:

*"...this is an internal matter for you to address with your service and is not properly the subject of a public complaint."*<sup>172</sup>

Despite the Chief of the WRPS ordering Donovan to have no further contact with the WRPS Board, the OIPRD advised Donovan that if there are issues with the adequacy or scope of the review conducted by the senior investigator with YRP they are for her to "raise again with the Board."

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 WRPS in order to focus

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<sup>170</sup> *Donovan v. Waterloo Regional Police Service, 2017 HRT 221.*

<sup>171</sup> Letter dated March 6, 2017, by Joyce Mackey, Registrar, Ontario Civilian Police Commission.

<sup>172</sup> OIPRD Complaint Number: E-201611281450436483.

on starting her own business (Fit4Duty™) and moving on with her life. This ordeal cost Donovan over \$10,000 in legal fees.

It is unknown what these proceedings cost the Region of Waterloo taxpayers. A Freedom of Information request has been submitted and appealed and this information is pending.

## **CANADA**

### **RCMP**

#### **The RCMP Five**

In the spring of 2003, Human Resource Director of the RCMP and 33-year employee, Denise Revine, was assigned an extensive budget review. It was then that Revine discovered how senior RCMP officials were mispending millions of dollars of members' pension funds and, it later turned out, insurance funds.<sup>173</sup> Revine compiled a massive file of evidence and turned it over to her boss, Chief Superintendent Fraser Macauley. Macauley attempted to have the evidence properly investigated only to be removed from his position and sent to the Department of National Defence, what he believed was a punitive secondment. RCMP Commissioner Giuliano Zaccardelli stated at a Commons committee that Macauley hadn't come forward soon enough, that it wasn't a punishment transfer, but for Macauley's own good "so he could learn from his mistake." Revine was sent packing, humiliated in public.

Retired Staff Sergeant Ron Lewis made several attempts to have the matter investigated within the RCMP and when those efforts failed Lewis then approached the Treasury Board, Auditor General and finally to MPs and the media.

Staff Sergeant Steve Walker assisted with the Ottawa Police Service's criminal investigation. Once interim Commissioner Bev Busson suspected she had been deceived about the extent of senior bungling on the pension file, she leapt in. Busson posted Hansard transcripts of every Commons committee hearing into the scandal on the RCMP's internal website for all members to read. Busson suspended deputy commissioner Barbara George, and relieved Paul Gauvin of his duties as chief financial officer.

Staff Sergeant Mike Frizzell was abruptly removed from the investigation as his lines of inquiry began to lead him to suspect senior RCMP management. Frizzell's laptop was wiped clean and backup copies of data "went missing."<sup>174</sup>

These officers have come to be known as the RCMP Five.<sup>175</sup>

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<sup>173</sup> "High cost of whistleblowing," Tonda MacCharles, Ottawa Bureau, The Star, June 30, 2007.

<sup>174</sup> *Supra* note 173.

<sup>175</sup> *Ibid.* note 147.

What came next was “years of RCMP foot-dragging, denials and career reprisals, three months of embarrassing parliamentary hearings and finally a damning report on the RCMP’s mismanagement.”<sup>176</sup>

The five RCMP members were awarded the RCMP’s Commissioner’s Commendations, the force’s top honour, for their perseverance in tracking misdeeds in the force’s pension fund that revealed a “horribly broken” management culture out of step with the RCMP’s own values of honesty and accountability, a special investigator concluded.<sup>177</sup>

As a result of the investigation, lawyer David Brown conducted an inquiry into the ordeal and recommended a complete overhaul of top management and RCMP culture in his report.<sup>178</sup> Regarding the cost to whistleblowers, Brown was quoted as saying the following:

*“People who speak out often pay a significant personal price in terms of their peace of mind, their professional, social and family relationships, and their confidence in the future.”*

As a result of the operational stress, Revine had to cope with what doctors told her was post-traumatic stress disorder.

The corrosive effect of facing his bosses’ wrath and colleagues’ doubts began to take a toll on Macauley’s health, personal relationships and on his “core beliefs in the organization.” It will affect him for the rest of his life, he says.<sup>179</sup>

Regarding Brown’s recommendation Frizzell had this to say:

*Brown’s recommendation was “important to me personally,” he admits, but adds “it would have meant far more to me had my own organization looked into this and come to the same conclusion. This is basically vindication from a stranger who in, what, six weeks was able to figure all this out.”*<sup>180</sup>

When asked if it was worth it, Walker replied:

*“Unequivocally, the answer is yes because – to quote my dad – the right thing will always be the right thing. If we can help make positive change in this organization, it will be worth it in the long run.”*<sup>181</sup>

Four years after the ordeal, Lewis quips that the whole thing has badly cut into his golf game,<sup>182</sup> (that’s his personality, say his colleagues and friends).

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<sup>176</sup> *Ibid.* note 173.

<sup>177</sup> *Ibid.* note 173.

<sup>178</sup> *Ibid.* note 173.

<sup>179</sup> *Ibid.* note 173.

<sup>180</sup> *Ibid.* note 173.

