



ONTARIO POLICE ARBITRATION COMMISSION

BUSINESS PLAN FISCAL YEARS 2015-16 through 2017-18

December 10, 2015



ONTARIO POLICE ARBITRATION COMMISSION

BUSINESS PLAN

**FISCAL YEARS
2015-16 to 2017-18**

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ONTARIO POLICE ARBITRATION COMMISSION BUSINESS PLAN

FISCAL YEARS
2015-16 – 2017-18

EXECUTIVE SUMMARY

In accordance with the Labour Relations Part VIII of the *Police Services Act (PSA)*, the Ontario Police Arbitration Commission (the Commission) appoints conciliators and mediator-arbitrators to assist police associations and police services boards across the Province to resolve outstanding labour relations grievances and contract bargaining disputes.

Conciliation: During the last fiscal year (2014-15), 106 new requests for conciliator appointments were received. Including carryovers, 120 conciliation files were handled with a total of 90 conciliation meetings being held during the year. Staff were able to set a conciliation meeting date within 14 days of the conciliator being appointed. The average number of business days from the receipt of request to first contact was 1.39 days. A detailed summary of conciliation activity is attached in Appendix 1.

Mediation/Arbitration: There were 21 new applications requesting the appointment of an arbitrator in fiscal year 2014-15. Including carryovers, 44 arbitration files were handled and 19 hearings were held; 4 files settled at or prior to arbitration; 4 files were mediated settlements; 8 awards were delivered and 2 matters were adjourned sine die. The remaining files are in process with hearings scheduled into fiscal year 2015-16. The average number of business days from receipt of the application to first contact was 1.89 days. A detailed summary of arbitration activity is attached at Appendix 2.

Appointment of Conciliators and Mediator-Arbitrators: The Chair of the Commission maintains a roster of persons who may be appointed as conciliators and mediator/arbitrators to hear both interest and rights disputes. Appointments for fiscal year 2014-15 numbered 90 conciliators and 21 mediator-arbitrators. Criteria used to appoint include geographical location, issue, and number of previous appointments.

Dissemination of Labour Relations Information and Research Materials: The Commission maintains and disseminates research materials including arbitration summaries, decisions and collective agreements which are available online at www.policearbitration.on.ca or onsite at 25 Grosvenor Street, Toronto. New arbitral decisions are distributed within one week of receipt.

Revenues and Expenditures: The Commission's budget for fiscal year 2014-15 was four hundred and fifty-eight thousand, seven hundred dollars (\$458,700). The Commission operated over-budget for a pressure of sixty-six thousand, five hundred and ninety-eight dollars (-\$66,598). Total expenditures were five hundred and twenty-five thousand, two hundred and ninety-eight dollars (\$525,298). There was no revenue. The financial report for fiscal year 2014-15 is located In the Financial Budget and Staffing Section.

MANDATE

Responsibilities of the Ontario Police Arbitration Commission as outlined in the Memorandum of Understanding between the Commission and the Ministry of Community Safety and Correctional Services:

- promote harmonious labour relations in the police community;
- administer the mediation-arbitration process for police contract bargaining disputes and rights grievances;
- provide conciliation services prior to arbitration;
- assist parties negotiating a voluntary collective agreement;
- sponsor research with respect to police arbitration processes and awards.

Mission Statement

The Commission is an independent adjudicative agency whose mission is to provide for the neutral administration of the Labour Relations, Part VIII, of the *Police Services Act (PSA)* in an effective and timely manner.

Legislative Authority

The legislative authority of the Commission is set out under section 131(1) of the *Police Services Act*, R.S.O. 1990, c.P. 15 as amended. The statutory responsibilities of the Commission are set out specifically in subsection 131 (5).

The Commission is subject to the *Accessibility for Ontarians with Disability Act, 2005*; *Occupational Health and Safety Act*; *Freedom of Information and Protection of Privacy Act (FIPPA)*; *Public Service of Ontario Act, 2006 (PSOA)*, the *Human Rights Code* and all other applicable laws as well as government policies and directives including the Agencies and Appointments Directive (AAD).

A Memorandum of Understanding (MOU) governs the operational, administrative and reporting relationships between the Commission and the Ministry of Community Safety and Correctional Services. The term of the MOU is five years or until such earlier time as all parties agree to a new MOU. The sunset review date is May 9, 2017.

