

ELECTRONICALLY AMENDED on this 8th day
of May, 2025 pursuant to Rule 26.02 (a).

Kamal K
Manchanda

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Date: 2025.05.12 14:15:48
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Court File No.: CV-24-00005966-0000

Ontario
SUPERIOR COURT OF JUSTICE

B E T W E E N:

KELLY LYNN DONOVAN

Plaintiff

- and -

THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD

Defendant

AMENDED
STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 1 8B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFFS' CLAIM, and \$5,000.00 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the Plaintiffs' claim and \$400 for costs and have the costs assessed by the court.

Date: December 20, 2024

Issued by: ELECTRONICALLY ISSUED
Local Registrar

Address of Court Office:

7755 Hurontario Street
Brampton, Ontario
L6W 4T6

TO: WATERLOO REGIONAL POLICE SERVICES BOARD
200 Maple Grove Road
Cambridge, Ontario
NOB 1M0

Relief Claimed

1. The Plaintiff, Kelly Lynn Donovan, claims against the Defendant the following relief:
 - a. Damages for Negligent Misrepresentation in the amount of \$1,000,000.
 - b. Damages for Breach of Contract and Abuse of Process in the amount of \$250,000.
 - c. Damages for intentional infliction of mental suffering in the amount of \$250,000.
 - d. Punitive, exemplary and/or aggravated damages in the amount of \$250,000;
 - e. Pre-judgment and post-judgment interest in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
 - f. Costs on a substantial indemnity basis, plus applicable taxes; and
 - g. Such further and other relief as counsel may advise and this Honourable Court deems just.

Parties

2. The Plaintiff, Kelly Lynn Donovan, is a former police officer who resides in the City of Brantford in the Province of Ontario.
3. The Defendant, Waterloo Regional Police Services Board, is a municipal police services board with duties outlined in the *Community Safety and Policing Act*, 2019, S.O. 2019, c. 1, Sched. 1, beginning at [section 37](#).
4. Prior to June 26, 2017, the Plaintiff was employed by the Defendant board, and earned \$96,678.40 in salary per year, plus benefits such as medical, dental, life insurance and pension benefits.

5. As a member of the police service, the Plaintiff was also a member of the Waterloo Regional Police Association ("WRPA") from 2010 to 2017.

Background

A. Plaintiff's Employment

6. The Plaintiff was hired on December 20, 2010, as a police constable and attended the Ontario Police College from January 2011 to March 2011.
7. The Plaintiff was invited to participate in a mentoring program within the police service's Fraud Branch in 2015 and was promoted to the position of use of force trainer in the Training Branch later that same year.

B. Retaliation for Whistleblowing

8. On May 4, 2016, the Plaintiff attended a police services board meeting and disclosed to the Defendant board that the police chief at the time, Bryan Larkin, was not investigating members of the police service accused of domestic violence according to law. The Plaintiff brought to the board's attention that the police service did not have a policy on how to conduct an internal investigation.
9. On May 9, 2016, the Plaintiff was subjected to retaliation by Larkin in the form of a misconduct investigation. The Chief formally ordered that the Plaintiff no longer work as a training officer and not re-attend a police services board meeting.
10. On May 31, 2016, the Plaintiff was subjected to the second round of retaliation by Larkin in the form of additional allegations of misconduct. She was ordered not to communicate with members of the Defendant board.

11. The Plaintiff filed multiple complaints against members of the police service and the police services board due to the extensive retaliation she faced. These complaints were submitted to the Human Rights Tribunal of Ontario (HRTO), the Ontario Civilian Police Commission, and the Office of the Independent Police Review Director.

12. At no time during the Plaintiff's employment, and despite repeated requests, the WRPA did not file any grievances against the Defendant board on the Plaintiff's behalf.

C. Plaintiff's Resignation

13. In May 2017, after 12 months of working administrative duties and facing a retaliatory misconduct investigation, the Plaintiff entered into negotiations with the Defendant board to sever their employment relationship.

14. Between May 1, 2017, and June 7, 2017, the Plaintiff's counsel at the time, Pamela Machado, communicated with in-house counsel for the Defendant board at the time, Gary Melanson, and external counsel, Donald Jarvis, regarding the terms of the Plaintiff's resignation.

15. The negotiations that occurred between the parties before the Plaintiff's resignation were deemed publicly admissible on the grounds that the public interest favoured their inclusion. This ruling was made on September 20, 2024, by Arbitrator Howard Snow during a duty of fair representation proceeding involving the Plaintiff and the association.