<sup>181</sup> *Ibid.* note 173.

<sup>182</sup> *Ibid.* note 173.

In 1999, Staff Sergeant Robert Stenhouse, who had extensive undercover experience, became frustrated with the lack of enforcement initiatives by the RCMP against the Hells Angels. Stenhouse disclosed RCMP media strategies for outlaw biker gangs to Yves Lavingne which appear in the book *Hells Angels at War*. Stenhouse was found guilty of discreditable conduct and ordered to resign. The RCMP External Review Committee found that the Force could not be expected to retain a member whose understanding of the obligations which the duty of loyalty entails was somewhat limited and did not appear to be trustworthy.<sup>183</sup> Stenhouse made an application to the Federal Court, asking that the Commissioner's decision be overturned. The Court concluded that:

*"...the accumulation of the Commissioner's past involvements and actions" in S/Sgt. Stenhouse's case "cannot but give rise to a clear and obvious reasonable apprehension of bias" on the issues to be determined.*"<sup>184</sup>

A court ruled his disciplinary hearing was unfair and ordered a new one which ruled he should be reinstated. In June, 2004, he was reinstated and then immediately suspended with pay.<sup>185</sup>

Stenhouse's career as an uncover officer was detailed on CBC's "The Fifth Estate," Episode 39, "Walk the Line."

## Edmonton

In 1999, Detective Ron Robertson came forward with concerns that the Edmonton Police Service (EPS) had been infiltrated by organized crime. In January, 2000, it was revealed that the Alberta RCMP had been investigating allegations of biker infiltration into EPS for 7 years.

Robertson was alleged to have committed 15 acts of misconduct and faced a disciplinary proceeding.

In 2002, he brought a request for judicial review to the Court of the Queen's Bench of Alberta and was unsuccessful.<sup>186</sup>

In November, 2002, Robertson made an application to the Court of the Queen's Bench of Alberta to stay the disciplinary proceedings which were ongoing against him on the principles of natural justice, as applied to his circumstances, require that he be provided with funded counsel. Robertson's application sought to stay the proceedings until the EPS provided funded counsel to him. His application failed. *Robertson v. Edmonton (City) Police Service (#5)*,<sup>187</sup> states:

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<sup>183</sup> "Update: Decision of the Federal Court in the Stenhouse Case," Martin Griffin, Counsel, March 2004.

<sup>184</sup> *Supra* note 183.

<sup>185</sup> *Ibid.* note 183.

<sup>186</sup> *Robertson v. Edmonton (City) Police Service (#1)*, 2002 ABQB 368.

<sup>187</sup> 2002, ABQB 988, para. 30.

*“There is no doubt that the disciplinary proceeding has serious implications for Detective Robertson’s career as a police officer and his reputation in that role. As well, the economic ramifications of the proceeding and potential penalty are significant.”*

In *Robertson v. Edmonton (City) Police Service* (#6),<sup>188</sup> Robertson made an application for a broad judicial review in relation to the investigation, charging, conduct of, prosecution of and privacy of a disciplinary hearing against him. Robertson alleged a reasonable apprehension that EPS Chief Wasylyshen and Superintendent Dibbs are biased. Robertson’s application was dismissed and costs awarded to the EPS.

In 2004, Chief Wasylyshen (EPS) brought an application for an order sealing part of the record, a partial publication ban, and an order that part of the proceedings be held in camera.<sup>189</sup> The Honourable Mr. Justice Frans F. Slatter ordered a partial publication ban.

On March 26, 2004, (5 years after Robertson disclosed his findings), his application for judicial review was dismissed by Justice Slatter.<sup>190</sup>

On July 8, 2005, Chief Wasylyshen brought an application for costs against Robertson for 3 previous decisions of the Court.<sup>191</sup> The Chief was successful and Robertson was ordered to pay the costs of the EPS for those 3 matters. There is no evidence that matters proceeded any further.

It appears that Robertson chose to leave the profession following this decision.

It is unknown what it cost the City of Edmonton to prosecute Robertson all those years.

In 2010, Constable Derek Huff, Edmonton Police Service, witnessed colleagues use excessive force and injure a prisoner in handcuffs. Huff reported the incident to his Sergeant and nothing was done about it. Huff says he and his partner were branded as “rats” and were mocked and shunned. Huff said it got so bad he and his partner called for backup on the street and no one came. Huff said the ostracizing became so unbearable, he couldn’t function at work. Two years after witnessing the alleged police brutality, Huff said he went to the Deputy Chief and revealed all, in a formal, written complaint. The complaint was sent to the Alberta Serious Incident Response Team (ASIRT), which investigates police misconduct. Huff went on stress leave. Even after the investigation into his complaint was completed, Huff was not advised of the outcome. Huff was ordered back to work and instead; he quit.

Huff stated:

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<sup>188</sup> 2003 ABQB 188.

<sup>189</sup> *Robertson v. Edmonton (City) Police Service* (#8), 2004 ABQB 242.

<sup>190</sup> *Robertson v. Edmonton (City) Police Service* (#10), 2004 ABQB 519.

