



ONTARIO POLICE ARBITRATION COMMISSION

BUSINESS PLAN

FISCAL YEARS

2014-15 through 2016-17

June 2, 2014



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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 last fiscal year 2013-14, 100 new requests for conciliator appointments were received. Including carryovers, 123 conciliation files were handled with a total of 92 conciliation meetings being held during the year. Staff were able to set a conciliation meeting date within 14 days of the receipt of the request. The average number of business days from the receipt of request to first contact was 1.28 days. A detailed summary of conciliation activity is attached at Appendix 1, page 10.

Mediation/Arbitration: There were 31 new applications requesting the appointment of an arbitrator in 2013-14. Including carryovers, 47 arbitration files were handled and 22 hearings were held during the fiscal year; 10 files settled at or prior to arbitration; 8 files were mediated settlements; 6 awards were delivered; and 2 matters were adjourned sine die. The remaining files are in process with hearings scheduled into fiscal year 2014-15. The average number of business days from receipt of the application to first contact was 1.76 days. A detailed summary of arbitration activity is attached at Appendix 2, page 11.

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 2013-14 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 and decisions and collective agreements which are available on-line at www.policearbitration.on.ca or on-site at 25 Grosvenor Street, Toronto. New arbitral decisions are distributed within 1 business week of receipt.

Revenues and Expenditures: The Commission's budget for the fiscal year 2013-14 was shown in the government's Printed Estimates, as four hundred and fifty-nine thousand dollars (\$459,000). The Commission operated under budget for a savings of fifty-four thousand, two hundred and sixty two dollars (\$54,262). Total expenditures were four hundred and four thousand, seven hundred and thirty eight dollars (\$404,738). There was no revenue. The financial report for fiscal year 2013-14 is located at page 9. 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. Barring unforeseen pressures, such as an extreme volume increase, etc. (see Risk Assessment and Management), no additional resources are anticipated for the next three years.

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.

MANDATE

The key objectives of the Commission are to:

- 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;
- maintain a register of arbitrators who are available for appointment under section 124 of the *PSA*;
- assist parties negotiating a voluntary collective agreement;
- fix the fees of arbitrators appointed by the Minister under section 124 of the *PSA*;
- sponsor the publication and distribution of information about agreements, arbitrations and awards;
- sponsor research with respect to police arbitration processes and awards;
- maintain a file of agreements, decisions and awards made under Part VIII of the *PSA*.

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 Agency Establishment and Accountability Directive (AEAD).

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.

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;***
- ***researching and investigating possible improvements to website;***
- ***improving stakeholder accessibility to the application process for conciliation and arbitration appointments and Commission research materials.***

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 municipal 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 continues to look at ways to address conflict in workplace relationships before the conflict escalates into grievances. The utilization of the voluntary Workplace Relationship Improvement Program (WRIP) to assist police associations and police services boards to develop good working labour relations has grown through word-of-mouth recommendations. The WRIP is used, where appropriate, by the Chair and Commission conciliators to identify and discuss with police services boards and police 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 not only in interest disputes but rights disputes as well.

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 some 25 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.

RESOURCES NEEDED TO MEET THE OBJECTIVES

The Commission's budget allocation for 2014-15 is four hundred and fifty-eight thousand seven hundred dollars (\$458,700). 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 currently operates within its budget allocation.

The Commission's budget supports two full-time staff and one part-time position. The remaining budget is allocated to the provision of conciliation and mediation-arbitration services to police across Ontario. The Commission's financial report for fiscal year 2013-14 is provided at page 9.

With the exception of unforeseen pressures as outlined in the Risk Assessment section below, the Commission should not require additional resources over the next three years. The 2014 -15 to 2016 -17 financial outlook is located at page 8.

RISK IDENTIFICATION, ASSESSMENT AND MITIGATION STRATEGIES

The Commission has no control over the following identified risks since they arise out of the Commission's legislated mandate and Court decisions.

1. Unanticipated increase in volume of requests for conciliation and mediation-arbitration which may increase Commission costs for delivery of service.
2. 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. See explanatory note on *Renaud* and a five-year summary for individual and duty of fair representation disputes at Appendix 4, page 14.
3. Costs related to employees exiting the Government through the Transitional Exit Initiative (TEI) or retirement.

In these instances, the Commission would attempt to manage within existing resources.

ENVIRONMENTAL SCAN

Over the next three years, the Commission anticipates:

1. Increasing pressure on police services boards to reduce costs related to compensation due to the current 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 ensuring healthy workplace relationships by participating in the Commission's Workplace Relationship Improvement Program.
2. Impact of legislative changes respecting "interest" disputes. 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.
3. Increasing complexity of rights disputes results in higher costs to stakeholders and the Commission due to more hearing days per dispute.
4. 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).

