

COURT OF APPEAL FOR ONTARIO

B E T W E E N :

KELLY LYNN DONOVAN

Plaintiff
(Appellant)

- and -

WATERLOO REGIONAL POLICE SERVICES BOARD
and BRYAN LARKIN

Defendants
(Respondents)

COMPENDIUM OF THE RESPONDENTS

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Plaintiff (Appellant)

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TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

KELLY LYNN DONOVAN

Plaintiff
(Responding Party)

- and -

WATERLOO REGIONAL POLICE SERVICES BOARD
and BRYAN LARKIN

Defendants
(Moving Party)

**AFFIDAVIT OF LAURA FREITAG
(Sworn February 4, 2019)**

I, Laura Freitag, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a lawyer at the law firm of Filion Wakely Thorup Angeletti LLP, counsel for the Defendants. I have reviewed the file for this matter and as such I have knowledge of the matters to which I hereinafter depose.

The Parties

2. The Organizational Defendant, the Waterloo Regional Police Services Board (“WRPSB”), is an agency created under the *Police Services Act* (“PSA”) that is responsible for the provision of adequate and effective police services to the Regional Municipality of Waterloo (including the cities of Kitchener, Waterloo, and Cambridge). The WRPSB oversees the Waterloo Regional Police Service (“WRPS”).
3. The Personal Defendant, Bryan Larkin, was appointed the Chief of Police of the WRPS on August 31, 2014 and remains in this role currently.

4. The Plaintiff, Kelly Lynn Donovan, commenced employment with the WRPSB, in or around 2010. At the time of her employment cessation, she held the rank of Constable and was assigned to Administrative Command, Training Branch.
5. At all times during her employment with the WRPSB, the Plaintiff was a member of the Waterloo Regional Police Association (the “WRPA”), the bargaining agent for uniformed and civilian members of the WRPS. Accordingly, the terms and conditions of the Plaintiff’s employment were governed by the Uniform Collective Agreement between the WRPSB and the WRPA. A copy of the 2015-2019 Uniform Collective Agreement is attached hereto as **Exhibit “A”**.

The Plaintiff’s Medical Leave of Absence

6. On or about February 24, 2011, the Plaintiff attended at a gun range at the Ontario Police College in Aylmer, Ontario. While at the gun range, the Plaintiff witnessed another individual accidentally discharging his firearm into his leg.
7. The Plaintiff subsequently commenced a medical leave of absence in or around February 2017. The Plaintiff remained off work until her employment resignation.
8. During her medical leave, the Plaintiff was diagnosed with post-traumatic stress disorder (“PTSD”) as a result of the incident she had witnessed at the Ontario Police College.

The Plaintiff’s WSIB Claim and Entitlement to Benefits Thereunder

9. On or about April 10, 2017, the Plaintiff applied for benefits from the Workplace Safety and Insurance Board in respect of her PTSD diagnosis. The date of injury/illness specified on the Plaintiff’s claim for benefits (WSIB Form 7) was February 1, 2017.
10. On or about July 12, 2017, a Case Manager from the WSIB, Jane Drake, issued a decision granting initial entitlement to the Plaintiff and finding that the Plaintiff was entitled to healthcare benefits and loss of earnings benefits from February 27, 2017 to June 24, 2017. A copy of the decision is attached hereto as **Exhibit “B”**.

11. On or about January 11, 2018, the WRPSB requested a review of Case Manager Drake's decision by filing an Intent to Object Form with the WSIB, a copy of which is attached hereto as **Exhibit "C"**.
12. Case Manager Drake reviewed the claims file and issued a reconsideration decision dated August 3, 2018 re-affirming her July 12, 2017 initial entitlement decision. A copy of the reconsideration decision is attached hereto as **Exhibit "D"**.
13. Since the issuance of Case Manager Drake's reconsideration decision, the WRPSB has not taken any steps to initiate any further WSIB reviews of the July 12, 2017 decision or the Plaintiff's WSIB claim.

The Plaintiff's Initial Human Rights Application and Potential *PSA* Charges, and the Settlement Thereof

14. On or about May 4, 2016, the Plaintiff made a delegation to the WRPSB regarding her belief that the WRPS was investigating domestic violence inconsistently where WPRS members were involved as either alleged victims or perpetrators. During her delegation, the Plaintiff identified herself as a police officer, referred to confidential information contained in a Crown Brief, criticized the WRPS and its members, and suggested that WRPS officers may have suppressed evidence in a criminal investigation.
15. By making her delegation without prior notice or approval from the WRPS Chief of Police or his delegate and potentially accessing a protected Crown Brief, the Plaintiff had engaged in acts that could potentially constitute professional misconduct under the *PSA*. Accordingly, the WRPSB issued a formal Notice of Investigation to the Plaintiff advising that, subject to and following an external review of the substance of the Plaintiff's allegations, the Plaintiff's conduct on May 4, 2016 would be investigated to determine whether she had breached the *PSA* and/or engaged in discreditable conduct. The Plaintiff was also issued a Directive instructing her, *inter alia*, not to have any conduct with WRPSB members without prior authorization from the Chief of Police.

16. Shortly thereafter, the Plaintiff sent an email to members of the WRPSB advising that she had been served with a Directive and a Notice of Investigation. She also asserted that her actions were beyond reproach and that she had no personal interest in any of the matters that she had brought to the WRPSB's attention.
17. The Plaintiff received a second Notice of Investigation on May 31, 2016 as a result of her email communications with the WRPSB and, again, was notified that an investigation would be conducted to determine if her actions constituted discreditable conduct under the *PSA*.
18. On or about June 6, 2016, the Applicant filed an application with the Human Rights Tribunal of Ontario ("the Tribunal"), having HRTO File No. 2016-245566-I ("the 2016 Application"), alleging that she was discriminated against on the basis of sex and marital status. A copy of the 2016 Application (excluding documents attached to the 2016 Application) is attached hereto as **Exhibit "E"**.
19. The WRPSB, the WRPA, and the Plaintiff successfully negotiated a Resignation Agreement to fully resolve and settle the 2016 Application, the Plaintiff's potential *PSA* charges, all matters related to the Plaintiff's employment with the WRPSB and the cessation of that employment, and all outstanding matters between the parties. The Resignation Agreement was executed by the WRPSB, the WRPA, and the Plaintiff on or about June 8, 2017. A redacted copy of the Resignation Agreement is attached hereto as **Exhibit "F"**.
20. Pursuant to the Resignation Agreement, the Plaintiff confirmed that she was freely, voluntarily, and irrevocably resigning from her employment with the WRPSB.
21. The WRPSB and the Plaintiff also released each other from, *inter alia*, any and all complaints and claims arising out of or in any way relating to the Plaintiff's employment with the WRPSB and/or the 2016 Application.

22. The Resignation Agreement also contained the following confidentiality provision:

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.

The Class Action Against the WRPSB

23. The WRPSB was named as a defendant in a class action lawsuit on or about May 30, 2017. The putative class members in the class action were current and former employees of the WRPS and their family members. The Plaintiff was not a putative class member in the class action. The class action was subsequently dismissed by Madam Justice Baltman on July 13, 2018.
24. On or about December 21, 2017, the WRPS's Chief of Police, Bryan Larkin, swore an affidavit in support of a dismissal motion in the class action. This affidavit was served on counsel for the class members as part of the WRPSB's Reply and Responding Motion Record.
25. Chief Larkin's affidavit attached several exhibits. Attached as Exhibit "F" to Chief Larkin's affidavit was a chart with anonymized details about human rights applications that had been commenced by female employees of the WRPS from

2012 to 2017. The chart did not contain any information identifying the Plaintiff, only the following information:

NAME	GROUNDS FOR DISCRIMINATION	RESOLUTION
Female Constable	<ul style="list-style-type: none"> • Sex, including sexual harassment and pregnancy • Marital status 	SETTLED <ul style="list-style-type: none"> • monetary settlement • withdrawal of OHRT application • voluntary resignation

A copy of Chief Larkin’s affidavit and its Exhibit “F” are attached hereto as **Exhibit “G”**.

The Tribunal Proceedings Between the Plaintiff and the WRPSB

26. On or about June 28, 2018, the WRPSB filed an Application for Contravention of Settlement with the Tribunal, having HRTO File No. 2018-33237-S (the “WRPSB’s Enforcement Application”). The WRPSB alleges that, following the execution of the Resignation Agreement, the Plaintiff has repeatedly contravened the terms, undertakings, and confidentiality provision of the Resignation Agreement by, *inter alia*, stating that she was constructively dismissed by the WRPSB, making complaints about the WRPSB, and referring to events giving rise to the 2016 Application. The WRPSB’s Enforcement Application seeks such relief from the Tribunal as is necessary to ensure the Plaintiff’s ongoing compliance with the terms of the Resignation Agreement. A copy of the WRPSB’s Enforcement Application is attached hereto as **Exhibit “H”**.

27. On or about July 10, 2018, the Plaintiff filed a Response to the WRPSB’s Enforcement Application; however, her Response neglected to speak to the merits of the WRPSB’s Enforcement Application. A copy of the Plaintiff’s Response is attached hereto as **Exhibit “I”**.

28. On or about July 27, 2018, the Plaintiff filed an Application for Contravention of Settlement against the WRPSB, having HRTO File No. 2018-33503-S (the “Plaintiff’s Enforcement Application”). Like the instant Claim, the Plaintiff’s Enforcement Application alleges a breach of the Resignation Agreement as a result of Chief Larkin’s affidavit in the class action. Similarly, the Plaintiff’s Enforcement Application claims damages and seeks an order that the Plaintiff be reinstated to employment with the WRPS. A copy of the Plaintiff’s Enforcement Application is attached hereto as **Exhibit “J”**.
29. Due to the Plaintiff’s failure to file any substantive response to the merits of the WRPSB’s Enforcement Application, on or about July 30, 2018, the WRPSB filed a Request for an Order During Proceedings (“RFOP”) with the Tribunal. The RFOP requested that the Tribunal move to a determination of remedy in respect of the WRPSB’s Enforcement Application absent any substantive submissions by the Plaintiff in response to the merits of the WRPSB’s Enforcement Application. A copy of the RFOP is attached hereto as **Exhibit “K”**.
30. The Tribunal’s Rules of Procedure, and specifically Rule 19.6 therein, required the Plaintiff to file a response to the RFOP not later than 14 days (i.e. August 13, 2018) after the RFOP was delivered. A copy of the Tribunal’s Rules of Procedure is attached hereto as **Exhibit “L”**.
31. On or about August 1, 2018, the Plaintiff emailed counsel for the WRPSB to request an extension for filing her response to the RFOP.
32. By email dated August 2, 2018, the WRPSB consented to granting the Plaintiff an extension to August 22, 2018 for the filing of her response to the RFOP.
33. The Tribunal issued a Notice of Hearing on August 3, 2018 in respect of the WRPSB’s Enforcement Application. The Notice of Hearing states that a hearing before the Tribunal has been set for February 22, 2019. A copy of the Notice of Hearing is attached hereto as **Exhibit “M”**.

34. On or about August 10, 2018, the Tribunal issued a Notice of Intent to Dismiss, informing the parties that it intended to dismiss the Plaintiff's Enforcement Application for untimeliness. The Notice of Intent to Dismiss instructed the Plaintiff to provide the Tribunal with written submissions as to the reasons for her untimely filing of the Plaintiff's Enforcement Application. The deadline for these written submissions was September 7, 2018. A copy of the Notice of Intent to Dismiss is attached hereto as **Exhibit "N"**.
35. By email dated August 20, 2018 to the Tribunal, the Plaintiff requested time extensions for filing her response to the RFOP (in respect of the WRPSB's Enforcement Application) and for filing her written submissions in response to the Tribunal's Notice of Intent to Dismiss (in respect of the Plaintiff's Enforcement Application).
36. On or about September 4, 2018, the Tribunal granted the Plaintiff until September 28, 2018 to file her response to the RFOP in respect of the WRPSB's Enforcement Application. A copy of the Tribunal's extension notice is attached hereto as **Exhibit "O"**.
37. Similarly, on or about September 7, 2018, the Tribunal granted the Plaintiff until October 26, 2018 to file written submissions in response to its Notice of Intent to Dismiss in respect of the Plaintiff's Enforcement Application. A copy of this extension notice is attached hereto as **Exhibit "P"**.
38. The Plaintiff did not comply with the Tribunal's directions and deadlines. To date, the Plaintiff has failed to file a response to the RFOP (in respect of the WRPSB's Enforcement Application) and failed to file written submissions regarding her untimely filing (in respect of the Plaintiff's Enforcement Application).

The Plaintiff's Civil Application

39. The Plaintiff had a Notice of Application (Court File No. CV-18-00605386-0000) issued against the WRPSB on September 18, 2018, under which she sought to bring a motion pursuant to section 137.1(3) of the *Courts of Justice Act* for the

dismissal of the WRPSB's Enforcement Application, as well as unparticularized amounts for costs and damages. A copy of the Notice of Application is attached hereto as **Exhibit "Q"**.

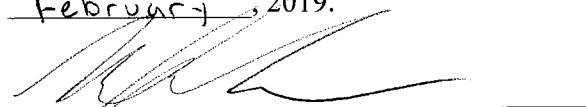
40. On or about September 21, 2018, the Plaintiff had an Amended Notice of Application issued against the WRPSB. The Amended Notice of Application claims the same relief as the Notice of Application, but elaborates on the grounds upon which the Plaintiff is claiming this relief. A copy of the Amended Notice of Application is attached hereto as **Exhibit "R"**.
41. On September 24, 2018, the WRPSB and the Plaintiff attended at Civil Practice Court in Toronto, Ontario, to speak to the scheduling of the Plaintiff's proposed motion. Counsel for the WRPSB raised the issue of the Court's jurisdiction to hear the proposed motion. By Order dated September 24, 2018, Justice Darla A. Wilson directed the WRPSB and the Plaintiff to schedule a Chambers Appointment to determine the jurisdictional issue. A copy of Justice Wilson's Order is attached hereto as **Exhibit "S"**.
42. The WRPSB and the Plaintiff attended at the Court on November 13, 2018 for a Chambers Appointment before Justice Alfred O'Marra. After hearing submissions from counsel for the WRPSB and the Plaintiff, Justice O'Marra determined that it would be necessary to have a fulsome presentation and deliberation on the jurisdictional issue and directed the WRPSB and the Plaintiff to schedule a one-hour hearing to present materials and argument. A copy of Justice O'Marra's Order is attached hereto as **Exhibit "T"**.
43. On January 10, 2019, the Parties attended at a hearing before Justice Lise G. Favreau of the Ontario Superior Court of Justice to make submissions regarding the Court's jurisdiction to hear the Plaintiff's proposed dismissal motion under section 137.1(3) of the *Courts of Justice Act*. By decision dated February 1, 2019, Justice Favreau dismissed the Plaintiff's Application and held that the Court did not have jurisdiction to hear the Plaintiff's proposed motion. A copy of Justice Favreau's decision is attached hereto as **Exhibit "U"**.

The Plaintiff's Claim Against the Defendants


44. On or about May 9, 2018, the Plaintiff commenced the instant action against the WRPSB and Chief Larkin by filing a Statement of Claim in the Ontario Superior Court of Justice in Brampton, Ontario. An Amended Statement of Claim was served on the Defendants on January 16, 2019. In the Statement of Claim, the Plaintiff alleges that the Defendants breached the Resignation Agreement as a result of the anonymized chart that had been appended to Chief Larkin's affidavit in the class action lawsuit. The Amended Statement of Claim raises an additional alleged breach of the Resignation Agreement, being the WRPSB's filing of an Intent to Object form in the Plaintiff's WSIB claim. The Plaintiff claims \$210,000.00 in damages and seeks an order that she be reinstated to employment with the WRPS. A copy of each of the Plaintiff's Statement of Claim and Amended Statement of Claim are attached hereto as Exhibits "V" and "W".

45. I make this Affidavit in support of the Defendants' motion and for no improper purpose.

SWORN BEFORE ME at the City of Toronto,
in the Province of Ontario, this 4th day of
February, 2019.



Commissioner for Taking Affidavits



Laura Freitag

**Mark Daniel Van Ghelst, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires September 27, 2021.**

TAB 2



Human Rights Tribunal of Ontario

Application under Section 34 of the *Human Rights Code* (Form 1)

(Disponible en français)

www.hrto.ca

How to Apply to the Human Rights Tribunal of Ontario

Before you start:

1. Read the questions and answers below to find out if the Human Rights Tribunal of Ontario (the Tribunal) has the ability to deal with your Application.
2. Download and read the **Applicant's Guide** from the Tribunal's web site www.hrto.ca. If you need a paper copy or accessible format, contact us:

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

Phone: 416-326-1312 Toll-free: 1-866-598-0322
 Fax: 416-326-2199 Toll-free: 1-866-355-6099
 TTY: 416-326-2027 Toll-free: 1-866-607-1240
 Email: HRTO.Registrar@ontario.ca
 Website: www.hrto.ca

The Tribunal has other guides and practice directions to help all parties to an Application understand the process. Download copies from the Tribunal's website or contact us.

3. Complete each section of this Application form. As you fill out each section, refer to the instructions in the Applicant's Guide.

Getting help with your application

For free legal assistance with the application process, contact the Human Rights Legal Support Centre.
 Website: www.hrlsc.on.ca, Mail: 180 Dundas Street West, 8th floor, Toronto, ON M7A 0A1, Tel: 416-597-4900,
 Toll-free 1-866-625-5179, Fax: 416-597-4901, Toll-free 1-866-626-5180, TTY 416-597-4903, Toll-free 1-866-612-8627.

Questions About Filing an Application with the Tribunal

The following questions and answers are provided for general information. They should not be taken as legal advice or a determination of how the Tribunal will decide any particular application. For legal advice and assistance, contact the Human Rights Legal Support Centre.

Who can file an Application with the Tribunal?

You can file an Application if you believe you experienced discrimination or harassment in one of the five areas covered by the Ontario Human Rights Code (the Code). The Code lists a number of grounds for claiming discrimination and harassment. To find out if you have grounds for your complaint under the Code, read the **Applicant's Guide**.

What is the time limit for filing an Application?

You can file an Application up to one year after you experienced discrimination or harassment. If there was a series of events, you can file up to one year after the last event. In some cases, the Tribunal may extend this time.



Human Rights Tribunal of Ontario

Application under Section 34 of the Human Rights Code (Form 1)

The discrimination happened outside Ontario. Can I still apply?

In most cases, no. To find out about exceptions, contact the Human Rights Legal Support Centre.

My complaint is against a federal government department, agency, or a federally regulated business or service. Should I apply to the Tribunal?

No. Contact the Canadian Human Rights Commission. Web: <http://www.chrc-ccdp.ca>. Mail: 344 Slater Street, 8th Floor, Ottawa, Ontario K1A 1E1. Phone: (613) 995-1151. Toll-free: 1-888-214-1090. TTY: 1-888-643-3304. Fax: (613) 996-9661.

Should I use this form if I am applying because a previous human rights settlement has been breached?

No. If you settled a previous human rights application and the respondent did not comply with the settlement agreement, use the special application called Application for Contravention of Settlement, Form 18. For a paper copy, contact the Tribunal.

Can I file this Application if I am dealing with or have dealt with these facts or issues in another proceeding?

The Code has special rules depending on what the other proceeding is and at what stage the other proceeding is at. Read the Applicant's Guide and get legal advice, if:

1. You are currently involved in, or were previously involved in a civil court action based on the same facts and asked for a human rights remedy; or
2. You have ever filed a complaint with the Ontario Human Rights Commission based on the same subject matter; or
3. You are currently involved in, or were previously involved in another proceeding (for example, union grievance) based on the same facts.

How do I file an Application on behalf of another person?

To file an application on behalf of another person, you must complete and file this Application (Form 1) as well one other form:

- Form 4A if you are filing on behalf of a minor;
- Form 4B if you are filing on behalf of a mentally incompetent person; or
- Form 27 for all other situations where you are filing on behalf of someone else.

When completing this Application, you must check the box in Question 1 that indicates you are filing an Application on Behalf of Another Person. You must provide your name and contact information in Question 1.

The completed Form 4A, Form 4B or Form 27 can be attached to your Application or sent to the Tribunal separately by mail, fax or email. If sent separately, it must be sent within five (5) days following the filing of your Application.

For more information on applications on behalf of another person, please see the following Practice Directions:

- Practice Direction on filing application on behalf of another person under section 34(5) of the Code
- Practice Direction on Litigation Guardians before Social Justice Tribunals Ontario

Note: If you are a lawyer or other legal representative providing representation to the applicant, do not use the Form 4A, Form 4B or Form 27. Your details should be provided in section 3, "Representative Contact Information," of this Application (Form 1).

Learn more

To find out more about human rights in Ontario, visit www.ohrc.on.ca or phone 1-800-387-9080.



Human Rights Tribunal of Ontario

Application under Section 34 of the Human Rights Code (Form 1)

Instructions: Complete all parts of this form, using the Applicant's Guide for help. If your form is not complete, the Tribunal may return it to you. This will slow down the application process. At the end of this form, you will be required to read and agree to a declaration that the information in your Application is complete and accurate (if you are a lawyer or legal representative assisting an applicant with this Form 1, please see the Practice Direction On Electronic Filing of Applications and Responses By Licensed Representatives).

Contact Information for the Applicant

1. Personal Contact Information

Check here if you are filing an Application on Behalf of Another Person. Note: you must also complete a Form 4A, Form 4B or Form 27, whichever is applicable, see Instructions above.

Please give us your personal contact information. This information will be shared with the respondent(s) and all correspondence from the Tribunal and the respondent(s) will go here. If you do not want the Tribunal to share this contact information, you should complete section 2, below, but you must still provide your personal contact information for the Tribunal's records.

*First Name Kelly		Middle Name Lynn	*Last Name Donovan	
Street # 11	Street Name Daniel Place		Apt/Suite	
City/Town Brantford		Province Ontario	Postal Code N3R1K6	Email donovandih@gmail.com
Daytime Phone (e.g. 999-999-9999) 519-209-5721	Cell Phone (e.g. 999-999-9999)	Fax (e.g. 999-999-9999)	TTY (e.g. 999-999-9999)	

What is the best way to send information to you?
(If you check email, you are consenting to delivery of documents by email)

Mail Email Fax



Human Rights Tribunal of Ontario

2. Alternative Contact Information

If you want the Tribunal and respondent(s) to contact you through another person, you must provide contact information for that person below. You should fill this section out if it will be difficult for the Tribunal to reach you at the address above or if you want the Tribunal to keep your contact information private. If you complete this section, all of your correspondence will be sent to you in care of your Alternative Contact.

First (or Given) Name		Middle Name	Last (or Family) Name	
Street #	Street Name		Apt/Suite	
City/Town		Province Ontario	Postal Code	Email
Daytime Phone (i.e. 999-999-9999)	Cell Phone (i.e. 999-999-9999)	Fax (i.e. 999-999-9999)	TTY (i.e. 999-999-9999)	

What is the best way to send information to you at your alternative contact?
(If you check email, you are consenting to delivery of documents by email) Mail Email Fax

3. Representative Contact Information

Complete this section only if you are authorizing a lawyer or another Representative to act for you.

I authorize the named organization and/or person to represent me

My representative is:

<input type="checkbox"/> Lawyer	LSUC#	
<input type="checkbox"/> Paralegal	LSUC#	
<input type="checkbox"/> Legal Support Centre		
<input type="checkbox"/> Other- please specify the Nature of Exemption from licensing requirements in the text below:		

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Human Rights Tribunal of Ontario

Nature of Exemption (e.g. family member, unpaid friend)

[Empty box for Nature of Exemption]

Please choose the type of Representative: A) Organizational Representative B) Individual Representative

A) Organizational Representative

Full Name of Representative Organization

Waterloo Regional Police Service

Name of the Contact Person from the Organization

First (or Given) Name	Last (or Family) Name
Bryan	Larkin

Street #	Street Name	Apt/Suite
200	Maple Grove Road	

City/Town	Province	Postal Code	Email
Cambridge	Ontario	N3H5M1	bryan.larkin@wrps.on.ca

Daytime Phone (i.e. 999-999-9999)	Cell Phone (i.e. 999-999-9999)	Fax (i.e. 999-999-9999)	TTY (i.e. 999-999-9999)

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

Contact Information for the Respondent(s)

4. Respondent Contact Information

Provide the name and contact information for any respondent against which you are filing this Application.

Please choose the type of respondent: A) Organization Respondent B) Individual Respondent



Human Rights Tribunal of Ontario

A) Organization Respondent

Name the organization you believe discriminated against you. You should also indicate the contact person from the organization to whom correspondence can be addressed.

Full Name of Organization

Waterloo Regional Police Service

Name of the Contact Person from the Organization

First (or Given) Name		Last (or Family) Name		Title	
Bryan		Larkin		Chief of Police	
Street #	Street Name			Apt/Suite	
200	Maple Grove Road				
City/Town		Province	Postal Code	Email	
Cambridge		Ontario	N3H5M1	bryan.larkin@wrps.on.ca	
Daytime Phone (i.e. 999-999-9999)		Cell Phone (i.e. 999-999-9999)	Fax (i.e. 999-999-9999)		TTY (i.e. 999-999-9999)
519-653-7700					

Are there any additional respondents? Yes No

Grounds of Discrimination

5. Grounds Claimed

The Ontario Human Rights Code lists the following grounds of discrimination or harassment. Put an "X" in the box beside each ground that you believe applies to your Application. You can check more than one box.

- Race
- Colour
- Ancestry
- Place of Origin
- Citizenship
- Ethnic Origin
- Disability
- Creed
- Sex, Including Sexual Harassment and Pregnancy
- Sexual Solicitation or Advances
- Sexual Orientation



Human Rights Tribunal of Ontario

- Gender Identity
- Gender Expression
- Family Status
- Marital Status
- Age
- Receipt of Public Assistance (Note: This ground applies only to claims about Housing)
- Record of Offences (Note: This ground applies only to claims about Employment)
- Association with a Person Identified by a Ground Listed Above
- Reprisal or Threat of Reprisal

Areas of Discrimination under the Code

6. Area of Alleged Discrimination

The Ontario *Human Rights Code* prohibits discrimination in five areas. Put an "X" in the box beside the area where you believe you have experienced discrimination (choose one). Read the Applicant's Guide for more information on each area.

- Employment (Complete Form 1-A)
- Housing (Complete Form 1-B)
- Goods, Services and Facilities (Complete Form 1-C)
- Contracts (Complete Form 1-D)
- Membership in a Vocational Association (Complete Form 1-E)

Does your Application involve discrimination in other areas? Yes No

If "Yes", put an "X" in the box beside any other area where you believe you experienced discrimination:

- Employment Housing Goods, Services or Facilities Contracts Vocational Association

Facts that Support Your Application

7. Location and Date (see Applicant's Guide)

Please answer the following questions.

a) *Did these events happen in Ontario?

Yes

No

b) In what city/town?

Cambridge

c) *What was the date of the last event?
(dd/mm/yyyy)

31/05/2016

d) If you are applying more than one year from the last event, please explain why:



Ontario

Human Rights Tribunal of Ontario

8. What Happened

*In the space below, describe each event you believe was discriminatory.

For each event, be sure to say:

- What happened
- Who was involved
- When it happened (day, month, year)
- Where it happened

Be as complete and accurate as possible. Be sure to give details of every incident of discrimination you want to raise in the hearing.

On May 4, 2016, I presented a delegation to the Waterloo Regional Police Services Board on the topic of the police service's inconsistencies and lack of policy when investigating its own members. This meeting took place in the Police Services Board room at 200 Maple Grove Road in the City of Cambridge. I am a Constable with the Waterloo Regional Police Service. Before this day I was an exemplary officer, having won awards and been placed in the department's Training Branch after only serving for four and a half years. I presented this delegation because I believed there were serious issues of inconsistency during internal investigations, authorized by Chief Bryan Larkin. I researched avenues available to me, as a member of the police service, and the only legal channel for me to voice my concerns and seek the help of the Board to order the service to create a policy and procedure on internal investigations was to present a delegation to the Board. I had researched service procedure and policy, the Police Services Act, and the Board By-Laws and did not locate anything from precluding me from making this delegation. I had requested time off to attend this meeting and been approved by my supervisor. During my delegation I did not disclose any information of which I have a duty to maintain in secrecy. The information presented was specific to four relevant issues. The information I presented was obtained outside of my work duties from the individual officers to whom the information pertains. I received permission from the individual officers to discuss their issues in my delegation. I was respectful to Board members and I was allowed to speak for the full ten minutes by the Board (the Board has the option to enter into a closed session if they believe the information is best kept from the public).

Following my presentation I was approached by a woman who identified herself as a reporter. The Chief's Executive Officer, Staff Sergeant Mike Haffner came up to me and stated "she's with the media, you can't talk to her." When this woman returned and began asking me questions I did not answer her questions, as I am precluded from doing so under service procedure and the PSA. The Chief's Executive Officer stood immediately beside me and stuck his head down into our conversation to hear what I was saying. There was an article in The Record (newspaper) covering my delegation in which I was misquoted and the article focused on the investigation of Sgt. Finucan, (this was one of four issues I mentioned in my delegation and the reporter had also covered this case originally). One of the four issues I discussed in my delegation involved a complaint of domestic violence being made by a female police officer and the complaint being dismissed. Another one of the four issues I discussed was a complaint of historical domestic violence being made by a female police officer and an arrest being made with little to no grounds for arrest. In this article, the Chief was quoted as saying "We take domestic violence very seriously and the complaint came from a policewoman." I was insulted by this comment because I felt that the Chief was insinuating that a female police officer is somehow more credible than a male police officer. I believe the Chief was stereotyping male police officers, that they are somehow dishonest versus female police officers. I do not believe the Chief of police should make any distinction of credibility based on gender, especially to local media.

The following day, (and every day since then), my work duties were restricted and I was restricted to working in the office only, as opposed to the training environment.

On May 9, 2016, I was called into the service's Professional Standards office at headquarters at 200 Maple Grove Road in



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Cambridge, and met with my divisional inspector (Inspector Thiel) and Acting Inspector Goodman. I was given a directive from the Chief to not appear before the Board without his permission and relegated to administrative duties (among other things). I was served a Notice of Investigation for six Police Services Act (PSA) charges regarding the lawful presentation of my delegation. Those charges included; Discreditable Conduct (x2), Neglect of Duty (x2), Breach of Confidence (x2). I had expected that I could be disciplined for the fact that the media were present, but only one of these charges had to do with the media. I was told by Inspector Thiel that all of the incidents I mentioned in my delegation would be reviewed independently. I asked Inspector Thiel for clarification as to which incidents would be reviewed and he confirmed it would be all of them (there were four major issues I specifically called attention to in my delegation). Inspector Thiel stated that the internal investigation into my conduct would largely weigh on the findings of the independent reviews. He stated if any of the information I presented turns out to be false, it would affect the investigation. I asked if the same is true if all of the information I presented turns out to be truthful would the service withdraw the charges and he stated that it would also affect the investigation. I believe that the Chief is upset that I brought a serious internal issue to the attention of the media and is using the PSA as a means of bullying and intimidating me. I did not sign the Directive forbidding me from appearing before the Board since I did not believe I could be prohibited from attending a meeting that shall be open to the public if I were not on duty and considered a member of the public. I was told by Inspector Thiel that the Chief can tell me to "whatever he wants." I was told by Inspector Thiel that I "had to sign" the directive. When I asked if I could have a lawyer present Acting Inspector Goodman stated that I did not have to sign. That evening, from home, I sent an email to the members of the Board to notify them of the internal investigation initiated due to my lawful attendance at the Board meeting. My delegation had focused on how the service treats its members and I felt I had a duty to report to the Board who is responsible for civilian oversight of the service and performance of the Chief.