<sup>191</sup> *Robertson v. Edmonton (City) Police Service* (#11), 2005 ABQB 499.

*"I gave up. I sacrificed my career. I stood up for what's right, and I just got run out of the police service. I thought there is nothing else I could do. I lost."*

When Chief Knecht came on as EPS Chief, he promised to protect whistleblowers. He's now promising to take Huff's allegations seriously. Huff stated:

*"I did absolutely nothing wrong. All I've ever wanted since day one was the truth – and it's finally coming out."*<sup>192</sup>

In 2013, the constable alleged to have used excessive force pled guilty to one count of discreditable conduct for pulling a man out of his cruiser, taking him into a school ground and beating him. The constable was demoted for one year. The presiding officer noted that the incident was "extremely serious" but that there were also several mitigating factors, including the fact that the officer was suffering from depression.<sup>193</sup>

In 2016, the EPS officers accused of excessive force were cleared. The hearing officer said:

*"I find without any doubt that Mr. Huff's version of what happened did not happen."*<sup>194</sup>

Regarding his whistleblowing, Huff had this to say:

*"I stood up for what's right, and I just got run out of the police service,"* said Derek Huff, 37. *"I still can't even really believe it."*

## Halifax

In 1994, Bruce Brine, who had 22-years of policing, was awarded a governor-general's award for exemplary service. In 1995, he was demoted from his job as chief of the Halifax Ports Police after he made allegations that senior officials with the Canada ports police were getting kickbacks from the Hells Angels.<sup>195</sup>

Brine subsequently went on long-term disability for depression. In 1996, Brine filed a complaint with the Canadian Human Rights Commission, alleging he had been poorly treated by Ports Canada.

In 1998, the insurer stopped paying Brine disability benefits. In 1999, Brine declared bankruptcy.

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<sup>192</sup> All information about Huff derived from "Former Edmonton cop Derek Huff blows whistle on brutality, corruption," Kathy Tomlinson, CBC News, September 27, 2013.

<sup>193</sup> "Edmonton's police owe the public far better than this," Matt Gurney, National Post, September 30, 2013.

<sup>194</sup> "Edmonton police officers cleared in beating of drug suspect," Bill Stadel, CBC News, July 20, 2016.

<sup>195</sup> *Ibid.* note 147.



The insurer in this case caused Brine a significant amount of suffering by alleging an overpayment of disability benefits and even once payments had stopped, continuing to issue him T4 slips for the income and claim he owed income tax on those payments. The insurer started legal proceedings against Brine in 2001, and Brine counterclaimed.

In 2004, Brine was awarded a \$300,000.00 settlement by the Canadian Human Rights Commission, and was ordered to pay \$210,000.00 of that to the insurer.<sup>196</sup>

## Montreal

At the start of 2012, Inspector Jimmy Cacchione & Inspector Giovanni Di Feo first discovered a case of corruption within the Montreal Police. The two approached their supervisors and wrote a letter to internal affairs. The two men allege members of the force's internal affairs department embellish or fabricate evidence against lower-ranking officers who fall out of favour. Spurious investigations were then allegedly launched to obtain phone records and other surveillance warrants in order to intimidate colleagues. Montreal Police conducted wiretaps to obtain evidence they used as grounds for suspension of the two officers. They were suspended without pay in June, 2013.

In August, 2013, three Justices of the Court of Quebec ordered Montreal Police to continue to pay their salary until their appeal of the suspensions had been completed. In January, 2014, Quebec's Superior Court denied the officers' application to have their discipline proceedings stayed. Both officers eventually resigned.

As a result of the issues raised by these two officers, the Quebec government now believes:

*"This serious information suggests that beyond certain files, there are also more systemic issues, notably involving the (Montreal police's) internal investigation practices."*<sup>197</sup>

It is not known how much has been spent by Montreal Police to attempt to have this problem go away since 2012.

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<sup>196</sup> "Ex-Ports Canada Police chief in Halifax wins big disability settlement," Eva Hoare, Staff Reporter, The Chronicle Herald, July 4, 2014.

<sup>197</sup> "Quebec broadens probe into Montreal police force corruption allegations," The Canadian Press, February 24, 2017

## CHAPTER 4: CHANGE

Peelian Principle 7 – *“Police, at all times, should maintain a relationship with the public that gives reality to the historic tradition that the police are the public and the public are the police; the police being only members of the public who are paid to give full-time attention to duties which are incumbent on every citizen in the interests of community welfare and existence.”*

Generally speaking, the opinions of the public are unanimous; change has to occur. Historically, the police hierarchy has been impenetrable to change and reliant on a military structure of leadership.

The Canadian Association of Police Governance, the Canadian Police Association and Police Association of Ontario all agree on many key issues, yet the police services themselves continue to operate status quo with little outside interference.

### IT STARTS WITH THE BOARD

This chapter focuses on the important role, and legislated responsibilities, of police services boards. The police services board is the first stage of civilian governance over the police and without it there is no democracy.