In each of these instances a heavier workload and/or greater expense may occur. However, the outcome is still unknown. As set out under the Resources Needed to Meet Objectives section, the Commission would attempt to work within its budget.

PERFORMANCE MEASURES

Overall performance measures to ensure key objectives are met are shown in Appendix 3, page 12 and include:

- **Review and Analysis** of Duty of Fair Representation Grievances and Court Decisions to ensure appropriate jurisdictional questions are evaluated;
- **Register of Mediators-Arbitrators:** bi-annual, formal review of the register of mediator-arbitrators in addition to the informal review of the register which occurs as each decision is rendered;
- **Number of Judicial Reviews:** performance measures to monitor the number of judicial reviews of arbitrator decisions and whether or not these decisions are upheld in a higher court;
- **Service Delivery Model:** service delivery model which provides accessible, quality and cost-effective conciliation and mediation/arbitration services to stakeholders;
- **Performance Standards for Staff:** monitoring the performance standards of staff to continue to provide a timely first response upon receipt of a request.

- **Website:** maintaining a Commission website to ensure stakeholder accessibility to research data and information and application materials.

FINANCIAL OUTLOOK

The printed estimate for fiscal year 2014-15, the first year of this plan, is four hundred and fifty-eight thousand seven hundred dollars (\$458,700). Program expenditures are expected to remain constant for the next three years, until the end of fiscal year 2016-17.

INFORMATION TECHNOLOGY (IT) AND ELECTRONIC SERVICE DELIVERY (ESD)

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 email and fax.

A review of the accessibility of the Commission's website to persons with disabilities is to be carried out in 2014-15. 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.

INITIATIVES INVOLVING THIRD PARTIES

The Commission deals with municipal police services 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.

IMPLEMENTATION PLAN

The Commission's services of conciliation and mediation-arbitration are legislated under Part VIII Labour Relations of the *Police Services Act*. Municipal police associations and police services boards may request the Minister to appoint under the *Act*. The requirement for police services to file collective agreements and arbitration awards with the Commission is also set out under Part VIII.

COMMUNICATION PLAN

A description of the Commission's programs and services and how to access them is available on line at www.policearbitration.on.ca. Arbitration decisions can also be accessed through the website.

Application forms for the appointment of conciliators and mediator-arbitrators are accepted by email and fax in addition to regular post.

Stakeholders and the public are able to access and research decisions on-line. They may also 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.

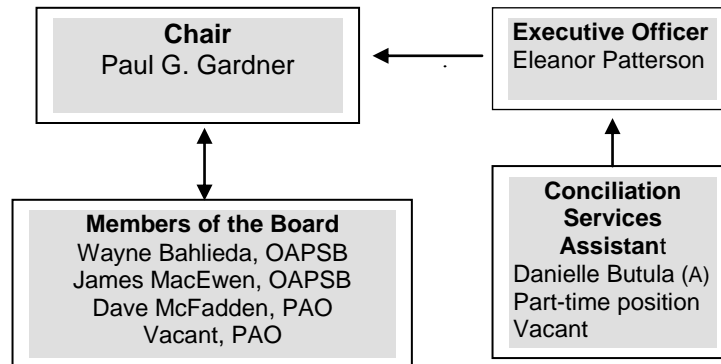
FINANCIAL REPORT

Last fiscal year 2013-14 the printed estimate was four hundred and fifty-nine thousand dollars (\$459,000). The actual expenditure for fiscal year 2013-14 was four hundred and four thousand, seven hundred and thirty eight dollars (\$404,738).

COMPOSITION OF THE COMMISSION

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 one full-time and one part-time Conciliation Services Assistant.

Organization



APPENDIX 1
CONCILIATION ACTIVITY FISCAL YEAR 2013-14

Applications Summary

REQUESTS FOR CONCILIATOR APPOINTMENTS	Totals	*Duty of Fair Representation Grievances	Rights Disputes	S. 40	Interest Disputes
Carryover of files from 2010-11	1		1		
Carryover of files from 2012-13	22		19	1	2
New Conciliations 2013-14	100	4	84	1	11
TOTAL FILES PROCESSED	123	4	104	2	13
Average # Business Days from Receipt of Application to First Contact	1.28				

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 CONCILIATION HEARINGS	Totals	Duty of Fair Representation Grievances	Rights Disputes	S. 40	Interest Disputes
Conciliation Hearings Held 2013-14	92	4	79	1	8
Number of days	70	4	57	1	6
Average Number of Days per Conciliation Appointment	0.76				

