IN THE MATTER OF A DUTY OF FAIR REPRESENTATION
ARBITRATION PURSUANT TO *THE POLICE SERVICES ACT*, R.S.O. 1990

BETWEEN

JEFFREY EMMONS
(the "Complainant")

AND

THE BRANTFORD POLICE ASSOCIATION
(the "Association")

ARBITRATOR — Diane Brownlee

APPEARANCES

FOR THE COMPLAINANT — Jeff Emmons
Elana Emmons

FOR THE ASSOCIATION — Caroline (Nini) Jones, Counsel
Lauren Pearce, Counsel

A HEARING IN THIS MATTER WAS HELD IN BRANTFORD, ONTARIO ON JUNE 5, 2019; WRITTEN SUBMISSIONS RECEIVED BY THE PARTIES ON JANUARY 30, FEBRUARY 28 and MARCH 1, 2020

INTERIM AWARD

[1] I was appointed pursuant to Section 124 (3) of the *Police Services Act*, R.S.O. 1990 (PSA) to hear and determine the complaint of Mr. Jeff Emmons, who alleges that the Brantford Police Association has breached its duty of fair representation ("DFR complaint").

[2] DFR complaints in other (non-police) sectors are typically dealt with by the Ontario Labour Relations Board (OLRB), and are governed by the OLRB's Rules of Procedure. The OLRB rules include processes for an applicant to provide full particulars of the complaint, and for a response to be provided by the respondent, in advance of a consultation process which determines whether the application will be dismissed or will be scheduled for a hearing.

[3] There are no similar procedures under the PSA to address DFR complaints. However, hearings under the PSA are governed by the *Statutory Powers and Procedures Act* (SPPA). Pursuant to Section 25 of the SPPA, I have the power to determine the procedures for this hearing.

[4] This Interim Award addresses procedural issues. For the purposes of this Interim Award, the relevant provisions of the SPPA are:

> **Liberal construction of Act and rules**
> 2. This Act, and any rule made by a tribunal under subsection 17.1 (4) or section 25.1, shall be liberally construed to secure the just, most expeditious and cost-effective determination of every proceeding on its merits. 1999, c. 12, Sched. B, s. 16 (1); 2006, c. 19, Sched. B, s. 21 (1).
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> **Application of Act**
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> 3. (1) Subject to subsection (2), this Act applies to a proceeding by a tribunal in the exercise of a statutory power of decision conferred by or under an Act of the Legislature, where the tribunal is required by or under such Act or otherwise by law to hold or to afford to the parties to the proceeding an opportunity for a hearing before making a decision. R.S.O. 1990, c. S.22, s. 3 (1); 1994, c. 27, s. 56 (5).

Disclosure

5.4 (1) If the tribunal's rules made under section 25.1 deal with disclosure, the tribunal may, at any stage of the proceeding before all hearings are complete, make orders for,

(a) the exchange of documents;

(b) the oral or written examination of a party;

(c) the exchange of witness statements and reports of expert witnesses;

(d) the provision of particulars;

(e) any other form of disclosure. 1994, c. 27, s. 56 (12); 1997, c. 23, s. 13 (11).

Other Acts and regulations

(1.1) The tribunal's power to make orders for disclosure is subject to any other Act or regulation that applies to the proceeding. 1997, c. 23, s. 13 (12).

Exception, privileged information

(2) Subsection (1) does not authorize the making of an order requiring disclosure of privileged information. 1994, c. 27, s. 56 (12).

Where character, etc., of a party is in issue

8. Where the good character, propriety of conduct or competence of a party is an issue in a proceeding, the party is entitled to be furnished prior to the hearing with reasonable information of any allegations with respect thereto. R.S.O. 1990, c. S.22, s. 8.

Hearings to be public; maintenance of order

Hearings to be public, exceptions

9. (1) An oral hearing shall be open to the public except where the tribunal is of the opinion that,

(a) matters involving public security may be disclosed; or

(b) intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the

desirability of adhering to the principle that hearings be open to the public, in which case the tribunal may hold the hearing in the absence of the public. R.S.O. 1990, c. S.22, s. 9 (1); 1994, c. 27, s. 56 (16).