On May 11, 2016, the Cambridge Times published an article regarding my delegation. The article featured exact wording from my delegation that I believe was given to them by the service (I did not disclose my delegation to the media). The article mentioned that I focused on four high profile cases, but the majority of the article focused once again on the case of Sgt. Finucan. The following is a quote from this article "the Chief assured the media following the meeting that the officer has a democratic right to vocalize her disapproval during the public session of the police board meeting." The article stated "Donovan, who referred to herself as a friend of Finucan, said she wanted to address the board on his behalf." I did state that I am friends with Sgt. Finucan, but not once did I ever stated I was addressing the board on his behalf. When I asked for Sgt. Finucan's permission to discuss some of the issues pertaining to his case he adamantly advised against me presenting a delegation to the board. Sgt. Finucan stated his reasons for advising against my delegation was his knowledge of the service's tendency to punitively target members whose lawful actions question leadership decisions. Further quotes from the Chief led me to believe that the angle this article was taking was determined by the Chief. The Chief is quoted as saying "Sometimes, when we're close to an issue we see it very differently than when we're not close to an issue." I took great offence to that comment because the Chief is insinuating that Sgt. Finucan and I are more than friends; based on the fact that I am a single female and he is male. I believe that if I were male or a married female, having presented the same delegation under the same circumstances, the Chief would never have made that statement. I believe the Chief was using my gender and marital status to discriminate against me and attempt to embarrass me in local media and have my credibility called into question. The Chief was also quoted as saying "there are many mechanisms within the force and the union to call for change." After having extensively researched the mechanisms, or lack thereof, available to me to call for change, I believe the Chief's statement is deceitful and an attempt to have my conduct appear nefarious or vexatious when in fact my attendance at the Board meeting was lawful.

On May 18, 2016, the Training Branch held an event, because of Police Week, to put the Board members through Use of Force training. My directive stated I could not participate in the training of members yet I was excluded from training the Board members. My supervisor requested the attendance of a member from another location to attend headquarters and train in my place.

On May 31, 2016, I was escorted to Acting Inspector Goodman's office by Staff Sergeant Davis (my immediate supervisor). I was served a memorandum stating I am also under investigation for two additional PSA charges; Deceit and an additional count of Discreditable Conduct. I was also directed to not have any further contact directly or indirectly with members of the Police Services Board. The memorandum alleged that I was deceitful when I stated that had no personal interest in any of the four matters I brought to the Board's attention. I had stated in my delegation that I am friends with Sgt. Finucan and that is truthful. I can only conclude that once again the Chief has used the fact that I am a single female to make a connection between one of the male officers involved in one of the four issues I presented and my motivation to present my delegation. The charge of Deceit is a very serious offence, punishable by termination, and I am appalled that the Chief would consider that charge based solely on my marital status and gender. At that moment I verbally notified Acting Inspector Goodman and Staff Sergeant Davis that I would be filing a harassment complaint.



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On June 2, 2016, I submitted an internal Workplace Harassment form to my supervisor Sergeant Prine.

The issues I discussed in my delegation pertained to the handling of internal investigations and the need for consistent practices and policies to oversee how these investigations are completed. Up until May 9th I had never been the subject of an internal investigation. I have never discussed any of my concerns with another member of the service, whether inside or outside of a training environment. My job as a training officer would not have been impacted by my delegation in any way. I chose to present my delegation because of internal turmoil, stress and depression I was experiencing after witnessing the manner in which the service handles internal investigations. My delegation was directed at the Board and I have not and don't intend to disseminate the information with anyone at the service.

Since being relegated to administrative duties only I have continued to be a hard worker. I diligently worked on the branch statistics and was assigned to complete the Inaugural Use of Force Report that was presented to the Police Services Board on June 1, 2016. The report I prepared was very well received and even covered on CTV News. I also began an audit of the branch's training material for Staff Sergeant Davis, and spent most of my days writing lesson plans to complement the learning material available. Aside from being prevented from training I am doing my best to remain a diligent and hard worker and an exemplary police officer.

The Effect on You

9. How the Events You Described Affected You

*Tell us how the events you described affected you. What was the effect (e.g. were there financial, social, emotional or mental health, or any other)?

My mental health began to be affected by the internal dealings of the service around August, 2015. It was around that time that I started to experience a moral injury due to the inconsistent and unexplained manner in which our service handled internal investigations. One of the issues I discussed in my delegation was regarding a report of domestic violence that I had made against a member. (I did not disclose any names in my delegation). I had been disappointed that the service did not continue with the investigation despite my allegations. As time passed I spoke to other members of the service, Sgt. Finucan and Jeremy Snyder, who were both currently facing criminal charges as a result of internal investigations. The information I learned from these two men corroborated the inconsistent manner in which the service handled internal investigations. All of the information I obtained about the issues was obtain off-duty and in no way violated the secrecy which I am bound by Oath to maintain. I advised both Snyder and Finucan that I planned to address the issue with the service somehow and they both gave me permission to discuss details of their cases if it would assist.

In the fall of 2015 I became depressed. I could not sleep and frequently came to work after only have 2 or 3 hours of sleep. I did not have much of an appetite and I had difficulty eating regularly. I did not exercise as often because it caused me stress to be in the headquarters gym alongside some Sergeants, Staff Sergeants, Inspectors and Superintendents (whom I knew had been involved in some of the internal investigations). In February, 2016, I visited my Doctor and he prescribed medication for depression and anxiety. The medication helped me to sleep and eat better but I still experienced stress and anxiety every day that I attended work. I did not miss any work days during this time for a personal illness (I may have taken one family day for a sick child).

I carefully prepared my delegation for the May 4th meeting and leading up to that date continued to experience heightened anxiety and stress. The meeting itself was very stressful. Upon entering the Police Services Board room I was greeted by the Chief who purposefully shook my hand and greeted me by name. When I was called to the table I sat between the Chief and Deputy Chief Chalk. During the time that I spoke the Chief's cellphone continued to chime and he left his seat twice to speak to Gary Melanson who was seated on the east side of the room. I found the Chief's conduct to be disruptive while I was speaking. Upon conclusion of my delegation I returned to my seat until the conclusion of the meeting. I continued to feel a tremendous amount of stress and anxiety but I now felt a sense of relief for having exposed some issues I felt were imperative to improve the morale within the service and to improve the level of trust between the membership and leadership. When the meeting adjourned I was approached by Board Director Philip Huck who shook my hand and thanked me for making my presentation. Acting Board Chair Rosemary Smith also shook my hand and thanked me for my presentation. I advised Smith that I did not have enough time to conclude what I had prepared and she advised that I could email my entire delegation to be included in the minutes. I felt even more relieved to know that the Board received my information positively and were thankful that I attended.



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When the Chief's Executive Officer Staff Sergeant Mike Haffner stood beside me in the Police Services Board room on May 4, 2016, and stuck his head into my conversation with the media I felt intimidated by his behaviour.

I was embarrassed to read the comments made by the Chief in The Record article dated May 4, 2016, regarding the level of credibility of a complainant weighing on their gender. I was hurt that the Chief had taken anything I had said in my delegation and turned it into a credibility issue based on the gender of the complainant. I felt that this was an attempt by the Chief at deflecting the focus away from service policy and onto me more personally.

On May 9, 2016, when I was served with the Directive and Notice of Investigation by Inspector Thiel and Acting Inspector Goodman I experienced an overwhelming amount of stress and anxiety and I could not prevent myself from becoming emotional. I felt that the conduct of two officers were tyrannical and oppressive and using the PSA and authorities of the Chief to bully and intimidate me. When Inspector Thiel stated that the Chief can direct me to do "whatever he wants" I felt intimidated and bullied. When Inspector Thiel told me I had to sign the document and then Acting Inspector Goodman stated I did not have to sign (after I asked to have a lawyer present), I felt lied to by Inspector Thiel. I had to involve a lawyer, due to the nature of the PSA investigation, and I cannot afford to pay a lawyer. I am a single mother of three children and I own my own home in Brantford, Ontario. I do not receive support payments from my children's father. I will have to borrow money to have a lawyer represent me in a PSA proceeding. That night at home I had a difficult time dealing with my stress. I could not bring myself to be involved with my children, which is very unlike me. Due to my level of anxiety I only slept for 3 hours that evening.

On May 11, 2016, when the article was published to the Cambridge Times website I felt embarrassed and upset that the Chief had publicly stated that I was not objective in my reasoning for my delegation due to being too "close" to "an issue." I felt discriminated against because I am a single female. I felt alienated and criticized by the Chief. It caused me a tremendous amount of stress to know that the service had taken a personal angle to attempt to deflect the attention away from the issues I presented in my delegation surrounding internal policies. I became fearful that the service would turn the investigation into something that would violate my personal life and could involve my children and my status in my community in Brantford. I was also confused that the Chief was quoted as saying I had a "democratic right" to make my delegation, knowing that he had authorized the directive and six PSA charges following my appearance. I felt the Chief was being deceitful to the media and therefore the public. The article also stated that the Chief respects Donovan for coming forward with her opinions about the force's handling of internal investigations." I feel this statement is manipulative because once again he has portrayed to the media that he has acknowledged my actions were lawful and democratic while continuing to take punitive and legal action against me. I continued to feel highly stressed and anxious.

On May 18, 2016, when I was excluded from the training event for the Board members this made me feel segregated and alienated. I felt as though I was burdening Cst. Zullani for having to attend headquarters and work in place of me. I had been looking forward to the opportunity to show the Board members my abilities as a training officer and I was directed to spend the entire day in the office. I felt dismissed and I experienced tremendous anxiety that day. When the members of the Training Branch returned to the office and discussed the highlights from the day's event I felt excluded, saddened and demoralized.

On May 31, 2016, when I was served notice of the additional charges I was extremely upset. I felt an overwhelming amount of stress and anxiety. Not only had the service used my gender and marital status to embarrass me in the media but new charges were now being investigated as a result of the allegation by the Chief that I somehow have a personal interest in having the 4 issues I raised in my delegation reviewed. I believe the only reason new charges were added was to include the clause that I be prohibited from contacting the Board members directly or indirectly (which was not stated on my original directive, and there is no lawful ability for the Chief to add that clause without additional charges). I believe the Chief did not want me to contact Board members for fear I would advise them of further tyrannical and oppressive conduct within the service leadership. Since the charge of Deceit is a very serious offence and can lead to termination I was very stressed and scared at the potential of losing my income. I am the sole provider in my household and my children live with me half of the time. The thought of being unemployed as a result of doing something lawful and within my rights left me feeling more disillusioned, disheartened and mistreated by the Chief, who has publicly stated I was within my rights and he respects me. In the days that followed I have been extremely stressed and depressed over the fact that I could be terminated from my employment.

Since being ordered to not participate in the training of any sworn members I have been relegated to the office in the basement of headquarters. This has made me feel dismissed, segregated, alienated, depressed and demoralized. Other



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officers are treating me like I did something wrong and rumours have spread through the department that I am under criminal investigation. When officers attend the office and ask me why I am in the office I have a difficult time making up excuses because I do not want to discuss the issue at work. When I see members of the senior leadership team in the hallways I continue to be pleasant and respectful. Some members of the senior leadership team are now treating me differently for having come forward with my delegation. I have maintained a very high level of professionalism despite the treatment I am receiving from senior leadership at the service. I am experiencing the following mental health issues; anxiety, stress and depression. I am currently taking medication for depression and anxiety. I have not received a bill from my lawyer.

According to Inspector Thiel and Acting Inspector Goodman, the investigation into the PSA charges will not begin until a review by a Staff Sergeant at York Regional Police into the Sgt. Finucan case concludes. I understand that this review could take months before my investigation even begins.

The Remedy

10. The Remedy You are Asking For (see Applicant's Guide)

Put an "X" in the box beside each type of remedy you are asking the Tribunal to order. Explain why you are asking for this remedy in the space below.

Monetary Compensation

Enter the Total Amount \$201,751.12

Explain below how you calculated this amount:

\$2,000.00 is what I estimate I owe my lawyer for the work he has done to date.
 \$10,000.00 is what I feel is the monetary value of the hurt and embarrassment the Chief has caused me with the discriminatory comments he has made in the media.
 \$189,751.12 is two-times my salary. The Chief has shown his desire to terminate my employment for being honest and acting lawfully. I have a responsibility to my children to ensure I can continue to support them if I am terminated until I can update my education and seek alternative employment.

Non-Monetary Remedy-Explain below:

Remedy for Future Compliance (Public Interest Remedy)-Explain below:



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Mediation

11. Choosing Mediation to Resolve Your Application

Mediation is one of the ways the Tribunal tries to resolve disputes. It is a less formal process than a hearing. Mediation can only happen if both parties agree to it. A Tribunal Member will be assigned to mediate your Application. The Member will meet with you to talk about your Application. The Member will also meet with the respondent(s) and will try to work out a solution that both sides can accept. If Mediation does not settle all the issues, a hearing will still take place and a different Member will be assigned to hear the case. Mediation is confidential.

Do you agree to try mediation? Yes

Other Legal Proceedings

12. Civil Court Action (see Applicant's Guide)

Note: If you answer "Yes" to any of these questions, you must send a copy of the statement of claim that started the court action.

*a) Has there been a court action based on the same facts as this Application?	<input type="radio"/> Yes (Answer 12b)	<input checked="" type="radio"/> No (Go to 13)
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13. Complaint Filed with the Ontario Human Rights Commission (see Applicant's Guide)

Note: If you answer "Yes", you must attach a copy of the complaint.

*Have you ever filed a complaint with the Commission based on the same facts as this Application?	<input type="radio"/> Yes	<input checked="" type="radio"/> No
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14. Other Proceeding - In Progress (see Applicant's Guide)

Note: If you answer "Yes" to question "14a" you must attach a copy of the document that started the other proceeding.

*a) Are the facts of this Application part of another proceeding that is still in progress?	<input checked="" type="radio"/> Yes (Answer 14b)	<input type="radio"/> No (Go to 15)
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b) Describe the other proceeding:

<input type="checkbox"/> A union grievance	Name of Union:
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<input type="checkbox"/> A claim before another board, tribunal or agency	Name of board, tribunal, or agency:	
<input checked="" type="checkbox"/> Other	Explain what the other proceeding is:	An internal Workplace Harassment and/or Discrimination Complaint Form filed with the Waterloo Regional Police Service on June 2, 2016.

*c) Are you asking the Tribunal to defer (postpone) your Application until the other proceeding is completed?	<input type="radio"/> Yes	<input checked="" type="radio"/> No
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15. Other Proceeding - Completed (see Applicant's Guide)

Note: If you answer is "Yes" to question "15a" you must attach a copy of the document that started the other proceeding and a copy of the decision from the other proceeding.

*a) Were the facts of this Application part of some other proceeding that is now completed?	<input type="radio"/> Yes (Answer Question 15b)	<input checked="" type="radio"/> No (Go to 16)
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b) Describe the other proceeding:

<input type="checkbox"/> A union grievance	Name of Union:	
<input type="checkbox"/> A claim before another board, tribunal or agency	Name of board, tribunal, or agency:	
<input type="checkbox"/> Other	Explain what the other proceeding is:	



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c) Explain why you believe the other proceeding did not appropriately deal with the substance of this Application.

[Empty text box for explanation]

Documents that Support this Application

16. Important Documents You Have

If you have documents that are important to your Application, list them here. List only the most important. Indicate whether the document is privileged. See the Applicant's Guide.

Note: You are not required to send copies of these documents at this time. However, if you decide to attach copies of the documents you list below to your Application they will be sent to the other parties to the Application along with your Application.

Document Name	Why It is Important to My Application

Add more Documents

17. Important Documents the Respondent(s) Have

If you believe the respondent(s) have documents that you do not have that are important to your Application, list them here. List only the most important.

Document Name	Why It is Important To My Application	Name of Respondent Who Has It
Any and all surveillance documents, audio and video recordings, digital recordings, photographs, licence plate enquiries for BABJ834	These items show that the service is abusing its resources to support their efforts to discipline me and change the focus to my personal life.	Chief Bryan Larkin and any and all employees under his direction

Add more Documents



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18. Important Documents Another Person or Organization Has

If you believe another person or organization has documents that you do not have that are important your Application, list them here. List only the most important.

Document Name	Why It is Important to my Application	Name of Person or Organization who has it
Any and all notes, and interviews pertaining the Police Services Board meeting on May 4, 2016, and articles printed on same.	These will assist in determining if the Chief provided the discriminatory comments to the reporter	Liz Monteiro, The Record Lisa Rutledge, Cambridge Times

Add more Documents

Confidential List of Witnesses

19. Witnesses

Please list the witnesses that you intend to rely on in the hearing. **Note:** The Tribunal will not send this list to the respondent(s). (see Applicant's Guide)

Name of Witness	Why This Witness is Important To My Application

Add more Witnesses

Other Important Information

20. Other Important Information the Tribunal Should Know

Is there any other important information you would like to share with the Tribunal?

This is my first time completing this form and I did not seek legal advice to assist me. Should there be errors or omissions they are done in error and will be corrected forthwith once I am advised.



Checklist of Required Documents

22. Other Documents from Questions 12 to 15

Confirm whether you are sending the Tribunal any of the following documents:

- A copy of a statement of claim (from Question 12)
- A copy of a complaint filed with the Ontario Human Rights Commission (from Question 13)
- A copy of a document that started another proceeding based on these facts (from Question 14 or 15)
- A copy of a decision from another proceeding based on these facts (from Question 15)



Human Rights Tribunal of Ontario

Application to the Human Rights Tribunal of Ontario Area of Discrimination: Employment (Form 1-A)

Note: Complete this form if you believe you were harassed or discriminated against in the area of employment.

PART I

Questions About the Respondent(s)

A1. Put an "X" in the box beside each point that describes the respondent(s) in your case. Check all that apply.

- The respondent is the employer at a place where I wanted to work
- The respondent is my current employer
- The respondent is my former employer
- The respondent is an employment agency
- The respondent is a union or employee association
- The respondent is a supervisor, manager, or boss
- The respondent is another employee
- Other- Please describe the respondent(s):

Questions About the Job

Please answer these questions.

A2. What was the position or job where you felt there was discrimination?

Police Training Constable, Waterloo Regional Police

A3. What were the requirements (essential job duties) of the position?

Conduct, plan and analyze Use of Force training to all members of the service.



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Ontario

A4. Was it a volunteer position?	<input type="radio"/> Yes	<input checked="" type="radio"/> No
A5. Were you employed in this position?	<input type="radio"/> Yes	<input checked="" type="radio"/> No (Go to A6)
a) If you answered "Yes" to question A5, how long were you in the position? Please give the dates you started and finished.	From: (dd/mm/yyyy)	To: (dd/mm/yyyy)
b) If you answered answer "Yes" to question A5, what was the pay for the position? \$		<input type="radio"/> Hourly <input type="radio"/> Monthly <input type="radio"/> Weekly <input checked="" type="radio"/> Yearly
A6. Are you working now?	<input checked="" type="radio"/> Yes	<input type="radio"/> No (Go to A7)
a) If you answered "Yes" to question A6, what is your current pay? \$	\$ 94,875.56	<input type="radio"/> Hourly <input type="radio"/> Monthly <input type="radio"/> Weekly <input checked="" type="radio"/> Yearly

Questions About Your Union

A7. Were you a member of a union or other occupational or professional association responsible for collective bargaining at the time of the alleged discrimination?

Yes (Fill out details below) No (Go to A8)

If you answered "Yes", the Tribunal will send them notice of this Application.

Full Name of Organization

Waterloo Regional Police Association

Name of Contact Person from the Organization

First (or Given) Name

Tim

Last (or Family) Name

Reparon

Street #

1128

Street Name

Rife Road

Unit/Suite Number

City/Town

Cambridge

Province

Ontario

Postal Code

N1R5S3

Email

treparon@wrpa.org



Human Rights Tribunal of Ontario

Daytime Phone (i.e. 909-999-9999)	Cell Phone (i.e. 999-999-9999)	Fax (i.e. 999-999-9999)	TTY (i.e. 999-999-9999)
519-622-0771	519-577-5321		

Questions About What Happened

Alleged Discrimination Before Hiring

A8 Put an "X" in the box beside each point that describes how you believe you were discriminated against.

I experienced discrimination:

- As a result of In a job ad
- In an application form
- In a job interview
- In drug and alcohol testing before hiring
- In other kinds of pre-employment testing
- In a hiring decision
- Other- please explain:

Alleged Discrimination During Employment

A9. Put an "X" in the box beside each point that describes how you believe you were discriminated against.

I experienced discrimination:

- In my rate of pay, overtime, hours of work, or holiday
- In being denied a promotion
- In scheduling
- In discipline (such as suspensions or warning)
- In being fired
- In comments, displays, jokes, harassment, or a poisoned work environment
- In sexual harassment or solicitation or advances
- In being denied a workplace opportunity (such as a training opportunity) Please describe:

- In being denied employment benefits, including time off for medical or other reasons. Please describe:



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<input type="checkbox"/> In drug testing or alcohol testing <input type="checkbox"/> In being denied necessary accommodation or modified work in the workplace <input checked="" type="checkbox"/> Other- please explain: Comments made to public media

Workplace Policies or Practices

A10. Is your Application about a workplace policy? (for example, absenteeism accommodation or holiday policy)	<input type="radio"/> Yes	<input type="radio"/> No
a) If you answered "Yes" to A10, what is the policy? (Attach a copy if available)		

Questions About Complaining to Your Employer

Complete this section only if you complained to someone in authority about the alleged harassment or discrimination.

A11. To whom did you complain? Sgt. George Prime, Staff Sergeant Jen Davis, Acting Inspector Goodman		
A12. Was there an investigation?	<input checked="" type="radio"/> Yes	<input type="radio"/> No (Go to Part II)
a) If you answered "Yes" to A12, what was the outcome of the investigation? Ongoing		

PART II



Human Rights Tribunal of Ontario

The following Part asks you to answer how you believe you were harassed or discriminated against based on grounds you identified. If you believe that you were discriminated against or harassed based on more than one ground, fill out all the sections that apply.

Questions About Employment Discrimination on the Grounds of Sex, Pregnancy, Gender Identity or Gender Expression

Complete this section only if you believe that you have been discriminated against on the grounds of sex, pregnancy, gender identity or gender expression

A24. Is your Application about discrimination on the ground of pregnancy?	<input type="radio"/> Yes	<input type="radio"/> No
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A25. Explain why you believe you were discriminated against based on your sex, pregnancy, gender identity.

A26. Please identify your sex or describe your gender identity or gender expression.

Question About Workplace Sexual Harassment

Complete this section only if you believe that you have been subjected to sexual harassment in the workplace.

A29. Tell us what happened.

Questions About Employment Discrimination on the Grounds of Family or Marital Status

Complete this section only if you believe that you have been discriminated against on the grounds of family or marital status.



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A32. Explain why you believe you were discriminated against based on your family or marital status.
 The Chief has made statements about me in the media being close to a male officer whom I alleged was a friend. The Chief has attempted to explain my behaviour in the media by insinuating I am more than friends with the person whose investigation I discussed in my delegation. The Chief has attempted to put my credibility and motivation into question by referencing my personal life only to deflect the focus away from the issues I raised in my delegation regarding the lack of service policy on internal investigations.

A33. Please describe your family or marital status.
 I am a single mother. I have been a single mother since 2009. I began my employment with the Waterloo Regional Police Service in 2010.

Declaration and Signature

23. Declaration and Signature

Instructions: Do not sign your Application until you are sure that you understand what you are declaring here.

Declaration:

To the best of my knowledge, the information in my Application is complete and accurate.

I understand that information about my Application can become public at a hearing, in a written decision, or in other ways determined by Tribunal policies.

I understand that the Tribunal must provide a copy of my Application to the Ontario Human Rights Commission on request.

I understand that the Tribunal may be required to release information requested under the Freedom of Information and Protection of Privacy Act (FIPPA).

***Signature Date (dd/mm/yyyy)**
 03/06/2016

Please check this box if you are filing your Application electronically. This represents your signature. You must fill out the date above.

Accommodation Required

If you require accommodation of Code-related needs please contact the Registrar at:

Email: HRTO.Registrar@ontario.ca
 Phone: 416-326-1519 Toll-free: 1-866-598-0322
 Fax: 416-326-2199 Toll-free: 1-866-355-6099
 TTY: 416-326-2027 Toll-free: 1-866-607-1240



Human Rights Tribunal of Ontario

Note: Only file your Application once. If the Tribunal receives your application more than once, it will only accept the first Application Form received.

Submit to Prod (GDC)

Print Form

TAB 3

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. Between now and June 9, 2017, Donovan will continue to remain on approved and paid sick leave. Thereafter and until June 25, 2017, Donovan will continue to be paid by using outstanding Annual Leave and/or Statutory Holiday Leave credits. Subject to and in accordance with all applicable plan provisions, terms and policies, Donovan will continue to receive her current employment benefits and participate in the OMERS Pension Plan up to and including June 25, 2017.
3. By no later than July 15, 2017, the Board will pay to Donovan all outstanding Annual Leave pay, Statutory Holiday pay and Overtime pay, if any, accrued and still owing to Donovan as of the date of her employment resignation.
4. Donovan hereby withdraws and discontinues her Application. Donovan further undertakes to forthwith file with the HRTO any documentation necessary for the HRTO to close its file in respect of the Application.
5. The Board hereby confirms that, as a result of Donovan's employment resignation effective June 25, 2017 and consistent with section 90(1) of the *Police Services Act*, it will take no further action in respect of the Potential *PSA* Charges.
6. Subject to the terms herein, this Resignation Agreement is without prejudice or precedent in any other matter. Further, this Resignation Agreement is entered into by the Board without admission of any contravention of the Uniform Collective Agreement or any

statute (including, without limitation, the *Police Services Act* and/or the *Human Rights Code*), and all such allegations are specifically denied.


7. The Board will reimburse Donovan for legal expenses incurred in respect of the Application and/or the Potential *PSA* Charges in the amount of
inclusive of HST or other applicable taxes. By her signature to this Resignation Agreement, Donovan confirms that she has incurred legal expenses of at least this amount.
8. No later than July 15, 2017 and subject to the Board's receipt of proof that the HRTO has closed its file in respect of the Application, the Board will pay to Donovan a gross lump sum payment equivalent to less all applicable deductions and remittances required by law.
9. Donovan hereby authorizes and directs the Board to allocate all monies payable to Donovan under the terms of this Resignation Agreement as directed by her legal counsel, Machado Law Professional Corporation.
10. Donovan will execute and return to the Board a Full and Final Release in the form of the attached Appendix "A" to this Resignation Agreement. Without limiting the generality of the foregoing, Donovan also undertakes and confirms, without time limitation, that she will not commence any future proceeding against the Board of any kind whatsoever (whether by way of human rights application, grievance, OCPC or OIPRD complaint under the *Police Services Act*, or otherwise) that in any way relates to or arises out of the period prior to June 26, 2017.
11. The Board will execute and return to Donovan a full and final Release in the form of the attached Appendix "B" to this Resignation Agreement. Without limiting the generality of the foregoing, the Board also undertakes and confirms, without time limitation, that it will not commence any future proceeding against Donovan of any kind whatsoever that in any way relates to or arises out of the period prior to June 26, 2017, except where such proceeding relates to the prohibited and/or unlawful disclosure of operational police information acquired by Donovan in the course of her employment.

12. Without limiting the generality of the foregoing, Donovan also undertakes and confirms, without time limitation, that she will not commence any future proceeding against the Association of any kind whatsoever (whether by human rights application, grievance, OCPC, or OIPRD complaint under the *Police Services Act*, or otherwise) that in any way relates to or arises out of the period prior to June 26, 2017.
13. On or before the date of her employment resignation, Donovan confirms that she will return to the Board any and all property, documents, or copies thereof (whether in an electronic form or otherwise), in her possession belonging to the Board. Such police property includes, without limitation, her equipment, uniform, badge and police identification.
14. To assist Donovan in her search for alternative employment, the Board agrees to permit Donovan to seek employment reference letters, without time limitation, from Staff Sergeant Jen Davis and Sergeant George Prine. The decision to provide such letters will be entirely within their own discretion, but the letters (if provided) will contain no references to the matters resulting in this settlement.
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 8th day of June, 2017.

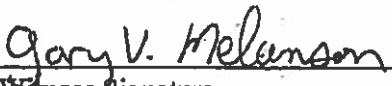
SIGNED AND WITNESSED
in the presence of:

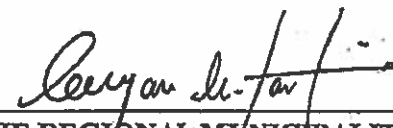

Witness Signature
Print Name: Molly Kimpel


KELLY DONOVAN

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


SIGNED AND WITNESSED
in the presence of:

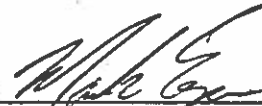

Witness Signature
Print Name: GARY V. MELANSON


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 Repardon 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 8th, 2017, do hereby release and forever discharge **THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD** and the **WATERLOO REGIONAL POLICE ASSOCIATION**, its and their officers, agents, directors, commissioners, servants, employees, attorneys, related and affiliated entities, parent and subsidiary entities, predecessors, successors and assigns (the "Releasees") from any and all actions, causes of action, complaints, applications, including, without limitation, Human Rights Tribunal of Ontario ("HRTO") Application No. **2016-24566-I** filed on or about June 6, 2016, appeals, requests, covenants, contracts, claims, grievances, under any terms of employment, whether express or implied, and demands whatsoever, whether arising at common law, by contract, including pursuant to the applicable Uniform Collective Agreement between **THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD** and **THE WATERLOO REGIONAL POLICE ASSOCIATION**, by statute, including without limitation, the *Human Rights Code*, R.S.O. 1990, c. H.19, the *Labour Relations Act, 1995*, S.O. 1995, c. 1, Sch. A, the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1, the *Pension Benefits Act*, R.S.O. 1990, c. P.8, the *Police Services Act*, R.S.O. 1990, c. P. 15 or the *Employment Standards Act, 2000*, S.O. 2000, c. 41, and any amended or successor statutes and sections, or otherwise, which I have ever had, now have or which my heirs, executors, administrators and assigns, or any of them hereafter can, shall or may have by reason of my employment with or the resignation of my employment with **THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD** effective on or about June 25, 2017, or which arises out of or in any way relates to the matters giving rise to my HRTO Application No. **2016-24566-I**.

