

IN THE MATTER OF AN ARBITRATION
PURSUANT TO THE *POLICE SERVICES ACT*, R.S.O. 1990, C. P.15

BETWEEN:

Heather McWilliam

(The “Complainant”)

-and-

Toronto Police Association

(The “Association”)

AND IN THE MATTER OF A COMPLAINT BY HEATHER McWILLIAM ALLEGING A
BREACH OF THE ASSOCIATION’S DUTY OF FAIR REPRESENTATION

Interim Award

Ian Anderson, Sole Arbitrator

APPEARANCES:

For the Complainant:

Gary Bennett, Counsel
Sharon Yeboah, Counsel
Heather McWilliam

For the Association:

Caroline V. (Nini) Jones, Counsel
Olivier Bishop-Mercier, Counsel
Drew Johnston

Hearing held in Toronto, November 2, 2023.

Award issued November 3, 2023.

1. The Complainant alleges that the Association breached the duty of fair representation it owes her.
2. Outside of the police sector, the *Labour Relations Act, 1995* (the “OLRA”), generally applies to duty of fair representation complaints. Section 74 of the OLRA contains an express duty of fair representation and section 114 gives the Ontario Labour Relations Board (the “OLRB”) exclusive jurisdiction to determine whether the duty has been breached. The OLRB does not have jurisdiction over the labour relations of the police and the *Police Services Act* does not contain an express duty of fair representation. There is, however, no dispute that the Association owes the Complainant a duty of fair representation or that I have jurisdiction, as a “rights” arbitrator appointed pursuant to the *Police Services Act*, to hear and determine a complaint alleging a breach of that duty. In any event, that duty and jurisdiction have been recognized by the Court of Appeal for Ontario: see *Renaud v. Lasalle (Town of Police Assn.)* (2006), 216 OAC 1 (CA); *Cumming v. Peterborough Police Association*, 2013 ONCA 670.
3. A hearing was convened on November 2, 2023, during which representations were made on behalf of the Complainant and the Association on issues of case management.
4. Among the remedies sought by the Complainant is an order directing the Association to initiate various grievances. Such an order, if granted, may affect the legal interests of the Complainant’s employer, the Toronto Police Services Board. Accordingly, the Association is directed to give notice of these proceedings to the Toronto Police Services Board.
5. The Association intends to raise objections to various allegations contained in the Complaint, on the basis of delay and that some allegations fall outside of the jurisdiction of an arbitrator to address. It seeks to have those allegations struck. The Association also asserts the remedial relief sought by the Complainant is disconnected from and cannot be sustained by the allegations of breach of the duty of fair representation which remain even if those allegations are treated as true. That is, the Association asserts there is no *prima facie* case for the relief sought.
6. The written Complaint is 55 pages long (exclusive of 135 pages of attachments) and the Association seeks to have many of its paragraphs struck. In my view, the objections of the Association which may be dealt with expeditiously, and without the

need for evidence, are appropriately dealt with in an expeditious manner on a preliminary basis, and without prejudice to the right of the Association to raise further objections. Accordingly, the Association is directed to provide a preliminary Response to the allegations set out in the Complaint, by March 8, 2024. The Association will be permitted to file a supplementary Response, if it requests to do so, once the preliminary objections have been addressed

7. Unless otherwise agreed or ordered, the hearing will proceed on the dates set on November 2, 2023, and the preliminary objections of the Association will be heard in their entirety on the first of those dates.

Dated this 3rd day of November, 2023.

"Ian Anderson"

Ian Anderson

Arbitrator