Summonses

12. (1) A tribunal may require any person, including a party, by summons,

(a) to give evidence on oath or affirmation at an oral or electronic hearing; and

(b) to produce in evidence at an oral or electronic hearing documents and things specified by the tribunal, relevant to the subject-matter of the proceeding and admissible at a hearing. R.S.O. 1990, c. S.22, s. 12 (1); 1994, c. 27, s. 56 (23).

Evidence
What is admissible in evidence at a hearing
15. (1) Subject to subsections (2) and (3), a tribunal may admit as evidence at a hearing, whether or not given or proven under oath or affirmation or admissible as evidence in a court,

(a) any oral testimony; and

(b) any document or other thing,

relevant to the subject-matter of the proceeding and may act on such evidence, but the tribunal may exclude anything unduly repetitious.

What is inadmissible in evidence at a hearing
(2) Nothing is admissible in evidence at a hearing,

(a) that would be inadmissible in a court by reason of any privilege under the law of evidence; or

(b) that is inadmissible by the statute under which the proceeding arises or any other statute.

Use of previously admitted evidence
15.1 (1) The tribunal may treat previously admitted evidence as if it had been admitted in a proceeding before the tribunal, if the parties to the proceeding consent. 1994, c. 27, s. 56 (30).

Interim decisions and orders

16.1 (1) A tribunal may make interim decisions and orders.

Conditions

(2) A tribunal may impose conditions on an interim decision or order.

Reasons

(3) An interim decision or order need not be accompanied by reasons. 1994, c. 27, s. 56 (32).

Powers re control of proceedings
Abuse of processes
23. (1) A tribunal may make such orders or give such directions in proceedings before it as it considers proper to prevent abuse of its processes. R.S.O. 1990, c. S.22, s. 23 (1).

Limitation on examination
(2) A tribunal may reasonably limit further examination or cross-examination of a witness where it is satisfied that the examination or cross-examination has been sufficient to disclose fully and fairly all matters relevant to the issues in the proceeding. 1994, c. 27, s. 56 (37).

Control of process
25.0.1 A tribunal has the power to determine its own procedures and practices and may for that purpose,

(a) make orders with respect to the procedures and practices that apply in any particular proceeding; and

(b) establish rules under section 25.1. 1999, c. 12, Sched. B, s. 16 (8).

Rules
25.1 (1) A tribunal may make rules governing the practice and procedure before it. 1994, c. 27, s. 56 (38).

[5] A hearing in this matter was scheduled for January 24, 2020. Prior to the hearing, I received approximately 24 pages of correspondence from the parties, who were requesting pre-hearing orders related to procedure, production, issuance of summonses and other matters. I was unable to address the parties requests for pre-hearing orders in light of the fact that the parameters of the dispute had not been particularized. Accordingly, I directed the parties to attend the January 24, 2020 hearing prepared to stipulate the material facts they were relying upon and to bring the documents that they were relying on in support of the material facts.

[6] The Complainant, Mr. Emmons, attended the hearing on January 24, 2020, accompanied by his spouse, Ms. Elana Emmons. Consistent with my direction that the focus of the day was to establish the material facts that supported the Complainant's DFR complaint, and for the parties to provide all of the relevant documents that they were relying on, the Complainant spoke to the context of the dispute. He stipulated the material facts that form the basis of his DFR complaint. He provided explanations and context for the documents that he provided in support of his DFR complaint. Ms. Emmons was also permitted to speak throughout the hearing, to assist the Complainant in presenting his complaint and explaining the documents.

[7] The Complainant requested an extension until February 7, 2020 to provide other relevant documents that he intended to rely upon. The Association did not object, and I granted the Complainant's request for an extension.

[8] After Mr. Emmons completed his presentation, the Association also had the opportunity to explain the dispute from its perspective and to review the documents that it intended to rely on to support its position that it did not breach its duty of fair representation.