Justice W. Morden highlighted the value of a civilian board in a report on the actions of the Toronto Police Service during the G20 summit.<sup>198</sup> Justice Morden stated:

*“Police boards are the intermediary between the police and the public, acting as a conduit to receive and impart information, providing a forum to ensure public sentiment makes its way to the ears of law enforcers, and, ultimately, arbitrating interests in determining what is incorporated into the policies that guide the actions of the police.”*<sup>199</sup>

Following recent reports and surveys it appears there is a disconnect between expectations of a police services board from the public’s perspective and from the policing perspective.

The public’s expectations were broadcast loud and clear throughout Justice Michael Tulloch’s public consultation sessions and outlined in his report.<sup>200</sup> Justice Tulloch pointed out that some board members do not receive any form of training. Starting at paragraph 12.212, the report states:

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<sup>198</sup> The Honourable John W Morden, *Independent Civilian Review into Matters Relating to the G20 Summit* (2012).

<sup>199</sup> *Supra* note 198.

<sup>200</sup> *Ibid.* note 9.

*“And 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 mandatory core training and ongoing training throughout their tenures *“will raise the capacity of boards to govern independently and hold police accountable within the communities they serve.”*<sup>201</sup>

When the Ontario Association of Police Services Boards (OAPSB) surveyed their members in 2016 regarding the rewrite of the Police Services Act<sup>202</sup>, respondents felt strongly that:

*“The PSA must provide greater precision and clarity regarding the roles of Police Boards and Police Chiefs...”*

OAPSB members also agreed that their number one priority for the Provincial Government’s PSA rewrite is:

*“Strengthening Police Board Governance.”*

So, which is it? Is the PSA not precise or clear enough? Or, do police services boards lack the capacity to govern independently and hold police accountable? Police leaders rely on the fact that police services boards cannot direct the chief on the day-to-day operations of a police service. However, if we defined the day-to-day operations as who they will arrest, how they will execute a search warrant, then yes... The police chief has much more experience and resources to make these decisions over a police services board. Every other issue, such as personnel, discipline, transparency, is the responsibility of the police services board, and that responsibility has to now be taken much more seriously than it has in the past.

When political allegiances are formed between a police services board and police service leadership, the ability to govern impartially and objectively is lost. Police Services Board members are representatives of the community responsible for oversight of the police service. Change can come from within; however, it will take strong leadership and knowledgeable and impartial advice.

In 2016, during Justice Michael Tulloch’s public consultation sessions across Ontario, several members of the communities either did not know they were welcome to attend police services board meetings or felt too intimidated to attend. Videos and transcripts are available online for review.<sup>203</sup> Several police services boards across the province do not post meeting schedules to the police service website or any independent contact information at all. The public will not view the police services board as an independent

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<sup>201</sup> *Ibid.* note 9.

<sup>202</sup> <https://oapsb.ca/wp-content/uploads/OAPSB-Survey-Results.pdf>

<sup>203</sup> [www.policeoversightreview.ca](http://www.policeoversightreview.ca)

and impartial body when communication to board members is filtered through an office at the police department.

### **Increase Overall Impartiality**

Police services board members have a Code of Conduct under the PSA.<sup>204</sup> Excerpt:

*“Board members shall discharge their duties loyally, faithfully, impartially and according to the Act, any other Act and any regulation, rule or by-law, as provided in their oath or affirmation of office.”*

It does not bode well for the policing community when members of their police services boards violate their code of conduct by failing to remain impartial on issues that divide the upper and lower echelon.

In April, 2017, Waterloo Regional Police Services Board Chair Tom Galloway openly supported a position taken by the Ontario Association of Chiefs of Police, saying the system of paid suspensions “has been abused.”<sup>205</sup> The article acknowledged that the Chief of Waterloo is a “strong proponent of changing the law so that officers who are suspended after serious, egregious misconduct are not paid.” The article fails to disclose that the decision to suspend at all rests with the chief of police and that if these decisions have been abused it has been by the chief and not the officers. As indicated in Chapter 2, these decisions are inconsistent and at times arbitrary. If the suspension of officers is costing municipalities millions of dollars across Ontario then police chiefs need to start substantiating their decisions to suspend and explain to their police services boards why there were no alternatives. If the goal is to achieve fundamental governance then the tough questions need to be asked.

For police services boards to accurately and impartially monitor the performance of the chief of police there needs to be policy in place to allow reporting from all levels of the police service and even community engagement. Whistleblower protection, as recommended by Justice Tulloch, would ensure that complainants are not deterred from making a report and unfavourable reports are not suppressed.

If the goal is to achieve impartiality in the adjudication of investigations of police officer conduct then the solution has to apply to every officer and every incident; whether criminal or disciplinary, on-duty or off-duty, constable or chief.

Justice Tulloch suggested that a public complaints prosecutor, appointed by the Attorney General, is the most impartial adjudicator of public complaints of police misconduct. If the decision is made to direct all public complaints to a public complaints prosecutor then all investigations of misconduct, whether resulting from a public complaint or an internal complaint need to be handled in the same manner; or the police lose trust in the process

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<sup>204</sup> O. Reg. 421/97: MEMBERS OF POLICE SERVICES BOARDS - CODE OF CONDUCT

<sup>205</sup> “Waterloo Regional police board chair wants changes to suspensions with pay,” Liz Monteiro, Waterloo Region Record, April 27, 2017.

that is intended to achieve impartiality. If this consideration is not made, police services will continue to use any available means to prosecute officers who have fallen out of favour; internal complaint and disciplinary action or criminal charge for off-duty conduct.