Reporting Requirements

The Commission is accountable for the following reporting requirements:

- Memorandum of Understanding – The MOU is signed by the Chair of the Commission and the Minister of Community Safety and Correctional Services. This agreement serves as an important tool to promote mutual understanding of the roles and responsibilities of each party (Minister, Deputy Minister, Board, Chair, and Executive Officer.)

- **Business Plan** – Each year, the Commission must submit a business plan to the Minister of Community Safety and Correctional Services for approval, which covers a three-year period. This plan is a key requirement for accountability under the Agencies and Appointees Directive (AAD) and one of the most important tools in maximizing an organization's likelihood of success in meeting its goals and objectives.
- **Annual Report** – Each year, the Commission prepares an Annual Report documenting how the agency fulfilled its mandate during the preceding fiscal year. It provides a retrospective look at the fiscal year and it includes performance targets, performance, accomplishments, financial statements and appointees.
- **Compliance Attestation** – Each year, the Chair of the Commission must send a letter to the Minister of Community Safety and Correctional Services confirming compliance with legislation, directives, and accounting and financial policies
- **Risk Assessment Evaluation** – Quarterly reporting is made to Treasury Board/MBC on each high risk the Commission faces including a description of the risk, the reasons it is a high risk, and what management plan is in place to manage the risk. This reporting requirement ensures effective management of risks for the Commission and Ministry.
- **Public Posting** – To fulfil the government's objective to increase transparency, the Memorandum of Understanding, Business Plan, Annual Report and expense information for appointees and senior executives must be posted on the Commission website.
- **Mandate Review** – The Commission's mandate sets out the parameters within which it may perform its responsibilities or provide services, and Ministries must complete reviews of the mandate once every seven years.

STRATEGIC DIRECTION

The Commission is committed to providing easily accessible, quality, fast and efficient conciliation and mediation-arbitration services to police associations and police services boards across the province.

Key strategies include:

- ***ensuring the timely delivery of service by qualified professional conciliators and mediator-arbitrators;***
- ***informing and educating the police community to improve labour relations;***
- ***improving stakeholder accessibility to the application process for conciliation and arbitration appointments and Commission research materials;***
- ***exploring and implementing environmentally-friendly alternatives for operational requirements;***
- ***researching and investigating possible improvements to website.***

These key strategies link the core businesses of the Commission with Ontario Government and the Ministry of Community Safety and Correctional Services to provide an accessible, accountable and innovative justice system, and support and deliver quality services by ensuring service continuity and improvement.

OVERVIEW OF PROGRAMS AND ACTIVITIES

Conciliation Services

The purpose of conciliation is to assist municipal police associations and police services boards reach a mutually agreeable resolution to a dispute without proceeding to arbitration. Conciliation is the preferred method of settling disputes. The Commission utilizes the services of four experienced, private-sector conciliators who are paid a per diem per case which allows staff to draw on a greater number of meeting dates within any given timeframe. This expertise and capability to hold multiple hearings on the same day in various locations throughout the Province ensures the provision of a responsive, efficient and effective service to stakeholders.

The Commission looks at ways to address conflict in workplace relationships before issues escalate into grievances. The utilization of the voluntary Workplace Relationship Improvement Program (WRIP) to assist police services boards and associations to develop good working labour relations has grown through word-of-mouth recommendations. Where appropriate, the WRIP is used by the Chair and Commission conciliators to identify and discuss with police services boards and associations the ways in which they can improve their day-to-day working relationship.

Mediation-Arbitration Services

Where the parties are unable to resolve their differences through conciliation and cannot agree on the joint appointment of an arbitrator, either party representing a police association or police services board may request the appointment of an arbitrator by applying to the Commission. In October 1997, the *Police Services Act* was amended to make provision for an assisted dispute resolution (ADR) mechanism to deal with all police contract bargaining disputes. As a result, the emphasis on mediation prior to arbitration has increased the rate of settlement between police services boards and associations in interest and rights disputes.

Appointment of Mediators/Arbitrators

Section 131(6.2) of the *Police Services Act* requires the Chair of the Commission to establish and maintain a roster of mediator/arbitrators. The Commission meets this requirement by utilizing the services of approximately thirty private-sector mediator/arbitrators to hear both interest and rights disputes. The roster is reviewed periodically.

Dissemination of Labour Relations Information and Research Materials

The Commission continues to be committed to providing information on the Commission and its services to stakeholders and the public in a transparent and easily accessible manner. The Commission website (www.policearbitration.on.ca) provides stakeholders and their representatives, legal counsel, labour relations personnel in the broader public sector and the general public, access to a current and historical database of rights and interest arbitration awards for police in Ontario. The Commission also maintains an archive of collective agreements between police services boards and associations.