AND FOR THE SAID CONSIDERATION, I further agree not to commence, maintain, or continue any action, cause of action, claim, request, complaint, demand or other proceeding, against any person, corporation or entity in which any claim could arise against the Releasees or any one of them for contribution or indemnity.

AND IT IS FURTHER AGREED that, while I do not retract my allegations pursuant to the Ontario *Human Rights Code*, in the event that I should hereafter make any claim or demand or commence or threaten to commence any action, claim or proceeding, or make any complaint against the Releasees or anyone connected with the Releasees for or by reason of any cause, matter or thing, including the matters arising out of or in any way relating to my HRTO Application No. 2016-24566-I, this document may be raised as an estoppel and complete bar to any such claim, demand, action, proceeding or complaint. Further, I acknowledge and agree that, in light of this settlement, any complaint filed under the *Human Rights Code*, the *Police Services Act* or *Employment Standards Act, 2000*, or any other legislation, which in any way relates to my employment would be frivolous, vexatious and an abuse of process. Subject to the terms of the attached Resignation Agreement, I further agree that I have no claim for disability benefits and I will not institute any action against any carrier or the Releasees which relates to said benefits. I further agree that this settlement can be relied upon as a complete bar to any such action or complaint.

AND IT IS FURTHER AGREED that for the aforesaid consideration, I will pay the appropriate authorities any taxes or any Employment Insurance repayments or any interest, fines, penalties or other charges of any kind whatsoever under any statutory provision, federal or provincial, that may be claimed or levied against me as a result of the payment of the amounts referred to in the attached Resignation Agreement dated June 8th, 2017, and I hereby agree to indemnify and save harmless the Releasees from any and all claims or demands under the *Income Tax Act* of Canada, the *Employment Insurance Act* of Canada, and/or the *Income Tax Act* of the Province of Ontario, and/or under any other statute, federal or provincial, for or in respect of any failure on the part of the Releasees to withhold income tax, or any other source deductions, or remit Employment Insurance repayments from all or any part of the said consideration and any interest or penalties relating thereto and any costs or expenses incurred in defending such claims and demands.

AND I HEREBY DECLARE that I fully understand the terms of settlement as set out in the attached Resignation Agreement dated June 8th, 2017, that the terms thereof constitute the sole consideration for this Release and that I voluntarily accept the amounts stated therein for the purpose of making full and final compromise, adjustment and settlement of all claims aforesaid.

AND I HEREBY CONFIRM that I have obtained independent legal advice with respect to the details of the attached Resignation Agreement dated June 8th, 2017, and this Release, and I confirm that I am executing this Release freely and voluntarily.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 8th day of

June, 2017, in the City of CAMBRIDGE, Ontario.

SIGNED AND WITNESSED
in the presence of:

M. Kimpel
Witness Signature
Print Name: Molly Kimpel

[Signature]
KELLY DONOVAN

APPENDIX "B"
FULL AND FINAL RELEASE

THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD, in consideration of the terms and conditions set out in the attached Resignation Agreement dated June 8th 2017, does hereby release and forever discharge **KELLY DONOVAN** ("**DONOVAN**") from any and all actions, causes of action, complaints, applications, appeals, requests covenants, contracts, claims, grievances, under any terms of employment, whether express or implied, and demands whatsoever, whether arising at common law, by contract, including pursuant to the applicable Uniform Collective Agreement between **THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD** and **THE WATERLOO REGIONAL POLICE ASSOCIATION**, by statute, including without limitation, the *Human Rights Code*, R.S.O. 1990, c. H.19, the *Labour Relations Act, 1995*, S.O. 1995, c. 1, Sch. A, the *Occupational Health and Safety Act*, R.S.O. 1990, c.O.1, the *Pension Benefits Act*, R.S.O. 1990, c. P.8, the *Police Services Act*, R.S.O. 1990, C. P.15 or the *Employment Standards Act, 2000*, S.O. 2000, c. 41, and any amended or successor statutes and sections, or otherwise, which it has ever had, now has or which it hereafter can, shall or may have reason of **DONOVAN**'s employment with or the resignation of her employment with **THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD** effective on or about June 25, 2017, or which arises out of or in any way relates to the matters giving rise to **DONOVAN**'S HRTO Application No. 2016-24566-I.

AND FOR THE SAID CONSIDERATION, THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD further agrees not to commence, maintain, or continue any action, cause of action or claim, request, complaint, demand or other proceeding, against any person, corporation or entity in which any claim could arise against **DONOVAN** for contribution or indemnity.

AND IT IS FURTHER AGREED that, in the event that **THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD** should hereafter make any claim or demand or commence or threaten to commence any action, claim or proceeding, or make any complaint against **DONOVAN** for or by reason of any cause, matter or thing relating to **DONOVAN**'S

employment or resignation, including the matters arising out of or in any way relating to DONOVAN'S HRTO Application No. 2016-24566-I, this document may be raised as an estoppel and complete bar to any such claim, demand, action, proceeding or complaint. Further, **THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD** agrees that, in light of this settlement, any complaint filed under the *Human Rights Code*, the *Police Services Act*, or *Employment Standards Act, 2000*, or any other legislation, which in any way relates to DONOVAN'S employment would be frivolous, vexatious and an abuse of process.

THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD further declares that it fully understands the terms of settlement as set out in the attached Resignation Agreement dated June 8th, 2017, that the terms thereof constitute the sole consideration for this Release and that **THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD** voluntarily accepts the terms therein for the purpose of making full and final compromise, adjustment and settlement of all claims aforesaid.

IN WITNESS WHEREOF **THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD** have hereunto set their hand and seal this 8th day of June _____, 2017, in the City of Cambridge, Ontario.

SIGNED AND WITNESSED
in the presence of:

Gary V. Melanson
Witness Signature

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

Print Name: GARY V. MELANSON

TAB 4

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

ANGELINA RIVERS, SHARON ZEHR,
and BARRY ZEHR

Plaintiffs

and

WATERLOO REGIONAL POLICE SERVICES BOARD and
WATERLOO REGIONAL POLICE ASSOCIATION

Defendants

AFFIDAVIT OF BRYAN LARKIN

I, **BRYAN LARKIN**, of the City of Kitchener, in the Regional Municipality of Waterloo, **MAKE OATH AND SAY:**

1. I make this Affidavit as a Reply Affidavit to the material filed by the Plaintiffs with respect to the Jurisdiction Motion, and as a Responding Affidavit to the Plaintiff's Certification Motion, and for no improper purpose.

2. I am the Chief of Police of the Waterloo Regional Police Services (WRPS). I am employed and report to the Defendant, the Waterloo Regional Police Services Board (WRPSB), and, as such, have knowledge of the matters and facts contained in this my affidavit. Unless I indicate to the contrary, these facts are within my personal knowledge and are true. Where I

have indicated that I have obtained from information from other sources, I verily believe those facts to be true.

PERSONAL BACKGROUND

3. I am 47 years of age. I began my policing career with the WRPS in 1991, as a Constable. While with the WRPS from 1991 until 2011, I progressed through the ranks from Constable to Superintendent. During that time and in addition to patrol/operational assignments, I have worked in Human Resources, been the Chief of Police's Executive Officer and Media Relations Officer, lead the largest Division in our Service. I left WRPS in 2011 to become the Deputy Chief of Police with the Guelph Police Service and then became Chief of the Guelph Police Services from 2012 to 2014, returning in August of 2014 to assume my role as Chief of Police of WRPS.

4. I am currently the President of the Ontario Association of Chiefs of Police, and participate in the Canadian Association of Chiefs of Police Working Groups on Diversity and Inclusion. During my career, including in my role in senior management with the WRPS, I have had training, attended and/or helped to arrange symposiums, conferences and seminars on Diversity, Gender Equality and Sexual Harassment (including through the Ontario Police College, internally and at a provincial and international level (International Association of Chiefs of Police- Women in Policing)).

STATEMENT OF DEFENCE AND ATTORNMENT TO JURISDICTION ISSUE

5. I have reviewed the Statement of Claim in these proceedings. The Defendant, WRPSB, denies or has no knowledge of many of the allegations made in the Statement of Claim. On the

advice of counsel, we have not entered a Statement of Defence due to the fact that we would be attorning to the jurisdiction of the Superior Court of Justice by doing so in circumstances where our position has been clearly stated, in our Motion Record and Factum brought under Rule 21 of the *Rules of Civil Procedure*, that the Plaintiff's Action should be dismissed on the grounds that the Superior Court of Justice has no jurisdiction to hear the matter based on the Collective Bargaining Agreements, which govern the employment relationship between the Plaintiffs and the Defendants. I have also been advised by our counsel that they would need particulars with respect to many of the allegations in the Statement of Claim in order to properly plead to it and prepare a proper Statement of Defence should the preliminary Jurisdiction Motion be dismissed.

6. My counsel was served yesterday with new and extensive Affidavit material purporting to be Responding Affidavits to the Defendant's Jurisdiction Motion, but which contains many new, unfounded, and unchallenged allegations, to bolster the previous Affidavits filed by the Plaintiffs. My not addressing these new allegations in this Affidavit should not be taken as a concession or admission with respect to those unfounded allegations.

COLLECTIVE BARGAINING AGREEMENT AND ITS GOVERNING THE EMPLOYMENT RELATIONSHIP BETWEEN THE WRPSB AND ITS EMPLOYEES

7. I have reviewed the Affidavit of Fillipe Mendes, sworn September 14, 2017, contained in the Motion Record, dated September 15, 2017, filed with respect to the Jurisdiction Motion. I confirm the accuracy of the information contained in that Affidavit.

8. In addition, there is a separate Collective Bargaining Agreement in force between the WRPSB and the Waterloo Regional Police Association (WRPA) which governs the employment relationship between the employer and its civilian employees. Attached hereto and marked as "Exhibit A" to this my Affidavit, is a true copy of this Collective Bargaining Agreement, and which is currently in force.

9. There is also a Collective Bargaining Agreement which exists between the WRPSB and the Senior Officers Association (SOA), which consists of 31 employees comprised of uniform officers above the rank of Staff Sergeants, being Inspectors, Superintendents, as well as civilian Managers and Supervisors, and all other employees who are in a position to receive confidential information, such as our in-house lawyers. It is unclear to me whether the class action purports to represent the members of the SOA bargaining unit. Attached hereto and marked as "Exhibit B" to this my Affidavit, is a true copy of this Collective Bargaining Agreement.

10. Attached hereto and marked as "Exhibit C" to this my Affidavit is a breakdown of the male/female ratio of the senior management positions in the SOA bargaining unit, and which contradicts the erroneous information in the Plaintiff's materials that woman have not been promoted to senior management positions within the WRPS, and which I had requested be prepared for the purpose of this affidavit.

INTERNAL PROCEDURES, PROTOCOLS AND POLICIES OF WRPS TO DEAL WITH SEXUAL HARASSMENT, SEXUAL ASSAULT AND GENDER DISCRIMINATION

11. Our Policy and Procedures Development Unit was asked to compile the following list of written policies and procedures in place that deal directly or indirectly with the issue of and processes for employees to follow regarding sexual harassment sexual assault, and/or gender

discrimination, as well as the historical Procedures dealing specifically with Harassment and Discrimination :

- (a) Harassment and Discrimination Procedures – Historical:
 - (i) By-law 11 and 12 from 1983 Rules and Regulations;
 - (ii) Harassment Policy (Order 13-90; February 12, 1990);
 - (iii) Harassment Policy (67-93; December 20, 1993);
 - (iv) Harassment Policy 1996;
 - (v) Harassment and Discrimination Procedure (April 11, 2007);
 - (vi) Harassment and Discrimination Procedure (June 21, 2010); and
 - (vii) Harassment and Discrimination Procedure (October 21, 2014)

- (b) Harassment and Discrimination Procedure – Current (August 2, 2017) – Attached hereto and marked as “Exhibit D”;

- (c) Promotional Procedures:
 - (i) Promotions Senior Officer; and
Promotions – Sergeant and Staff Sergeant; and

- (d) Other Procedures that reference or deal with harassment or discrimination, gender equity, etc. related issues (e.g., workplace violence free obligations):
 - (i) Auxiliary Police Procedure;
 - (ii) Bias Neutral Policing Procedure;
 - (iii) Emergency and Personal Safety Procedure;
 - (iv) Field Development (formerly Coach Officer) Procedure;
 - (v) Performance Management – Civilian Procedure;
 - (vi) Relationships in the Workplace Procedure;
 - (vii) Skills Development and Learning Plan Procedure;
 - (viii) Supervision Procedure;
 - (ix) Workplace Accidents Procedure; and
 - (x) Workplace Violence Procedure.

12. These specific policies and procedures have worked well in allowing most complaints to have been handled and resolved internally, but with the option for any employee to proceed with a complaint to the Human Rights Tribunal of Ontario, or a formal grievance under the applicable

Collective Bargaining Agreement and/or dealing with misconduct of a police officer under the Code of Conduct found in the *Police Services Act*. Attached hereto and marked as "Exhibit E" to this my Affidavit is a chart which I requested that the Human Resources Division of the WRPS prepare for sexual harassment/discrimination complaints for the last 9 years, with non-identifying particulars with respect to the parties and the resolution of those complaints in order to comply with the applicable legislation and respect the individuals' privacy.

13. Attached hereto and marked as "Exhibit F" to this my Affidavit, is an additional chart that I had requested the Human Resources Division of WRPS prepare, showing where the Human Rights Tribunal complaints that had been commenced by female employees in the last five years, and their status or resolution. Again, this chart has non-identifying information, with the exception of the Plaintiff, Angelina Cea, (aka Rivers), who's Complaint is to the Human Rights Tribunal as it is still outstanding, and the status of which is referred to in detail below.

14. The WRPS with the full support of the Defendant, the WRPSB, has taken proactive steps in recent years to properly deal with the issues of sexual discrimination, gender diversity, sexual harassment and to encourage and promote women to senior management positions. Attached hereto and marked as "Exhibit G" to this my Affidavit, is a true copy of the text of a recent article from the Ottawa Citizen newspaper, dated November 28, 2017, outlining steps taken by the Ottawa Police Services arising out of a settlement of a Human Rights complaint from 2015. The WRPS had already launched similar initiatives prior to the issuance of the Statement of Claim in this action. WRPS, in January of 2017, had established an Inclusion and Equity Officer with the full support of the WRPSB. Donna Mancuso, was the first Inclusion and Equity Officer, and is now been promoted to an Inspector of the WRPS. Sergeant Julie Sudds has

replaced Inspector Mancuso. Her mandate, and the mission statement of her office, is that every member is responsible for promoting inclusivity within the organization and community.

15. In addition and since 2005, the WRPS Diversity Committee has served as a steering group for a wide variety of Service initiatives that promote the Core Value of *Diversity* within our Service and throughout Waterloo Region. Over 30 WRPS uniform and civilian members are divided equally among its 5 sub-committees, including Education (assist in coordinating Service educational programs and initiatives that promote Diversity awareness and inclusion):

16. In 2015, a program was implemented, where every female Staff Sergeant has been sent to the Women Leadership Institute, hosted by the International Association of Chiefs of Police, which is a five day, 40 hour program. This initiative has now also been expanded to include all female Sergeants.

17. In 2016, WRPS sponsored a Women's Leadership Day Forum. Ironically, the Plaintiff, Barry Zehr, advocated that men should attend this forum and was overruled by senior management on the basis that there was a consensus that the women needed a safe space as a first step to move forward, and to then subsequently involve men as part of the ongoing process. Attached hereto and marked as "Exhibit I" to this my Affidavit is the on-line Registration form for the Women's Leadership Forum scheduled for January 18, 2018

18. The internal policies referred to in Barry Zehr's Affidavit, at paragraph 42, and Exhibit B, are outdated versions of the Harassment and Discrimination Procedure, which current version is attached to this Affidavit as "Exhibit D" described above. Contrary to the allegation made by the Plaintiff, Barry Zehr, about the briefing note "highlighting the inherent ineffectiveness" of the current policies, changes made to the wording of the internal policies was simply to reflect the

new legislation and requirements of Bill 132, which had an effect on numerous other policies of the WRPS, which were also changed to be in compliance.

19. In addition, all new employees (including probationary constables) are required, as part of new employee orientation to receive training on Workplace Conduct, that includes specific lesson plan on appropriate workplace conduct and harassment and discrimination and those key and applicable Procedures. This was developed following the Service-wide training on “Ontario Human Rights – Accommodation and Harassment and Discrimination” from June to September 2007. In addition, Field Development Officer (formerly, Training Officers) have specific training dealing with harassment and discrimination and are required to address the issues with their probationary constables.

20. The Service has kept its procedures up to date and revised them as amendments to legislation have been introduced (e.g., Bill 168 (Workplace Violence and Harassment) updates and later Bill 132 (Sexual Violence and Harassment Action Plan)— which is what Ms. Penny Smiley was referring to in her report to the Senior Leadership Team). Attached hereto and marked as “Exhibit I” is the Senior Leadership Team Briefing Note dated March 2, 2017 entitled, “Bill 132 Harassment and Discrimination Procedure Changes” and as “Exhibit J” is the accompanying PowerPoint presentation entitled “Harassment and Discrimination Procedure- Bill 132 Updates”.

EXTERNAL PROCEDURES/PROCESSES AVAILABLE TO EMPLOYEES OF WRPS TO DEAL WITH COMPLAINTS OF SEXUAL HARASSMENT, SEXUAL/GENDER DISCRIMINATION, OR SEXUAL ASSAULT

21. The internal policies and procedures of the WRPS, while not perfect are continually progressing appropriately and provide remedies for female officers and civilian employees when they have complaints with respect to sexual/gender discrimination, sexual harassment or sexual assault to be handled either informally on an internal basis. But they also contemplate and allow for other external remedies available by way of Complaints to the Human Rights Tribunal, or under the Collective Bargaining Agreements, or the *Police Services Act* or SIU complaints and investigations.
22. Any employee who has a complaint, with respect to harassment or discrimination, sexual or otherwise, is specifically permitted to suspend or by-pass any proceedings under our internal procedures and/or any interim solutions by commencing proceedings before the Ontario Human Rights Tribunal, or a grievance under the Collective Bargaining Agreement/*Police Services Act*, or commencing a criminal prosecution.
23. In fact, if there is any concern that a potential crime may have been committed during the course and scope of a police officer's employment with the WRPS, a complaint to and investigation will be initiated by the Special Investigations Unit ("SIU"), which is a separate and independent body mandated to investigate police officers in Ontario (whether they active or retired as long as the allegation of sexual assault occurred while they were police officers and it arose out of or related to their duties or position as a police officer). The mandate of the SIU is to maintain confidence in Ontario's police services by assuring the public that police actions resulting in serious injury, death, or

allegations of sexual assault are subjected to rigorous, independent investigations. Incidents which fall within this mandate must be reported to the SIU by the police service involved and/or may be reported by the complainant or any other person.

24. As well, the *Police Services Act* explicitly provides for misconduct in the Code of Conduct (Regulation 268/10) that are designed or can be used to address matters of sexual harassment and/or discrimination in the workplace, including but not limited to:

2. (1) Any chief of police or other police officer commits misconduct if he or she engages in,

(a) Discreditable Conduct, in that he or she,

(i) **fails to treat or protect persons equally without discrimination** with respect to police services because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, **sex, sexual orientation**, age, marital status, family status or disability,

(ii) uses profane, abusive or insulting language that relates to a person's race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, **sex, sexual orientation**, age, marital status, family status or disability,

(iii) **is guilty of oppressive or tyrannical conduct towards an inferior in rank,**

(iv) **uses profane, abusive or insulting language to any other member of a police force,**

(vii) **assaults** any other member of a police force,

(viii) **withholds or suppresses a complaint** or report against a member of a police force or about the policies of or services provided by the police force of which the officer is a member,

(ix) is guilty of a **criminal offence** that is an indictable offence or an offence punishable upon summary conviction, or

(xi) **acts in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the police force** of which the officer is a member;

(b) Insubordination, in that he or she,

(i) is **insubordinate by word, act or demeanor**, or

(ii) without lawful excuse, **disobeys, omits or neglects to carry out any lawful order** [note: Procedures are considered orders of the Chief];

(c) Neglect of Duty, in that he or she,

(i) without lawful excuse, neglects or omits promptly and diligently to perform a duty as,

(A) a member of the police force of which the officer is a member, if the officer is a member of an Ontario police force as defined in the *Interprovincial Policing Act, 2009*, or

(iii) **fails to work in accordance with orders**, or leaves an area, detachment, detail or other place of duty, without due permission or sufficient cause,

(vi) **fails to report a matter that it is his or her duty to report**,

[Emphasis Added]

25. As noted above, all police officers are also subject to that Code of Conduct in the *Police Services Act*. While members of a Service are not permitted to bring a “public complaint” against an officer from their same Service, there are other mechanisms by which a formal complaint and, if substantiated and of a serious nature, a public hearing can be commenced. The Chief can initiate a Chief’s complaint under the *Police Services Act*. In fact, this is something that is explicitly contemplated in the Service’s Harassment and Discrimination Procedure at “Exhibit D”).
26. Lastly and notwithstanding that a member of a Police Service cannot directly bring a public complaint, the *Police Services Act* also provides at section 25 for Ontario Civilian Police Commission, on its own motion (and if a member brings an issue to their attention), the power to investigate, inquire into and report on, *inter alia*,
- (a) the conduct or the performance of duties of a police officer, a municipal chief of police, an auxiliary member of a police force, a special constable, a municipal law enforcement officer or a member of a board;
 - (b) the administration of a municipal police force...
27. As such, there are a host of avenues that a complainant in a harassment or discrimination related matter can, and have at our Service, pursue.

THE PLAINTIFF'S PURPORTED EXPERT, KATHY HOGARTH

28. I am advised by my counsel that the report and alleged expert opinion of Ms. Hogarth, set forth in the Supplementary Motion Record of the Plaintiffs, is improperly before the Court in this proceeding, in that Ms. Hogarth is unqualified, biased, and that her opinions are not made in a report served in accordance of the provisions of Rule 53 of the *Rules of Civil Procedure*.
29. I specifically deny the allegations made in paragraphs 12 and 13 of Ms. Hogarth's Affidavit that she discussed with me, issues of systematic sexual harassment and practices of the WRPS dealing with sexual harassment and discrimination. My recollection of my meetings and conversations with Ms. Hogarth was that they were based on racism issues and race based interactions, such as racial profiling and the larger inclusion and diversity issue and not related to gender equity/diversity specifically.
30. I had first met Ms. Hogarth through the Waterloo Region Well-Being Working Group as part of planning on building healthier communities. I had appointed Barry Zehr to this Working Group. Ironically, it was myself that gave her name to the Plaintiff Barry Zehr, Penny Smiley, and Staff Sergeant Allison Bevington, to request that she speak at the Women and Leadership Forum, which she refers to in her Affidavit and report.
31. I recall Ms. Hogarth being critical of the appointment of Donna Mancuso, as WRPS first Inclusion and Equity Officer, saying that she was a "disciple of other senior officers" and may not be the best candidate. At the time I thought that this was a very strange comment and it now seems clear to me that she was receiving information from the Plaintiff, Barry Zehr, since she would not have known the identity of these other senior

officers, and their relationship to Donna Mancuso. Again, the context of any discussions about the Inclusion and Equity Officer was centered around racial diversity issues. The education and training assistance that was offered by Ms. Hogarth, as set out in paragraph 14 of her Affidavit, was related to systematic discrimination based on racial discrimination, not gender discrimination. In any event, given the apparent lack of support of Kathy Hogarth to the appointment of Donna Mancuso as the Inclusion and Equity officer, I did not follow up with Ms. Hogarth following that conversation and made the decision that Inspector Mancuso would be better to deal with these issues internally, and based on her own initiatives.

32. The allegation in paragraph 15 of Ms. Hogarth's Affidavit, that there were only two women in the large senior management team of the WRPS is simply wrong, and I don't know where she got that information. As seen by the charts attached as "Exhibit C" to my Affidavit, there is significant progress being made in gender diversity in our Senior Management Team.

THE REPRESENTATIVE PLAINTIFF, ANGELINA RIVERS (CEA)

33. Ms. Rivers, under the name Cea, made a complaint of sexual discrimination and sexual harassment in August of 2015, to the human resources division of WRPS, which was taken very seriously and prompted an internal investigation in accordance with our policies and procedures. The WRPS hired an independent lawyer, Lauren Bernardi, of Bernardi Human Resource Law LLP, to conduct an external and independent investigation. As a result of this independent investigation, the individual male officer that was the subject of the complaint was found guilty of a charge of discreditable conduct,

pursuant to the *Police Services Act*, and disciplined under our normal policies and procedures. The WRPS would have had a meeting with Ms. Rivers to discuss the findings set out in the Bernardi report and to resolve her complaint (including advising her of the discipline imposed on the subject of her complaint), but when she was contacted (in October of 2016) so that a meeting could be scheduled with the Director of Human Resources, Lauren Bernardi and Shirley Hilton (the then Inspector of Professional Standards), Ms. Rivers refused, citing that she was sick and that for medical reasons, she could not meet. Ms. Rivers' has been on 100% employer paid sick leave from WRPS since July 29, 2015.

34. Contrary to the allegations set out in paragraph 28 of Ms. Rivers' Affidavit, she does in fact have a copy of the Bernardi report and in fact has quoted from it in this proceeding and publicly, which my counsel advises me is in complete breach of what is referred to as, the Deemed Undertaking Rule.
35. Ms. Rivers filed a complaint with the Human Rights Tribunal of Ontario in 2016. The mediation for Ms. Rivers' complaint was scheduled for December 18, 2017, but at the request of Ms. Rivers and her counsel, they cancelled the mediation and are now seeking to have the hearing cancelled or stayed until it is determined if she can proceed with her claims as a Representative Plaintiff in the class action. The WRPS is opposing this request to stay the HRT. Attached hereto as "Exhibit K" to this my Affidavit is the email chain dated December 15, 2017, to the HRTO from Ms. Rivers' counsel in that proceeding and the counsel of the WRPSB in that proceeding.

36. It is the position of the Defendant, WRPSB, that the Plaintiff, Angelina Rivers (aka Cea), with her HRT0 outstanding and in fact now refusing to proceed with the scheduled hearing of her Complaint before the HRT0 which is a preferable procedure for the resolution of any issues, which are identical to the issues raised in the Statement of Claim, and is therefore not a proper Representative Plaintiff, completely separate and apart from the jurisdiction of the Superior Court of Justice to deal with the proposed class action.

THE REPRESENTATIVE PLAINTIFF, SHARON ZEHR

37. The allegations made by Ms. Zehr of gender based discrimination and sexual harassment and bullying are at least 26 years old, and there is no evidence that she ever complained about any of these incidents or issues while in the employ of the WRPS, or at any time subsequent to the issuance of the current Statement of Claim.
38. I note that in paragraph 17(c) and (d) of Ms. Zehr's Affidavit, that when she subsequently had complaints with respect to sexual harassment and gender discrimination, following her leaving her employment at Wilfred Laurier University in 2006, she made a specific complaint to the Human Rights Tribunal of Ontario and had her complaint successfully resolved at that time by way of a settlement.
39. When the WRPS received a copy of the Statement of Claim, issued May 30, 2017, on the basis that the allegations in paragraph 52 of that claim potentially disclosed sexual assaults, the WRPS, as they are mandated to do, reported these incidents to the Special Investigations Unit of the Ministry for investigation. I am advised by Staff Sergeant David MacMillan, of our Professional Standards Branch, that on June 2, 2017, he

emailed the Statement of Claim to Oliver Gordon, at the Special Investigations Unit (“SIU”), specifically drawing his attention to paragraph 52. He was subsequently contact by Mr. Gordon on June 5, 2017, and advised that the SIU had sent a letter to Plaintiff’s counsel in this action inquiring if they wished to speak to them, and whether or not they were alleging sexual assaults in the Statement of Claim. In a subsequent follow up by Staff Sergeant MacMillian to Mr. Gordon, on October 2, 2017, he was advised that the SIU had not received any response from Plaintiff’s counsel to their proceeding to investigate the alleged sexual assaults, and had therefore closed their file.

40. For whatever reason, Ms. Zehr does not seem to want to pursue other preferable and available remedies to deal with the issues set out in the Statement of Claim.

THE REPRESENTATIVE PLAINTIFF, BARRY ZEHR

41. The Plaintiff, Barry Zehr, is an alleged *Family Law Act* Plaintiff, whose claims are derivative from any claims of his spouse, Sharon Zehr.
42. It is correct that Mr. Zehr was employed by the WRPS from April 12, 1987 to April 16, 2017, when he retired from his position as Superintendent. He had previously been a Superintendent of Human Resources from November 2008 to November 2013.
43. There are many allegations and statements made by Mr. Zehr in his Affidavit, and alleged in the Statement of Claim, which are incorrect and will be denied in an eventual Statement of Defence if this action proceeds.
44. It is not correct that Mr. Zehr brought forward issues about gender equality while part of the Senior Management Team. I certainly recall him speaking to him on occasion,

speaking about racial diversity, but I never recall him raising a gender issue at a Senior Leadership team meeting. We had assigned a female acting Inspector for Mr. Zehr to mentor his feedback was not positive of her abilities. He was also critical of his only female Inspector when he was serving as the Neighbourhood Policing Superintendent.

45. I have specifically reviewed paragraphs 11, 12, and 13, of Mr. Zehr's Affidavit dealing with the alleged "Lamport" issue. I was not the Chief of Police at the time, but having reviewed the files I can confirm that Greg Lamport was disciplined for substantiated misconduct, but which had nothing to do with the gender issues or any issues raised in this current action. Upon Greg Lamport subsequently being promoted, contrary to the allegations contained in Mr. Zehr's Affidavit, a female officer was promoted to be the first female Staff Sergeant of the Emergency Responsive Unit (ERU) and that individual has subsequently been promoted to be an Inspector.
46. I do not understand the relevance of the Lamport issue since it has nothing to do with the issues raised in this litigation. It now appears from my review of Mr. Zehr's most recent Affidavit, where he has included portions of the Investigative Report dealing with Greg Lamport, that he was improperly and illegally taken this Report from the WRPS and produced it along with the other information in his Affidavit in direct violation of S.95 of the *Police Services Act*, which provides:

"Confidentiality

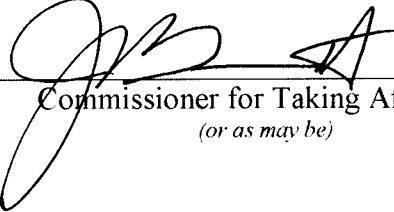
95. Every person engaged in the administration of this Part shall preserve secrecy with respect to all information obtained in the course of his or her duties under this Part and shall not communicate such information to any other person except,

- (a) As may be required in connection with the administration of this Act and the regulations;*
- (b) To his or her counsel;*
- (c) As may be required for law enforcement purposes; or*
- (d) With the consent of the person, if any, to whom the information relates."*

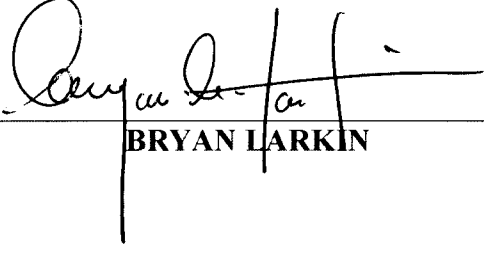
47. Contrary to the allegations in Mr. Zehr's Affidavit, rather than being a champion of women's rights, and taking steps to deal with gender equality and sexual harassment, he admits that he encouraged Sharon Zehr not to come forward to pursue any complaints with respect to her allegations of discrimination and sexual harassment.
48. In January of 2017, prior to his retirement in April of 2017, I recall being approached by Barry Zehr, asked whether I was going to approach the Defendant, WRPSB, with respect to an early buyout and retirement package for Senior Staff such as himself. I told Mr. Zehr that as a Senior Officer he was doing a good job, but that there was no justification or reason to request an early retirement and buyout. Certainly, Mr. Zehr did not communicate to me in any way the allegations set forth in paragraph 39(b) of his Affidavit, that he was demoralized. I recall him saying, I have "boulders on my shoulders", but when I pressed him to elaborate he did not want to and would not share any information or explain. He did not take early retirement as he eludes to in paragraph 40 of his Affidavit, but retired with a full unreduced pension, at 30 years of service, as almost all officers in the employ of WRPS do.
49. Unfortunately, serious issues were uncovered by the WRPS surrounding Mr. Zehr's departure from our employment which constituted a serious breach of his employment contract, his fiduciary duties as a police officer, and a contravention of his Oath of Office.