## **Increase Accountability**

Without any means of internal oversight of police services, and with the protection of an officer's oath of secrecy, police management have full control over the level of secrecy that exists.

How can the public hold police management accountable for something they don't know?

In order for police services boards to effectively evaluate police organizational performance there needs to be a mechanism for reports to be made from inside a police service. These reports need to be made to a third-party completely independent of the police service, the police services board and the Ministry, (anyone with a stake in preserving the reputation of the judicial system). Only then can the public be assured that all complaints will be adjudicated objectively, regardless of rank or stature.

Members of the community need to know they are welcome at police services board meetings. An open-door policy needs to exist between a community and their police services board. As recommended by Justice Tulloch, this can be achieved through community outreach. After a quick survey of police service's websites, it is easy to determine that some police services boards do not even post contact information, let alone meeting schedules and locations. This needs to improve.

## **Culture Change**

Board members can't be expected to change the personalities of police officers already on the job. What can be done is retaining and attracting the right people and assuring them a work environment that fosters honesty, integrity, accountability and respect. Culture change will not happen overnight.

If police services boards want to increase the gender and racial diversity at their police services, focus must also be placed on retaining that talent. In order to ensure retention, police services boards need to understand the internal issues, and address internal issues before they become the reasons good people leave.

## **Leadership**

*"The secret of change is to focus all of your energy, not on fighting the old, but on building the new."*

- Socrates

Since 1968, recommendations have been made by the public to improve policing. Social advocacy groups have pushed for more accountability, transparency and equality in

policing. The policing community has stayed reactionary, waiting for direction from the Ministry.

Police services board members need to understand the history of criticisms of police governance in order to realize the pressure that has been building and the need to make positive changes now. Change is not about assigning blame it is about moving in the right direction. Justice Tulloch makes several specific recommendations for police services boards, much of which was echoed by OAPSB members in the recent survey.

It is now up to the Board to take action or wait for Ministerial direction. It is clear that since the Kerner Commission of 1968, the Report of the Race Relations and Policing Task Force of 1989, the Report by the Ontario Civilian Commission on Police Services of 1992, the recent Report into Workplace Harassment in the RCMP and many other relevant reports, that very little has changed in police culture and legislation despite the expectations of the public.

It is now up to the police services boards to take appropriate action to achieve their objectives. Fit4Duty™ is The Ethics Standard™ for training, policy evaluation and whistleblower programs to achieve many of the objectives stated in this report.

Together, let's start building the new.

## CHAPTER 5: LEGISLATION

The following is excerpts from current PSA legislation regarding responsibility, powers and duties of the parties responsible for the oversight of police business.

### SECTIONS OF THE PSA RELATING TO RESPONSIBILITY, POWERS AND DUTIES

#### Office of The Independent Police Review Director

S. 5 (1) For the purposes of this Part, the Independent Police Review Director may,

- (a) establish procedural rules for anything related to the powers, duties or functions of the Independent Police Review Director under this Part;
- (b) establish procedural rules and guidelines for the handling by chiefs of police and boards of complaints made by members of the public under this Part; and
- (c) provide guidance to assist chiefs of police and boards in the handling of complaints made by members of the public under this Part. 2007, c. 5, s. 10.

S. 57. In addition to his or her other functions under this Act, the Independent Police Review Director may examine and review issues of a systemic nature that are the subject of, or that give rise to, complaints made by members of the public under this Part and may make recommendations respecting such issues to the Solicitor General, the Attorney General, chiefs of police, boards, or any other person or body. 2007, c. 5, s. 10.

S. 59 (1) The Independent Police Review Director shall review every complaint made to him or her by a member of the public under this Part, and shall determine whether the complaint is about the policies of or services provided by a police force or about the conduct of a police officer. 2007, c. 5, s. 10.

(2) Subject to section 60, the Independent Police Review Director shall ensure that every complaint reviewed under subsection (1) is referred or retained and dealt with in accordance with section 61. 2007, c. 5, s. 10.

#### Ontario Civilian Police Commission

S. 22 (1) The Commission's powers and duties include,

- (a) if the Solicitor General advises the Commission that a board or municipal police force is not complying with prescribed standards of police services,
  - (i) directing the board or police force to comply, and
  - (ii) if the Commission considers it appropriate, taking measures in accordance with subsection 23 (1);
- (b) conducting investigations with respect to appointing officials under the *Interprovincial Policing Act, 2009* under section 25;
- (c) conducting investigations with respect to municipal police matters under section 25;

- (d) conducting inquiries into matters relating to crime and law enforcement under section 26;
- (e) conducting inquiries, on its own motion, in respect of a complaint or complaints made about the policies of or services provided by a police force or about the conduct of a police officer and the disposition of such complaint or complaints by a chief of police or board;
- (e.1) REPEALED: 2007, c. 5, s. 6 (1).
- (e.2) making recommendations with respect to the policies of or services provided by a police force by sending the recommendations, with any supporting documents, to the Solicitor General, the chief of police, the association, if any, and, in the case of a municipal police force, the board;
- (f) hearing and disposing of matters referred to it by boards and appealed to it by police officers and complainants in accordance with Part V. R.S.O. 1990, c. P.15, s. 22 (1); 1995, c. 4, s. 4 (3); 1997, c. 8, s. 16 (1-3); 2007, c. 5, s. 6 (1, 2); 2009, c. 30, s. 44.