16. As early as May 1, 2017, the Plaintiff made her demands very clear: that she would only voluntarily resign if there was nothing restricting her ability to speak freely about

her experiences as a “police whistleblower.” She was adamant throughout that she would not sign a release, which restricted her right to do so.

17. Between May 5, 2017, and June 6, 2017, several versions of the resignation agreement were exchanged, yet were not satisfactory to the Plaintiff due to the wording of the confidentiality provisions.

18. On June 6, 2017, after 5-weeks of unsuccessful negotiating, the Defendant board recklessly or negligently made a false representation of fact with the intention that it should be acted upon by the Plaintiff and she would resign. At approximately 2:45 p.m., Jarvis left a voicemail on the cell phone of the Plaintiff’s representative, Machado, regarding the ongoing negotiations.

19. Within this recording, Jarvis specifically states that the release does not “restrict [the Plaintiff] from speaking out or saying what she wants.” He mentions that the release is only meant to enforce statutory disclosure restrictions and confidentiality obligations stemming from her role as a police officer. He goes on to say that the board can never “go after her” with respect to anything that occurred before June 26, 2017.

20. Two days later, on June 8, 2017, and relying on prior negotiations and the statements made by the Defendant’s lawyer, the Plaintiff agreed to voluntarily resign from her employment with the Defendant board, resulting in the loss of her salary, benefits, future pension contributions, seniority, and membership in the police association. The Plaintiff worked as a police constable for six and a half years and had approximately 24 years left before retirement. The effective date of the Plaintiff’s resignation was June 26, 2017.

Plaintiff's Whistleblower Advocacy Efforts

21. The Plaintiff knew that her experience as a “police whistleblower” had value and would help lawmakers improve policing laws to ensure that when an officer exposes a malignancy within their police service, they would not succumb to the retaliation of their police chief. As depicted during negotiations and stated by Defendant’s counsel, the resignation agreement was not meant to restrict her ability to tell her story and advocate for police whistleblowers.
22. At that time, the *Police Services Act*, [R.S.O. 1990, c. P.15, s. 58\(2\)](#) prohibited a police officer from making a complaint to the independent oversight body about their own police service and did not provide any protection from reprisals.
23. In April 2016, (before the Plaintiff’s delegation to the Defendant board explained at para. 8), now Chief Justice Michael Tulloch was appointed to lead an independent review of the police oversight bodies (the Independent Police Oversight Review, or “IPOR”).
24. As a result of the IPOR, Bill 175 – Safer Ontario Act, 2018, was carried upon first reading at the Ontario Legislature on November 2, 2017.
25. On February 22, 2018, and March 1, 2018, the Plaintiff testified before the Standing Committee on Justice Policy on Bill 175. Her testimonies addressed several important topics in policing, including the concept of “police whistleblowing.”
26. The Plaintiff was the only witness to provide the Standing Committee information regarding internal complaints of misconduct. An excerpt from the Official Report of Debates (Hansard) transcript of the Plaintiff’s testimony reads; “During my time at

Waterloo, I witnessed misfeasance during internal investigations of other police officers at the service; more specifically, unlawful arrest of members, corrupt investigations and criminal allegations being overlooked. Waterloo only allows members of the public to make a complaint of misconduct, and the OIPRD does not accept complaints from police officers. Therefore, I made a lawful delegation to my police services board to disclose the misconduct of several high-ranking members of the service and, as a result, I was disciplined and silenced.”

27. As a result of the Plaintiff’s testimony, the new *Community Safety and Policing Act*, 2019, S.O. 2019, c. 1, Sched. 1, includes [Part XI – Right to Report Misconduct](#), including protection from reprisals when reporting internal misconduct.

28. The Plaintiff continues to have much success with her advocacy efforts, which can be summarized as follows:

- a. July, 2017 – Published her Report on Misfeasance in Ontario Policing and the Coordinated Suppression of Whistleblowers to all Members of the Provincial Parliament and police services boards across Ontario;
- b. March, 2018 – Testified at the Ontario Legislature on Bill 175 – Safer Ontario Act;
- c. December 2019 – Ontario Civil Liberties Award recipient;
- d. July, 2020 – Self-published her book *Police Line: Do Not Cross, Silencing a Canadian Police Whistleblowers*;
- e. March, 2023 – Association of Certified Fraud Examiners’ International Women’s Day Keynote Speaker in Washington, DC;

f. April, 2024 – Subject matter expert featured on CBC’s “Ontario Today” segment on officer-involved domestic violence.