RISK IDENTIFICATION, ASSESSMENT AND MITIGATION STRATEGIES

Through the quarterly risk assessment exercise, the following have been identified as potential risks to the Commission:

Financial

1. **Website:** Following the Government announcement of OneSite strategy and implementation to simplify Ontario's web presence, the Commission's current website platform (Stellent) will no longer be supported by the Ministry. The Commission is working with Justice Technology Services (JTS) on plan development and team procurement. In order to migrate the Commission's existing web content and complex award classification system to a new platform, JTS will require the expertise of a third party developer, estimated to cost ten thousand dollars (\$10,000.) Additional costs, including training and site design are estimated at eleven thousand dollars (\$11,000) bringing the total project cost to an estimated twenty-one thousand dollars (\$21,000.)

Additional funds were not provided to the Commission in the 2015-16 budget allocation to cover the cost of this project, however the Commission has allocated twenty thousand dollars (\$20,000) towards this project in the 2015-16 forecast by implementing cost saving measures in other operational areas.

The Commission will monitor opportunities to realize operational efficiencies to pay for the website development and maintain dialogue with the Business and Financial Planning Branch to provide updates on progress.

2. **Mandate Review:** The Commission is scheduled to have a Mandate Review completed by Q4 of 2015-16. Third party consultants are required to perform mandate reviews on behalf of adjudicative agencies. The estimated procurement of a third party consultant to provide this service is thirty-five thousand dollars (\$35,000.) This requirement was not known to the Commission when forecasting 2015-16 expenses and is not included in the current budget. If the Commission is required to pay for the mandate review, it is unlikely that the Commission will have the estimated funds remaining in the currently allotted baseline 2015-16 budget.

It is expected that costs resulting from the mandate review will be paid by the Ministry and offset from a corporate mandate review fund held by Treasury Board Secretariat (TBS). In the event that funds are not available from TBS, the Commission will work with the Ministry to determine an appropriate strategy to pay for the services, including opportunities for the Ministry to assume all or partial costs.

Operational

1. **Increase in Conciliation and Arbitration Assistance:** The number of police associations and boards seeking assistance through conciliation and arbitration varies from year to year depending upon the economic environment or particular issues being negotiated/grieved within the police labour community. The risk of unanticipated increase in volume of requests for conciliation and mediation-arbitration may increase and create operational pressures for the Commission.

The increase in applications for conciliation or arbitration services can provide opportunities to schedule multiple hearings for the same municipalities on the same day to reduce travel expenses and meeting room fees. Cost saving initiatives can be taken in other operational areas to offset potential increase in service delivery fees.

2. **Individual and Duty of Fair Representation Grievances:** Possible Judicial Reviews respecting Commission jurisdiction to appoint in individual and duty of fair representation grievances, arising initially out of the "*Renaud*" Ontario Court of Appeal decision, may increase Commission legal costs and create additional operational pressures. See explanatory note on *Renaud* and a five-year summary for individual and duty of fair representation disputes at Appendix 3. Cost saving initiatives can also be taken in other operational areas to offset potential legal fees.

In these instances, the Commission would attempt to manage within existing resources. Additionally, the following cost saving initiatives will be implemented to mitigate the financial and operational risks identified above:

- Utilize municipal meeting spaces at no cost for conciliation hearings as well as schedule multiple hearings on one day, where possible
- Electronic file sharing to reduce courier and mail fees, office supply usage
- Cancel memberships and subscriptions to labour law periodicals and opting for lower costing online alternatives

ENVIRONMENTAL SCAN

Over the next three years, the Commission anticipates:

1. The pressure on police services boards to reduce costs related to compensation due to the economic environment may impact working relationships between boards and associations. Consequently, an increase in the number of applications to appoint for conciliation and arbitration may occur. Board and association members may take a more pro-active approach to foster healthy workplace relationships by participating in the Commission's Workplace Relationship Improvement Program.
2. Increased awareness and understanding of mental health issues including post-traumatic stress disorder among officers may lead to a rise in applications for conciliation and arbitration services regarding accommodation/duty to accommodate, and duty of fair representation.
3. Heightened privacy concerns from applicants, witnesses, victims and other individuals whose names and/or testimonies are included in publically available awards. The ease of online searching may create an increase in requests for access to information or requests for protection of privacy under the Freedom of Information and Protection of Privacy Act (FIPPA).
4. Potential legislative changes respecting "interest" disputes will impact the volume of applications the Commission receives. Should legislation be enacted, it is possible the number of rights grievances will increase and requests to the Commission for the appointment of conciliators and arbitrators will also increase.