[9] At the end of the first day, it was agreed that after the Complainant provided the rest of his documents on February 7, 2020, the procedure for the hearing would be addressed through an email exchange.

[10] The Complainant provided his documents within the February 7, 2020 deadline.

Background Facts

[11] No evidence has yet been called. However, as described above, the parties have stated the material facts that they are relying on, and have explained the documents that they intend to rely on. A very broad overview of the factual

background can be given based on the relevant documents provided to me at the first day of hearing on January 24, 2020. The overview that follows is the briefest of overviews and is provided only to place the issues addressed in this decision in context. The complete facts will be set out in the final award which will address the merits of the DFR complaint.

[12] Broadly speaking, the circumstances surrounding the DFR complaint pertain to the Complainant's compensation, in particular the amount of top-up the Complainant is entitled to receive. As a person in receipt of WSIB and CPP – Disability benefits, the Complainant is entitled, pursuant to Article 10.04 of the collective agreement to receive a top-up from the Employer "in the amount required to supplement the WSIB benefit up to the net pay the member would receive from their regular salary".

[13] The provisions in the collective agreement that pertain to top-up were amended by an Interest Arbitration award of Arbitrator Laura Trachuk. The award was issued on July 25, 2017, and the change was to become effective on January 1, 2018.

[14] Issues arose between the parties concerning the implementation of the change. The Association alleged that the Employer had breached the new provision, and the parties referred the dispute back to Arbitrator Trachuk. On August 28, 2018, Arbitrator Trachuk issued a Supplemental Award addressing the issues. Arbitrator Trachuk found that "the way the Board had implemented Articles 10.04 and 7.09 [was] not inconsistent with the language of those provisions except, potentially, for its failure to take into account the tax consequences of receiving Canada Pension Plan Disability benefits." (my emphasis) Arbitrator Trachuk went on to say:

> "If employees are receiving Canada Pension Plan Disability Benefits and the Board is taking those benefits into account in determining the amount it must pay to top up their WSIB benefits it may need to take the tax consequences into account to ensure that the employees

> are receiving the appropriate amount. If there is such a practice, the parties are directed to exchange information about employees who may be affected by it."

[15] The Complainant was such an affected employee, who was in receipt of CPP-Disability benefits, and for whom the Employer needed to take the tax consequences of the CPP-Disability payments into account to ensure that he was receiving the appropriate amount. The Complainant's DFR arose in the context of determining the amount of top-up that he was entitled to as a result of the changes described above.

[16] The Complainant filed a grievance about his top-up in January 2019. The grievance was denied by the Employer on the basis that the parties were "continuing to explore the matter and hoped to have resolution in the near future".

[17] In the period between March and August, 2019, Association and the Employer exchanged draft Minutes of Settlement to resolve the top-up issues for all of the affected employees, including the Complainant. The Association and the Employer resolved all of the issues.

[18] The Complainant filed his DFR complaint as a grievance under the PSA. He requested the and requested the appointment of a conciliator on October 29, 2019. Conciliation was unsuccessful and the matter was referred to arbitration. A hearing date of January 24, 2020 was scheduled.

Orders Requested by the Parties

[19] At the start of the hearing on January 24, 2020, the Association requested an order prohibiting the recording of the proceeding. The Complainant agreed that the hearing should not be recorded. Accordingly, no participant is permitted to record any portion of this arbitration at any time.

[20] At the end of the first day of hearing, the Complainant reiterated his earlier request for pre-hearing orders, including:

1. Order the BPA union, and also consideration for the employer to provide the full accounting firms report, since arbitrator Brownlee informed the applicant and support, they are parties. The union to provide copies of the accountant report, financial break downs for the CTIT and amendments made by the union (as cited by the union, Tab 22 brief and President Baxter.
2. Order the matter must go directly to a hearing with witness's summons permitted;

[21] After the hearing, on January 30, 2020, the Complainant made an additional request for orders, which are set out below:

1. Order an abuse of process to be applied based on factual evidence, and case law supporting the union falsely provided evidence that was untrue;
2. Order for the full MOS to be opened up in an in-camera meeting between the Applicant arbitrator Brownlee, and union representative, that will show the presentation by the union mischaracterized the actual events as they unfolded. Arbitrator Brownlee consider all evidence from the union cannot be entered as there was a violation of law with issues relied upon, within the MOS. The union was provided a copy of the MOS, unlawfully from the employer, and the applicant cannot respond to any and all matters;
3. Order the BPA union, and also consideration for the employer to provide the full accounting firms report, since arbitrator Brownlee informed the applicant and support, they are parties. The union to provide copies of the accountant report, financial break downs for the CTIT and amendments made by the union (as cited by the union, Tab 22 brief and President Baxter.
4. Order the matter must go directly to a hearing with witness's summons permitted;
5. Order to permit the character of the union is in issue according to SPPA Section 8;
6. Order that during the May 22, 2020 (continuation) of hearing, the applicant is permitted to other interested parties attending;

Abuse of Process Order

[22] The basis of this request appears to be that the Complainant objects strenuously to the explanations that the Association provided in its presentation of its documents. The Complainant submitted that the Association mischaracterized the evidence in its presentation at the January 24, 2020 hearing in order to obtain an unfair advantage.

[23] It is not unusual for parties' to disagree about the meaning that should be given to documents, or for parties to use the same document in support of two different versions of events. It is not surprising in this case that the Complainant disagrees with the Association's characterization of the documents that it intends to put into evidence. It was also apparent at the hearing that the Association disagrees with the Complainant's characterization. Both parties have the right to explain their side of the dispute and to characterize the evidence that they believe supports their version. Neither party's characterization of the evidence can be considered to be true at this point. That determination will be made by me, after the evidence is completed, and the submissions have been heard.

[24] The Complainant was also concerned that I did not permit him to make submissions or refer to his case law at the hearing on January 24, 2020. The Complainant is correct that I asked him to focus on the presentation of his material facts and supporting documents and directed him not to make submissions in this regard. When the evidence is completed, both parties will be provided a full opportunity to make their submissions. Moreover, if an issue arises that requires submissions, both parties will be provided an opportunity to make submissions on the issue.

[25] I have the power under the SPPA to make orders to prevent an abuse of the hearing process. However, there is no basis for a finding at this time that any party has abused the hearing process or to make any orders to prevent an abuse of

process. This does not preclude any party from making a future request for orders to prevent an abuse of this hearing process.

Prior Settlement - MOS between the Complainant and the Employer

[26] Both parties referred to a confidential Memorandum of Settlement (MOS) that the Complainant entered into with the Employer to resolve a human rights complaint against the Employer. The Association has submitted that I should dismiss the DFR complaint that is before me, in whole or in part, because it is already covered by comprehensive minutes of settlement that the Complainant entered into with the Employer. The Association submitted that the confidentiality portions of the MOS should be abridged so that the MOS can be admitted for the purposes of this hearing. The Complainant has also requested that the MOS be admitted as evidence in this hearing, but has requested that the MOS be produced in an "in-camera" meeting where the contents of the MOS can be discussed privately between the arbitrator, the Complainant and Counsel.

[27] This interim award addresses the production of the MOS at this stage of the hearing process. It does not address any other issues that have been raised by the Complainant, or that might arise in the future, pertaining to the MOS.

[28] The MOS is clearly relevant to at least one of the issues before me; that is, whether I should dismiss the complaint in whole or in part because it has already been resolved. There is no dispute between the parties that the MOS should be produced. However, the MOS is a confidential document, and in light of this, there should be conditions attached to its production to protect the confidentiality provisions of the MOS.

[29] Therefore, I order that the MOS be produced only for the purposes of this hearing and for no other purpose. The confidentiality of the MOS is to be preserved for all other purposes. Specifically, the MOS is not to be shown or provided to any other party or person once the hearing is completed. If members

of the public attend the hearing, they will be excluded from the hearing room during the portions of the hearing where the MOS is being discussed.