29. Throughout these advocacy efforts, the Plaintiff has been diligent in not disclosing any information protected by statute or police confidentiality. She has not disclosed and continues to abide by the terms of the resignation agreement.

Defendant’s Breach of the Resignation Agreement

30. On May 9, 2018, the Plaintiff brought a civil action against the Defendant board for breach of contract and negligence, CV-18-00001938-0000. The Plaintiff alleged that the Defendants committed one breach of the resignation agreement in December 2017 by publicly disclosing the terms of her resignation agreement. That matter is stayed pending the completion of HRTO proceedings.

31. On June 28, 2018, 1-year after the Plaintiff resigned, and as retaliation for her civil action, the Defendant board brought an application for contravention of the resignation agreement before the Human Rights Tribunal of Ontario (“HRTO”). The Defendant board sought, at para. 77(e) of their application; “significant damages to remedy the ongoing damage to the WRPS’s reputation in the context of intentional and repeated violations of the most fundamental nature.”

32. The Defendant board’s HRTO application 2018-33237-S was essentially a claim for defamation and also sought to prevent the Plaintiff from continuing to speak about her employment with them, redact information from her self-published book and her public internet accounts, and ask other parties to remove information about them from the public domain.

33. Evidence included in the Defendant board's application showed they had been conducting surveillance on the Plaintiff by monitoring all her social media accounts and her business website, as well as following her to events.

34. On July 10, 2018, the Plaintiff responded to the Defendant board's application and requested the application be dismissed for the following reasons:

- a. The proceeding relates to matters that are outside the jurisdiction of the tribunal, in accordance with the *Statutory Powers and Procedures Act* ("SPPA"), R.S.O. 1990, c. S.22, [s. 4.6\(1\)\(b\)](#);
- b. The application is frivolous, vexatious and was commenced in bad faith by the Defendant board as a means of retaliation against the Plaintiff for having filed her civil claim, in accordance with SPPA [s. 4.6\(1\)\(a\)](#);
- c. The application was a flagrant abuse of process;
- d. The application was untimely, in accordance with the *Ontario Human Rights Code*, R.S.O. 1990, c. H.19, [s. 45.9\(3\)](#); and
- e. The application was a collateral attack on the Plaintiff's fundamental freedoms, as guaranteed by the [Canadian Charter of Rights and Freedoms](#).

35. The HRTO's response to the Plaintiff's submission was to inform the parties that a full-day in-person hearing would be scheduled for the matters raised in the Defendant board's application. This hearing was cancelled, and the HRTO and defendant have been unresponsive to the Plaintiff's efforts to reschedule.

36. In November 2019, the Defendant board submitted to the HRTO, "The WRPSB is not alleging that Ms. Donovan breached a general non-disclosure clause." Their submission goes on to state; "Ms. Donovan's public complaints as set out in Part IV of

Schedule “A” to the Application undermine the clear and fundamental purpose of the Resignation Agreement – namely, to fully and finally resolve all outstanding matters between Ms. Donovan and the WRPSB to the parties’ mutual satisfaction. Notwithstanding the specific wording of the confidentiality or non-disclosure provisions agreed to by the parties, the inherent purpose of the Resignation Agreement itself precludes Ms. Donovan from reviving the allegations of her initial human rights application (HRTO File No. 2016-24566-I).”

37. On December 23, 2022, the Defendant board submitted an amendment to their HRTO application 2018-33237-S and added a plethora of new allegations dating from 2018 to 2022, all of which are unfounded and in complete contradiction to the terms negotiated between the parties. It became abundantly clear then that the defendant never intended to abide by the terms of the resignation agreement and that the comments in Jarvis’ voicemail were meant to falsely induce the plaintiff’s resignation.
38. From 2018 to 2023, the Plaintiff has done everything possible to try to have the Defendant board’s HRTO application dismissed. She has utilized all dismissal mechanisms available to her at the HRTO, Superior Court of Justice (CV-18-605386), and Divisional Court (699/22):
- a. *Donovan v. (Waterloo) Police Services Board*, [2019 ONSC 818 \(CanLII\)](#);
 - b. *The Regional Municipality of Waterloo Police Services Board v. Donovan*, [2019 HRTO 1326 \(CanLII\)](#);
 - c. *The Regional Municipality of Waterloo Police Services Board v. Donovan*, [2022 HRTO 1409 \(CanLII\)](#);
 - d. *Donovan v. Human Rights Tribunal of Ontario*, [2023 ONSC 6746 \(CanLII\)](#).