50. Upon leaving his employment, Mr. Zehr completely erased all files on the hard drive of his computer. He also recalled, from storage, all of his police notebooks, which are the property of Waterloo Regional Police Services, and took them from the premises. Attached hereto and marked as "Exhibit L" to this my Affidavit is a true copy of the letter sent by counsel for the WRPSB to Plaintiff's counsel, dated October 17, 2017. Similarly, Ms. Rivers' had also improperly taken her notebooks and provided them to Plaintiff's counsel.
51. The original notebooks and other files taken by Mr. Zehr were only returned directly to the WRPS by courier on October 31, 2017, but there remains a serious problem in that, as requested, Plaintiff's counsel has refused to return all copies of the notebooks that were made. Certain pages from the notebooks were also removed. This causes a serious problem with respect to the confidential contents of the police notebooks, and the chain of their custody, since they contain protected and confidential information in no way connected to the class action, such as confidential informants, past and/or ongoing investigations, references to young persons, all of which is in contravention of the legislative provisions of the *Youth Criminal Justice Act*, *Police Services Act*, *Municipal Freedom and Information and Protection of Privacy Act* and/or *The Personal Health Information Protection Act*. It may be that by improperly copying and reviewing all of the notebooks, Plaintiff's counsel has put themselves in a conflict of interest and the Defendant, WRPSB, is currently considering whether it will become necessary to bring a Motion to have them removed as the Lawyers of Record for the Plaintiffs in this proceeding and for a Court Order to be obtained to compel the return of all copies made of the notebooks.

SWORN BEFORE ME at the City of
Kitchener, in the Regional Municipality of
Waterloo on ... December 21st 2017 }



Commissioner for Taking Affidavits
(or as may be)

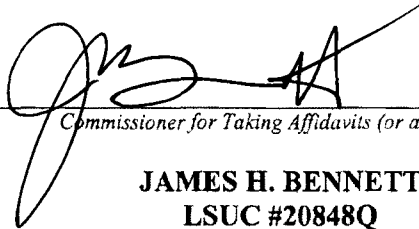


BRYAN LARKIN

RCP-E 4D (July 1, 2007)



This is Exhibit "F" referred to in the Affidavit of Bryan Larkin
sworn December 21, 2017



Commissioner for Taking Affidavits (or as may be)

JAMES H. BENNETT
LSUC #20848Q

Police Officer Initiated Ontario Human Rights Complaints

NAME	GROUNDS FOR DISCRIMINATION	RESOLUTION
Angie Cea (a.k.a. Rivers)	<ul style="list-style-type: none"> • Disability • Sex, including sexual harassment & Pregnancy • Sexual solicitation or advances 	ON GOING
Female Constable	<ul style="list-style-type: none"> • Sex, including sexual harassment and pregnancy • Marital status 	SETTLED <ul style="list-style-type: none"> • monetary settlement • withdrawal of OHRT application • voluntary resignation
Female Constable	<ul style="list-style-type: none"> • employment (rate of pay, denied promotion, discipline) • sexual harassment (comments, displays, jokes, poisoned work environment, denied accommodation or modified work in the workplace) 	WITHDRAWN <ul style="list-style-type: none"> • Tribunal directed Summary Hearing to determine if application should be dismissed on basis there was no reasonable prospect that Application would be successful – withdrawn prior to hearing)

Female Sergeant	<ul style="list-style-type: none">• Disability• Sex including sexual harassment, pregnancy, gender identity• Reprisal or threat of Reprisal• Discrimination in employment on basis of sex and disability• Discrimination in discipline• Discrimination in comments, displays, jokes, harassment, poison environment, sex harassment, solicitation or advances• Denied workplace opportunity• Denied employment benefits• Denied necessary accommodation or modified work	SETTLED <ul style="list-style-type: none">• monetary settlement• withdrawal of Application
-----------------	--	---

TAB 5



Workplace Safety
& Insurance Board
Commission de la sécurité
professionnelle et de l'assurance
contre les accidents du travail

Head Office:
200 Front Street West
Toronto, Ontario
Canada M5V 3J1

Siège social :
200, rue Front Ouest
Toronto, Ontario
Canada MSV 3J1

Telephone / Téléphone :
416-344-1000
1-800-387-0750
TTY / ATS : 1-800-387-0050

Fax / Télécopieur :
416-344-4684
1-888-313-7373

July 12, 2017

HEATHER HENNING
WATERLOO REGIONAL POLICE SERVICE
200 MAPLE GROVE ROAD
CAMBRIDGE ON N3H 5M1
CANADA

Claim No.: 30505408
Worker Name: KELLY DONOVAN
Date of Injury/Illness: 01/Feb/2017
Injury/Illness: Psychological Trauma

Dear Ms. Henning,

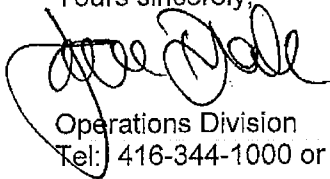
To keep you informed of the claim status, attached is a copy of a letter sent to Kelly Donovan.

I have made this decision based on the information available to me. If you do not understand the decision, or if you do not agree with the conclusions reached, please call me. I would be pleased to discuss your concerns.

It is important to know that the *Workplace Safety and Insurance Act (the Act)* imposes time limits on objections. If you want to object to my decision, the Act requires that you notify me in writing no later than January 12, 2018.

To submit this written appeal notice, please go to our website at www.wsib.on.ca and complete the Intent to Object Form. There is an instruction sheet included on the site which also lists organizations that can provide free representation. You can access the form and instruction sheet by typing "appeal" into the search box on the website and accessing the Worker Appeals or Employer Appeals page. They are also available in the "Forms" section of the website. If you do not have access to our website, you may call our toll free number at 1-800-387-0750 and request the form be mailed to you.

Yours sincerely,



Operations Division
Tel: 416-344-1000 or 1-800-387-0750

RECEIVED
JUL 20 2017

Human Resources Branch



Workplace Safety
& Insurance Board
Commission de la sécurité
professionnelle et de l'assurance
contre les accidents du travail

Head Office:
200 Front Street West
Toronto, Ontario
Canada M5V 3J1

Siège social :
200, rue Front Ouest
Toronto, Ontario
Canada M5V 3J1

Telephone / Téléphone :
416-344-1000
1-800-387-0750
TTY / ATS : 1-800-387-0050

Fax / Télécopieur :
416-344-4684
1-888-313-7373

July 12, 2017

KELLY DONOVAN
11 DANIEL PL
BRANTFORD ON N3R 1K6
CANADA

Claim No.: 30505408
Worker Name: KELLY DONOVAN
Date of Injury/Illness: 01/Feb/2017
Injury/Illness: Psychological Trauma

Dear Ms. Donovan,

Subject: Initial Entitlement (Eligibility to Benefits)

I am writing to confirm the allowance of your claim for Posttraumatic Stress Disorder (PTSD) as verbally communicated to you on July 12, 2017.

Details of the Case:

Your claim was established in April 2017 when we received your Worker's Report of Injury/Disease, as well as an Employer's Report of Injury/Disease. You were employed as a police officer with Waterloo Regional Police Service from December 19, 2010 until you resigned effective June 25, 2017. You are claiming you developed posttraumatic stress disorder as a result of your workplace duties, and you have been off work since February 27, 2017 due to your PTSD symptoms. A June 22, 2017 assessment report from your psychologist confirmed a diagnosis of PTSD.

Criteria:

The Workplace Safety and Insurance Act (WSIA) was amended as of April 6, 2016 and new provisions were introduced which establish presumptive entitlement to benefits for first responders and other designated workers diagnosed with PTSD. Operational Policy Manual (OPM) document 15-03-13 titled, Posttraumatic Stress Disorder in First Responders and Other Designated Workers, guides decision makers in the implementation of these legislative changes.

The policy provides that if a first responder or other designated worker is diagnosed with PTSD by a psychiatrist or psychologist, and if certain criteria have been met, the PTSD is presumed to have arisen out of and in the course of the first responder's or other designated worker's employment, unless the contrary is shown.

Decision:

The information in your claim has been carefully considered. It is confirmed you are a first responder as defined in OPM 15-03-13 and you were diagnosed with PTSD by a psychologist on June 22, 2017. Therefore, your claim for PTSD is allowed by presumption and considered to have arisen out of and in

the course of your employment noting the criteria under the policy have been satisfied. Your claim is allowed for healthcare benefits. This would include 12 initial counselling sessions.

The medical information on file supports that you were unable to work in any capacity; and were clinically authorized off work. As a result, you are entitled to full loss of earnings (LOE) benefits from February 27, 2017 up to June 24, 2017. I understand you received advances from your employer, which will be reimbursed to the employer by the WSIB.

Also, your WSIB Nurse Consultant, Missa Canave, may contact you in the future, to facilitate the recommended treatment with your psychologist.

I have made this decision based on the information available to me. If you do not understand the decision, or if you do not agree with the conclusions reached, please call me. I would be pleased to discuss your concerns.

It is important to know that the Workplace Safety and Insurance Act (the Act) imposes time limits on objections. If you want to object to my decision, the Act requires that you notify me in writing no later than January 12, 2018.

To submit this written appeal notice, please go to our website at www.wsib.on.ca and complete the Intent to Object Form. There is an instruction sheet included on the site which also lists organizations that can provide free representation. You can access the form and instruction sheet by typing "appeal" into the search box on the website and accessing the Worker Appeals or Employer Appeals page. They are also available in the "Forms" section of the website. If you do not have access to our website, you may call our toll free number at 1-800-387-0750 and request the form be mailed to you.

Yours sincerely,

Jane Drake, TMS EA / STCM
Case Manager
Traumatic Mental Stress Program

Tel: 416-344-5205 or 1-800-387-0750

Copy To: Waterloo Regional Police

TAB 6

If you need assistance completing this form, see the instruction sheet or call the WSIB at 416-344-1000 or 1-800-387-0750.

1. Claim Identifiers

Worker's Name Kelly Donovan	Claim No. 30505408
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2. Objecting Party

Worker
 Worker Representative
 Employer
 Employer Representative
 Transfer-of-Cost Employer

3. General Information

Is the worker/employer address and contact information the same as the decision letter? Yes No, see changes below.

Name
Waterloo Regional Police Service

Address 200 Maple Grove Road	City/Town Cambridge	Postal Code N3H 5M1
--	-------------------------------	-------------------------------

Telephone No.: (Day) (519) 653-7700	Telephone No.: (Evening) ()	Language <input checked="" type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Other _____
---	--	--

4. Representation

See Instruction Sheet for information on possible assistance available.

Please check one: I will represent myself in the objection process, or I am currently seeking representation. I have a representative to handle my objection.

If you are represented - A signed *Direction of Authorization* for this representative must be in the claim file.

Representative's Name Donald B. Jarvis	Organization Filion Wakely Thorup Angeletti LLP
--	---

Address 333 Bay Street, Suite 2500	City/Town Toronto, Ontario	Postal Code M5H 2R2
--	--------------------------------------	-------------------------------

Telephone No.: (Day) (416) 408-5516	Telephone No.: (Evening) ()	FAX No. (416) 408-4814
---	--	------------------------------------

5. Intent to Object


I disagree with the following decision(s):

Date of Decision Letter(s) (dd/mmm/yyyy)	Issue(s) in Dispute
12/Jul/2017	Entitlement to healthcare and loss of earnings benefits

6. New Information/Reconsideration

This is an opportunity to provide any new information that the front-line decision maker may not have considered, based on the contents of the decision letter(s). The decision maker can reconsider the decision(s) and may be able to change the decision(s). You will be advised of the outcome of the reconsideration.

No, I have no additional explanation/information to submit.
 Yes, additional explanation/information is attached.
 (Please put the worker's name and claim number on each page.)

Name (please print) Donald B. Jarvis	Signature 	Date 11 JAN 2018
--	---	----------------------------

Please print and sign the completed form before sending to the WSIB by fax to 416-344-4684 or 1-888-313-7373 or by mail to: Workplace Safety & Insurance Board, 200 Front Street West, Toronto, ON M5V 3J1

Worker's Name
Kelly Donovan

Claim No.
30505408

7. Reasons for the Objection

Please explain why you disagree with the decision(s). Your explanation may bring out new information the front-line decision maker was not aware of. Be as specific as possible and refer to any new information you are attaching, where applicable. Please attach additional pages if you need additional space.

Please see attached Schedule "A".

Number of pages attached
15

SCHEDULE "A" TO INTENT TO OBJECT FORM

1. The Waterloo Regional Police Service (the "Service") disagrees with the decision because the worker's alleged injury did not arise out of or in the course of the worker's employment. The worker's diagnosis of PTSD was presumed to have arisen out of and in the course of her employment pursuant to Operational Policy Manual document 15-03-13 titled Posttraumatic Stress Disorder in First Responders and Other Designated Workers. It is the position of the Service that this presumption is clearly rebutted based on the events that occurred leading up to the worker's date of injury/illness of February 1, 2017. The decision indicates that the worker was diagnosed with Posttraumatic Stress Disorder (PTSD) on June 22, 2017.

BACKGROUND

2. The worker was employed by the Service as a police officer prior to her resignation effective on June 25, 2017.
3. On or about May 4, 2016, the worker made a "delegation" to the Waterloo Police Services Board (the "Board"). The worker's delegation to the Board related to the worker's belief that the Service was investigating alleged domestic violence inconsistently where members of the Service were involved, either as alleged victims or alleged perpetrators. Members of the public as well as the media were present during the worker's delegation to the Board in which she identified herself as a police officer, referred to confidential information contained in a confidential Crown Brief, criticized the Service and members of the Service, and suggested that police officers of the Service may have suppressed evidence in a criminal investigation.
4. Following the worker's delegation, the worker was advised that the Service would arrange for an external review of the substance of the worker's allegations. The worker was also advised that, subject to and following that review, the worker would be the subject of an investigation under the *Police Services Act* (the "PSA") to determine

whether her actions breached the *PSA* and constituted discreditable conduct, neglects of duty and/or breaches of confidence.

5. The worker was served with a Notice of Internal Investigation into Alleged Misconduct on May 9, 2016. The worker was also served with a Directive on May 9, 2016, which directed her not to appear before the Board without the permission of the Police Chief, and assigning her to administrative duties. The worker was assigned to administrative duties as of May 9, 2016 pending the conclusion of the *PSA* investigation. Nonetheless and despite the Directive, on May 9, 2016, the worker sent an email to members of the Board. On May 31, 2016, the worker was served with an additional Notice of Internal Investigation into Alleged Misconduct in respect of her email correspondence of May 9, 2016.
6. After learning that she would be investigated under the *PSA*, the worker filed an internal complaint on June 2, 2016. In that complaint, the worker alleged that she had been discriminated against and harassed contrary to the Ontario *Human Rights Code* by various members of the Service in connection with her delegation of May 4, 2016. The Service retained an independent third party investigator named Lauren Bernardi, of Bernardi Human Resource Law LLP, to investigate the worker's complaint of workplace harassment and discrimination. Ms Bernardi issued her report on October 31, 2016, which found that there had been no discrimination based on sex, and that no members of the service had engaged in any form of harassment.
7. The Service asked the York Regional Police (“YRP”) to conduct an external review of one of the investigations that had been highlighted by the worker during her May 4, 2016 delegation. On August 18, 2016, the Service received the YRP’s report, which found that there were no concerns or improprieties with the Service’s criminal investigation.
8. Between November 29, 2016 and January 16, 2017, the Service also conducted an internal review of another investigation the worker alleged had been mishandled by the Service. This internal review similarly found that the Service had followed appropriate investigative procedures.

9. The Service deferred its *PSA* investigations of the worker pending the completion of the external and internal reviews of the worker's allegations of investigative misconduct by the Service, and pending the Bernardi investigation of the worker's claim that she had been subject to harassment and discrimination. Accordingly, following the Service's receipt of all of the foregoing investigative reports, the Service resumed its *PSA* investigation, and notified the worker on or about January 23, 2017 that it would be continuing with that investigation.
10. Then, very shortly thereafter, the worker commenced a medical leave of absence from work on or about February 27, 2017. Notably, the worker did not receive medical clearance to participate in the Service's *PSA* investigation, including attending for a *PSA* compelled interview where she would have been given the opportunity to respond to the allegations, prior to her resignation effective on June 25, 2017. As a result, the worker was never formally or informally disciplined and those matters ended, as a matter of law, upon her resignation.

SUBMISSIONS

11. First and foremost, the Service respectfully submits that the worker's employment was not a significant contributing factor in causing her alleged PTSD. Notably, the worker was assigned to the Service's Training Branch beginning in or around 2015. In that role, the worker trained other police officers, and did not perform any work "in the field" or in the community. Further, as noted above, the worker was then assigned to administrative duties beginning on or about May 11, 2016. These duties continued until the effective date of the worker's resignation, though the worker began an approved leave of absence from work due to sickness on or about February 27, 2017.
12. In the WSIB Decision, the date of injury/illness is identified as February 1, 2017. Again, as previously noted, the worker was performing only administrative duties at that time. Moreover, the worker had just been advised on January 23, 2017, that the Service would be resuming its investigation into whether the worker had engaged in misconduct under the *PSA*.

13. In all of the circumstances, even if the worker did genuinely suffer from PTSD, it is clear that the only work-related nexus was the Service's notice to the worker that it was about to resume its *PSA* investigation. As noted in Operational Policy 15-03-13, if a worker's PTSD was caused by his or her employer's decisions or actions that are part of the employment functions such as discipline, the worker will not be entitled to benefits for PTSD.
14. In summary, the worker's employment was not a significant contributing factor in causing her alleged PTSD and/or, in the alternative, such work-relatedness was rooted in decisions or actions of the Service that were part of the employment function.
15. For the foregoing reasons, the Service submits that the worker is not entitled to healthcare benefits or LOE benefits. The Service reserves the right to make further submissions upon receipt of the Claim File, including all applicable medical reports.

TAB 7



Workers' Safety
 & Insurance Board
 Ontario
 Ontario
 Ontario

Head Office:
 200 Front Street West
 Toronto, Ontario
 Canada M5V 3J1

Siège social :
 200, rue Front Ouest
 Toronto, Ontario
 Canada M5V 3J1

Telephone / Téléphone :
 416-344-1000
 1 800 387 0750
 TTY / ATIS : 1-800-387-0050

Fax / Télécopieur :
 416-344-4684
 1 888 313 7373

August 3, 2018

DONALD B. JARVIS
 333 BAY ST SUITE 2500
 TORONTO ON M5H 2R2
 CANADA

Claim No.: 30505408
 Worker Name: KELLY DONOVAN
 Date of Injury/Illness: 01/Feb/2017
 Injury/Illness: Psychological Trauma

Dear Mr. B. Jarvis,

Subject: Review of Intent to Object Form and Reconsideration

I am writing in response to your January 11, 2018 Intent to Object form.

I would like to apologize for my delay in responding to your concerns.

Concerns Indicated:

You are objecting to initial entitlement in this claim. The letter attached to your Intent to Object form indicates the following concerns:

- On or around May 4, 2016, Ms. Donovan made a "delegation" to the Waterloo Police Services Board, which resulted in an external review of her allegations (regarding inconsistent police investigations into potential domestic violence, where Service members were involved), as well as an investigation into Ms. Donovan under the *Police Services Act (PSA)*.
- Effective May 11, 2016 Ms. Donovan was assigned to administrative duties (pending *PSA* investigations). Previously, she was assigned to the Service's Training Branch beginning in or around 2015. As such, she did not perform work "in the field" or in the community.
- The date of injury/illness is identified as February 1, 2017, which occurred when Ms. Donovan was performing only administrative duties, and had recently been advised of the resumption of the Service's *PSA* investigation.
- On June 2, 2016, Ms. Donovan filed an internal complaint, alleging harassment and discrimination under the Ontario *Human Rights Code*. An independent third party investigator addressed this complaint and the October 31, 2016 report found there had been no discrimination or harassment.
- Both an external review (which was completed on August 18, 2016) and an internal review (conducted between November 29, 2016 and January 16, 2017) found that the Service had followed appropriate investigative procedures.
- On or around January 23, 2017, the Service notified Ms. Donovan that its *PSA* investigation would now continue.
- Effective February 27, 2017, Ms. Donovan commenced a medical leave of absence.
- Ms. Donovan's PTSD would seem to be caused by her employer's decisions or actions and her employment was not a significant contributing factor in causing her PTSD.

For information on benefits, services and working safely, visit our website, www.wsib.on.ca
 Pour des renseignements sur les prestations, les services et la sécurité au travail, visitez notre site Web, www.wsib.on.ca

LTR

3334A

Criteria:

The WSIB's Policy 11-01-04 (*Determining the Date of Injury*) states:

In a gradual onset disablement claim, the date of injury is established using the date of first medical attention, which led to the diagnosis, or the date of diagnosis, whichever is earlier.

The WSIB's Policy 15-03-13 (*Posttraumatic Stress Disorder in First Responders and Other Designated Workers*) states:

If a first responder or other designated worker is diagnosed with posttraumatic stress disorder (PTSD) and meets specific employment and diagnostic criteria, the first responder or other designated worker's PTSD is presumed to have arisen out of and in the course of his or her employment, unless the contrary is shown.

The first responder must have been employed as a first responder for at least one day on or after April 6, 2014.

The first responder must have been diagnosed with PTSD by a psychologist or psychiatrist

- on or after April 6, 2014, and
- no later than 24 months after the day he or she ceases to be employed as a first responder if he/she ceases to be employed as a first responder on or after April 6, 2016.

The presumption may be rebutted if it is established that the employment was not a significant contributing factor in causing the first responder's PTSD.

Review and Reconsideration:Date of Injury

In reviewing the information on file, I note that Ms. Donovan first sought medical attention due to work-related mental stress issues as early as March 11, 2016. However, she did not begin formal treatment with a psychologist until December 16, 2016. Ongoing treatment with the clinical psychologist led to the confirmed DSM-5 diagnosis of posttraumatic stress disorder (PTSD).

For these reasons, I am amending the date of injury to December 16, 2016 – the date Ms. Donovan first sought treatment with her psychologist.

Presumptive Allowance

With regard to your concerns about Ms. Donovan's exposures "in the field", you indicate Ms. Donovan was reassigned to the Service's Training Branch beginning in or around 2015. The relevant criterion of the WSIB's Policy 15-03-13 is that Ms. Donovan "must have been employed as a first responder for at least one day on or after April 6, 2014". This criterion has been met.

Regarding your concerns about Ms. Donovan's PTSD being closely related to the Service's PSA investigation, the medical information on file – from the treating psychologist, a consulting psychiatrist, and the family doctor – confirms that traumatic workplace exposure is the significant contributing factor to her PTSD condition.

While her layoff from work may coincide with notification of the resumption of the PSA investigation, this would be considered a trigger of increased symptoms. The medical evidence does not support that the

Page 3

Claim No. / N° de dossier : 30505408

employer's actions or decisions were a significant contributor to her PTSD diagnosis. Also, the medical information supports an inability to work in any capacity due to PTSD symptoms from late February 2017.

Since I am unable to alter my prior decision, I will refer this file for Access on an urgent basis, so that you will receive a copy of the file. You will also receive an Appeals Readiness form. When this form is completed and returned, I will review any new information provided in order to reconsider my decision from July 12, 2017. If I am still unable to change my decision, I will refer this claim to the Appeals Services Division.

If you have any further questions or concerns, please contact me.

Yours sincerely,

Jane Drake
Case Manager, Mental Stress Injuries Program

Tel: 416-344-5205 or 1-800-387-0750

Copy To: Regional Municipality Of Waterloo
Kelly Donovan

3331A

Fax
Cover
Sheet

Page
couverture
de télécopie



Workplace Safety
& Insurance Board
Commission de la sécurité
professionnelle et de l'assurance
contre les accidents du travail

Confidential/Confidentiel:

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Date: August 3, 2018
12:18:18 PM

Number of pages: (excluding cover page)
Nombre de pages: 03 (sans compter la page
couverture)

To/Destinataire:

Cassandra Mah for Donald Jarvis

From/Expéditeur(trice):

Jane Drake

Telephone
Téléphone:

Telephone
Téléphone: (416)344-5205

Fax
Télécopieur: 94164084814

Fax
Télécopieur:

Message:

TAB 8



Information for all parties who receive a copy of this Application for Contravention of Settlement:

You may respond to this Application for Contravention of Settlement by completing a *Response to an Application for Contravention of Settlement (Form 19)*.

Follow these steps to respond:

1. Fill out Form 19.
2. Deliver a copy of Form 19 to each party to the settlement.
3. Complete a *Statement of Delivery (Form 23)*.
4. File Form 19 and Form 23 with the Tribunal.

You must file your Response to an Application for Contravention of Settlement **14 days** after the Application for Contravention of Settlement was delivered to you.

Download forms from the Forms & Filing section of the HRTO web site at www.sjto.ca/hrto. If you need a paper copy or accessible format, contact us:

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

Phone: 416-326-1312 Toll-free: 1-866-598-0322
Fax: 416-326-2199 Toll-free: 1-866-355-6099
TTY: 416-326-2027 Toll-free: 1-866-607-1240
Email: hrto.registrar@ontario.ca



Application Information	
Tribunal File Number:	
Name of Applicant:	The Regional Municipality of Waterloo Police Services Board ("WRPSB")
Name of Each Respondent:	Kelly Donovan

1. Your Contact Information (person or organization making this request)

First (or Given) Name Virginia		Last (or Family) Name Torrance		Organization (if applicable) WRPS	
Street Number 200	Street Name Maple Grove Road			Apt/Suite P.O. Box 3070	
City/Town Cambridge		Province Ontario	Postal Code N3H 5M1	Email virginia.torrance@wrps.on.ca	
Daytime Phone 519-650-8552	Cell Phone		Fax 519-650-8551	TTY	

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

Check off whether you are the:
 Applicant Respondent Ontario Human Rights Commission
 Other - describe: _____

2. Representative Contact Information

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

First (or Given) Name Donald		Last (or Family) Name Jarvis		LSUC No. (if applicable) 28483C	
Organization (if applicable) Filion Wakely Thorup Angeletti LLP					Apt/Suite Suite 2500
Street Number 333	Street Name Bay Street				
City/Town Toronto		Province ON	Postal Code M5H 2R2	Email djarvis@filion.on.ca	
Daytime Phone 416-408-5516	Cell Phone		Fax 416-408-4814	TTY	

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



3. Contact Information for the Other Parties to the Settlement

Name and provide contact information for all of the other parties to the settlement. If the other party is an organization complete **a) Organization**. If the other party is an individual complete **b) Individual**.

a) Organization

Full Name of Organization
 Waterloo Regional Police Association

Name of the person within this organization who is authorized to negotiate and bind the organization with respect to this application:

First (or Given) Name Caroline V. (Nini)		Last (or Family) Name Jones		Title Solicitor	
Street Number 155	Street Name Wellington Street			Apt/Suite 35th Floor	
City/Town Toronto		Province ON	Postal Code M5V 3H1	Email nini.jones@paliareroland.com	
Daytime Phone 416.646.7433	Cell Phone		Fax 416.646.4301	TTY	

b) Individual

First (or Given) Name Kelly		Last (or Family) Name Donovan			
Street Number 11	Street Name Daniel Place			Apt/Suite	
City/Town Brantford		Province ON	Postal Code N3R 1K6	Email kelly@fit4duty.ca	
Daytime Phone 519-209-5721	Cell Phone		Fax	TTY	

4. What is the date of the last alleged contravention or breach of the settlement?

Ongoing. (dd/mm/yyyy)

5. If you are applying more than six months from the last alleged contravention, please explain why:

See Schedule "A".



6. What term of the settlement do you allege has been contravened or breached? Provide all the material facts you are relying upon to support your claim that the settlement has been contravened or breached.

See Schedule "A".

7. Explain what remedy you wish the HRTO to provide.

See Schedule "A".

8. Declaration and Signature

Instructions: Do not sign your application until you are sure that you understand what you are declaring here.

Declaration:

To the best of my knowledge, the information in my Application for Contravention of Settlement is complete and accurate.

I understand that information about my Application for Contravention of Settlement can become public at a hearing, in a written decision, or in other ways determined by HRTO policies.

I understand that the HRTO must provide a copy of my application to the Ontario Human Rights Commission on request.

I understand that the HRTO may be required to release information requested under the *Freedom of Information and Protection of Privacy Act* (FIPPA).

Name:

Donald B. Jarvis

Signature:

Date: (dd/mm/yyyy)

28/06/2018

Please check this box if you are filing your application electronically. This represents your signature. You must fill in the date, above.

Freedom of Information and Privacy

The tribunal may release information about an application in response to a request made under the *Freedom of Information and Protection of Privacy Act*. Information may also become public at a hearing, in a written decision, or in accordance with tribunal policies. At the request of the Ontario Human Rights Commission (OHRC), the tribunal must provide the OHRC with copies of applications and responses filed with the tribunal and may disclose other documents in its custody or control.

**SCHEDULE "A" TO FORM 18
(CONTRAVENTION OF SETTLEMENT)**

BETWEEN:

THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD

Applicant

- and -

KELLY DONOVAN

Respondent

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I. INTRODUCTION

1. This is an application by the The Regional Municipality of Waterloo Police Services Board (hereinafter referred to as the “WRPSB” or the “Board”) for an order for enforcement of the Resignation Agreement in which the parties voluntarily settled the Applicant’s application to the HRTO dated June 3, 2016, and having Tribunal File Number 2016-24566-I (the “HRTO Application”).