### **Police Services Board**

S. 31 (1) A board is responsible for the provision of adequate and effective police services in the municipality and shall,

- (a) appoint the members of the municipal police force;
- (b) generally determine, after consultation with the chief of police, objectives and priorities with respect to police services in the municipality;
- (c) establish policies for the effective management of the police force;
- (d) recruit and appoint the chief of police and any deputy chief of police, and annually determine their remuneration and working conditions, taking their submissions into account;
- (e) direct the chief of police and monitor his or her performance;
- (f) establish policies respecting the disclosure by chiefs of police of personal information about individuals;
- (g) receive regular reports from the chief of police on disclosures and decisions made under section 49 (secondary activities);
- (h) establish guidelines with respect to the indemnification of members of the police force for legal costs under section 50;
- (i) establish guidelines for dealing with complaints under Part V, subject to subsection (1.1);
- (j) review the chief of police's administration of the complaints system under Part V and receive regular reports from the chief of police on his or her administration of the complaints system. R.S.O. 1990, c. P.15, s. 31 (1); 1995, c. 4, s. 4 (7); 1997, c. 8, s. 21 (1-3); 1997, c. 17, s. 8; 2007, c. 5, s. 9 (1).



**Special Investigations Unit**

s. 113 (5) The director may, on his or her own initiative, and shall, at the request of the Solicitor General or Attorney General, cause investigations to be conducted into the circumstances of serious injuries and deaths that may have resulted from criminal offences committed by police officers. R.S.O. 1990, c. P.15, s. 113 (5).

s. 113 (7) If there are reasonable grounds to do so in his or her opinion, the director shall cause informations to be laid against police officers in connection with the matters investigated and shall refer them to the Crown Attorney for prosecution. R.S.O. 1990, c. P.15, s. 113 (7).

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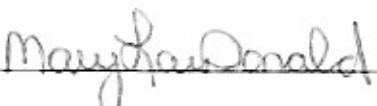
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This is **Exhibit "H"** referred to in the affidavit of Kelly Lynn Donovan  
sworn on September 12, 2018.

  
\_\_\_\_\_  
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."

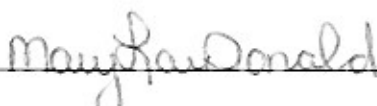
"Congratulations and well done. You obviously know what you have ignited. If it's anything less than a firestorm then I will be surprised. It never fails to astound me how insulated majorities can fool themselves and believe that they are fooling everybody else as well. What you are doing has needed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

This is **Exhibit "I"** 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.*



AOUT 1 1 2017  
AUG

Kelly Donovan  
**[www.fit4duty.ca](http://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.

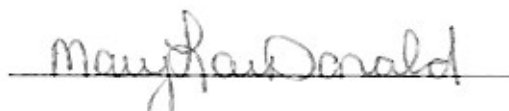
Thank you again for writing on this important matter and sharing a copy of your report with me.

Yours sincerely,

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



This is **Exhibit "J"** 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.*

**Ministry of Community Safety  
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**SEP 13 2017**

**MC-2017-1635  
By e-mail**

Ms. Kelly Donovan  
President  
Fit4Duty  
[Kelly@fit4duty.ca](mailto: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](http://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.

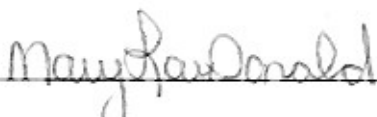
Sincerely,

A handwritten signature in black ink, appearing to read "Marie-France Lalonde".

Marie-France Lalonde  
Minister

c: The Honourable Yasir Naqvi  
Attorney General

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  
Tel 519.209.5721  
kelly@fit4duty.ca  
www.fit4duty.ca



SEPTEMBER 22, 2017

**The Honourable Marie-France Lalonde**

25 Grosvenor Street  
18<sup>th</sup> 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.

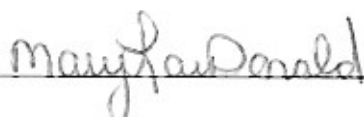
Respectfully,

**Kelly Donovan**

PRESIDENT

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

This is **Exhibit "L"** 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.*

# Ex-officer with Regional Police wants to train board members

LOCAL ([HTTPS://WWW.570NEWS.COM/CATEGORY/LOCAL/](https://www.570news.com/category/local/))

by CARYN CEOLIN ([HTTPS://WWW.570NEWS.COM/AUTHOR/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.”