39. The Plaintiff applied to Superior Court to attempt to have the Defendant board's application dismissed pursuant to *Courts of Justice Act* ("CJA"), R.S.O. 1990, c. C.43, [s. 137.1\(3\)](#), (above at para. 38.a). Justice Favreau ruled that Superior Court did not have jurisdiction to dismiss a tribunal proceeding, and in doing so, wrote, at [para. 55 of the decision](#); "While I have found that this Court does not have the authority to dismiss the Board's application to the Human Rights Tribunal, there is no doubt that Ms. Donovan raises legitimate concerns about whether the Board's application is a justified effort to prevent her from speaking out about her experience as a police officer with the Board. In the circumstances, in my view, while she has been unsuccessful, Ms. Donovan's application to this Court was not frivolous or unreasonable."

40. After allowing the Defendant board's application to persist for over 5 years, the Plaintiff filed for judicial review of the HRTO's 2022 decision for failing to address the Plaintiff's multiple requests to dismiss (above at para. 38.d), court file number 699/22. The Plaintiff asked the Divisional Court for an order in the nature of *mandamus* compelling the tribunal to address her multiple requests for preliminary dismissal of the Defendant board's application.

Cause of Action

A. Negligent Misrepresentation

41. The Plaintiff, Kelly Lynn Donovan, claims that the Defendant board, through its counsel and acting agent, Donald Jarvis, made negligent misrepresentations during the course of the resignation negotiations, which the Plaintiff relied upon to her detriment.

42. Specifically, on June 6, 2017, Jarvis left a voicemail for the Plaintiff's legal representative, Pamela Machado, stating that the resignation agreement would not restrict the Plaintiff from speaking out or saying what she wanted. Jarvis further asserted that the confidentiality clauses only enforced statutory disclosure restrictions and confidentiality obligations arising from her role as a police officer and that the Defendant could never "go after her" with respect to anything that occurred before June 26, 2017.
43. The statements made in the voicemail were material to the Plaintiff's decision to agree to the terms of resignation. Relying on these representations, the Plaintiff believed that the agreement would not impede her ability to advocate for police whistleblowers or discuss her experiences publicly.
44. The Defendant knew or ought to have known that these statements would be relied upon by the Plaintiff when making her decision to resign. However, the representations were false or misleading as the resignation agreement—as drafted and executed—contained provisions that were capable of being interpreted to restrict the Plaintiff's advocacy efforts and public disclosure of her experiences.
45. The Defendant failed to exercise reasonable care in ensuring that the representations made by its counsel during negotiations were accurate and reflective of the terms of the resignation agreement. The Defendant had a duty to provide truthful, clear, and non-misleading information during the course of negotiations, given the significant and foreseeable impact of the Plaintiff's decision to resign.

46. As a result of the Defendant's negligent misrepresentations, the Plaintiff: a. Resigned from her position as a police constable, resulting in the loss of her salary, benefits, future pension contributions, seniority, and membership in the police association; b. Suffered financial losses and economic harm, including the forfeiture of approximately 24 years of future employment income and pension contributions; and c. Endured emotional distress, frustration, and reputational harm due to the Defendant's actions and subsequent interpretations of the resignation agreement over the past 8 years.

47. But for the negligent misrepresentations of the Defendant, the Plaintiff would not have agreed to the resignation terms as presented.

48. On March 20, 2025, Arbitrator Snow found it reasonable for the WRPA to conclude that a grievance arbitrator would have no jurisdiction over these torts, and ruled that the WRPA did not fail in its duty to represent the Plaintiff.

B. Breach of Contract

49. The resignation agreement between the Plaintiff and the Defendant board constitutes a valid contract formed through negotiations between May 1, 2017, and June 7, 2017.

50. The contract terms were finalized, and the Plaintiff agreed to resign voluntarily, relying on assurances provided by the Defendant's legal representatives, including that the agreement would not restrict her ability to speak freely about her experiences.

51. The Plaintiff fully performed her obligations under the agreement, including resigning on June 26, 2017, and refraining from disclosing information protected by statutory confidentiality requirements.

52. Pursuant to the resignation agreement's Appendix "B" the Defendant released the Plaintiff 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*, RSO 1990, c. H.19[...], 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 [...] or which arises out of or in any way relates to the matters giving rise 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."