II. THE PARTIES

2. The WRPSB is an agency created under the *Police Services Act*, RSO 1990, c P-15 (“PSA”) that is responsible for the provision of adequate and effective police services to The Regional Municipality of Waterloo (including the cities of Kitchener, Waterloo and Cambridge).
3. Kelly Donovan commenced employment with the WRPSB in or around 2010. She was, at all material times, represented by The Waterloo Regional Police Association in respect of her employment with the WRPSB.

III. BACKGROUND

A. *The HRTO Application*

4. On or about June 6, 2016, Ms Donovan filed the HRTO Application alleging that she was discriminated against on the basis of sex and marital status. A copy of the HRTO Application is attached at **Tab 1**.
5. The foundation for Ms Donovan’s claim of alleged discrimination was a series of events that began with Ms Donovan’s delegation (or presentation) to the WRPSB on or about May 4, 2016.
6. The WRPSB is a civilian board that oversees the Waterloo Regional Police Service (the “WRPS” or the “Service”). The WRPSB is tasked with ensuring that the community is policed effectively, and that any and all policing standards are complied with.
7. Ms Donovan’s delegation to the Board on or about May 4, 2016 was regarding Ms Donovan’s belief that the Service was investigating domestic violence inconsistently

where members of the Service were involved, either as alleged victims or as alleged perpetrators. Members of the public as well as the media were present during Ms Donovan's delegation. As set out in her HRTO Application, "I presented this delegation because I believed there were serious issues of inconsistency during internal investigations, authorized by Chief Bryan Larkin". Ms Donovan identified herself as a police officer; referred to confidential information contained in a Crown Brief; criticized the Service and members of the Service; and suggested that police officers of the Service may have suppressed evidence in a criminal investigation.

8. Ms Donovan's delegation was predominantly focused on the Service's investigation of allegations against Sergeant Bradley Finucan, though Ms Donovan also referred to the Service's investigation of a complaint she made on behalf of an unnamed friend relating to alleged criminal harassment by an unnamed officer of the WRPS, as well as the Service's criminal investigations of Constable Jeremy Snyder.
9. Ms Donovan's actions in making a delegation to the Board at its open and public meeting and with media present on May 4, 2016, without prior notice or approval from the WRPS Chief of Police (or an appropriate delegate in the chain of command), and the serious allegations made against other members of the Service (including the investigators of the Finucan matter that ended in a criminal guilty plea) and potentially accessing a protected Crown Brief in the Finucan matter may have constituted misconduct under the *PSA*. Further, because of the extremely serious nature of the allegations Ms Donovan had made regarding the Service's investigations of domestic violence, the WRPS determined that it would be appropriate to ask another police service to conduct an independent review of the Service's investigation of Sergeant Finucan.
10. Ms Donovan also made it clear, due to the fact that her time for making her deputations ran out, that she would be re-attending the next Board meeting in June to complete her delegation.
11. On or about May 11, 2014, Ms Donovan met with Inspector Doug Thiel and Acting Inspector John W. Goodman, Professional Standards. At that meeting, Inspector Thiel issued a Directive to Ms Donovan directing that:

- Ms Donovan not appear before the Board without the permission of the Chief of Police;
 - Ms Donovan notify the Board's secretary via email that she would be cancelling her appearance at the July 2016 Board meeting;
 - Ms Donovan cooperate with the external review process by participating in interviews and providing information in support of her allegations to investigators; and
 - Ms Donovan be assigned to administrative duties (unless she preferred to be transferred to Patrol duties), and would not participate in the direct training of any Service members during the external review and during any pending *PSA* investigation.
11. At the same meeting, Ms Donovan was also issued a formal Notice of Investigation by Acting Inspector Goodman advising that, subject to and following an external review of the substance of Ms Donovan's allegations, Ms Donovan's conduct on May 4, 2016 would be investigated to determine whether her actions breached the *PSA* and constituted discreditable conduct, neglects of duty, and/or breaches of confidence. In her HRT0 Application, Ms Donovan characterized the *PSA* Investigation as "bullying" and intimidation in response to her delegation.
12. Notably, despite Ms Donovan's meeting with Inspector Thiel and Acting Inspector Goodman during which she had been expressly directed not to appear before the Board, Ms Donovan subsequently sent an email to members of the Board advising that she had been served with a Directive and a Notice of Investigation. Ms Donovan also asserted that her actions were above reproach and that she had no personal interest in any of the matters she brought to the Board's attention. Ms Donovan was subsequently served with a second Notice of Investigation on May 31, 2016 in relation to her email to members of the Board. This notice indicated that an investigation would be conducted to determine whether Ms Donovan's actions constituted deceit and/or discreditable conduct under the *PSA*. Once again, the Notice of Investigation ordered Ms Donovan not to have any contact with members of the Board without the permission of the Chief of Police.
13. On or about June 2, 2016, Ms Donovan filed an internal complaint alleging that she had been discriminated against and harassed contrary to the *Human Rights Code* and *WRPS*

policy by various members of the Service in connection with her delegation. These allegations were repeated in the HRTO Application.

14. In response to Ms Donovan's delegation to the Board and subsequent discrimination and harassment complaints, the WRPS took the following steps:
 - (a) On or about May 25, 2016, Chief Larkin requested York Regional Police ("YRP") review the criminal investigation of Sergeant Finucan to ensure that the incident had been properly investigated. The YRP's external review was completed on or about August 12, 2016. The YRP investigator concluded that the Service had conducted a full, fair and transparent criminal investigation against Sergeant Finucan, and that the Service had reasonable grounds to arrest and charge Sergeant Finucan.
 - (b) On or about July 12, 2016, the Board retained Lauren Bernardi of Bernardi Human Resource Law LLP to conduct an independent, third party investigation into Ms Donovan's internal harassment and discrimination complaint.
15. On consent, by letter dated July 25, 2016, the HRTO placed the HRTO Application in abeyance pending the conclusion the internal investigation processes.
16. During the period of deferral, the WRPS took the following additional steps in response to Ms Donovan's delegation to the Board and subsequent internal discrimination and harassment complaint:
 - (a) On or about November 29, 2016, the Service commenced an internal review of the allegation Ms Donovan had made during her delegation to the Board in respect of the Service's investigation of a reported harassment incident relating to a friend of Ms Donovan and a member of the Service. In April 2015, Ms Donovan reported that her friend was being repeatedly contacted by a member of the Service with whom her friend had previously been in a romantic relationship. Ms Donovan's report was investigated at that time, though Ms Donovan's friend did not wish to make a complaint. In any event, an internal review of the April 2015 report was conducted by Investigator Sergeant Greg Fiss of the Domestic Violence Unit commencing on or about November 29, 2016. Investigator Fiss

found that the appropriate procedures had been followed by the Service in investigating the April 2015 report. This internal review was completed on or about January 16, 2017.

- (b) As a result of a law suit commenced by Constable Jeremy Snyder arising out of his acquittal following a criminal trial for sexual assault, the Board had already had a review done and received an independent report, subject to solicitor-client privilege and litigation privilege – the existence of which was well-known to Constable Snyder. In addition, Constable Snyder was actively involved in another criminal prosecution (this time for domestic assault, mischief and threats) that resulted in a withdrawal of charges and peace bond, but was still outstanding at the time of Ms Donovan's deputations to the Board. On January 10, 2017, Constable Snyder pleaded guilty to Discreditable Conduct under the *PSA* arising out of the underlying incidents of the criminal charges.
 - (c) The independent, third-party investigation into Ms Donovan's internal harassment and discrimination complaint was concluded in October 2016. Ms Bernardi's report was issued on October 31, 2016, and was shared with counsel for Ms Donovan on or about November 27, 2016. Ms Bernardi found that there had been no discrimination based on sex, and that no members of the Service had engaged in any form of harassment. What is more, Ms Bernardi noted that it was reasonable in the circumstances for the Service to take the position that an investigation into Ms Donovan's conduct in making a delegation to the Board was warranted.
17. On or about December 14, 2016, Ms Donovan requested that her HRTO Application be reactivated.
 18. The WRPSB opposed Ms Donovan's request to reactivate her Application, taking the position that the Application should continue to be deferred pending the conclusion of an ongoing investigation under the *PSA* and any disciplinary proceeding that may arise in the event that charges were laid against Ms Donovan under the *PSA*. Ms Donovan had made serious allegations against other members of the Service and may have improperly accessed and publicly shared details from a protected Crown Brief in the Finucan matter,

all of which needed to be investigated to determine whether such actions were neglects of duty, breaches of confidence, discreditable conduct and/or deceitful.

19. The Service had reasonable and demonstrable grounds to investigate Ms Donovan's conduct on and following May 4, 2016 and to determine whether charges under the *PSA* were necessary and appropriate. This investigation, by consent of Ms Donovan's counsel, was deferred pending the completion of the internal Harassment and Discrimination investigation and the final report regarding the independent review conducted by the YRP of the Finucan matter.
20. A *PSA* investigation is a statutorily mandated employment misconduct and discipline system. In this case, it was to cover the same facts and underlying allegations made by Ms Donovan in her HRTO Application under the *Code*. In addition, the determination of whether Ms Donovan had engaged in misconduct under the *PSA* would have borne directly upon the Tribunal's assessment of the actions of the Service and the outcome of the HRTO Application.
21. Furthermore, should the *PSA* allegations of misconduct have been considered of a serious nature or had Ms Donovan refused an informal resolution, the *PSA* mandated a hearing to take place that is subject to the *Statutory Powers and Procedures Act*. Such hearing is a public proceeding wherein all evidence filed, transcripts, and the decision itself are all public and may be filed in any subsequent proceeding.
22. The WRPSB, therefore, requested that the Tribunal defer the HRTO Application pending the conclusion of the *PSA* investigation and, in the event that charges were laid against Ms Donovan, any resulting disciplinary proceeding under the *PSA*.
23. By decision dated February 17, 2017, the HRTO found that the issues "while not co-extensive, significantly overlap such that all of the concerns with duplicative concurrent litigation are in play". Accordingly, the HRTO deferred the HRTO Application for 60 days or such shorter time period in which a decision was made as to whether or not more charges ought to be brought against Ms Donovan under the *PSA*.
24. However, the WRPSB was not able to reach a final decision regarding whether to bring charges against Ms Donovan within the 60 day period due to a necessary interview with

Ms Donovan being repeatedly rescheduled and delayed to accommodate Ms Donovan's medical condition(s).

25. In the result, the HRTO Application was deferred by HRTO letter dated May 5, 2017 for a further period of 60 days.

B. *Settlement of the HRTO Application: The Resignation Agreement*

26. During the period of deferral, the parties successfully negotiated a Resignation Agreement to "fully resolve and settle the two outstanding matters between them, namely: (a) the application filed by Donovan with the Human Rights Tribunal of Ontario ("HRTO") on or about June 6, 2016 and having HRTO File No. 2016-245566-I (the "Application"); and (b) the Board's investigation into whether Ms Donovan engaged in misconduct in or about May 2016 sufficient to warrant formal charges against Donovan under the *Police Services Act* (the "Potential PSA Charges")".
27. Pursuant to the Resignation Agreement, Ms Donovan expressly confirmed that "she is freely and voluntarily resigning her employment with the Board effective on or about June 25, 2017" and that this resignation was "irrevocable".
28. Not only did the parties expressly agree that Ms Donovan resigned but the parties agreed to strict confidentiality provisions pursuant to which the parties undertook to keep the terms of the Resignation Agreement in absolute and strict confidence. The Resignation Agreement provided that "[i]f asked, the parties will indicate only that all outstanding matters between the parties were settled to their mutual satisfaction, the terms of which settlement are strictly confidential".
29. The Resignation Agreement also included a Full and Final Release pursuant to which Ms Donovan released and forever discharged "the Regional Municipality of Waterloo Police Services Board ...from any and all ...complaints...claims....which I have ever had...by reason of my employment with or the resignation of my employment with the Regional Municipality of Waterloo Police Services Board... or which arises out of or in any way relates to the matters giving rise to my HRTO Application". Pursuant to the Full and Final Release, Ms Donovan further agreed that the Release could be raised as a complete bar to "any complaint against any of the Releasees or anyone connected with the

Releasees for or by reason of any cause, matter or thing, including the matters arising out of or in any way relating to my HRT0 Application”.

IV. MS DONOVAN ENGAGED IN A CONTINUING SERIES OF VIOLATIONS OF THE RESIGNATION AGREEMENT

30. Notwithstanding that two of the clear terms of the Resignation Agreement were that Ms Donovan freely resigned and she was prohibited from any further “complaints” against the WRPSB, Ms Donovan has engaged in a continuing series of violations of the Resignation Agreement by (a) stating that she was constructively dismissed contrary to the agreement that she resigned, (b) complaining about the Service and repeating the allegations giving rise to her HRT0 Application, and (c) violating the confidentiality provisions.
31. Ms Donovan’s violations of the Resignation Agreement appear to be part of a scheme to advertise and generate business for Fit4Duty, a business established by Ms Donovan, to provide:
- (a) training to police services boards regarding such matters as human rights, systemic racism and ethical leadership;
 - (b) speaking engagements regarding Ms Donovan’s allegations, accountability, transparency, and ethics;
 - (c) engagement strategies;
 - (d) policy development and review services; and
 - (e) workplace investigations.

Excerpts from the Fit4Duty website are attached at **Tab 2**.

32. Put simply, notwithstanding that she fully and finally resolved her HRT0 Application and the allegations therein and notwithstanding the undertakings of confidentiality, Ms Donovan is seeking to profit from her allegations without regard to either the undertakings in the Resignation Agreement or the deleterious impact of her actions on the reputation of the WRPS.
33. The particulars of Ms Donovan’s ongoing series of violations of the Resignation Agreement commenced with the publication of a 93-page book entitled “*Report of*

Systemic Misfeasance in Ontario Policing and the Coordinated Suppression of Whistleblowers". A copy of the Book is attached at **Tab 3** and is sold for \$25 on the Fit4Duty website at <https://fit4duty.ca/book>.

34. The Book appears to be intended, at least in part, to generate business for Fit4Duty which is advertised in the Executive Summary as being available to "heighten your Ethical Standard". The Book advertises Ms Donovan as follows at page 3:

"Kelly Donovan is available for speaking engagements, training, policy development, and whistleblower programs for both government and corporations. For more information visit www.fit4duty.ca."

35. In effect, Ms Donovan's Book is a 93-page "complaint" against the WRPS and police services across the Province. Indeed, the Book repeats the allegations giving rise to the HRTO Application. For example, the Book provides at page 10:

"It wasn't until 2015, that I witnessed misconduct during multiple internal investigations at my own police service and I soon learned that the issue was systemic. I witnessed police officers sweep allegations under the rug, violate internal policy, if they were about a favourable officer and I saw good, hardworking officers be humiliated and non-criminal allegations be stretched into homicide scale criminal investigations for officers who were not favourable. I became determined to address the mishandling of internal investigations and deficiencies in police legislation. I began my journey by addressing my police services board with my issues, since I had learned that my service does not permit members to file internal complaints. I was subsequently disciplined, constructively dismissed, my issues were not adequately addressed and I began to research just how often police services silence whistleblowers. I attempted to have the OCPC investigate my service for changing internal policy to no avail. I attempted to have the OIRPD investigate officers who conducted a negligent investigative review to no avail. I complained to the Human Rights Tribunal for the reprisal action taken against me and the Tribunal refused to intervene. I went as far as asking the Office of the Ombudsman to examine the systemic issues and to date, no oversight body has chosen to exercise their legislated authority or investigate. From the time I reported the issues to my Board (May, 2016), to the date of my resignation in June, 2017, the service has been more interested in attacking my credibility than acknowledging that these problems exist and show a true desire to improve."

36. At pages 74 to 77 of her Book, Ms Donovan set out a more detailed complaint regarding her personal experiences, repeating the allegations underlying the HRTO Application, as follows:

“In 2015, Constable Kelly Donovan, a 6-year member of the Waterloo Regional Police Service (WRPS), witnessed misconduct by senior investigators at the WRPS by not following service procedure and failing to properly investigate criminal allegations against members of the WRPS. Donovan began to research avenues to address complaints of internal misconduct. Donovan learned that the WRPS procedure on Complaints had been changed in April, 2014, to no longer allow a member of the service to make a complaint through the chain of command. Donovan learned from Constable Jeremy Snyder that he had submitted an internal complaint following his acquittal from criminal charges in January, 2014, and had never received a response. Donovan learned that although the WRPS had prohibited members from making internal complaints there were no adequacy standards established by the Ministry requiring the WRPS to maintain such policy.

Donovan consulted with other officers during her off-duty time and determined that several issues existed at the service with the lack of identification of conflicts of interest during investigations, lack of policy on ethics and conflicts of interest, and overall inconsistency in the manner in which the service exercises discretion and investigates allegations against its officers. Donovan extensively researched current legislation and determined that the only manner to address concerns with the police service was through the police services board. Donovan was aware that the Board is legislatively responsible for the provision of adequate and effective police services in the municipality.

In May, 2016, Donovan addressed the WRPS Board by way of delegation regarding the inconsistencies in internal investigations. Throughout the ten minutes that Donovan was allowed to speak the Board remained in public session, it is at the Board’s discretion to enter into a closed session.

A week later, Donovan was served with a Notice of Investigation for six PSA allegations, and directed by the Chief of the WRPS to no longer address the Board at future meetings. That same day, the Cambridge Times published an article about Donovan’s delegation which stated that Chief Larkin assured the media “that the officer has a democratic right to vocalize her disapproval during the public session of the police board meeting.” Larkin also questioned Donovan’s decision to address the civilian board stating there are many mechanisms within the force and the union to call for change. Larkin added that investigations are done by “exemplary” and high-calibre members with input from the Crown Attorney’s office.

Donovan sent an email to Board members to notify them of the reprisal action taken against her and was served with a second Notice of Investigation for doing so, including allegations of two further offences under the PSA. At that time, Donovan was ordered by the Chief to not communicate with members of the Board.

Donovan filed workplace harassment and human rights complaints immediately.

Donovan also filed a complaint with the OCPC regarding the change of service procedure by the WRPS to prohibit a member from making an internal complaint and regarding the conduct of members of the Board to suppress her complaints addressed in her delegation.

The WRPS hired a lawyer to complete the workplace harassment investigation. According to Donovan, this investigation was biased and did not objectively investigate her allegations or even deny them. The investigator focused much of her final report on the personal life of Donovan as opposed to Donovan's allegations of workplace harassment. The lawyer even stated in her report that Donovan was not a reliable witness because she deflected the questions regarding her personal life and attempted to refocus the interview on her allegations of harassment.

The WRPS contracted the York Regional Police Service (YRP) to conduct an investigative review of one of the criminal investigations cited in Donovan's delegation to the Board. Donovan was interviewed by the senior investigator from YRP and provided an extensive list of false statements made in court documents by WRPS investigators and victim, who was also a police officer. Donovan provided the YRP investigator with a list of exculpatory evidences that were known to investigators and which they failed to report in favour of the defendant.

...

Donovan's Human Rights Tribunal of Ontario (HRTO) complaint had been deferred in July, 2016, upon consent. In December, 2016, (upon completion of her workplace harassment investigation and investigative review by York), Donovan applied to have the HRTO matter resume. The WRPS objected and requested another deferral in order to prosecute Donovan under the PSA. Donovan cited several violations of her Charter Rights in her objection to the request by WRPS, alleging that a deferral of her HRTO application is in essence permitting reprisal by the WRPS, further harassment and discrimination and denying her fundamental rights afforded to her by the Charter. In February, 2017, the HRTO delivered a decision to allow WRPS the continued deferral of Donovan's Human Rights complaint. The HRTO's decision did not address Donovan's allegations of violations of her Charter Rights or reprisal.

....

Failing the intervention by any independent agency into her matter, Donovan remained the subject of a PSA investigation. The misconduct reported by Donovan to the Board has never been objectively and impartially investigated.

Donovan did not receive any financial support from her Association and since May, 2016, had been forced to work in a toxic environment, doing nothing but administrative duties at a desk in a basement office at headquarters with no daylight. As of June, 2017, Donovan chose to resolve all matters between herself and the WRPSB in order to focus on starting her own business (Fit4Duty™) and

moving on with her life. This ordeal cost Donovan over \$10,000.00 in legal fees.”

37. In addition to her personal complaints and the public repetition of the allegations and factual underpinnings of her HRTO Application, Ms Donovan outlined in the Book various complaints about the treatment of others, including:
- (a) At page 11, Ms Donovan wrote that in her policing career she “saw very qualified, confident and intelligent women come and go because they refused to remain in the toxic environment, impenetrable to change; that is policing”.
 - (b) Commencing at page 36, Ms Donovan complained about the conduct of the Chief of the WRPS in respect of his release of a personal email sent by Constable Craig Markham.
 - (c) At pages 54-55, Ms Donovan set out complaints against the WRPS in respect of matters regarding Constable Jeremy Snyder and Sergeant Bradley Finucan.
 - (d) At pages 57-58, Ms Donovan complained about the treatment of Rajiv Sharma by the WRPS.
38. Ms Donovan’s Book generated media attention, including the following:
- (a) In an interview with 570 News, Ms Donovan is recorded as saying that the WRPS is attacking her credibility and failing to acknowledge the problems that exist. A copy the inquiry from 570 News is attached at **Tab 4**. A copy of the 570 News article dated July 17, 2017 is attached at **Tab 5**.
 - (b) A CBC report dated July 18, 2017 is attached at **Tab 6** and records Ms Donovan as alleging that she was subject to reprisals for raising issues with the WRPS regarding its handling of internal investigations.
39. Subsequent to the publication of her Book, Ms Donovan continued to make public complaints about the WRPS, repeating both the allegations giving rise to her HRTO Application and the Potential *PSA* Charges and alleging that she was constructively dismissed. These complaints and allegations have been made in various public speaking engagements, communications with government and the media, and through social media (including her website, her LinkedIn account, her twitter account, Facebook (at fit4dutycaanda) and YouTube). The particulars of this ongoing series of contraventions of the Resignation Agreement include the following.
40. In or about June 2017, Ms Donovan established a twitter account (https://twitter.com/fit4duty_ethics?lang=en), which she has used as a forum to advertise

Fit4Duty and make complaints against the WRPS and other police services. For example, on April 25, 2018, Ms Donovan posted a tweet stating that she “exposed internal corruption” and that Chief was allowed to “silence” her and “take reprisal”. A copy of this tweet is attached at **Tab 7**.

41. In September 2017, Ms Donovan appeared before the WRPSB asking them to hire her to help train board members. In a CBC report regarding her presentation, Ms Donovan was reported as saying “officers who complain are treated unfairly and targeted by their superiors”. A copy of the CBC report is attached at **Tab 8**.
42. On or about November 14, 2017, Ms Donovan attended the Ryerson Forum on Police Oversight accountability and Public Consent at which she gave a video interview. During the interview, Ms Donovan stated that she addressed the Board about “corrupt practices”, “favoritism” and “abuse of power” which resulted in the Service taking “punitive action” against her and imposing discipline and she was “ultimately silenced”. A copy of the interview can be found on YouTube at <https://www.youtube.com/watch?v=PYEPmH4wV5U>.
43. On or about December 11, 2017, Ms Donovan presented to the Durham Regional Police Services Board regarding gender diversity and the services she provides through Fit4Duty. During her presentation, she alleged that when she raised allegations of “internal corruption” during her time as a police officer, she was “silenced and disciplined as a result”. Her presentation is available on YouTube at <https://www.youtube.com/watch?v=VPllMYKa5Ag>.
44. By letter dated January 8, 2018, Ms Donovan wrote to the Honorable Yasir Naqvi, the Attorney General, alleging that she has “personal knowledge of the issues at WRPS” and holding him responsible for ensuring that “this misfeasance does not continue, and that those committing these unethical and illegal acts are held accountable”. Attached to her letter is a detailed complaint against the WRPS repeating the allegations giving rise to her HRTO Application. A copy of Ms Donovan’s letter is attached to her submissions to the Standing Committee on Justice Policy in respect of Bill 175, An Act to implement measures with respect to policing, coroners and forensic laboratories and to enact, amend

or repeal certain other statutes and revoke a regulation (“Bill 175”), which are set out at **Tab 9**.

45. On February 22, 2018, Ms Donovan appeared before the Standing Committee on Justice Policy in respect of Bill 175. During her presentation, Ms Donovan made numerous allegations against the WRPS, repeated the allegations underlying the HRTO Application and alleged that she had been constructively dismissed. A copy of her submissions is attached at **Tab 9** and a copy of the transcripts are at **Tab 10** (commencing at page JP-667). The allegations in her oral presentation include:

“**Ms. Kelly Donovan:** Thank you. My name is Kelly Donovan and up until June 2017, I was a police officer with Waterloo Regional Police....

During my time at Waterloo, I witnessed misfeasance during internal investigations of other police officers at the service; more specifically, unlawful arrest of members, corrupt investigations and criminal allegations being overlooked.

Waterloo only allows members of the public to make a complaint of misconduct, and the OIPRD does not accept complaints from police officers. Therefore, I made a lawful delegation to my police services board to disclose the misconduct of several high ranking members of the service and, as a result, I was disciplined and silenced.

Chief Bryan Larkin ordered me to have no further contact with members of the board. I was relegated to administrative duties and I was put under investigation for eight Police Services Act charges. There was never a complaint from a member of the public; this was the result of a chief’s complaint. **Over the next 14 months, I was constructively dismissed. Chief Larkin used the Police Services Act to silence me so that I could no longer disclose to the board the unethical conduct happening within the service.**

Following my delegation to the board, another police service was contracted to conduct an impartial review of a recent internal criminal investigation. That review was negligent and biased, and is irrefutable evidence that when police investigate police, there is bias.

During my constructive dismissal, I wrote a 93-page report citing cases that show just how systemic misfeasance is in Ontario police services and how often police chiefs and ineffective oversight bodies are able to silence police whistleblowers. This report is contained in tab A of my submission. I made complaints to all of

the applicable police oversight bodies and none of them chose to enforce their legislated authorities.

....

The lack of consultation prior to the release of Bill 175 shows a continued reluctance by government to accept the gravity of internal corruption that exists within our police services.

I am living proof that internal corrupt practices are eliminating good, honest people from the profession. I was an exemplary police officer until Chief Larkin used internal discipline to constructively dismiss me. Nothing in Bill 175 would prevent what happened to me from happening again to another honest police officer. In fact, after I was diagnosed with post-traumatic stress disorder last February, I could have faced termination under part VII of schedule 1.”

[emphasis added]

46. On or about March 1, 2018, Ms Donovan again addressed the Standing Committee on Justice Policy about Bill 175. At this presentation, Ms Donovan presented on behalf of Angie Rivers and repeated various complaints and allegations against the WRPS. Without limitation, she alleged that she reported “internal corruption” and, as a result, the Chief “targeted” her, she faced *PSA* charges, and she was “constructively dismissed”. She later elaborated that she reported corruption to her Board and instead of listening they allowed the Service to come after her “punitively”. She further stated that the Human Rights Tribunal did not help her. A copy of the transcripts is attached at **Tab 11** (see pages JP-718 to JP-720).
47. On or about March 5, 2018, Ms Donovan sent an email to various members of the WRPS attaching a link to her YouTube channel and her presentation to the Standing Committee on Justice Policy regarding Bill 175. A copy of her email is attached at **Tab 12**.
48. On or about March 7, 2018, Ms Donovan published an article on her LinkedIn account entitled “Perception of Bias? Or, Blatant, Advertised Bias”. The same article was posted on the Fit4Duty blog on March 10, 2018 (a copy of the article is attached at **Tab 13**). In the Article, Ms Donovan complained of corruption at the WRPS and alleged that she was constructively dismissed. She wrote, *inter alia*:

“If you follow my material, you’ll know that in 2016 I reported to my police services board that corruption existed during internal investigations. As a result of that report, I faced constructive dismissal. In 2017, I resigned and published a research paper to bring those systemic issues to light....

...

Now, police chiefs can use internal discipline, criminal charges AND the officer's disability as a means to dismiss them. I know this; because it happened to me.”

49. In addition to the above, Ms Donovan has engaged in numerous speaking engagements across the country repeating her allegations of corruption, lack of integrity and constructive dismissal.
50. In addition to her linkedin and twitter accounts, Ms Donovan maintains a website “fit4duty.ca” and a blog (<https://fit4duty.ca/kelly-donovan>). She continues to use these to post complaints about the WRPSB, the particulars of which include.

- (a) On the “Her Story” section of the Fit4Duty website, Ms Donovan wrote:

“Fit4Duty Founder & President, Kelly Donovan, had been a police officer for 5 years when she witnessed corruption within her police service when conducting internal investigations. In May, 2016, Kelly addressed her Police Services Board since they are the oversight body responsible for the effective management of the police service.

The issues Kelly addressed were not objectively or impartially investigated and she became the subject of the very corrupt internal investigation process she had originally addressed.

Over the next 14 months, Kelly contacted every government agency responsible for police oversight to draw attention to the reprisal she was now facing and no agency was willing to intervene. Kelly was forced to resign from policing, after facing a protracted and corrupt discipline proceeding that would have lasting effects on her career. She released a report to the media detailing the corruption in policing, and later published her first book.”

- (b) On January 31, 2018, Ms Donovan posted a blog entry entitled #MeToo, but #NotYou” in which she alleged corruption and threats by the WRPS. She wrote:

“When I came forward with allegations of corruption during internal investigations, I was threatened with charges and taken out of my job.

...

Well, when I chose to go public with my Report in July, 2017, I did so because I had investigated just how often that is not the case. Our laws around transparency and disclosure by police services are so out of date and inadequate that police services have been able to use the Oath of Secrecy as a way to silence victims, silence witnesses, and allow total autonomy of leadership. What was once an Oath to protect members of the public from ever having their interactions with police exposed, has evolved into a breeding ground for internal corruption and selective suppression of information. No one can tell me I'm wrong; I have lived it. And the actions the Waterloo Regional Police Service took against me cannot be disputed.”

- (c) On February 4, 2018, Ms Donovan posted a blog entry entitled “Are all Whistleblower Programs created equal?” in which she implied that the WRPS suppresses complaints and punishes complainants.
- (d) On or about March 10, 2018, Ms Donovan posted the above mentioned blog entitled “Perceived Bias? or Blatant advertised Bias?”
- (e) On April 5, 2018, in a blog entry entitled “The \$1.27M “Bad Apple?””, Ms Donovan accused the WRPS of misfeasance and wasting taxpayer funds and “ineffective management”. She also referred to policing as “one of the most toxic work environments”.
- (f) On May 11, 2018 in a blog entry entitled, “What Policing Culture is Doing to Good People” Ms Donovan alleged that the WRPS knowingly tolerated unprofessional and sexual interactions in the workplace:

“Luckily, I never had to deal with any physical advances when I was a “PW” (police woman - common nickname for female constables). But, to say that there wasn't locker room banter in the briefing room, commentary about women encountered the night before, discussions better left for the bar than a professional workplace... I'd be lying. Policemen have been very comfortable in their work environments, absent the need to act professionally or careful to not offend anyone. No one listening was going to do anything about it, and the women were “good sports” and “sucked it up.” Some of them are having a very hard time adjusting to a new day where police are professionals and expected to act as such.”