5. Increasing trend by Courts to decline jurisdiction and refer disputes to adjudicative bodies where this had not formerly been the case (e.g. non-association grievances, duty of fair representation grievances and Charter of Rights grievances).
6. Outcomes of grievances and awards delivered by arbitrators on contentious issues in the policing community, such as mandatory retirement and suspension without pay, may result in a rise in the number of requests for conciliation and arbitration from municipalities across the Province with respect to these matters.
7. Increasing complexity of rights disputes results in higher costs to stakeholders and the Commission due to more hearing days per dispute.

In each of these instances a heavier workload and/or greater expense may occur. However, the outcome is still unknown and the Commission would attempt to work within its budget.

HUMAN RESOURCES

Staff members are an integral part of the Commission meeting its mandate. A key priority for the Commission is filling the Executive Officer and Conciliation Services Assistant after the retirement of two employees. These vacancies are to be filled with permanent staff, rather than fixed contract staff. With three full time employees, the Commission will be able to reach performance targets and operate efficiently to facilitate reliable programs and services. An increase in applications for business activities can drastically impact the quantity of work and efficiency of the Commission's performance. Having a full complement of three permanent full time staff members will ensure the Commission has the human resources in place to handle an increase in activities, vacation and sick time coverage, and operate as efficiently as possible over the next three years.

Competition for the Executive Officer position is scheduled to take place in December, 2015. Once this position is filled, the Commission will be able to reanalyze staffing needs and hold a competition for the Conciliation Services Assistant position in early 2016.

The Commission utilizes four private-sector conciliators and approximately thirty private-sector mediator/arbitrators to deliver legislated programs and services. Per Diem rates are much lower than those in the private sector for these services, which can pose challenges in attracting and retaining experienced conciliators and mediator/arbitrators for the Commission's roster. An aging roster will soon encounter retirements, which can create opportunities to attract new mediator/arbitrators. Per Diem rates and recruitment of fee for service staff is something the Chair and Board is aware of and will be looking for recommendations on over the next few years.

PERFORMANCE MEASURES

Overall performance measures to ensure key objectives are met include the following:

1. Core Business Function: Conciliation

Objective	Measures
Ensure timely delivery of conciliation services by qualified professionals	<ul style="list-style-type: none"> • Provide hearing dates within 14 days of receipt of request for conciliator • Maintaining the response time from receipt of application to first contact – Average 1.39 days. (Ministry standard is 5 days)

2. Core Business Function: Mediation-Arbitration

Objective	Measures
Ensure timely delivery of mediation-arbitration services by qualified professionals	<ul style="list-style-type: none"> • Provide hearing dates within 30 days of receipt of request for arbitrator • Maintaining the response time from receipt of application to first contact – Commission Average 1.89 Days. (Ministry Standard is 5 days)

3. Core Business Function: Maintain and Disseminate Information & Research Materials

Objective	Measures
Improve stakeholder accessibility to the application process and research materials	<ul style="list-style-type: none"> • Updating list of Collective Agreements on the Commission Website within 1 week of their release • New awards to be entered on website within 1 day of receipt of summary

FINANCIAL BUDGET AND STAFFING

Although much of the Commission's expenditures are mandated by legislation and the level of demand is beyond its control, the Commission consistently meets its key objectives and historically has operated within its budget allocation. The Commission's budget supports three

full-time staff. The remaining budget is allocated to the provision of conciliation and mediation-arbitration services to police across Ontario and other direct operating expenses.

The Commission employs two permanent full time staff and one temporary contract member in order to meet operational requirements. The Commission is working with the Ministry's Human Resources and Recruitment services to fill the vacancies with permanent staff by March, 2016.

Financial Report

The Commission's budget for the fiscal year 2014-15 was revised from four hundred and fifty-eight thousand, seven hundred dollars (\$458,700) to five hundred and twenty-five thousand, two hundred and ninety-eight dollars (\$525,298), for a total variance of sixty-six thousand, five hundred and ninety eight dollars (-\$66,598).

