

HUMAN RIGHTS TRIBUNAL OF ONTARIO

B E T W E E N:

KELLY DONOVAN

Applicant

- and -

**THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD AND
BRYAN LARKIN**

Respondents

RESPONDENTS' CASE SUMMARY

Overview

1. This is a contravention of settlement application under [s. 45.9\(3\)](#) of the [Human Rights Code](#).
2. Ms. Donovan's application alleges that it was a breach of the parties' June 8, 2017 Resignation Agreement for the Respondent, the Regional Municipality of Waterloo Police Services Board (the "Board"), to file an Intent to Object form ("ITO") with respect to the initial entitlement decision of the Workplace Safety and Insurance Board ("WSIB") dated July 12, 2017.

Summary of the Respondents' Position

3. An ITO form is not an “appeal”. Rather, it is how the claim filed is obtained from the WSIB.

4. The WSIB’s Appeals Services Division Practice & Procedures defines an “appeal” as: “The process that occurs when a [workplace party] has completed an intent to object form, an appeal readiness form and the file is registered in the appeal services division to resolve”. In this case, no appeal readiness form was ever completed, nor was the file registered in the WSIB’s appeal services division. There never was any “appeal”.

5. Even if the ITO form were characterized as an “appeal” (which it was not), it did not contravene the Resignation Agreement because, as a matter of law, the Agreement could not waive participation in statutory WSIB processes. As the Court of Appeal for Ontario held in *Fleming v. Massey*, [2016 ONCA 70](#), leave to appeal refused, [2016 CanLII 33997](#) (SCC), “it would be contrary to public policy to allow employers and workers to contract out of [the workers’ compensation] regime” ([para. 34](#)). Accordingly, since the Agreement could not validly contract out of that regime, a WSIB appeal – even if there had been one, which, again there was not – could not breach the Agreement.

6. Ultimately, in addition to there being no appeal, there was no impact on Ms. Donovan’s entitlement to or receipt of WSIB benefits.

7. The filing of the ITO form was not a breach of the Settlement Agreement, and also had no effect that could give rise to any remedy before this Tribunal.

Removal of Individual Respondent

8. The ITO form complained of states on its face that the “Objecting Party” was Ms. Donovan’s employer, the Waterloo Regional Police Service. The Chief of Police at the time, Bryan Larkin, not been involved.

9. The Respondents have filed a Request for an Order During Proceedings, to have former Chief Larkin removed.

Extraneous Issues Raised by the Applicant

10. It is anticipated that Ms. Donovan will argue that events prior to the signing of the Resignation Agreement are relevant, to the interpretation of the Agreement or otherwise. They are not.

11. As this Tribunal has repeatedly recognized, a settlement is a contract and determinations under s. 45.9 of the *Code* are based on contractual principles: see for example *Maisonneuve v. Soullière*, [2018 HRTO 64](#), [para. 10](#).

12. In that regard, as the Court of Appeal for Ontario has held, “the parties’ intent and the meaning of their contract must be ascertained by looking at the actual words they used and the context in which they used them, but not by their subjective intention in using them: *Thunder Bay (City) v. Canadian National Railway Company*, [2018 ONCA 517](#), [para. 42](#), leave to appeal refused, [2019 CanLII 23877](#) (SCC).

13. Accordingly, what is relevant is the actual wording of the contract (in this case the Settlement Agreement signed by the parties on June 8, 2017), not any communications or events leading up to it, surrounding it, or after it.

14. In addition, beyond being irrelevant, any evidence of negotiations leading to the execution of the Resignation Agreement is inadmissible because it is subject to settlement privilege.

Conclusion

15. This sole issue on this application is narrow and straightforward: has Ms. Donovan proven that the Board's act of filing the ITO form with the WSIB contravened the parties' June 8, 2017 Settlement Agreement?

16. The Board's position is that there was no contravention by it, and Ms. Donovan's application should be dismissed.