51. Ms Donovan also has a YouTube Channel (Fit4Duty – the Ethical Standard) in which she regularly posts videos including allegations of impropriety by the WRPS and complaints of constructive dismissal, the particulars of which include:
- (a) On July 9, 2017, Ms Donovan published a video entitled “Fit4Duty Intro” in which Ms Donovan alleged that maintaining her integrity and following her internal morals and ethics cost her her career as a police officer.
 - (b) On November 24, 2017, Ms Donovan published a video entitled “Fit4Duty Founder Kelly Ms Donovan’s Story” in which she alleged that she was silenced, charged and lectured as a result of having raised issues of impropriety in the Service.
 - (c) On December 11, 2017, Ms Donovan published a video of her presentation to the Durham Regional Police Services Board in which she stated, *inter alia*, that she “tried to address internal corruption with my police services board and I was silenced and disciplined as a result”.
 - (d) On February 23, 2018, Ms Donovan published a video of herself speaking at the public consultation hosted by Justice Tulloch during the Independent Police Oversight Review in October 2016 as well as a video of her presentations to the Standing Committee on Justice Policy about Bill 175.
 - (e) On March 2 and 5, 2018, Ms Donovan published various videos including portions of her presentations to the Standing Committee on Justice Policy about Bill 175.
 - (f) On March 5, 2018, Ms Donovan also published a series of video clips collectively entitled “Why we need Whistleblower Programs for Police”, in which she stated, *inter alia*, that her allegations were not taken seriously and she became the subject of an investigation. She stated when she spoke up she was subject to discipline and removed from her position at the Service and she was “made an example of”.
 - (g) On May 19, 2018, Ms Donovan published a video entitled “About my Book”, in which she says 100s of officers across Ontario have “tried to do the right thing” and “been silenced by the system”.
 - (h) On June 21, 2018, Ms Donovan published a video entitled “Kelly Donovan at One Woman International Fearless Women's Summit in St. John's Newfoundland”, in which she says that internal investigations at WRPS were “corrupt” and “negligent”. The complaints in the video include the following. She said there were cases of evidence being withheld and allegations being “swept under the rug”. Ms Donovan described how she went to the Board to report “systemic corruption” and a “web of people who are willing to cover it up because they all want to see their next promotion”. She said that as a result she was told that the Chief did not want her to communicate with the Board any more, she was removed from her office and put in a basement, and she was put under

investigation for *PSA* charges. She said she was “vilified” and “constructively dismissed”. She also said that she has been going across Canada telling her story.

V. SUBMISSIONS

52. Section 45.9(1) of the *Code* provides that the settlement of an application under the *Code* that is agreed to in writing and signed by the parties is “binding on the parties”.
53. Not only are settlements legally binding, but adherence to settlements promotes essential *Code* values. The Tribunal has repeatedly recognized that a contravention of a settlement can undermine the administration of justice, discredit the human rights system, and create adverse incentives in respect of dispute resolution. In *Saunders v. Toronto Standard Condominium Corp.* No. 1571 2010 HRTO 2516, the Tribunal stated:

“Respect for terms of settlement is not only a legally binding, contractual obligation; it also promotes essential *Code* values. A contravention of settlement can undermine the administration of justice by discrediting the human rights system and generating wrong disincentives to negotiation. The uncertainty created by a contravention of settlement potentially undermines the substantive and procedural provisions of the *Code*. An award of monetary compensation can help reflect both the private and public importance of complying with settlement terms.”

See also *Ye v. Pestell Pet Products Inc.* 2014 HRTO 156.

54. In determining the meaning of contractual settlement provisions, the primary goal is to give effect to the parties’ intentions.
55. In the present case, the primary intention of the parties was clearly set out in the Resignation Agreement. This intention was to “fully resolve and settle” the HRTO Application and the Potential *PSA* Charges. Accordingly, the parties agreed that Ms Donovan would “withdraw and discontinue” the HRTO Application in paragraph 4, execute a Full and Final Release, and maintain confidentiality over the Resignation Agreement other than to indicate that “all outstanding matters between the parties were settled to their mutual satisfaction, the terms of which are strictly confidential.” Despite this clear and fundamental purpose, Ms Donovan has persisted in publicly repeating the allegations giving rise to the HRTO Application. Rather than concluding the HRTO Application, Ms Donovan has simply shifted her allegations into the public domain. Ms

Donovan's actions are a blatant and continuing failure to abide by the terms of the settlement.

56. She has further violated the provisions of the Full and Final Release, which forms an integral part of the Resignation Agreement, by raising new "complaints" against the WRPSB and/or the WRPS. This is a clear violation of the Full and Final Release, pursuant to which Ms Donovan released and forever discharged "the Regional Municipality of Waterloo Police Services Board ...from any and all ...complaints...claims....which I have ever had...by reason of my employment with or the resignation of my employment with the Regional Municipality of Waterloo Police Services Board... or which arises out of or in any way relates to the matters giving rise to my HRTO Application". Pursuant to the Full and Final Release, Ms Donovan also expressly agreed that the Release could be raised as a complete bar to "any complaint against any of the Releasees or anyone connected with the Releasees for or by reason of any cause, matter or thing, including the matters arising out of or in any way relating to my HRTO Application". As such, the Release specifically provides that it is a bar against all complaints against the Releasees or anyone connected with them. The Release covers but is not limited to those allegations giving rise to the HRTO Application.
57. In addition, Ms Donovan has violated the confidentiality undertakings in the Resignation Agreement. Specifically, paragraph 16 of the Resignation Agreement requires the parties to "keep the terms and existence of this Resignation Agreement in absolute and strict confidence at all times, without time limitation, and not disclose its contents to any third party, person or entity". Read in context, it is clear that the parties intended this confidentiality undertaking to apply broadly. The parties specifically included a clarity note confirming that the parties will not "publicize, discuss, disclose or communicate in any way without any person, entity or organization, in any form whatsoever, the contents or terms of all or any part of this Resignation Agreement. If asked, the parties... will indicate only that all outstanding matters between the parties were settled to their mutual satisfaction, the terms of which settlement are strictly confidential". Ms Donovan has not restricted her comments to the agreed upon statement that her complaints were resolved to the parties' mutual satisfaction but has persistently and publicly repeated her allegations.

58. Finally, while the Resignation Agreement provides that “Ms Donovan hereby confirms that she is freely and voluntarily resigning her employment” and that this resignation is “irrevocable”, Ms Donovan has publicly stated that she was constructively dismissed. Publicly alleging constructive dismissal is incompatible with and directly contradicts her agreement that she freely and voluntarily resigned her employment.
59. Subsection 45.9(8) of the *Code* gives the Tribunal broad powers to remedy contraventions of such settlements. Specifically, the Tribunal may make “any order that it considers appropriate to remedy the contravention”.
60. The Tribunal has recognized that it has broad remedial authority to remedy any contravention of a settlement and that this power includes both common law remedies and “innovative remedial action”. In *Saunders v. Toronto Standard Condominium Corp.* No. 1571, 2010 HRTO 2516, the Tribunal stated at paragraph 39:

“Section 45.9(8) gives the broad power to make “any order that it considers appropriate to remedy the contravention.” There is no reason to limit the potential scope of this power. At minimum, it allows for consideration of any common law remedy, and may contemplate additional or innovative remedial action, subject to the circumstances of the case and the discretion and statutory authority of the Tribunal.”

61. To assist it in determining the appropriate remedy, the Tribunal has considered the following questions as set out in *Saunders v. Toronto Standard Condominium Corp.* No. 1571 2010 HRTO 2516:

For the purposes of this case, I find it appropriate to ask the following questions in order to determine the appropriate remedy:

- What is the nature of the breach – does it go to the heart of the MOS?
- Does anything need to be done to fulfil the terms of the MOS? If so, what?
- Were the applicant’s contractual expectations adversely affected?
- Did the applicant suffer any quantifiable harm or material loss as a result of the breach?

Did the applicant suffer any harm to dignity, feelings or self-respect as a result of the breach?

62. These factors all weigh in favour of significant remedies, including substantial damages, in this case.
63. The Tribunal has recognized that damages must recognize the cost, inconvenience and aggravation involved in enforcement of the settlement. In *Harvey v Newtek Automotive*, 2013 HRTO 677, the Tribunal stated:
- “This Tribunal can exercise its discretion to award a reasonable amount of damages for breach of the settlement in the face of a blatant and continuing failure of a respondent to abide by the terms of a settlement, particularly in the absence of an explanation for that breach. The damages can amount to an award which recognizes that there is some cost, inconvenience and aggravation involved with the enforcement of the settlement. The award, however, should be made solely as against the party who has breached the settlement in a material respect and always in an amount that is appropriate under the circumstances.”
64. In the present case, however, the wrongdoing is compounded by bad faith and willfulness, factors which ought to increase the damages. Ms Donovan has persistently failed to abide by the most fundamental terms of the Resignation Agreement. Her conduct is both intentional and repeated. Her breaches go to “the heart” of the settlement. Moreover, her actions are public and intended to bring the WRPSB into disrepute with the objective of causing the WRPSB and other police service boards to retain the services of Ms Donovan as a consultant through her Fit4Duty business. This conduct evidences bad faith and ought to be severely sanctioned.
65. Further, as recognized by the Tribunal in *Saunders v. Toronto Standard Condominium Corp.* No. 1571, 2010 HRTO 2516, damages must be sufficiently high so as to not “trivialize the social importance of the *Code*”.
66. The WRPSB respectfully states that the circumstances of this case demand the highest level of damages to remedy the ongoing damage to its reputation in the context of intentional and repeated violations of the most fundamental nature.

67. Alternatively, the WRPSB states that the Tribunal ought to assess damages with reference to the revenue generated by Ms Donovan through her ongoing breaches of the Resignation Agreement which are being undertaken to generate work for her business.
68. In addition to significant damages, the WRPSB requests an order directing Ms Donovan to cease violating the terms of the Resignation Agreement, to redact allegations against the WRPSB from her Book and to remove from the public domain any other allegations she has made against the WRPSB. To the extent that allegations have been made by Ms Donovan and publicly been posted by others, Ms Donovan ought to be directed to make best efforts to have those public allegations removed from the public domain.
69. Notably, section 45.9(4) of the *Code* permits a party to make a Contravention of Settlement Application more than six months after the alleged violation where the delay is “incurred in good faith and no substantial prejudice will result to any person affected by the delay”. In the present case, the WRPSB has delayed the instant Application in the good faith hope that Ms Donovan would move on and cease making accusations and complaints. Unfortunately, her conduct is persistent and can no longer be tolerated. Her ongoing accusations are tantamount to slander and defamation. Indeed the triggering event is her filing of a Statement of Claim seeking to enforce the Resignation Agreement in response to the WRPSB’s good faith attempt to defend itself against a proposed class action. In support of its defence, the WRPSB referred to the Donovan case on a completely no-names basis. While the reference was consistent with the requirements of the Resignation Agreement, Ms Donovan objected by commencing a civil action. In effect, while Ms Donovan has completely disregarded the obligations of the Resignation Agreement, she is using the Agreement to try to limit the ability of the WRPSB to defend itself in the proposed class action. A copy of the Statement of Claim is attached at **Tab 14**.
70. In any event, quite apart from the fact that any delay was incurred in good faith with no substantial prejudice to Ms Donovan, her actions form “a series of contraventions”. Section 45.9(3) of the *Code* expressly permits an application to enforce a settlement where there is a series of contraventions and the application is made to the Tribunal within six months of the last contravention in the series. As set out above, Ms Donovan

has engaged in a series of repeated violations of the Resignation Agreement, which conduct is both persistent and ongoing.

VI. CONCLUSION

71. The WRPSB and Ms Donovan concluded her HRT0 Application in good faith with a comprehensive Resignation Agreement. While the WRPSB has, at all times, honoured its obligations as set out in the Resignation Agreement, Ms Donovan has willfully and flagrantly disregarded her corresponding commitments.
72. Rather than accepting the Resignation Agreement as the agreed upon resolution of her HRT0 Application, Ms Donovan has publicly repeated the allegations giving rise to her HRT0 Application in order to promote her business and profit from her experiences. Her actions are willful, deliberate and in bad faith. Rather, than accepting the resolution of all issues, Ms Donovan has simply moved her allegations from the HRT0 to the public domain. These actions breach the fundamental purpose of the Resignation Agreement -- namely, to resolve the HRT0 Application. Her actions further violate her confidentiality obligations.
73. Not only has she repeated the allegations giving rise to her HRT0 Application but she has made complaints against the WRPSB of misfeasance, corruption and other improprieties. These complaints violate the clear undertaking the Full and Final Release to not make any complaints against the Releasees.
74. Her inappropriate actions are compounded by the fact that the WRPSB is bound by confidentiality provisions which limit its ability to defend against her accusations.
75. In addition to making complaints barred by the Resignation Agreement, Ms Donovan has persistently characterized her employment as having been constructively dismissed which characterization completely contradicts her agreement in the Resignation Agreement to freely and voluntarily resign.
76. The WRPSB respectfully states that the ongoing, persistent and willful nature of the violations of the Resignation Agreement demand a severe remedial response so as to not

trivialize the breaches and so as to uphold the principles of the *Code* and the goals of expeditious dispute resolution.

77. For all of the foregoing reasons, the WRPSB requests that the Tribunal:
- (a) declare that Ms Donovan has engaged in an ongoing series of contraventions of the Resignation Agreement;
 - (b) direct Ms Donovan to cease and desist from any further violations of the Resignation Agreement;
 - (c) direct Ms Donovan to redact allegations against the WRPSB from her Book and to remove from the public domain any other allegations she has made against the WRPSB contrary to the Resignation Agreement;
 - (d) direct Ms Donovan to make best efforts to have those public allegations that are under the control of other parties removed from the public domain; and
 - (e) order Ms Donovan to pay significant damages to remedy the ongoing damage to the WRPS's reputation in the context of intentional and repeated violations of the most fundamental nature. In the alternative, the WRPSB states that the Tribunal ought to assess damages with reference to the revenue generated by Ms Donovan through her ongoing breaches which are being undertaken to generate work for her business.
78. The WRPSB reserves the right to seek further remedial relief and to raise such other arguments as counsel may advise and the Tribunal permits.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

TAB 9



You may make an *Application for Contravention of Settlement (Form 18)* to the Human Rights Tribunal of Ontario if:

- You were a party to a written settlement of an application made under section 34 or 35 of the *Human Rights Code*, **and**
- the settlement was signed by the parties, **and**
- you believe a party has contravened the settlement.

Or

- You were a party to a settlement of a complaint made under the old Part IV before June 30, 2008 or during the six (6) month period following June 30, 2008, **and**
- the settlement was agreed to in writing, signed by the parties and approved by the Commission, **and**
- you believe a party has contravened the settlement.

Deadline:

- You must make your application within six (6) months after the contravention to which the application relates, **or**
- if there was a series of contraventions, within six (6) months after the last contravention in the series.

The HRTTO may extend this time if the HRTTO is satisfied that the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay.

Follow these steps to make your application:

1. Fill out this Form 18.
2. Attach a copy of the settlement.
3. Deliver a copy of Form 18 to each party to the settlement.
4. Complete a *Statement of Delivery (Form 23)*.
5. File Form 18 and Form 23 with the HRTTO.



Information for all parties who receive a copy of this Application for Contravention of Settlement:

You may respond to this Application for Contravention of Settlement by completing a *Response to an Application for Contravention of Settlement (Form 19)*.

Follow these steps to respond:

1. Fill out Form 19.
2. Deliver a copy of Form 19 to each party to the settlement.
3. Complete a *Statement of Delivery (Form 23)*.
4. File Form 19 and Form 23 with the Tribunal.

You must file your Response to an Application for Contravention of Settlement **14 days** after the Application for Contravention of Settlement was delivered to you.

Download forms from the Forms & Filing section of the HRTO web site at www.sjto.ca/hrto. If you need a paper copy or accessible format, contact us:

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

Phone: 416-326-1312 Toll-free: 1-866-598-0322
Fax: 416-326-2199 Toll-free: 1-866-355-6099
TTY: 416-326-2027 Toll-free: 1-866-607-1240
Email: hrto.registrar@ontario.ca



Application Information	
Tribunal File Number:	
Name of Applicant:	Kelly Donovan
Name of Each Respondent:	The Regional Municipality of Waterloo Police Services Board et al.

1. Your Contact Information (person or organization making this request)

First (or Given) Name Kelly		Last (or Family) Name Donovan		Organization (if applicable)	
Street Number 11	Street Name Daniel Place			Apt/Suite	
City/Town Brantford		Province On	Postal Code N3R1K6	Email kelly@fit4duty.ca	
Daytime Phone 5192095721	Cell Phone		Fax	TTY	

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

Check off whether you are the:

- Applicant Respondent Ontario Human Rights Commission
 Other - describe: _____

2. Representative Contact Information

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

First (or Given) Name		Last (or Family) Name			
Organization (if applicable)				LSUC No. (if applicable)	
Street Number	Street Name			Apt/Suite	
City/Town		Province	Postal Code	Email	
Daytime Phone	Cell Phone		Fax	TTY	

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



3. Contact Information for the Other Parties to the Settlement

Name and provide contact information for all of the other parties to the settlement. If the other party is an organization complete **a) Organization**. If the other party is an individual complete **b) Individual**.

a) Organization

Full Name of Organization

The Regional Municipality of Waterloo Police Services Board

Name of the person within this organization who is authorized to negotiate and bind the organization with respect to this application:

First (or Given) Name Virginia		Last (or Family) Name Torrance		Title WRPS	
Street Number 200	Street Name Maple Grove Road				Apt/Suite P.O.Box 3070
City/Town Cambridge		Province On	Postal Code N3H5M1	Email virginia.torrance@wrps.on.ca	
Daytime Phone 5196508552	Cell Phone		Fax 5196508851	TTY	

b) Individual

First (or Given) Name Bryan		Last (or Family) Name Larkin			
Street Number 378	Street Name Golf Course Road				Apt/Suite
City/Town Conestogo		Province On	Postal Code N0B1N0	Email bryan.larkin@wrps.on.ca	
Daytime Phone	Cell Phone		Fax	TTY	

4. What is the date of the last alleged contravention or breach of the settlement?

21/12/2017 (dd/mm/yyyy)

5. If you are applying more than six months from the last alleged contravention, please explain why:

See Schedule A



6. What term of the settlement do you allege has been contravened or breached? Provide all the material facts you are relying upon to support your claim that the settlement has been contravened or breached.

See Schedule A

7. Explain what remedy you wish the HRTO to provide.

See Schedule A

8. Declaration and Signature

Instructions: Do not sign your application until you are sure that you understand what you are declaring here.

Declaration:

To the best of my knowledge, the information in my Application for Contravention of Settlement is complete and accurate.

I understand that information about my Application for Contravention of Settlement can become public at a hearing, in a written decision, or in other ways determined by HRTO policies.

I understand that the HRTO must provide a copy of my application to the Ontario Human Rights Commission on request.

I understand that the HRTO may be required to release information requested under the *Freedom of Information and Protection of Privacy Act* (FIPPA).

Name:

Signature:

Date: (dd/mm/yyyy)

27/07/2018

Please check this box if you are filing your application electronically. This represents your signature. You must fill in the date, above.

Freedom of Information and Privacy

The tribunal may release information about an application in response to a request made under the *Freedom of Information and Protection of Privacy Act*. Information may also become public at a hearing, in a written decision, or in accordance with tribunal policies. At the request of the Ontario Human Rights Commission (OHRC), the tribunal must provide the OHRC with copies of applications and responses filed with the tribunal and may disclose other documents in its custody or control.

BETWEEN:

KELLY DONOVAN

Applicant

- and -

THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD and

BRYAN LARKIN

Respondents

Schedule A

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I. Background

1. From December, 2010, until June 26, 2017, the applicant was a police constable with the organizational respondent.
2. In 2017, the applicant was diagnosed with post-traumatic stress disorder.
3. Since the applicant's resignation on June 26, 2017, the applicant has made several attempts to gain employment, she has applied to post-secondary institutions and has been trying to get her business of providing workplace solutions off the ground.
4. The applicant is an advocate for whistleblower protection in Canada and has volunteered her time to raise awareness of current deficiencies in legislation.
5. The applicant lives in Brantford, and is a single-mother to three children under the age of fourteen.
6. The individual respondent, Bryan Larkin, is chief of Waterloo Regional Police Service ("WRPS") and is employed by the organizational respondent.
7. As a police officer in the province of Ontario, the individual respondent has sworn an oath of office to uphold the Constitution of Canada.

II. Facts

Class action lawsuit

8. On May 30, 2017, a class action lawsuit was filed against the organizational respondent in the Ontario Superior Court of Justice in Brampton; Court File Number CV-17-2346-00, (furthermore referred to as "the class action lawsuit"). Neither the applicant nor her family members are parties to the class action lawsuit. The class action lawsuit alleges systemic

and institutional gender-based discrimination and harassment and seeks total damages of One Hundred and Sixty-Seven Million Dollars (\$167,000,000.00).

Applicant's resignation

9. On June 8, 2017, the applicant and respondents entered into a Resignation agreement, written by counsel for the organizational respondent, containing the following clause:
 - a. *“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.”*
10. The Resignation agreement was signed by the individual respondent on behalf of the organizational respondent.
11. The intent of the resignation agreement was to prevent the applicant from joining the class

action lawsuit.

III. Overview

12. On December 21, 2017, the individual respondent swore an affidavit in defense of the class action lawsuit and that document was submitted to record.

13. In the affidavit, the individual respondent states, at para. 13:

a. *“Attached hereto and marked as “Exhibit F” to this my Affidavit, is an additional chart that I had requested the Human Resources Division of WRPS prepare, showing where the Human Rights Tribunal complaints that had been commenced by female employees in the last five years, and their status or resolution. Again, this chart has non-identifying information, with the exception of the Plaintiff, [name removed], who’s Complaint is to the Human Rights Tribunal as it is still outstanding, and the status of which is referred to in detail below.”*

14. The attachment to the individual respondent’s affidavit is a chart titled “Police Officer Initiated Ontario Human Rights Complaints” and lists four female officers. Those officers are identified in the following ways:

- a. One female officer is named and the three remaining female officers are not.
- b. Of the three-unnamed female officers, two are listed as “Constables” and one as “Sergeant.”

15. Of the two-unnamed female “Constables” in the chart, one shows as having been resolved in the following manner:

- i. *“SETTLED: - monetary settlement, - withdrawal of OHRT application, - voluntary resignation.”*

14. There is only one female officer showing on this chart as having resigned.
15. The applicant is the only female constable who was employed by the organizational respondent over the past five years, had filed a human rights complaint and who voluntarily resigned.
16. The public disclosure made by the individual respondent was not required by law, contained sufficient information for the applicant to be identified and violates the terms of the Resignation agreement.
17. The applicant received notification from Mark Egers, Waterloo Regional Police Association President, in February, 2018, that a group grievance was being filed for all current members of WRPS whose privacy was breached when the individual respondent's affidavit was published online. The individual respondent ought to have known that his actions constituted a breach of the privacy of those named in his affidavit after the filing of this grievance.
18. The reckless actions of the individual respondent have caused the applicant a great deal of stress, anxiety, depression and re-lived moral trauma.
19. The individual respondent is aware that the applicant was on medical leave from February, 2017, until her resignation in June, 2017.
20. The respondents are jointly and severally liable for the damages caused to the applicant. Further, the organizational respondent is vicariously liable for the conduct, representations, omissions and/or negligence of the police service's employees, agents, servants and contractors, which includes the individual respondent.

IV. Timeliness & Retaliation

21. The applicant had chosen to proceed with an allegation of breach of contract in the Ontario Superior Court of Justice against the respondents as opposed to the Human Rights Tribunal due to the complexities of the employment relationship which led to her resignation.
22. The applicant filed a statement of claim in the Ontario Superior Court of Justice, court file number CV-18-00001938-0000 (“the statement of claim”), on May 9, 2018, which is within the six-month limitation period.
23. The organizational respondent brought a motion on June 7, 2018, to dismiss the statement of claim on several bases, including jurisdiction, and that motion is being heard on February 13, 2019.
24. The applicant did not file a Form 18 within the six-month period because she was waiting for the courts to make a ruling regarding jurisdiction. This ruling will not be made until after the February 13, 2019, date.
25. Despite the ongoing court proceeding against the organizational respondent, the organizational respondent filed HRTO File No. 2018-33237-S in bad faith against the applicant in June, 2018.
26. The applicant brings this application now as a result of a letter she received from the registrar on July 19, 2018, indicating there would be a full day in-person hearing scheduled to hear the parties’ submissions on the matters raised in the application brought forward by the organizational respondent.
27. The applicant’s position is that the application brought forward by the organizational respondent should be dismissed without a hearing, the reasons were set out in the applicant’s Form 19 of HRTO File No. 2018-33237-S.
28. The filing of the section 45.9 application 2018-33237-S by the organizational respondent

is a significant insult to the dignity of the applicant and is an additional form of blatant discrimination and harassment against her.

29. The applicant has no other option but to file this application so that her original allegation of a breach of contract or contravention of settlement against the organizational respondent will be heard when the Tribunal hears the retaliatory allegations made by the organizational respondent.
30. It would severely prejudice the applicant if the Tribunal hears submissions which support only the organizational respondent's section 45.9 application done out of retaliation in June, 2018, and not the applicant's original allegation made in May, 2018, that the organizational respondent violated the terms of the resignation agreement.

V. Applicant's health

31. Prior to February, 2011, the applicant did not have any health issues. The applicant was healthy, educated and highly employable. She was hired by the organizational respondent on her first attempt in December, 2010.
32. Since February, 2017, the applicant has suffered from severe post-traumatic stress disorder ("PTSD") symptoms.
33. The applicant's symptoms briefly improved when she resigned from the police service in June, 2017.
34. The applicant's moral injury causes her to be triggered any time she witnesses an individual in a position of authority who has sworn an oath to uphold the law commit an act that the applicant perceives as unlawful or unethical.
35. The applicant's PTSD was severely triggered in early January, 2018, when she read the

affidavit of the individual respondent which was available on a public website.

36. The applicant's depression has worsened since January, 2018, and she has suffered periods of suicidal thoughts.

37. The applicant feels psychologically imprisoned by the actions both respondents have taken since December, 2017, to violate her privacy, recklessly and blatantly violate a legal agreement between the parties and attempt to vilify her and deprive her of her fundamental right to freedom of expression.

VI. Relief Claimed

38. The applicant, claims against the respondents, jointly and severally, the following relief:

- a. General damages, in the amount of twenty-thousand dollars (\$20,000.00);
- b. Special damages for the living expenses of the applicant, since she has not been well enough to earn an income, for every month since January, 2018, when she was re-injured as a result of the reckless violation of the resignation agreement by the individual respondent and the retaliation by the organizational respondent;
- c. As a public interest remedy, the applicant seeks to be reinstated as a sworn member of the Waterloo Regional Police Service at full pay of a first-class constable with all the rights, privileges and prerogatives she formerly enjoyed, in the capacity of Integrity Commissioner reporting directly to the organizational respondent;
- d. Dismissal of HRTO File No. 2018-33237-S for reasons set-out in the applicant's Form 19 on file;
- e. Pre-judgment and post-judgment interest in accordance with the Courts of Justice Act, R.S.O. 1990, c. C.43, as amended; and

f. Such further and other relief as counsel may advise and the Tribunal deems just.

TAB 10

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

KELLY LYNN DONOVAN

Plaintiff
(Responding Party)

and

REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD and
BRYAN LARKIN

Defendants
(Moving Party)

FACTUM OF THE RESPONDING PARTY
(returnable February 13, 2019)

February 8, 2019

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

TO: Donald Jarvis, counsel for Defendant
Filion Wakely Thorup Angeletti LLP
Bay Adelaide Centre
333 Bay Street, Suite 2500, Box 44
Toronto, Ontario

M5H 2R2

Email: DJarvis@filion.on.ca

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PART I – NATURE OF THE MOTION

1. This motion brought by the Defendants for an Order to dismiss this proceeding is done so on the following alleged grounds:
 - a. the Court has no jurisdiction over the subject matter of the action, pursuant to Rule 21.01(3)(a) of the *Rules of Civil Procedure*;
 - b. failing to disclose a reasonable cause of action against the Defendants, pursuant to Rule 21.01(1)(b) of the *Rules of Civil Procedure*;
 - c. the Statement of Claim discloses no reasonable cause of action against the personally-named Defendant and/or is frivolous, vexatious and/or an abuse of the process of the Court and/or the Court has no jurisdiction over the subject matter of the action;
2. The motion brought by the Defendants also seeks an Order for:
 - a. extending the time limits to allow the Defendants to file a Statement of Defence;

- b. abridging or extending the time for service, filing and/or delivery of the Motion Record, the Factum, the Book of Authorities and/or Motion Confirmation;
- c. costs for this motion, on a substantial indemnity basis, fixed and payable to the Defendants within 30 days, pursuant to Rule 57.03(1) of the *Rules of Civil Procedure*; and
- d. such further and other relief as counsel may advise and/or this Honourable Court deems just.

PART II – SUMMARY OF FACTS

- 3. In December, 2010, the Plaintiff accepted the position of police constable with the Defendant Board. From the date of her hiring, the Plaintiff was a contributing member to the police service, was regularly recognized for her contributions and had won awards.
- 4. On May 12, 2015, the Plaintiff was named a YWCA Women of Distinction by the YWCA of Cambridge. A post from the Cambridge Times covering this awards ceremony can be found at Tab 1 of the Plaintiff's Motion Record.
- 5. In June, 2017, the Plaintiff resigned from her employment from the Defendant Board following a complex series of events.
- 6. On May 4, 2016, the Plaintiff made a delegation to the board to disclose wrongdoing from within the police service, at that time, there was no procedural or legislative mechanism for the Plaintiff to disclose internal wrongdoing.
- 7. On May 5, 2016, the Waterloo Record posted an article on the subject of the Plaintiff's delegation. In the article, it states that the Plaintiff refused to speak to the media. This article is available at Tab 2 of the Plaintiff's Motion Record.
- 8. On May 9, 2016, the Plaintiff was served a Chief's Directive ordering her to not continue working as a Use of Force Instructor, but rather she was relegated to administrative duties. This

Directive also ordered the Plaintiff to no appear before the Board again, and she was placed under investigation for 6 allegations of misconduct.