Production of Accounting Report and financial breakdowns

[30] The Complainant requested that I order the Association to produce a report that was prepared for the Employer by an accountant or accounting firm. It appears that the Employer engaged an accounting firm for assistance with respect to the calculation of the top-up for affected employees. It is not clear whether the Complainant is requesting that the entire report be produced, or just the portion that pertains to the calculation of his top-up.

[31] The Association submitted that it does not have a copy of this report and that it cannot produce material that is not in its care and control.

[32] The Association is not required to produce a document that it does not have in its possession. The Complainant's request for an order that the Association produce the accounting report is denied.

[33] In addition to his request for production of the accounting report, the Complainant requested an Order for the Association to produce "financial break downs for the CTIT and amendments made by the union". The Association submitted that it has already produced all arguably relevant documents pertaining to these issues. In light of this, there is no basis for me to issue an order for production of records pertaining to the financial breakdowns for the CTIT or amendments made by the Association. If any further arguably relevant documents are found, the Association is ordered to produce them to the Complainant.

Request for Summonses

[34] The Complainant has requested that I issue summonses for a number of people to appear at the hearing and testify. The Association opposes the Complainant’s requests for summonses.

[35] I have the power to issue summonses pursuant to Section 12 (1) of the SPPA. The requirement in the SPPA for the issuance of a summons is that the evidence to be given is relevant to the subject-matter of the proceeding and admissible at a hearing.

[36] It is important to be very clear about the issues that are before me. The issue before me is not how much top-up the Complainant is entitled to. Rather, the issue is whether, in resolving the issue of the Complainant's top-up with the Employer, the Association breached its duty of fair representation by acting in a manner that was arbitrary, discriminatory or in bad faith. The Complainant has made allegations against the Association that he submits constitute actions that were arbitrary, discriminatory and/or in bad faith. The evidence that is relevant in this proceeding is the evidence that speaks to these allegations.

[37] The Complainant has provided his reasons for the summonses he has requested. These reasons are set out below.

[38] Mr. Mark Baxter is the president of the Brantford Police Association. There is no doubt that Mr. Baxter's testimony would be directly relevant to the issues before me. However, the Association has given an undertaking to call Mr. Baxter, as its only witness, to testify. The Complainant will be able to cross-examine Mr. Baxter. In light of this, there is no need for me to issue a summons to Mr. Baxter and I decline to do so.

[39] Ms. Leesa Bell holds the position of secretary of the Association. The Complainant submitted that Ms. Bell would testify about Association meetings, discussions about the Complainant's CPP-D, monetary compensation and union by-laws. The evidence that the Complainant seeks to call through the evidence of Leesa Bell can be called through Mr. Baxter, who will be a witness in this proceeding. I therefore decline to issue a summons for Ms. Bell.

[40] Mr. Rob Davies is the Chief of Police for the City of Brantford. The Complainant submitted that Chief Davies would testify about compensation provided under the collective agreement and about the accounting firm allegedly retained by the Employer. The Complainant submitted that Chief Davies would also be able to produce emails between the Employer and the Complainant about the Complainant's compensation. Chief Davies would be testify that the complainant's compensation is not accurate based on the collective agreement, salary and net pay.

[41] The email evidence that the Complainant seeks to establish through the testimony of Chief Davies is not necessary, since this evidence can be established through the Complainant's testimony. There is no need for Chief Davies to testify for this purpose. There is also no need for Chief Davies to testify about the provisions in the collective agreement or about the Complainant's compensation. All of that evidence can be provided through the documents and through the Complainant's testimony.