Donovan 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





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This is **Exhibit "M"** 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.*

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.

This is **Exhibit "N"** referred to in the affidavit of Kelly Lynn Donovan  
sworn on September 12, 2018.

A handwritten signature in cursive script, reading "Mary Louise Donald", is written over a horizontal line.

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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### What is an Independent Workplace Investigation?

May 29, 2018

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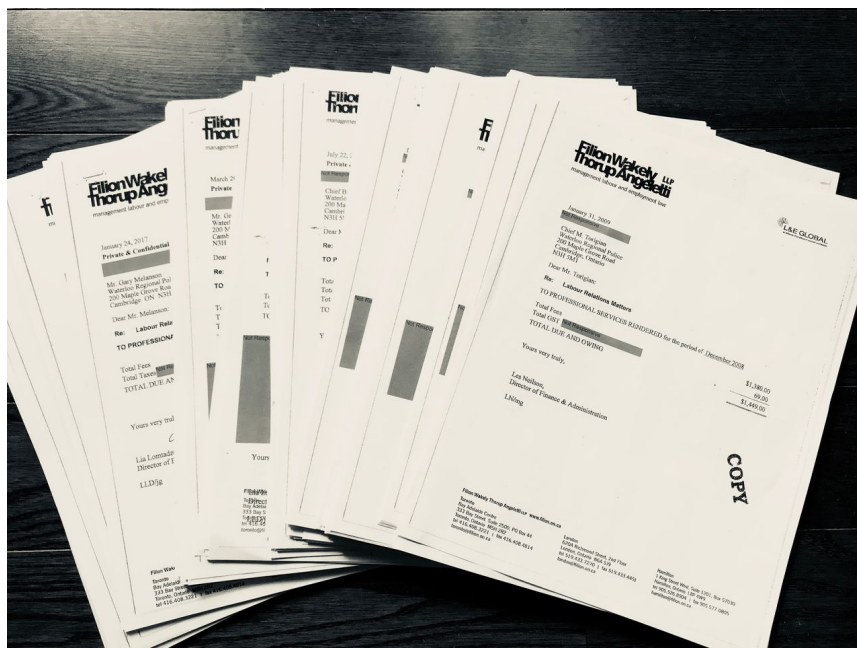
May 11, 2018

## **Discrimination Within Ontario Policing**

Apr 14, 2018

# The \$1.27M "Bad Apple?"

April 5, 2018 | POLICING, WORKPLACE



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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e=2122149600&v=alpha&t=Y4ijOdEE08MKEV68RFoe2CDSzegT0EIOLGtQfAqdl8"/>

	2016 Budget	2016 Actuals	Variance	Variance Notes	2017 Budget	Budget Change	% Change	Budget Notes
<b>Expenditures</b>								
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
<b>Net expenditures</b>	<b>\$ 165,549</b>	<b>\$ 164,367</b>	<b>\$ 1,182</b>		<b>\$ 170,908</b>	<b>\$ 5,359</b>	<b>3.2%</b>	

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 news](#) with 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](http://www.fit4duty.ca) and her personal website is [www.kellydonovan.ca](http://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 article](#) about 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 McInnis](#) and [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 boss's 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."*

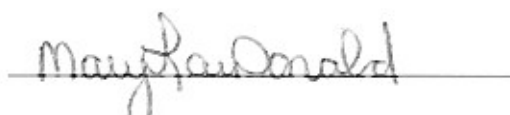
Unfortunately for PC Scolley, she may now find herself falling victim to the secret world of chiefs complaints, and may be charged with neglect of duty or deceit by the chief of the Toronto Police Service. Like the Waterloo Regional Police did with me, it's always good for the service to make an example 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](http://www.fit4duty.ca) and her personal website is [www.kellydonovan.ca](http://www.kellydonovan.ca)

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, 11<sup>th</sup> 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:

<b>PART I – CRIMINAL ALLEGATIONS AGAINST MEMBERS OF OTTAWA POLICE SERVICE</b>	<b>- 4 -</b>
<b>PART II – CRIMINAL ALLEGATIONS AGAINST OPSB CHAIR</b>	<b>- 5 -</b>
<b>PART III – ALLEGATIONS OF CORRUPTION, MISCONDUCT AND/OR UNETHICAL CONDUCT BY OPS CHIEF AND OPSB CHAIR</b>	<b>- 5 -</b>
<b>PART IV - ALLEGATIONS OF CORRUPTION, MISCONDUCT AND/OR UNETHICAL CONDUCT BY WRPS CHIEF, WATERLOO REGIONAL POLICE SERVICES BOARD AND YORK REGIONAL POLICE SERVICE</b>	<b>- 10 -</b>
<b>NEGLECT OF DUTY:</b>	<b>- 12 -</b>

## **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”).<sup>1</sup> 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.<sup>2</sup>

## **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

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<sup>1</sup> R.S.O. 1990, c. M.56.