9. On May 11, 2016, The Cambridge Times published an article about the Plaintiff's delegation to the Defendant Board. In the article, the individual Defendant assured the media that the Plaintiff had a democratic right to "vocalize" her "disapproval during the public session of the police board meeting." The individual Defendant was also quoted as saying "They're some strong allegations that we'll review[.]" The entire article is at Tab 3 of the Plaintiff's Motion Record.
10. On May 31, 2016, the Plaintiff was served an additional Chief's Directive ordering her to have to communication with members of the Board and she was placed under investigation for an additional 2 charges of misconduct.
11. On June 2, 2016, the Plaintiff filed a Workplace Harassment Complaint against the individual Defendant (and others not named in this proceeding).
12. The Plaintiff filed a Human Rights Application against the Defendants.
13. During the period from May, 2016, to June, 2017, the Defendant Board did not serve the Plaintiff with a Notice of Hearing, contrary to subsection 83(17) of the *Police Services Act, R.S.O. 1990, c. P.15*, requiring the Defendant Board to do so within six months of the Notice of Investigation being served.
14. In June, 2017, the Plaintiff resigned from employment with the Defendant which brought an end to multiple ongoing proceedings between the parties including the protracted disciplinary investigation and several complaints made by the Plaintiff about the Defendant, to the Ontario Civilian Police Commission, the Office of the Independent Police Review Director and the Human Rights Tribunal.
15. The conditions of the Plaintiff's resignation were that she withdraw her Human Rights complaint, and all other outstanding complaints against the Defendant, and the Defendant would cease their disciplinary investigation. The Plaintiff's resignation terminated multiple ongoing processes.

16. On June 8, 2017, both the Plaintiff and the Defendant signed the resignation agreement (furthermore referred to as the “resignation agreement”) that contained a confidentiality clause pertaining to the contents of the agreement only, but did not contain a general non-disclosure clause. The Plaintiff was adamant that she would not resign from her employment if she was prohibited from speaking about her experiences, and the Plaintiff has waived solicitor client privilege in order to admit evidence in her application to support her intention upon resignation. The redacted resignation agreement can be found at Tab F of the Motion Record of the Moving Party (the Defendants).
17. Both the Plaintiff and Defendant signed mutual releases to not file any new proceedings or appeals for matters arising prior to the Plaintiff’s resignation. The Plaintiff believes that the intention of the resignation agreement was to prevent her from joining the \$167M class action lawsuit that was filed one month before the date of her resignation, (against the Defendant on behalf of all current and former female members of the police service in Brampton Court, court file number CV-17-2346-00).
18. Since resigning, the Plaintiff has campaigned for greater accountability and transparency in Canadian policing, even having spoken at the Ontario Legislature on the topic to improve policing legislation in Ontario. The Plaintiff has also published a book to provide advice to members of police services boards on how to improve governance within Ontario policing. The Plaintiff believes that all of the information she has published and spoken about are matters of public interest, the Plaintiff did not publish any false information or accusations, and the Plaintiff frequently receives accolades from members of the community to support her efforts to improve the ethicality of policing in Canada.
19. The Plaintiff has sold copies of her book to police service board members and is currently working with Ontario police services as a consultant.
20. The Plaintiff has become something of a public figure and expert on policing legislation and internal corrupt practices and has been called on by local media to provide interviews on current issues. The Plaintiff believes her ongoing advocacy has aggravated and angered the Defendant, despite the Plaintiff merely exposing matters in the public interest. The purpose of the Plaintiff’s advocacy is to draw attention to the need for better governance in Ontario police services.

21. The Plaintiff started a consulting business when she resigned to try to earn enough of an income to support her three children. Since December, 2017, the stress the Defendant has caused the Plaintiff has prevented her from fulfilling the activities necessary to build her business.
22. In December, 2017, and in support of his defence in the class action lawsuit, Waterloo Regional Police chief Bryan Larkin referred to the Plaintiff in a sworn affidavit and disclosed details of the resignation agreement. This affidavit became a public document throughout those proceedings. The Plaintiff believes the affidavit is a breach of the terms of the resignation agreement signed by the Defendant. The Waterloo Regional Police Association filed a grievance against the Defendant Board on behalf of other female police officers whose privacy was breached as a result of this same Affidavit.
23. In January, 2018, the Defendant filed an appeal with the Workplace Safety and Insurance Board (“WSIB”) against the Plaintiff’s claim number 30505408. The Plaintiff’s claim for psychology benefits to treat her post-traumatic stress disorder was approved prior to the date of her resignation. The appeal letter is signed by counsel for the Defendant, the same counsel who participated in the creation of the resignation agreement. The Plaintiff believes that this act by counsel is tantamount to deliberate wrongdoing, and is an additional breach of the resignation agreement by the Defendant, since the Defendant had released the Plaintiff from any appeal. The appeal letter can be found at Tab 4 of the Plaintiff’s Motion Record.
24. In May, 2018, the Plaintiff filed the Statement of Claim for breach of contract against the Defendants in the Ontario Superior Court of Justice in Brampton (court file number: CV-18-00001938-0000). The Plaintiff chose to file the breach in Court rather than the Human Rights Tribunal due to the complexity of the issues surrounding her resignation, as is her right.
25. On June 7, 2018, the Defendants filed a Notice of Motion to dismiss the Plaintiff’s action on several grounds, one of which was that jurisdiction for breach of contract lies exclusively with the Human Rights Tribunal.
26. On June 28, 2018, the Defendant Board filed a section 45.9 application against the Plaintiff at the Human Rights Tribunal of Ontario (“HRTTO”) file number 2018-33237-S. This is an application for enforcement of a settlement agreement. This was a strategic and prejudicial move by the Defendant Board, prior to Courts deciding jurisdiction of the Plaintiff’s claim, which deprived

the Plaintiff of her right to procedural fairness and the opportunity to bring her own claim against the Defendant Board to the HRTO.

27. It is the Plaintiff's position that the HRTO proceeding filed by the Defendant Board is a "gag" proceeding, in that the Defendant Board is strategically using litigation as a means of unduly limiting expression by the Plaintiff on matters of public interest. The Plaintiff did not agree to a non-disclosure clause when she resigned in July, 2017, yet the Defendant is now alleging that any expression the Plaintiff has made publicly has been a breach of her resignation agreement.
28. The HRTO application filed by the Defendant was done out of retaliation, is vexatious, an attempt to further harass the Plaintiff, deteriorate her mental health and prevent her from operating her business which is her only source of income by burdening her with the task of defending herself in the HRTO proceeding and WSIB appeal. The Defendant seeks the following remedy at the HRTO:
- a. Significant damages, assessed with reference to the revenue generated by the Plaintiff through her expressions used to generate work for her business;
 - b. Cease to make any further expression about the Defendant;
 - c. Redact allegations against the Defendant from the Plaintiff's book;
 - d. Remove from the public domain any other allegations the Plaintiff has made against the Defendant.
29. On September 25, 2018, the Plaintiff filed an Application at Ontario Superior Court of Justice, (CV-18-00605386-0000), to have the HRTO application filed by the Defendant Board, pursuant to section 137.1 of the *Courts of Justice Act*.
30. On January 10, 2019, the Parties appeared before Madam Justice Favreau where it was decided that *Courts of Justice Act*, section 137.1 does not apply to Tribunal matters. In her decision, *Donovan v. (Waterloo) Police Services Board, 2019 ONSC 818*, Madam Justice Favreau states at para. 55:

- a. “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.” See **Tab 1** of the Plaintiff’s Book of Authorities for the full decision.

31. The HRTO proceeding filed by the Defendant Board is a collateral attack against the Plaintiff, as opposed to filing a counter-claim or statement of defence, the Defendant Board chose to apply to dismiss the Plaintiff’s action and file against the Plaintiff in another legal venue, one which is exempt from Ontario’s anti-SLAPP laws.

32. On January 16, 2019, the Plaintiff filed an amended Statement of Claim, on consent, to include the second allegation of Breach of Contract by the Defendants, listed above at para. 23.

PART III - ISSUES AND LAW

Do the Courts have jurisdiction to proceed with the Plaintiff’s claim?

33. Contrary to what is stated in paragraph 1.(a) of the Defendants’ Factum, the essential character of this dispute is not the enforcement of a human rights settlement.
34. As indicated above, the issues resolved in the resignation agreement, in chronological order, are:
 - a. Police Services Act investigation against the Plaintiff;
 - b. The Workplace Harassment complaint against the individual defendant by the Plaintiff;
 - c. The Human Rights Application made against the Defendants by the Plaintiff; and
 - d. The complaint about the conduct of the Defendants to the Ontario Civilian Police Commission by the Plaintiff.
35. The Human Rights Tribunal of Ontario (“HRTO”) enforces settlements arising solely out of breaches of the *Code*. The Plaintiff’s claim does not arise solely out of breaches to the *Code*.

A. Donovan v. (Waterloo) Police Services Board, 2019 ONSC 818

36. Regarding proper jurisdiction of an allegation of breach of contract pertaining to the resignation agreement between the Plaintiff and the Defendants, Honourable Justice Favreau had this to say at para. 51:

- a. “The Board also argues that the Human Rights Tribunal has exclusive jurisdiction over issues related to the enforcement of the Resignation Agreement. A similar issue is being raised by the Board on the motion to be heard on February 13, 2019, in the context of Ms. Donovan’s civil action. While it is not necessary for me to decide this issue in the context of this motion, I note that it is not clear to me that the Human Rights Tribunal has any jurisdiction over the Board’s application, let alone exclusive jurisdiction. Evidently, there were many issues between the parties that led to the Resignation Agreement. One of these issues was an application made by Ms. Donovan to the Human Rights Tribunal. Under the circumstances, it is difficult to see how the Tribunal has exclusive jurisdiction over the issue of whether the Resignation Agreement precludes Ms. Donovan from making the public statements targeted by the Board. Ultimately, it will be up to the Human Rights Tribunal to decide whether it has jurisdiction over the matter.”

37. The Defendants argument that a breach of the terms of the resignation agreement would fall under the purview of the HRTO or Workplace Safety and Insurance Appeals Tribunal is disingenuous.

38. In paragraph 50, Justice Favreau states:

- a. “In its argument, the Board suggested that its application to the Human Rights Tribunal would not be caught by section 137.1 because it is simply trying to enforce the Resignation Agreement. In my view, this argument is disingenuous. Section 137.1(3) does not limit the causes of action susceptible to its application. It may turn out that the Resignation Agreement provides a justification for the Board’s attempt to interfere with Ms. Donovan’s public expression, but the fact that the underlying proceeding is about the enforcement of an agreement does not out this Court’s jurisdiction to deal with the issue.”

B. Anderson v. Tasco Distributors, 2011 ONSC 269

39. In their Notice of Motion, the Defendants state that the HRTO has exclusive jurisdiction over allegations of breach of the Applicant’s resignation agreement. The Applicant disagrees.

40. In *Anderson v. Tasco Distributors*, 2011 ONSC 269, Superior Court Justice Echlin wrote that Courts do have the jurisdiction to hear proceedings that do not arise solely from an alleged breach of the *Ontario Human Rights Code* (the “Code”).
41. The Plaintiff asserts that her allegations do not arise from alleged breaches of the *Code* and as such, the Courts do have jurisdiction to hear her claim.
42. Reference the Plaintiff’s Book of Authorities, Tab 4, for the complete decision in *Anderson v. Tasco Distributors*, 2011 ONSC 269.

C. Power Tax Corporation v. Millar et al., 2013 ONSC 135

43. In *Power Tax Corporation v. Millar*, 2013 ONSC 135, the defendant Ms. Millar brought an application before the Human Rights Tribunal of Ontario. Subsequently, Power Tax brought an application to Court. Justice Goldstein ruled in favour of Ms. Millar and called the application by Power Tax an abuse of process. Power Tax’s application was permanently stayed. See Tab 5 for the entire decision.
44. Paragraph 16 of the Power Tax decision described the doctrine of abuse of power in greater detail for the Honourable Court to consider.

Does an Arbitrator have jurisdiction over breach of contract?

45. From the time the Plaintiff first found herself in need of assistance from her association, the Waterloo Regional Police Association (the “Association”), that assistance was denied.
46. The position taken by the Association President, Mr. Paul Perchaluk, in 2016, was that since the Plaintiff was not “on-duty” when she presented her delegation to the Defendant Board, the repercussions of that delegation were for the Plaintiff to deal with on her own. According to Article 12.01 of the Collective Agreement, (included at Tab A of the Defendants’ Motion Record), Association only offers indemnity for legal expenses incurred in the course of their employment.

47. Article 42 of the Collective Agreement offers a grievance procedure to “members.” The Plaintiff is no longer a member of the bargaining unit.
48. The Plaintiff ceased to be a member of the Association on June 25, 2017, and has not paid any member dues to the Association since prior to that date.
49. The allegations contained in this claim pertain to actions by the Defendants after the date the Plaintiff’s employment ended.
50. There can be no dispute by the Defendants regarding the status of the Plaintiff’s membership with the Association.
51. Police Services Act, subsection 116(1), included at Tab 25 of the Book of Authorities of the Moving Party (Defendants), states:
 - a. 116(1) If there is a dispute as to whether a person is a member of a police force or a senior officer, any affected person may apply to the Commission to hold a hearing and decide the matter.
52. The Plaintiff is not a member of a police force and no longer enjoys the benefits or representation of the Association.
53. Paragraphs 26 through 29 of the Defendants’ Factum rely on this dispute arising expressly or inferentially out of the collective agreement between the Association and the Defendant Board.
54. As succinctly stated in paragraph 27 of the Defendants’ Factum;
 - a. “The WRPA, a signatory to the Resignation Agreement along with the Plaintiff and the WRPSB, has exclusive representation rights in respect of its members (including the Plaintiff) for all terms and conditions of employment.”
55. The Plaintiff argues that this matter does not fall within the terms of the collective agreement.
56. There are no provisions in the Police Services Act and Regulations that require the Plaintiff to seek restitution through the Association for an alleged offence committed by the Defendants after the date her employment ceased.
57. In paragraph 30 of the Defendants’ Factum, they cite *Regina Police Assn. Inc. v. Regina (City) Board of Police Commissioners*. The Plaintiff asserts that her resignation from the Defendant Board was governed neither by the collective agreement in place between the Defendant Board and Association, nor the applicable police services legislation.
58. At Tab 8 of the Defendants’ Book of Authorities is the complete decision. Paragraph 9 states:
 - a. “She emphasized that the resignation whose validity was at issue was tendered in a disciplinary context... the issues raised were not governed by the collective agreement and were not arbitrable.”

59. Contrary to the situation in *Regina Police Assn. Inc. v. Regina (City) Board of Police Commissioners*, there are no provisions in the collective agreement between the Defendant Board and the Association regarding the resignation of a member. The Plaintiff argues that the outcome in the cited case is not comparable to the case currently before the Court.
60. As the Association was not involved in the Plaintiff's employment issues, from the initial discipline in 2016 until her eventual resignation, for the Defendants to suggest at this point in time that this matter is best resolved through the Plaintiff's prior affiliation with the Association is self-serving and germane to their desire to dismiss the Plaintiff's claim.
61. The Defendants entered into a contract with the Plaintiff, not governed by the existing collective agreement or any police statute, and on two occasions have violated that agreement.

Is the Plaintiff suing the Defendant Board for a workplace injury?

62. At paragraph 32 of the Defendants' Factum, they quote the Workplace Safety and Insurance Act in an attempt to dismiss the Plaintiff's claim as if she is suing the Defendant Board for a workplace injury. This simply is not the case and this argument is a moot point.
63. As stated at paragraph 6 of the Amended Statement of Claim, the Plaintiff is alleging that the Defendant Board breached the release contained in the resignation agreement by filing an appeal with the Workplace Safety and Insurance Board. Regardless of where this appeal was filed, it is the filing of the appeal that the Plaintiff alleges breaches the terms of the resignation agreement, not the fact that the appeal was related to a workplace injury.

Is it plain and obvious there is no reasonable cause of action?

64. The Defendants are relying on parallel legislation governing workplace injuries and labour relations to strike the Plaintiff's claim.
65. The Plaintiff has presented the Court with two basic breaches of a legal agreement entered into by the Plaintiff and the Defendants.
66. As the Defendants are public officers, the Plaintiff believes a greater duty of care exists for the Defendants to abide by the terms and conditions contained in the resignation agreement.
67. The Plaintiff has asked for reinstatement as a remedy simply because her voluntary resignation hinged on the fact that the terms and existence of the agreement would remain confidential, and she would continue to receive psychological care and medication for her Post-Traumatic Stress Disorder. The Plaintiff is required to earn an income to support her three children, and would

not have resigned from her employment, where she earned in excess of \$100,000 per year, if she believed that the Defendants would simply ignore their responsibilities under the resignation agreement.

68. The Defendant Board appealed her claim for medical assistance, which is an obvious breach of the contract and is a deliberate action to eliminate any care currently being provided for the Plaintiff. If the Plaintiff knew that 7 months following her resignation, action would be taken by a public body to deliberately breach the resignation agreement, she would not have agreed to sign the resignation agreement. The Plaintiff has higher expectations for the conduct of public officers.
69. The same counsel who represented the Defendant Board and wrote the resignation agreement was the same counsel who signed the appeal letter to the Workplace Safety and Insurance Board. Not only was this a breach of the resignation agreement, but the act is tantamount to misconduct by said counsel.
70. Despite the Defendant Board choosing to not pursue an appeal, the fact remains that the appeal was filed and the Plaintiff had no choice but to face the ongoing harassment and mental aggravation brought on by the actions of the Defendant Board. See Tab 4 of the Plaintiff's Motion Record for the Appeal letter filed by Mr. Donald Jarvis to the Workplace Safety and Insurance Board.

Did Chief Larkin have absolute privilege?

71. When the individual Defendant swore the Affidavit in defence of the ongoing class action lawsuit against the Defendant Board, he was not acting as an expert witness, a judge or an advocat.
72. In *Amato v. Welsh*, 2013 ONCA 258, absolute privilege is defined in paragraph 1 as follows:
 - a. "The common law doctrine of absolute privilege protects judges, counsel, jurors, witnesses and parties from any action "for words spoken in the ordinary course of any proceedings before any court or judicial tribunal recognised by law", so long as the words sought to be cloaked with the privilege were "uttered for the purposes of judicial proceedings by someone who has a duty to make statements in the course of the proceedings." See Tab 7 of the Plaintiff's Book of Authorities for the full decision.
73. The individual Defendant did not have a duty to make statements in the course of the class action lawsuit, and therefore it is the Plaintiff's position that the individual Defendant does not have absolute privilege in this case.

74. The individual Defendant's affidavit supplied for the ongoing class action lawsuit was not required by law or required under any statute or agreement. It was supplied to Courts to attempt to disguise the current state of internal affairs within the Defendant Board.

Does the resignation agreement preclude the Defendant Board from appealing the WSIB claim?

75. The Plaintiff has received treatment from Dr. Kathy Lawrence approximately once per week since the date of her resignation. Those sessions cost approximately \$250 each. Since the date of the Plaintiff's resignation from employment, this amount is approximately \$20,583.33 that the Plaintiff would have had to spend on her mental health treatment, if she did not have a current claim with WSIB. The Plaintiff does not know the cost of her current prescribed medication, which is also being paid by WSIB.

76. It was very important for the Plaintiff to maintain health coverage through the WSIB following her resignation so that she could continue to improve her overall health, which had deteriorated as a result of her employment for the Defendant Board.

77. The Defendant Board had initially proposed that the Plaintiff withdraw her WSIB claim, and resign with no mental health support. The Plaintiff had to negotiate that her claim be allowed to survive her resignation.

78. Despite their signing a release to not file any "appeals" against the Plaintiff, and despite their public commitments to the wellness of their officers, the Defendant Board filed an appeal of the Plaintiff's claim which would have eliminated the funding for mental health support she was receiving and prescribed medication. Had the Defendant Board's appeal been successful, the Plaintiff would have been left with no mental health supports.

79. The Defendant Board believes that because their appeal was unsuccessful, this precludes them from any accountability to their responsibilities in the resignation agreement.

80. The Plaintiff asserts that by signing the resignation agreement, the Defendant Board had promised not to file the appeal in the first place, yet they did.

Is the Plaintiff's claim an unnecessary expenditure of limited judicial resources?

81. Prior to the Plaintiff's resignation, she had accessed parallel judicial resources such as her Association and the Human Rights Tribunal. Failing the involvement of either of those bodies, the Plaintiff resigned from her employment.

82. The Plaintiff brings this claim before the courts now because she believes the Defendants have ignored their responsibilities to the resignation agreement and have deliberately caused the Plaintiff stress, anxiety and fear that she may face ongoing litigation for expressing herself on matters of public interest to attempt to improve accountability and transparency in Canadian police services.
83. The Defendants allege that the Plaintiff's action is "not only duplicative, but amounts to an unnecessary expenditure of limited judicial resources." The Plaintiff stands strong on the fact that she only filed one proceeding against the Defendants; this civil action. Since that time, it is the Defendants who filed their collateral attack at the Human Rights Tribunal, creating the duplicity. It is defamatory for the Defendants to blame the Plaintiff for this unnecessary expenditure of judicial resources.
84. The Plaintiff utilized the judicial system since her resignation was complex and did not address only one aspect of her prior employment. It is evident in Justice Favreau's decision that she also believed the Plaintiff's resignation was a complex matter.
85. The Plaintiff has no doubt that the Defendants would prefer to not address her allegations in a Court of Law, however, being public officers, the Plaintiff believes it is that much more important that her claim be heard by an Honourable Justice in advance of the retaliatory claims made by the Defendants being heard at the Human Rights Tribunal on February 22, 2019.

PART IV – PROCEDURAL FAIRNESS

86. In the interest of procedural fairness, it is the Plaintiff's position that actions taken by the Defendants to launch a collateral attack against her is tantamount to malfeasance.
87. As stated in paragraph 21 of *Baker v. Canada (Minister of Citizenship & Immigration)*, 1999, 2 S.C.R. 817:
- "The values underlying the duty of procedural fairness relate to the principle that the individual or individuals affected should have the opportunity to present their case fully and fairly, and have decision affecting their rights, interests, or privileges made using a fair, impartial and open process, appropriate to the statutory, institutional and social context of the decisions."
88. Reference the Plaintiff's Book of Authorities, tab 6, for the complete decision in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817.

89. The Plaintiff's claim contains two basic breaches of the resignation agreement. The Plaintiff agrees that the first breach is arguable, yet the second breach is clear and concrete. On this basis alone, the Plaintiff believes her claim should not be dismissed and that public officers, such as the Defendants, be held to a higher standard of compliance to legal agreements signed in good faith.

PART V – ORDER REQUESTED

90. The Plaintiff seeks an order to dismiss the Defendants' motion and allow her claim to proceed expeditiously, as the continued litigious harassment is continuously deteriorating her health and ability to earn an income. It was not the Plaintiff who created a web of ongoing litigation, but rather the Defendant Board in an attempt to cast a negative light on the actions of the Plaintiff.

91. The Plaintiff also seeks an order for costs on a substantial indemnity basis, fixed and payable by the Defendant to the Plaintiff within 30 days, pursuant to Rule 57.03(1) of the Rules giving consideration to the following points:

- a. The Defendant strategically filed their gag proceeding at the Human Rights Tribunal to attempt to limit the Plaintiff's access to justice through the Court;
- b. After the Plaintiff filed her statement of claim in May, 2018, the Defendant could have filed a counter-claim, however chose to strategically file their allegation of breach of contract as a gag proceeding disguised as a contravention of settlement at the Human Rights Tribunal. It is the Plaintiff's position that this step was improper and vexatious, as well as untimely and beyond the limitation period.

February 7, 2019

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TAB 11

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

KELLY LYNN DONOVAN

Plaintiff
(Responding Party)

- and -

WATERLOO REGIONAL POLICE SERVICES BOARD
and BRYAN LARKIN

Defendants
(Moving Party)

**FACTUM OF THE MOVING PARTY
(returnable February 13, 2019)**

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Plaintiff/Responding Party

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**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

KELLY LYNN DONOVAN

Plaintiff
(Responding Party)

- and -

WATERLOO REGIONAL POLICE SERVICES BOARD
and BRYAN LARKIN

Defendants
(Moving Party)

**FACTUM OF THE MOVING PARTY
(returnable February 13, 2019)**

PART I - INTRODUCTION

1. This is a motion brought by the Defendants pursuant to Rules 21.01(1)(b), 21.01(3)(a), and 21.01(3)(d) of the *Rules of Civil Procedure* (the “*Rules*”) for an Order dismissing the Plaintiff’s action or, in the alternative, striking out the Statement of Claim on the following bases:

- (a) The Court has no jurisdiction over the subject matter of the action. The Plaintiff seeks damages for breach of contract and reinstatement on the basis that the Defendants breached an earlier human rights settlement (the “Resignation Agreement”) by: (i) swearing an affidavit in a class action lawsuit which included non-identifying particulars of various human rights applications; and (ii) filing an Intent to Object form in respect of a decision by the Workplace Safety and Insurance Board (the “WSIB”). The essential character of this dispute involves enforcement of a human rights settlement

falling within the core jurisdiction and specialized expertise of the Human Rights Tribunal of Ontario (the “Tribunal”). Any matters not within the core jurisdiction of the Tribunal fall within the exclusive jurisdiction of the binding arbitration processes established pursuant to the *Police Services Act* (“PSA”). To the extent the dispute concerns the review of a WSIB decision, it falls within the exclusive jurisdiction of the WSIB and/or the Workplace Safety and Insurance Appeals Tribunal (the “WSIAT”).

- (b) The action discloses no reasonable cause of action against one or both of the Defendants. First, as Chief Larkin’s affidavit was made in the course of a judicial proceeding, it is covered by absolute privilege and cannot give rise to a cause of action. Second, the Intent to Object form cannot be barred by the Release executed pursuant to the Resignation Agreement, as the WSIB’s review could not cause any loss to the Plaintiff or lead to any finding of liability owed by the Plaintiff to the Defendants. In any event, workplace parties cannot contract out of the *Workplace Safety and Insurance Act, 1997* (“WSIA”). Finally, the Plaintiff has not alleged any facts against Chief Larkin that would indicate an actionable wrong and/or separate identity or interest for which he could be personally liable.
- (c) The action is frivolous, vexatious and/or an abuse of process as against one or both of the Defendants. The action is clearly unmeritorious and raises the same allegations raised before the Tribunal.

Rules of Civil Procedure, R.R.O. 1990, Reg. 194, r. 21.01(1)(b), 21.01(3)(a), and 21.01(3)(d) [Rules].

Police Services Act, R.S.O. 1990, c. P-15 [PSA].

Workplace Safety and Insurance Act, 1997, S.O. 1997, c. 16, Sched. A [WSIA].

PART II - THE FACTS

A. The Parties

2. The Organizational Defendant, the Waterloo Regional Police Services Board (“WRPSB”), is an agency created under the *Police Services Act* that is responsible for the provision of police services to the Regional Municipality of Waterloo. It oversees the Waterloo Regional Police Service (“WRPS”).

Affidavit of Laura J. Freitag sworn February 4, 2019, Motion Record of the Defendants/Moving Party, Tab 2 at para. 2 [Affidavit of Laura Freitag].

3. The Personal Defendant, Bryan Larkin, is the Chief of Police of the WRPS.

Affidavit of Laura Freitag, *supra*, at para. 3.

4. The Plaintiff commenced employment with the WRPSB in or around 2010. She held the rank of Constable until her employment resignation. She was, at all times, represented by the Waterloo Regional Police Association (the “WRPA”).

Affidavit of Laura Freitag, *supra*, at paras. 4-5.

B. The Prior and Outstanding Litigation Between the Parties

i. The Initial Human Rights Application and Settlement

5. On or about June 6, 2016, the Plaintiff filed an application with the Tribunal against the WRPSB (the “2016 Application”), alleging discrimination in employment on the grounds of sex and marital status, contrary to the *Human Rights Code* (the “Code”).

Human Rights Code, R.S.O. 1990, c. H.19 [Code].
Affidavit of Laura Freitag, *supra*, at para. 18 and Exhibit E.

6. All matters relating to the Plaintiff’s employment with the WRPSB (including, most critically, the 2016 Application and potential *PSA* charges against the Plaintiff) were fully and finally resolved through a Resignation Agreement

executed on or about June 8, 2017 by the Plaintiff, the WRPSB and the WRPA. The Plaintiff was represented by independent legal counsel throughout the negotiation of the Resignation Agreement. The WRPSB and the Plaintiff executed mutual Releases and agreed, *inter alia*, to keep the terms and existence of the Resignation Agreement in absolute and strict confidence “**except where disclosure is required by law...**”.

Affidavit of Laura Freitag, *supra*, at paras. 14-22 and Exhibit F.

ii. The Class Action Against the WRPSB

7. On or about May 30, 2017, the WRPSB was named as one of the defendants in a class action lawsuit (subsequently dismissed by Madam Justice Baltman on July 13, 2018) commenced by current and former employees of the WRPS and their family members. The Plaintiff was not a class member of the class action.

Affidavit of Laura Freitag, *supra*, at para. 23.

8. Chief Larkin swore an affidavit in support of a dismissal motion in the class action lawsuit on or about December 21, 2017. Attached as Exhibit “F” to Chief Larkin’s affidavit was an anonymized chart with non-identifying particulars of human rights applications that were commenced by female WRPS employees in the period of 2012 to 2017. The chart includes, *inter alia*, the following:

NAME	GROUNDS FOR DISCRIMINATION	RESOLUTION
Female Constable	<ul style="list-style-type: none">• Sex, including sexual harassment and pregnancy• Marital status	SETTLED <ul style="list-style-type: none">• monetary settlement• withdrawal of OHRT application• voluntary resignation

Affidavit of Laura Freitag, *supra*, at paras. 24-25 and Exhibit G.

iii. The WRPSB's Enforcement Application

9. On or about June 28, 2018, the WRPSB filed an Application for Contravention of Settlement with the Tribunal (the "WRPSB's Enforcement Application") alleging breaches of the Resignation Agreement by the Plaintiff. The WRPSB is seeking only such remedies as are necessary to ensure the Plaintiff's ongoing compliance with the terms of the Resignation Agreement.

Affidavit of Laura Freitag, *supra*, at para. 26 and Exhibit H.

10. The Plaintiff filed a Response to the WRPSB's Enforcement Application with the Tribunal on or about July 10, 2018. That Response did not, however, address the substantive allegations in the WRPSB's Enforcement Application. As a result, the WRPSB filed a Request for an Order During Proceedings ("RFOP") with the Tribunal on or about July 30, 2018, requesting that the Tribunal move to determine the issue of remedy.

Affidavit of Laura Freitag, *supra*, at paras. 27 and 29 and Exhibits I and K.

11. Pursuant to the Tribunal's Rules of Procedure and subsequently granted extensions, the Plaintiff was required to file submissions in response to the RFOP by September 28, 2018. The Plaintiff failed to do so.

Affidavit of Laura Freitag, *supra*, at paras. 30-32, 35-36 and 38 and Exhibits L and O.

12. The WRPSB's Enforcement Application is scheduled for hearing before the Tribunal on February 22, 2019, a date which was set back on August 3, 2018.

Affidavit of Laura Freitag, *supra*, at para. 33 and Exhibit M.

iv. The Plaintiff's Enforcement Application

13. On or about July 27, 2018, the Plaintiff filed her own Application for Contravention of Settlement with the Tribunal (the "Plaintiff's Enforcement

Application”) alleging a breach of the Resignation Agreement as a result of Chief Larkin’s affidavit in the class action lawsuit and seeking similar remedies as those in the instant action, including an order of reinstatement. Again, the Plaintiff has failed to comply with Tribunal directions issued in respect of the Plaintiff’s Enforcement Application.