[42] Although the Complainant has not requested a subpoena duces tecum, it is apparent that the Complainant is also seeking to have the accounting report admitted through Chief Davies' testimony. I will address this issue. It is my view that the accounting report is not relevant to the issues in this proceeding. The basis for the Complainant's request to admit the accounting report is that there is content in the accounting report that is relevant to the issue of the calculation of the CTIT and the compensation owed to him by the Employer. It is clear that this accounting report is arguably relevant to the issue of the calculation of the Complainant's top-up, which was resolved by the Association and the Employer. However, as discussed above, that issue is not before me. The issue before me is whether the Association acted in a manner that was arbitrary, discriminatory or in bad faith. The failure of the Association to obtain and provide the accounting report to the Grievor is one of the material facts that the Complainant relies upon establish his DFR complaint. However, it is not at all clear how the contents of the accounting report will help me to determine whether the Union's failure to

obtain and provide it to the Complainant was a breach of its duty to represent the Complainant. For that question, it is sufficient that the document existed, and the Association decided not to request it from the Employer or provide it to the Complainant when the Complainant requested that the Association do so. None of these facts are in dispute.

[43] Moreover, the portion of the accounting report that address the calculation of the CTIT and the compensation owed to the Complainant has already been provided to him by the Employer's counsel, and is one of the documents in the Association's document book. To the extent that this content provides some context that is important in order for me to understand the dispute between the parties, it is likely that it will be admitted as evidence.

[44] In light of all of the foregoing, I find that the proposed evidence of Chief Davies is not relevant to the issues before me, and/or is repetitive. I decline to issue a summons for Chief Davies.

[45] Ms. Joelle Daniels is the CGA Director of Finance at the City of Brantford. The Complainant submitted that Ms. Daniels would testify to "exactly what is amiss". She would provide details of the financial disclosure and discrepancies in the accounting firm report and can show that there is no buffer as clearly stated by the employer. The Complainant has not provided any details about how Ms. Daniels proposed evidence would speak to the alleged arbitrary, discriminatory or bad faith actions of the Association. I am not persuaded that Ms. Daniels would be able to provide any relevant information pertaining to the issues before me. I decline to issue a summons for Ms. Daniels.

[46] Ms. Tabitha Fischer is a senior officer in charge of Human Resources for the Brantford Police Service. The Complainant submitted that Ms. Fischer would testify about compensation for disabled officers, and that she would be able to confirm or deny information about the accounting firm. She would be able to provide details about the calculation of the CTIT including whether there was a

buffer. The Complainant has not provided any details about how Ms. Fischer's proposed evidence would speak to the alleged arbitrary, discriminatory or bad faith actions of the Association. I am not persuaded that Ms. Fischer would be able to provide any information related to the issues before me. I decline to issue a summons for Ms. Fischer.

Character of the Association

[47] The Complainant has requested an "Order to permit the character of the union is in issue according to SPPA Section 8". Section 8 of the SPPA provides:

> Where the good character, propriety of conduct or competence of a party is an issue in a proceeding, the party is entitled to be furnished prior to the hearing with reasonable information of any allegations with respect thereto. R.S.O. 1990, c. S.22, s. 8.

[48] There are no issues in this proceeding which require me to make any findings about the character of any person or of the Association. Accordingly, Section 8 of the SPPA has no application to this matter.

Hearing Open to the Public

[49] The Complainant has requested an order that the hearing is open to the public. Section 9 of the SPPA provides that an oral hearing (which this hearing is) is open to the public, unless certain conditions apply. No party has submitted that the hearing ought not to be open to the public. Accordingly, Section 9 of the SPPA applies, and the hearing is open to the public.

Procedure for the Hearing

[50] The Association has requested that I issue directions to the parties for the conduct of the hearing. In particular, the Association requests for direction are:

1. An order dispensing with the need for opening submissions. The Association submitted that the parties have already thoroughly canvassed their respective positions at the January 24, 2020 hearing.
2. An order that the documents that the parties seek to tender into evidence should be admitted without the need for formal proof. If there is an objection by the other party, the Arbitrator should determine whether and to what extent authentication is required before the document will be admitted (if at all) and for what purposes the document will be admitted. Nothing shall be taken to restrict the parties' ability to argue what weight should be accorded to the documents admitted on this basis.
3. The parties should be permitted to examine and cross-examine witnesses at the hearing solely to the extent that the Arbitrator considers their evidence to be relevant and necessary to supplement the documentary record or resolve a matter of factual dispute. The parties should be required to deliver witness lists and a summary of each witness' anticipated evidence at least two weeks before the hearing. At the outset of the hearing, the Arbitrator should issue a direction as to which witness will be heard.