<sup>2</sup> Markham and the Waterloo Regional Police Service, 2015 ONCPC 04.

the conduct of Chief Bordeleau.<sup>3</sup> The Chief of police is involved with the administration of justice in ways that create great potential for conflict and improper use of power.<sup>4</sup>

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.<sup>5</sup>

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.<sup>6</sup> 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."<sup>7</sup>

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<sup>3</sup> "Conflict-of-interest allegation involving top police families prompts review," by Shaamini Yogaretnam, Ottawa Citizen, February 17, 2016.

<sup>4</sup> Vogel v. Canadian Broadcasting Corporation, 1982 CanLII 801 (BC SC).

<sup>5</sup> Police Services Act, R.S.O. 1990, c. P.15, Section 35(3).

<sup>6</sup> "Ottawa police chief stands by temporary promotion of officer facing OPP probe," Ottawa Citizen, July 24, 2017.

<sup>7</sup> "Updated: Ottawa police chief asks OPP to investigate senior officers for alleged evidence manipulation," Shaamini Yogaretnam, Ottawa Citizen, May 1, 2017.

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.
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.<sup>8</sup>
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;

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<sup>8</sup> “Ottawa police chief stands by temporary promotion of officer facing OPP probe,” Ottawa Sun, July 24, 2017.

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:

- 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.<sup>9</sup> 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.<sup>10</sup> 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

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<sup>9</sup> "Police board members didn't know promoted cop faced criminal probe, emails reveal," Ottawa Sun, Shaamini Yogaretnam, September 14, 2017.

<sup>10</sup> *Supra* note 9.



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).

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.<sup>11</sup> 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."<sup>12</sup> 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.

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<sup>11</sup> "No charges after five-month OPP probe of Ottawa police," Ottawa Citizen, by Shaamini Yogaretnam, October 27, 2017.

<sup>12</sup> *Supra* note 11.

- c. A systemic campaign was launched by OPS members to publicly discredit and humiliate Rukavina and implicate him in the explosion incident.<sup>13</sup>
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 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.

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<sup>13</sup> "\$3.35M lawsuit alleges deceit, civil conspiracy and "campaign" of mistreatment against Ottawa cop," Shaamini Yogaretnam, Ottawa Citizen, October 3, 2017.

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).<sup>14</sup>
- 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.

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<sup>14</sup> R.S.O. 1990, c. P.15.

- 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.

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.

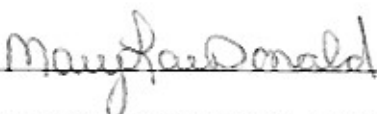
*\*The Ministry of the Attorney General reports each year on how much of their budget was dedicated to the Human Rights Legal Support Centre, Prosecuting Crime, (as examples). It is reasonable for police services to report the above figures in order for the public to better understand where budgets are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



This is **Exhibit "P"** 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.*

## AUDIO

**'It's OK 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.

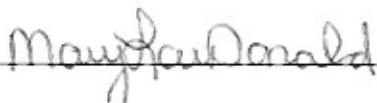
"We want them to feel comfortable talking to people about this," Smith said.

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

This is **Exhibit "Q"** 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.*

08-01-2018

Page 1 of 2

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, I/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), I/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. Clarke



Supporting signatures:

M. Lantz



JERRY PARKER



Rick Smith

T. Megard



Peter Hoare

Nathan Calabrese

Cheryl Layman



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](mailto: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 can not silence her.

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

# Curtis Rutt M.B., C.D.

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

**July 31, 2017**

Kelly Donovan  
Fit4Duty  
Brantford, Ontario

**Dear Kelly Donovan:**

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,**

**Curtis Rutt**

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](mailto: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](mailto: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

This is **Exhibit "R"** 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.*

## 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)

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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.

Carle had been very active in the fight for accountability. She came forward to CBC News about her own experiences for the first time after her former 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)

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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

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## **Where to get help:**

[Canada Suicide Prevention Service](#)

Toll free: 1-833-456-4566

Text: 45645

Chat: [crisiservicescanada.ca](https://crisiservicescanada.ca)

[Association québécoise de prévention du suicide \(AQPS\)](#) (French): 1-866-APPELLE

[Kids Help Phone](#): 1-800-668-6868 (Phone), Live Chat counselling at [www.kidshelpphone.ca](http://www.kidshelpphone.ca)

[Canadian Association for Suicide Prevention](#): [Find a 24-hour crisis centre](#)

If you're worried someone you know may be at risk of suicide, you should talk to them, says the [Canadian Association of Suicide Prevention](#). Here are some warning signs:

Suicidal thoughts.

Substance abuse.

Purposelessness.

Anxiety.

Feeling trapped.

Hopelessness and helplessness.

Withdrawal.

Anger.

Recklessness.

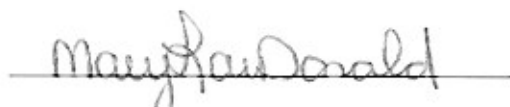
Mood changes.

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This is **Exhibit "S"** 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.*

## 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 of those deaths happened in the past month including Sgt. Sylvain Routhier, who was described as a "gentle soul" and loving father of 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)

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## 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

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## '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

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***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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