Affidavit of Laura Freitag, *supra*, at paras. 28, 34-35 and 37-38 and Exhibits J, N, and P.

v. The Plaintiff’s Civil Application

14. Notwithstanding the Plaintiff’s ongoing failure to comply with Tribunal directions, the Plaintiff commenced an application against the WRPSB by filing a Notice of Application on or about September 18, 2018 (the “Application”).

Affidavit of Laura Freitag, *supra*, at paras 39-40 and Exhibits Q and R.

15. By decision dated February 1, 2019, Madam Justice Favreau dismissed the Application and concluded that the Court did not have jurisdiction to hear the Plaintiff’s proposed motion under section 137.1(3) of the *Courts of Justice Act* (“*CJA*”) to dismiss the WRPSB’s Enforcement Application before the Tribunal.

Courts of Justice Act, R.S.O. 1990, c. C.43 [*CJA*].
Affidavit of Laura Freitag, *supra*, at para. 43 and Exhibit U.

vi. The Determination of the Plaintiff’s Entitlement to Workers’ Compensation Benefits

16. The Plaintiff commenced a medical leave of absence on or about February 27, 2017, and was later diagnosed with post-traumatic stress disorder (“PTSD”) as a result of an accident she had witnessed at the Ontario Police College in February 2011. On April 10, 2017, the Plaintiff submitted a claim for WSIB benefits.

Affidavit of Laura Freitag, *supra*, at paras. 6-9.

17. In a decision dated July 12, 2017, WSIB Case Manager Jane Drake granted the Plaintiff Initial Entitlement (Eligibility for Benefits) and allowed the claim for healthcare benefits and full loss of earnings (LOE) benefits from February 27, 2017 to June 24, 2017 (the “Initial Entitlement Decision”).

Affidavit of Laura Freitag, *supra*, at para. 10 and Exhibit B.

18. On or about January 11, 2018, the WRPSB filed an Intent to Object form (along with accompanying submissions) with the WSIB. Following its review of the claims file, the WSIB re-affirmed the Initial Entitlement Decision on August 3, 2018. Since then, the WRPSB has taken no steps to initiate any further WSIB reviews of the Initial Entitlement Decision.

Affidavit of Laura Freitag, *supra*, at paras. 11-13 and Exhibits C and D.

vii. The Plaintiff’s Action Before this Court

19. Originally commenced in May 2018 (the “Claim”) and amended on January 16, 2019 (the “Amended Claim”), the instant action is being maintained by the Plaintiff despite the fact that the WRPSB’s Enforcement Application and the Plaintiff’s Enforcement Application are already the Tribunal.

Affidavit of Laura Freitag, *supra*, at para. 44 and Exhibits V and W.

PART III - ISSUES AND THE LAW

A. The Subject Matter of the Amended Claim is Outside of this Honourable Court’s Jurisdiction

i. The Tribunal Exercises Primary (if Not Exclusive) Jurisdiction Over the Enforcement of Human Rights Settlements

20. Section 45.9(3) of the *Code* specifically confers upon the Tribunal the jurisdiction to address and remedy contraventions of human rights settlements.

The Tribunal’s remedial jurisdiction is broad and includes the power to “make any order that it considers appropriate to remedy the contravention”:

If a settlement of an application made under section 34 or 35 is agreed to in writing and signed by the parties, a party who believes that another party has contravened the settlement may make an application to the Tribunal for an order under subsection (8)...

...

If, on an application under subsection (3), the Tribunal determines that a party has contravened the settlement, the Tribunal may make any order that it considers appropriate to remedy the contravention.

Code, supra, ss. 45.9(3) and (8).

21. The same allegations are made in the Claim and the Plaintiff’s Enforcement Application. To the extent that the Amended Claim contains an additional allegation, the Plaintiff may seek to amend her Enforcement Application before the Tribunal to include this additional allegation.

22. Section 39 of the *Code* allows the Tribunal “to determine all questions of fact or law that arise in any application before it”. Accordingly, whether the WRPSB breached the Resignation Agreement (either through Chief Larkin’s affidavit or by requesting a WSIB review) is a matter that may be addressed by the Tribunal.

Code, supra, s. 39.

23. The enforcement of human rights settlements under the *Code* is recognized by the Tribunal as an integral part of achieving the high purposes of the *Code*:

Respect for terms of settlement is not only a legally binding, contractual obligation, it also promotes essential Code values. A contravention of settlement can undermine the administration of justice by discrediting the human rights system and generating wrong disincentives to negotiation. **The uncertainty created by a contravention of settlement potentially undermines the**

substantive and procedural provisions of the Code. An award of monetary compensation can help reflect both the private and public importance of complying with settlement terms.

[Emphasis added]

Saunders v. Toronto Standard Condominium Corp. No. 1571, 2010 HRTO 2516 at para. 51.

24. Since the 1981 decision of the Supreme Court of Canada in *Seneca College v. Bhadauria*, it has been trite law in Ontario that human rights claims, along with the enforcement of settlements in respect of such claims, should be pursued through the comprehensive enforcement regime set up under the *Code*:

In the present case, the enforcement scheme under *The Ontario Human Rights Code* ranges from administrative enforcement through complaint and settlement procedures to adjudicative or quasi-adjudicative enforcement by boards of inquiry...

...

For the foregoing reasons, I would hold that **not only does the Code foreclose any civil action based directly upon a breach thereof but it also excludes any common law action based on an invocation of the public policy expressed in the Code. The Code itself has laid out the procedures for vindication of that public policy,** procedures which the plaintiff respondent did not see fit to use.

[Emphasis added]

Seneca College v. Bhadauria, [1981] 2 S.C.R. 181 at pp. 194-195.

See also *Honda v. Keays*, 2008 SCC 39 at para. 65.

25. The one exception to this established principle arises under section 46.1 of the *Code* (enacted in 2008). This provision allows a plaintiff to directly advance a breach of the *Code* before the courts, but only where such alleged infringement of Part I of the *Code* is ‘piggy-backed’ to a separate, independent civil action (thereby allowing the entire dispute to be adjudicated in one forum):

46(1) If, in a civil proceeding in a court, the court finds that a party to the proceeding has **infringed a right under Part I** of another party to the proceeding, the court may make either of the following orders, or both:

1. An order directing the party who infringed the right to pay monetary compensation...
2. An order directing the party who infringed the right to make restitution to the party whose right was infringed...

(2) Subsection (1) does not permit a person to commence an action based solely on an **infringement of a right under Part I**.

[Emphasis added]

Code, supra, s. 46.1.

26. Given the reference to infringements under Part I in section 46.1 of the *Code*, the Legislature clearly intended the Tribunal to have jurisdiction over the enforcement of settlements: section 45.9 appears in Part IV of the *Code*.

ii. Alternatively, Alleged Contraventions of the Resignation Agreement Must Proceed Before an Arbitrator

27. Alternatively, the Plaintiff's allegations of a breach of the Resignation Agreement are matters that must be determined by an arbitrator, rather than this Honourable Court. The WRPA, a signatory to the Resignation Agreement along with the Plaintiff and the WRPSB, has exclusive representation rights in respect of its members (including the Plaintiff) for all terms and conditions of employment. In pith and substance, the Resignation Agreement arises out of the settlement of the 2016 Application. Nonetheless, to the extent that the Resignation Agreement is, itself, the product of a negotiated resolution of all outstanding employment matters between not just the Plaintiff and the WRPSB, but also the WRPA, means that the enforcement of the Resignation Agreement

must be treated in the same manner as the enforcement of any agreement made by a union on behalf of one of its members.

Globe and Mail (The) and CEP, Local 87-M, Re (2012), 225 L.A.C. (4th) 321 (Davie).

28. More broadly, the essential character of the instant dispute is a matter that arises expressly or inferentially out of the collective agreement between the WRPA and the WRPSB precisely because the Resignation Agreement is, itself, an agreement relating to the terms and conditions of employment of a member in respect of whom the WRPA has exclusive representation rights. The courts do not have jurisdiction to deal with any aspects of the employment relationship between individual police officers and their police associations or municipal police services boards.

Weber v. Ontario Hydro, [1995] 2 S.C.R. 929 at paras. 43 and 67.

Rivers v. Waterloo (Regional Municipality) Police Services Board, 2018 ONSC 4307 at paras. 25-26.

PSA, supra, ss. 123(1) and 126.

29. The courts have repeatedly applied the doctrine from *Weber v. Ontario Hydro* in the police sector, finding that the *PSA*, together with applicable collective agreements, provide a “complete and comprehensive scheme for police officers relating to their employment relationship”.

Renaud v. Town of Lasalle Police Association (2006), 216 O.A.C. 1 (C.A.) at para. 7.

30. In *Regina Police Assn. Inc. v. Regina (City) Board of Police Commissioners*, the Supreme Court of Canada confirmed that courts could only have jurisdiction in policing if the dispute was governed by neither a collective agreement nor applicable police services legislation.

Regina Police Assn. Inc. v. Regina (City) Board of Police Commissioners, 2000 SCC 14 at p. 376.

31. The fact that the Plaintiff is seeking an order of reinstatement to the WRPSB as a remedy for an alleged breach of the Resignation Agreement underscores that the instant dispute ought to proceed before the Tribunal or a labour arbitrator: the Court does not have the power to order reinstatement.

iii. Matters Relating to Workers' Compensation Claims in Ontario are Within the Exclusive Jurisdiction of the WSIB and WSIAT

32. Under Canadian workers' compensation legislation, including the *WSIA*, employees surrender their right to sue employers for workplace injuries in exchange for a 'no-fault' insured compensation scheme. The principles underlying this historic trade-off were first articulated by the Honourable Sir William Ralph Meredith in 1913 (the "Meredith principles"). One of the central to the Meredith principles has been that courts ought not intervene in matters of workers' compensation:

In my judgment the furthest the Legislature should go in allowing the intervention of the courts should be to provide that the Lieutenant-Governor in Council may state a case for the opinion of a Division Court of the Appellate Division of the Supreme Court of Ontario, if any question of law of general importance arises and he deems it expedient it should be settled by a decision of a Divisional Court...

Ontario, Legislative Assembly, Final report on laws relating to the liability of employers to make compensation to their employees for injuries received in the course of their employment which are in force in other countries, and as to how far such laws are found to work satisfactorily (1913) (Hon. Sir W. R. Meredith) at p. 13.

33. In sections 118(1) and 123(1) of the *WSIA*, the Legislature has enshrined the exclusive jurisdiction of the WSIB and the WSIAT over matters relating to workers' compensation insurance. Moreover, sections 118(4) and 123(5) of the *WSIA* expressly state that this exclusive jurisdiction shall not be restrained "by

injunction, prohibition or **other process or procedure in a court** or be removed by application for judicial review or **otherwise into a court**'.

WSIA, supra, ss. 118(1), 118(4), 123(1) and 123(5).

34. By alleging that the WRPSB's filing of an Intent to Object form is a breach of the Resignation Agreement, the Plaintiff is seeking to use the Court to restrain a WSIB process contrary to the *WSIA*. Whatever WSIB benefits the Plaintiff is entitled to is within the exclusive jurisdiction of the WSIB and/or the WSIAT. Thus, any concern regarding the propriety of the WRPSB's filing of an Intent to Object form must be raised before the WSIB, not this Honourable Court.

B. The Claim Discloses No Reasonable Cause of Action Against the Defendants

35. The test for determining if a pleading should be struck pursuant to Rule 21.01(1)(b) is whether "assuming that the facts as stated in the statement of claim can be proved, [it is] "plain and obvious" that the plaintiff's statement of claim discloses no reasonable cause of action".

Hunt v. Carey Canada Inc., [1990] 2 SCR 959 at p. 980.

36. To support a claim of breach of contract, a plaintiff must prove the existence of: (1) a contract with the defendant; and (2) an act that contravenes the contract.

Mars Canada Inc. v. Bemco Cash & Carry Inc., 2018 ONCA 239 at para 32.

37. The Plaintiff has failed to establish the requisite elements of, or plead any facts that would support, a claim for remedies against the Defendants.

i. Chief Larkin's Affidavit Cannot Form the Basis for a Cause of Action

38. It is trite law that statements made in the course of a judicial or quasi-judicial proceeding, including statements in "all pleadings and other documents brought

into existence for the purpose of the proceedings”, are covered by absolute privilege and cannot create a cause of action.

Fabian v. Margulies (1985), 53 O.R. (2d) 380 (CA) at para. 9, citing *Lincoln v. Daniels*, [1962] 1 Q.B. 237 (Eng CA).

See also *Dooley v. C.N. Weber Ltd. et. al.* (1994), 19 O.R. (3d) 779 (Ont. Ct. (Gen. Div.)) [*Dooley*].

39. As stated in the seminal case of *Dooley v. C.N. Weber Ltd et. al.*, a claim shall fail to disclose a reasonable cause of action if the claim is based upon statements subject to absolute privilege. To allow such a claim to continue before the courts amounts to an abuse of process:

However, I conclude, after considering submissions of counsel and the relevant jurisprudence, that **an absolute privilege attaches to the pleadings and they may not form the basis for a cause of action, even for abuse of process.** The development of this privilege has been consistent and without exception, applying in England, Canada and other common law jurisdictions to judges, witnesses, counsel and litigants. **The privilege extends to statements made in court, the evidence of witnesses, to submissions, to addresses, to statements in court by counsel, to pleadings (as in this case) and perhaps even to statements made to investigators in the preparation of a prosecution.**

...

...It matters not whether the action is framed in libel or slander, in defamation, intentional infliction of mental suffering, intentional interference with economic interest, or abuse of process. **To the extent that any action is based upon statements in a pleading, the claim will disclose no reasonable cause of action. Otherwise expressed, the action has no reasonable chance of success in law, and to permit it to continue would constitute an abuse of the process of the court.**

[Emphasis added]

Dooley, supra, at pp. 5 and 8.

40. This Honourable Court has also held that statements in a defendant's sworn affidavit arising from a proceeding are protected by absolute privilege and, as a result, cannot be used to support a subsequent cause of action.

Gray Investigations Inc. v. Mitchell (2007), 157 A.C.W.S. (3d) 704 (Ont. Sup. Ct.) at paras. 17-20.

See also *Web Offset Publications Ltd. v. Vickery* (1999), 43 O.R. (3d) 802 (CA) at p. 3.

41. In short, to the extent that the Amended Claim is based upon Chief Larkin's affidavit in the class action lawsuit, there is no reasonable cause of action. The Amended Claim is predicated upon a document subject to absolute privilege and, accordingly, to permit the action to proceed amounts to an abuse of process.

42. In addition, and in any event, no reasonable cause of action arises on the face of Chief Larkin's affidavit. Put simply, it is plain and obvious that the WRPSB did not breach the confidentiality provisions of the Resignation Agreement:

- (a) Chief Larkin's affidavit did not contain any identifying information relating to the Plaintiff. Any reference to the Plaintiff or the 2016 Application was completely anonymized, and there was no indication as to the time when the settlement took place; and
- (b) The Plaintiff's bald assertion in paragraph 16 of the Amended Claim that Chief Larkin's affidavit "contained sufficient information for the plaintiff to be identified" is wholly speculative and remote at law.

43. In the further alternative, and in any event, Chief Larkin's affidavit was "required by law" and, therefore, excluded from the scope of the confidentiality provisions set out in the Resignation Agreement. The content of Chief Larkin's affidavit was directly responsive to the issues raised in the class action lawsuit, which

specifically alleged systemic and institutional gender-based discrimination and harassment. The WRPSB had a legal obligation to provide the Court with a full factual record to allow the Court to render a decision in the class action lawsuit.

ii. The Release Executed by the WRPSB Does Not Preclude Participation in WSIB Processes

44. The goal of a legal release is to “liberate a party once and for all from any liability or obligation **to another party** arising out of specific circumstances”.

Gregory v. KPMG LLP, 2012 BCSC 1387 at para. 19.

45. Because the WSIB’s review of the Initial Entitlement Decision could not lead to any finding of liability or obligation owed by the Plaintiff to the WRPSB, the filing of an Intent to Object form did not contravene the WRPSB’s Release of the Plaintiff or amount to a “proceeding against Donovan” contrary to paragraph 11 of the Resignation Agreement. Moreover, the WRPSB is a Schedule 2 employer under the *WSIA* and, therefore, acts as a self-insurer for the full costs of all claims and benefits awarded by the WSIB in respect of its employees. In such circumstances, and given the non-adversarial nature of Ontario’s workers’ compensation scheme, it is wholly proper for the WRPSB to ensure that the WSIB is granting benefits appropriately.

WSIA, supra, s.85(1).

O Reg 175/98, Schedule 2.

WSIB, *Policy 11-01-02: Decision-Making*, at p. 2.

Decision No. 2157/09, 2014 ONWSIAT 938 at para. 21.

46. Notably, even if the WSIB had overturned the Initial Entitlement Decision as a result of the WRPSB’s Intent to Object form, the Plaintiff would not have suffered any losses. Absent acts of fraud or misrepresentation, the WSIB will not

pursue recovery of benefits from a worker if it reverses a previous decision that granted the worker entitlement to benefits.

WSIB, *Policy 18-01-04: Recovery of Benefit-Related Debts*, at pp. 1, 3-4.
Decision No. 1658/02, 2002 ONWSIAT 2718 at para. 20.

47. In the alternative, and in any event, the Release cannot constitute a waiver of the WRPSB's rights under the *WSIA*. As held by the Ontario Court of Appeal in *Fleming v. Massey*, workplace parties cannot contract out of their rights and obligations under workers' compensation legislation:

I recognize that the courts should exercise extreme caution in interfering with the freedom to contract on the grounds of public policy. Considering the sweeping overriding of the common law made by workers' compensation legislation and the broad protection it is designed to provide to workers in the public interest, **it would be contrary to public policy to allow employers and workers to contract out of its regime, absent some contrary legislative indication.**

[Emphasis added]

Fleming v. Massey, 2016 ONCA 70 at para. 34.
See also *WSIA*, *supra*, s.16.

48. The Release executed by the WRPSB shares the same language as the Release executed by the Plaintiff. The two Releases must, therefore, be interpreted in a consistent manner. Precisely because the Plaintiff's Release cannot result in a waiver of the Plaintiff's right to pursue WSIB entitlements (see section 16 of the *WSIA*), the WRPSB's Release cannot, of necessity, result in a waiver of the WRPSB's reciprocal statutory right to challenge entitlement decisions.

C. The Claim Is Frivolous, Vexatious, and/or an Abuse of Process

49. Any clearly unmeritorious action may qualify as frivolous, vexatious, or an abuse of process under Rule 21.01(3)(d). The Plaintiff's Amended Claim ought to be

characterized as frivolous, vexatious and/or an abuse of process precisely because of its lack of merit.

Salasel v. Cuthbertson, 2015 ONCA 115 at para. 8.

50. If a plaintiff engages in an abuse of process by commencing a civil action in respect of the same allegations made in a parallel administrative proceeding, “the abuse of process doctrine can apply not only to bar re-litigation of issues that were actually determined in the administrative process, but also to issues that could have been determined”.

Aba-Alkhail v. University of Ottawa, 2013 ONCA 633 at para. 12.

51. Admittedly, the Plaintiff’s Enforcement Application before the Tribunal was commenced after the Claim. Nonetheless, the Plaintiff has not withdrawn the Amended Claim despite commencing a similar proceeding before the Tribunal. By concurrently pursuing two parallel proceedings arising from the same allegations, the Plaintiff is proceeding in a manner that violates the principle of judicial economy and the need to avoid conflicting findings of fact. This amounts to an abuse of process.

D. There Is No Proper Basis for the Plaintiff to Pursue Her Claim Against the Personal Defendant

52. Officers and employees are protected from personal liability unless it can be shown that their actions are themselves tortious or exhibit a separate identity or interest from that of the company/employer so as to make the act or conduct complained of their own.

Lussier v. Windsor-Essex Catholic District School Board (1999), 47 C.C.E.L. (2d) 256 (Ont. Div. Ct.) at para. 17.

53. The Defendants submit that the Plaintiff has not alleged any facts against Chief Larkin that would indicate an actionable wrong and/or separate identity or interest for which he could be personally liable. In preparing and swearing his affidavit in the class action, Chief Larkin was acting within the scope of his employment duties as Chief of Police of the WRPS. Moreover, the WRPSB, and not Chief Larkin, was party to the Resignation Agreement and may be sued in its own name in respect to the Resignation Agreement.

See also *PSA, supra*, s. 30(1).

E. Proceeding with the Amended Claim Would be an Unnecessary Expenditure of Limited Judicial Resources

54. To allow the Plaintiff to proceed with this action is not only duplicative, but amounts to an unnecessary expenditure of limited judicial resources. While the WRPSB's Enforcement Application is currently scheduled to be heard before the Tribunal on February 22, 2019, given the commonalities between the parties' Enforcement Applications, they will likely be consolidated. Put simply, it would be far more expeditious and cost-effective for the parties to resolve all outstanding issues arising from the Resignation Agreement in one proceeding before the Tribunal.
55. The Defendants respectfully submit that to allow the Plaintiff's Amended Claim to proceed undermines the efficient administration of justice, contrary to sections 71 and 138 of the *Courts of Justice Act* and Rule 1.04(1) of the *Rules*.

CJA, supra, ss. 71 and 138.
Rules, r. 1.04(1).

PART IV - ORDER REQUESTED

56. Based on the foregoing, the Defendants seek:
- (a) an Order dismissing the Plaintiff's action on the basis that this Honourable Court has no jurisdiction over the subject matter of the action;
 - (b) in the alternative, an Order striking out the Amended Claim, without leave to amend, for failing to disclose a reasonable cause of action against the Defendants;
 - (c) in the further alternative, an Order dismissing the Plaintiff's action on the basis that the action is frivolous, vexatious and/or an abuse of process;
 - (d) in the further alternative, an Order striking out the Claim as against the personally-named Defendant, without leave to amend, for disclosing no reasonable cause of action as against the personally-named Defendant and/or for being frivolous, vexatious and/or an abuse of process;
 - (e) in the further alternative, an Order extending the time limits to allow the Defendants to file a Statement of Defence;
 - (f) an order for costs of this hearing on a substantial indemnity basis fixed and payable to the Defendants within 30 days; and
 - (g) such further and other relief as counsel may advise and/or this Honourable Court deems just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 4th day of February, 2019.

Donald B. Jarvis
Cassandra Ma
Filion Wakely Thorup Angeletti LLP
Lawyers for the Defendants/Moving Party

**SCHEDULE “A”
LIST OF AUTHORITIES**

1. *Saunders v. Toronto Standard Condominium Corp. No. 1571*, 2010 HRTO 2516.
2. *Seneca College v. Bhadauria*, [1981] 2 S.C.R. 181.
3. *Honda v. Keays*, 2008 SCC 39.
4. *Globe and Mail (The) and CEP, Local 87-M, Re* (2012), 225 L.A.C. (4th) 321 (Davie).
5. *Weber v. Ontario Hydro*, [1995] 2 S.C.R. 929.
6. *Rivers v. Waterloo (Regional Municipality) Police Services Board*, 2018 ONSC 4307.
7. *Renaud v. Town of Lasalle Police Association* (2006), 216 O.A.C. 1 (C.A.).
8. *Regina Police Assn. Inc. v. Regina (City) Board of Police Commissioners*, 2000 SCC 14.
9. Ontario, Legislative Assembly, *Final report on laws relating to the liability of employers to make compensation to their employees for injuries received in the course of their employment which are in force in other countries, and as to how far such laws are found to work satisfactorily* (1913) (Hon. Sir W. R. Meredith).
10. *Hunt v. Carey Canada Inc.*, [1990] 2 SCR 959.
11. *Mars Canada Inc. v. Bemco Cash & Carry Inc.*, 2018 ONCA 239.
12. *Fabian v. Margulies* (1985), 53 O.R. (2d) 380 (CA).
13. *Dooley v. C.N. Weber Ltd. et. al.* (1994), 19 O.R. (3d) 779.
14. *Gray Investigations Inc. v. Mitchell* (2007), 157 A.C.W.S. (3d) 704 (Ont. Sup. Ct.).
15. *Web Offset Publications Ltd. v. Vickery* (1999), 43. O.R. (3d) 802 (CA).
16. *Gregory v. KPMG LLP*, 2012 BCSC 1387.
17. WSIB, *Policy 11-01-02: Decision-Making*.
18. *Decision No. 2157/09*, 2014 ONWSIAT 938.
19. WSIB, *Policy 18-01-04: Recovery of Benefit-Related Debts*.
20. *Decision No. 1658/02*, 2002 ONWSIAT 2718.
21. *Fleming v. Massey*, 2016 ONCA 70.
22. *Salasel v. Cuthbertson*, 2015 ONCA 115.
23. *Aba-Alkhail v. University of Ottawa*, 2013 ONCA 633.
24. *Lussier v. Windsor-Essex Catholic District School Board* (1999), 47 C.C.E.L. (2d) 256 (Ont. Div. Ct.).

**SCHEDULE “B”
RELEVANT STATUTES**

Courts of Justice Act, R.S.O. 1990, c. C.43

Goals

71 The administration of the courts shall be carried on so as to,

- (a) maintain the independence of the judiciary as a separate branch of government;
- (b) recognize the respective roles and responsibilities of the Attorney General and the judiciary in the administration of justice;
- (c) encourage public access to the courts and public confidence in the administration of justice;
- (d) further the provision of high-quality services to the public; and
- (e) promote the efficient use of public resources.

Multiplicity of proceedings

138 As far as possible, multiplicity of legal proceedings shall be avoided.

Rules of Civil Procedure, R.R.O. 1990, Reg. 194

General Principle

1.04 (1) These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits.

21.01 (1) A party may move before a judge,

...

- (b) to strike out a pleading on the ground that it discloses no reasonable cause of action or defence,

and the judge may make an order or grant judgment accordingly.

...

(3) A defendant may move before a judge to have an action stayed or dismissed on the ground that,

- (a) the court has no jurisdiction over the subject matter of the action;

...

- (d) the action is frivolous or vexatious or is otherwise an abuse of the process of the court,

and the judge may make an order or grant judgment accordingly.

57.03 (1) On the hearing of a contested motion, unless the court is satisfied that a different order would be more just, the court shall,

- (a) fix the costs of the motion and order them to be paid within 30 days; or
- (b) in an exceptional case, refer the costs of the motion for assessment under Rule 58 and order them to be paid within 30 days after assessment.

Human Rights Code, R.S.O. 1990, c. H.19

39 The Tribunal has the jurisdiction to exercise the powers conferred on it by or under this Act and to determine all questions of fact or law that arise in any application before it.

Settlements

45.9 (1) If a settlement of an application made under section 34 or 35 is agreed to in writing and signed by the parties, the settlement is binding on the parties.

...

Application where contravention

(3) If a settlement of an application made under section 34 or 35 is agreed to in writing and signed by the parties, a party who believes that another party has contravened the settlement may make an application to the Tribunal for an order under subsection (8),

- (a) within six months after the contravention to which the application relates; or
- (b) if there was a series of contraventions, within six months after the last contravention in the series.

...

Order

(8) If, on an application under subsection (3), the Tribunal determines that a party has contravened the settlement, the Tribunal may make any order that it considers appropriate to remedy the contravention.

Civil remedy

46.1 (1) If, in a civil proceeding in a court, the court finds that a party to the proceeding has infringed a right under Part I of another party to the proceeding, the court may make either of the following orders, or both:

1. An order directing the party who infringed the right to pay monetary compensation to the party whose right was infringed for loss arising out of the infringement, including compensation for injury to dignity, feelings and self-respect.
2. An order directing the party who infringed the right to make restitution to the party whose right was infringed, other than through monetary compensation, for loss arising

out of the infringement, including restitution for injury to dignity, feelings and self-respect.

Same

(2) Subsection (1) does not permit a person to commence an action based solely on an infringement of a right under Part I.

Workplace Safety and Insurance Act, 1997, S.O. 1997, c. 16, Sched. A

No waiver of entitlement

16 An agreement between a worker and his or her employer to waive or to forego any benefit to which the worker or his or her survivors are or may become entitled under the insurance plan is void.

Payments by Schedule 2 employers

85 (1) The Board shall determine the total payments to be paid by all Schedule 2 employers with respect to each year to defray their fair share (as determined by the Board) of the expenses of the Board and the cost of administering this Act and such other costs as are directed under any Act to be paid by the Board.

Jurisdiction

118 (1) The Board has exclusive jurisdiction to examine, hear and decide all matters and questions arising under this Act, except where this Act provides otherwise.

...

Finality of decision

(3) An action or decision of the Board under this Act is final and is not open to question or review in a court.

Same

(4) No proceeding by or before the Board shall be restrained by injunction, prohibition or other process or procedure in a court or be removed by application for judicial review or otherwise into a court.

Jurisdiction

123 (1) The Appeals Tribunal has exclusive jurisdiction to hear and decide,

- (a) all appeals from final decisions of the Board with respect to entitlement to health care, return to work, labour market re-entry and entitlement to other benefits under the insurance plan;

(b) all appeals from final decisions of the Board with respect to transfer of costs, an employer's classification under the insurance plan and the amount of the premiums and penalties payable by a Schedule 1 employer and the amounts and penalties payable by a Schedule 2 employer; and

(c) such other matters as are assigned to the Appeals Tribunal under this Act.

...

Finality of decision

(4) An action or decision of the Appeals Tribunal under this Act is final and is not open to question or review in a court.

Same

(5) No proceeding by or before the Appeals Tribunal shall be restrained by injunction, prohibition or other process or procedure in a court or be removed by application for judicial review or otherwise into a court.

O Reg 175/98: General

SCHEDULE 2

INDUSTRIES THE EMPLOYERS IN WHICH ARE INDIVIDUALLY LIABLE TO PAY BENEFITS UNDER THE INSURANCE PLAN

9. Any employment by or under the Crown in right of Ontario and any employment by a permanent board or commission appointed by the Crown in right of Ontario.

Police Services Act, R.S.O. 1990, c. P-15

Board may contract, sue and be sued

30 (1) A board may contract, sue and be sued in its own name.

123 (1) The Solicitor General shall appoint a conciliation officer, at a party's request, if a difference arises between the parties concerning an agreement or an arbitrator's decision or award made under this Part, or if it is alleged that an agreement or award has been violated.

126 Agreements and awards made under this Part do not affect the working conditions of the members of the police force in so far as those working conditions are determined by sections 42 to 49, subsection 50 (3), Part V (except as provided in subsections 66 (13) and 76 (14)) and Part VII of this Act and by the regulations.

KELLY LYNN DONOVAN
Plaintiff/Responding Party

and

WATERLOO REGIONAL POLICE
SERVICES BOARD and BRYAN LARKIN
Defendants/Moving Party

Court File No: CV-18-00001938-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at BRAMPTON

FACTUM OF THE MOVING PARTY
(returnable February 13, 2019)

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Defendants (Respondents)

CA No. C66718

COURT OF APPEAL FOR ONTARIO

Proceeding commenced at BRAMPTON

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