[51] On basic principles, the parties are entitled to a hearing that is fair and expeditions. The purpose provisions of the SPPA refer to the importance of providing not only a just hearing process, but also a process that provides the "most expeditions and cost-effective determination of every proceeding on its merits".

[52] With the exception of dispensing with opening statements, the Complainant did not oppose the Association's suggested process. I am of the view that it is appropriate to provide some direction to the parties. There are a number of unusual elements in this case that persuade me that clarity of both the issues and the hearing process will facilitate the conduct of a fair and expeditious hearing for both parties. These elements include the apparent level of acrimony between the parties which appears to be preventing any cooperation between them, and which appears to be contributing to the volume and nature of the ongoing requests for orders. Moreover, there is a continuing relationship between the parties, which should not be further eroded by the litigation of this DFR complaint.

[53] I will address the Complainant's objection to dispensing with the need for opening statements on May 22, 2020. The parties have already provided extensive opening statements, describing their position in relation to the issues to be determined in this hearing. Indeed, the remarks of the parties on January 24, 2020 can be described as very robust openings. However, in fairness to the Complainant, there was no discussion on January 24, 2020 about limiting the opportunity for opening remarks. Moreover, the Complainant has not yet had the opportunity to make opening remarks about the documents that he provided by the February 7, 2020 deadline. Therefore, I will allow the parties to supplement their opening statements, to the extent that is necessary, without being repetitive. In light of the extensive opening statements that were made on January 24, 2020, I anticipate that any supplemental opening comments would be quite brief.

[54] In light of all of the foregoing, I am granting the Association's requested directions, with some clarifications inserted.

[55] Having considered all of the parties submissions, I issue the following orders.

ORDERS

1. No participant is permitted to create a recording of any portion of the hearing. This does not preclude any participant from making their own written or typed notes of the arbitrations proceedings.

2. The Complainant's request for an order finding that an abuse of process has occurred is denied. This does not preclude any party from requesting future orders to prevent an abuse of process.

3. The MOS between the Complainant and the Brantford Police Services Board shall be produced solely for the purpose of determining this DFR complaint. The confidentiality provisions of the MOS shall be preserved

for all other purposes. For clarity, the MOS is not to be shown or provided to any other party or person once the hearing is completed. If members of the public attend the hearing, they will be excluded from the hearing room while MOS is being discussed.

4. The Complainant's request for further production from the Association is denied. However, if additional arguably relevant documents are found, the parties are ordered to produce them in advance of the May 22, 2020 hearing date.

5. The Complainant's requests for a summons for Mr. Baxter is denied on the basis of the Association's undertaking to call Mr. Baxter as a witness.

6. The Complainant's request for summonses for Chief Davies, Ms. Leesa Bell, Ms. Joelle Daniels and Ms. Tabitha Fischer are denied for the reasons outlined earlier in this award.

7. Section 8 of the SPPA has no application to this matter. It is not necessary for me to issue any orders with respect to the character of the Association.

8. The hearing is open to the public in accordance with Section 9 of the SPPA.

9. The parties may make supplemental opening statements, if necessary, without being repetitive. I anticipate that such supplemental openings will be quite brief, for the reasons given earlier in this award.

10. With respect to the hearing process and admission of evidence, the parties are directed as follows:
    a. The parties shall deliver witness lists and a summary of each witness' anticipated evidence on or before May 8, 2020.

b. After brief supplemental opening statements, if any, the hearing on May 22, 2020 shall commence with the Complainant's evidence.
c. Unless the other party objects, documents tendered by either party shall be admitted into evidence without the need for authentication
d. I will hear witness testimony only to the extent that the proposed evidence is relevant and necessary to supplement the documentary record or resolve a material factual dispute.

Dated this 13th day of April, 2020

Diane Brownlee

Diane Brownlee, Sole Arbitrator