53. The Defendant's HRTO application 2018-33237-S, filed on June 28, 2018, and amended on December 23, 2022, is in clear breach of the resignation agreement.

C. Abuse of Process

54. The Plaintiff also claims damages for abuse of process stemming from the Defendant's retaliatory conduct and misuse of legal proceedings.

55. On June 28, 2018, the Defendant initiated HRTO application 2018-33237-S, alleging breaches of the Resignation Agreement.

56. The same counsel for the Defendant board (Jarvis) made the representation at issue to the Plaintiff, wrote the resignation agreement, and filed the HRTO application against her. Jarvis was, at all material times, acting as an agent of the Defendant board. The Defendant knew or ought to have known that the Plaintiff was released from an action taken against her for disclosing the whistleblower retaliation she endured prior to June 2017.

57. The Defendant's HRTO application was frivolous, vexatious, and brought in bad faith as retaliation for the Plaintiff filing a civil claim in May 2018.

58. The Defendant's surveillance of the Plaintiff and submission of amendments to the HRTO application, adding unfounded allegations from 2018 to 2022, demonstrate a sustained effort to harass and intimidate the Plaintiff.

59. The application sought relief unrelated to any legitimate claims under the agreement, including damages for reputational harm and a request to censor the Plaintiff's public statements.

D. Intentional Infliction of Mental Distress

60. The Plaintiff further claims that the Defendant intentionally inflicted mental distress upon her during and following the resignation negotiations.

61. The Defendant's conduct, through its counsel and subsequent actions, was flagrant and outrageous. This conduct included recklessly making false or misleading representations about the terms of the resignation agreement and subsequently

enforcing those terms in a manner that was inconsistent with the Plaintiff's understanding and detrimental to her advocacy efforts.

62. The Defendant knew or ought to have known that its actions would cause the Plaintiff severe emotional distress. By creating a false sense of security about the terms of the resignation agreement, the Defendant induced the Plaintiff to resign under the belief that she would be free to advocate for police whistleblowers and share her experiences without repercussion.

63. Following the execution of the resignation agreement, the Defendant's conduct in attempting to restrict the Plaintiff's advocacy efforts further exacerbated her emotional distress. This conduct caused the Plaintiff to feel betrayed, humiliated, and isolated.

64. The Plaintiff has suffered severe emotional and psychological harm as a result of the Defendant's actions, including anxiety, depression, and significant distress about her professional and personal reputation.

65. The Defendant's conduct was intentional, reckless, and without regard for the Plaintiff's well-being.

Damages

66. As a result of the Defendant's breach of contract and abuse of process, the Plaintiff suffered reputational harm, financial loss, and emotional distress. The Defendant's actions undermined the Plaintiff's whistleblower advocacy efforts and credibility, causing irreparable harm to her professional reputation.

67. As a result of the Defendant's negligent misrepresentation the Plaintiff gave up a substantial amount past and future wages. She lost her pension accrual and contributions to her medical and dental benefits as a result of being misled by the Defendant and falsely induced into signing the resignation agreement.

68. As a result of the Defendant's conduct and causes of action, including the intentional infliction of mental suffering, the Plaintiff has sustained and continues to sustain psychological and emotional distress related to the ongoing proceedings and a clear attempt to silence her whistleblower advocacy efforts.

Punitive and Aggravated Damages

69. The Plaintiff pleads that the conduct of the Defendant was deliberate, high-handed, reckless, and showed a wanton disregard for the Plaintiff's rights. Such conduct constitutes a marked departure from ordinary standards of decency and warrants the imposition of punitive damages to denounce and deter similar conduct in the future.

70. The Plaintiff further pleads that the Defendant's actions caused not only direct harm but also humiliation, distress, and emotional suffering to the Plaintiff beyond what is compensable under general damages. The Defendant's conduct was oppressive, malicious, and calculated to harm the Plaintiff, thus justifying an award of aggravated damages.

Statutes and Jurisdiction

71. The Plaintiff will rely on the following statutes and laws in support of her claim:

- a. *Courts of Justice Act*, R.S.O. 1990, c. C.43
- b. *Police Services Act*, R.S.O. 1990, c. P.15;

- c. *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194;
- d. *Human Rights Code*, R.S.O. 1990, c. H.19; and
- e. Such further and other statute as the Plaintiff may raise and this honourable court accept.

72. This claim is filed in the City of Brampton, in the Province of Ontario, under the jurisdiction of the Ontario Superior Court of Justice.