The increase in budget was a result of costs related to employees exiting the Government through the Transitional Exit Initiative (TEI) and retirement. Consequentially, further expenses were incurred from the hiring of temporary help to fill the vacancy created by employees exiting the Government.

Financial Outlook

The proposed budgets for the following two years are each four hundred and fifty-eight thousand seven hundred dollars (\$458,700) each year.

Expenditures are expected to steadily rise over the next three years as applications for services are on an upward trend, per diems for fee for service staff are being evaluated, and staff merit salary increases. Barring unforeseen pressures and taking the previously mentioned risks into account, the Commission should operate within 5% of its proposed budgets until the final year of this plan, fiscal year 2017-18.

INFORMATION TECHNOLOGY AND ELECTRONIC SERVICE DELIVERY

The Commission's website is an integral tool used for providing historic information on arbitration decisions to stakeholders and the public. The website is also used to communicate policies, procedures, and accountability documents.

The Commission is changing its website platform in fiscal year 2015-16 following the announcement of the Government's initiative to simplify Ontario's online presence. This change in platforms will allow for modernization of the Commission's online presence.

During the website update in fiscal year 2015-16, a review of the accessibility of the website to persons with disabilities is to be carried out. The Commission is committed to supporting the Government's initiative for accessibility, diversity and inclusivity internally and as a model to businesses within the community and the public in general.

Staff will continue to look at ways to streamline the administration process and the input and posting of new data to the Commission's website. Currently, the Commission accepts application forms by mail, email and fax.

INITIATIVES INVOLVING THIRD PARTIES

The Commission deals with municipal police services boards and police associations as part of its mandate. The major stakeholders, including the Police Association of Ontario and the Ontario Association of Police Services Boards, recommend two members each for Order-in-Council appointments to the Commission.

The Commission utilizes the services of four private-sector conciliators and approximately thirty private-sector mediator/arbitrators who are necessary for the delivery of the Commission's programs and activities.

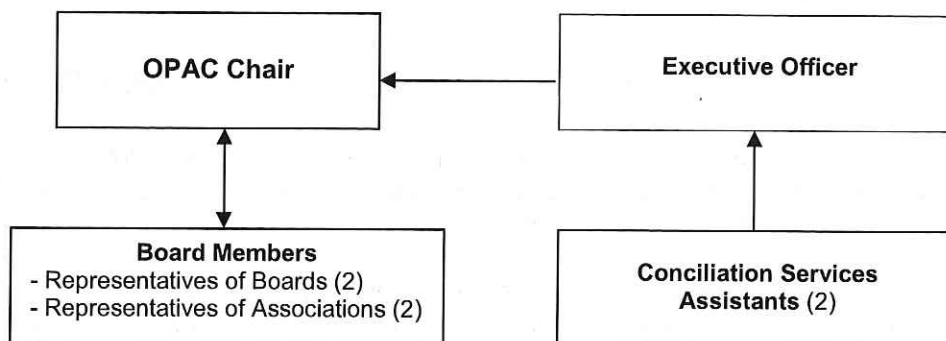
COMMUNICATION PLAN

A description of the Commission's programs and services and how to access them is available online at www.policearbitration.on.ca. Arbitration decisions and governance documents can also be accessed through the website. Application forms for the appointment of conciliators and mediator-arbitrators are found on the website and accepted by email, fax or regular post.

Stakeholders and the public are able to access and research decisions online or visit the Commission on the 15th Floor, 25 Grosvenor Street, Toronto, Ontario.

The Chair writes annually to all police associations and boards requesting outstanding decisions or collective agreements be filed with the Commission.

ORGANIZATIONAL CHART



In accordance with section 131 (1) of the *Police Services Act*, the Commission is composed of a Chair, two representatives of police services boards recommended for appointment by the Ontario Association of Police Services Boards (OAPSB), and two representatives of members of police associations, recommended for appointment by the Police Association of Ontario (PAO).

The Minister must consult with or attempt to consult with the bargaining agents or employers' organizations prior to a Chair being appointed to the Commission. The terms of office for appointees are set within Government of Ontario guidelines. Staff is comprised of an Executive Officer and two full-time Conciliation Services Assistant.