APPENDIX 2

MEDIATION-ARBITRATION ACTIVITY FISCAL YEAR 2013-14

Applications Summary

REQUESTS FOR ARBITRATOR APPOINTMENTS	Totals	Duty of Fair Representation Grievances	Rights Disputes	S. 40	Interest Disputes
Re-opened from 2002-03	1			1	
Carryover of files from 2010-11	2		1	1	
Carryover of files from 2011-12	5		5		
Carryover of files from 2012-13	8		2		6
New Arbitrations 2013-14	31	4	21	3	3
TOTAL FILES PROCESSED	47	4	29	5	9
Average # Business Days from Receipt of Application to First Contact	1.76				

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 Hearings	Totals	Duty of Fair Representation Grievances	Rights Disputes	S.40	Interest Disputes
Number of Hearings	22	2	11		9
Number of Hearing Days	35	2	24		9
Average # Hearing Days Per Appointment	1.59				

APPENDIX 3

PERFORMANCE STANDARDS AND MEASURES
FOR CORE BUSINESSES 2014-15 – 2016-17**Objective****Measure****1. CORE BUSINESS FUNCTION – CONCILIATION AND MEDIATION-ARBITRATION**

Informing and educating the police community to improve labour relations

Scheduling Targeted Sessions – Presentations
at Police Association of Ontario (PAO) seminar/mock mediations/arbitrations.

Voluntary Workplace Relationship Improvement Program (WRIP) – Commission conciliators continue to educate police boards and associations on this initiative as part of the conciliation process. Hold WRIP meetings where requested.

2. CORE BUSINESS FUNCTION – CONCILIATION

Ensure timely delivery of service by qualified professionals

Scheduling multiple hearings in the same location on the same day where requested and if appropriate.

Ability to provide hearing dates within 14 days of receipt of request for conciliator.

Reducing first contact time from receipt of application to first contact – Average 1.28 days. (Ministry standard is 5 days)

Objective**Measure****3. CORE BUSINESS FUNCTION – MEDIATION ARBITRATION**

Ensure timely delivery of service by qualified professionals

Reviewing Register of Arbitrators*Formally – Bi-annual**Informally – Ongoing****Reviewing Arbitration Awards for Quality****Formally – As required by Board Members**Informally – Ongoing****Monitoring Judicial Reviews –****Association Grievances; Duty of Fair Representation Grievances****Reducing the time between receipt of application and first contact –****Commission Average 1.76 Days**(Ministry Standard is 5 days)****Reviewing and Analyzing Duty of Fair Representation (DFR) Grievances and Court Decisions –****Ensure appropriate jurisdictional questions are evaluated – 2 Judicial Reviews: (1) Arbitrator Decision upheld by Divisional Court with costs awarded. (2) Deputy Minister Decision upheld by Divisional Court with Commission to deal with Duty of Fair Representation Grievance and/or section 40 matter.***4. CORE BUSINESS FUNCTION – MAINTAIN AND DISSEMINATE INFORMATION AND RESEARCH MATERIALS**

Improve stakeholder accessibility to the application process and research materials.

Entering contract bargaining decisions on the Commission Website within 1 week of their release*- New awards continue to be entered on website within 1 day of receipt of summary.****Streamlining administration process for Website****- Identify and resolve difficulties in the data input and posting to the Commission Website and transfer to IServe.*

APPENDIX 4

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.”

Arbitral jurisprudence to date has allowed individual officers to bring a “duty of fair representation” grievance against a police association. However, arbitrators have ruled that individual officers may not bring grievances against a Police Services Board. A summary of this activity follows.

Activity Summary Fiscal Years 2008-2014

Conciliation

Individual and Duty of Fair Representation Grievances	S. 123 Rights Disputes
Applications Received and Outcome	27
<i>Settled through informal discussion prior to conciliation</i>	0
<i>Withdrawn</i>	2
<i>No jurisdiction</i>	4
<i>Settled at conciliation</i>	1
<i>In process</i>	1
<i>Unresolved and no further action to date</i>	4
<i>Unresolved Duty of Fair Representation grievances proceeded to arbitration</i>	15

Arbitration

Duty of Fair Representation Grievances	S. 124 Rights Disputes
Applications Received and Outcome	15
<i>Settled through informal discussion prior to arbitration</i>	0
<i>Mediated Settlements</i>	4
<i>Awards Delivered</i>	8
<i>In Process</i>	3

Arbitration awards dealing with eight grievances have been rendered to date. Each of the arbitrators declined jurisdiction to hear an individual non-association grievance but indicated they would have jurisdiction to hear “duty of fair representation claims”.

DATED AT TORONTO THE 20 DAY OF August, 2014.

(signed original)
Yasir Naqvi
Minister, MCSCS
(December 3, 2014)

(signed original)
Paul G. Gardner
Chair, OPAC



You may contact the Commission at:

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www.policearbitration.on.ca