APPENDIX 1

CONCILIATION ACTIVITY FISCAL YEAR 2014-15

Applications Summary

REQUESTS FOR APPOINTMENT	Files Processed	* Duty of Fair Representation Grievances	Rights Disputes	S. 40	Interest Disputes
Carryover of files from 2012 - 13	1	0	1	0	0
Carryover of files from 2013 - 14	13	1	11	0	1
New Conciliation requests in 2014 - 15	106	5	94	0	7
TOTAL APPLICATIONS HANDLED:	120	6	106	0	8

Average number of business days from receipt of application to first contact with Applicant	1.39
Current Ministry Standard	5

Note: * Duty of Fair Representation (DFR) grievances against police associations arising out of the *Renaud* decision as a result of the expanded definition of party.

Hearings Summary

NUMBER OF CONCILIATIONS	Totals	Duty of Fair Representation Grievances	Rights Disputes	S. 40	Interest Disputes
Conciliation Cases Heard 2014-15	90	5	79	0	6
Number of days	71	5	62	0	4
Average number of hearing days required per Case	0.79				

APPENDIX 2

MEDIATION-ARBITRATION ACTIVITY FISCAL YEAR 2014-15

Applications Summary

REQUESTS FOR APPOINTMENT	Files Processed	*Duty of Fair Representation Grievances	Rights Disputes	S. 40	Interest Disputes
Carryover of files from 2002 - 03	1	0	0	1	0
Carryover of files from 2010 - 11	1	0	0	1	0
Carryover of files from 2013 - 14	21	4	12	3	2
New Arbitration Requests in 2014 - 15	21	1	17	0	3
TOTAL APPLICATIONS HANDLED:	44	5	29	5	5

Average number of business days from receipt of application to first contact with Applicant	1.29
Current Ministry Standard	5

Note: * Duty of Fair Representation (DFR) grievances against police associations arising out of the *Renaud* decision as a result of the expanded definition of party.

Hearings Summary

NUMBER OF ARBITRATIONS	Totals	Duty of Fair Representation Grievances	Rights Disputes	S.40	Interest Disputes
Arbitration Cases Heard 2014-15	19	2	14	3	0
Number of days	36	9	24	3	0
Average number of hearing days required per case	1.89				

APPENDIX 3

INDIVIDUAL AND DUTY OF FAIR REPRESENTATION GRIEVANCES

As background, the *Renaud* decision, which was handed down on July 7, 2006 by an Ontario Court of Appeal panel, upheld a Superior Court decision and dismissed the appeal of Gary Renaud (a police officer with the LaSalle Police Service) on the grounds that the "terms of the Collective Agreement and the specific rights, duties and obligations between the parties are set forth in the *Police Services Act* and Regulations". In reference to the definition of "party" under section 123(1) of the *Police Services Act*, the panel states:

... "We agree that the word "party" should be given a broad and liberal interpretation in order to facilitate the intention of the legislature that the Act and the Collective Agreement together provide a complete and comprehensive scheme for police officers relating to their employment relationship."

Arbitrators have ruled that individual officers may not bring grievances against a Police Services Board. However, arbitral jurisprudence to date has allowed individual officers to bring a "duty of fair representation" (DFR) grievance against a Police Association. A summary of this activity follows.

Activity Summary Fiscal Years 2010-2015

Conciliation

Individual and Duty of Fair Representation Grievances	S. 123 Rights Disputes
Applications Received and Outcome	16
<i>Settled through informal discussion prior to conciliation</i>	<i>0</i>
<i>Withdrawn</i>	<i>0</i>
<i>No jurisdiction</i>	<i>3</i>
<i>Settled at conciliation</i>	<i>1</i>
<i>In process</i>	<i>0</i>
<i>Unresolved and no further action to date</i>	<i>7</i>
<i>Unresolved DFR grievances proceeded to arbitration</i>	<i>5</i>

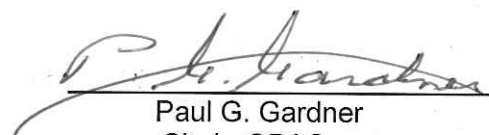
Arbitration

Individual and Duty of Fair Representation Grievances	S. 124 Rights Disputes
Applications Received and Outcome	5
<i>Settled through informal discussion prior to arbitration</i>	<i>0</i>
<i>Mediated Settlements</i>	<i>1</i>
<i>Awards Delivered</i>	<i>1</i>
<i>In Process</i>	<i>3</i>

DATED AT TORONTO THE 10 DAY OF DECEMBER, 2015.



Yasir Naqvi
Minister, MCSCS



Paul G. Gardner
Chair, OPAC



You may contact the Commission at:

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www.policearbitration.on.ca