ONTARIO POLICE ARBITRATION COMMISSION

ANNUAL REPORT
FISCAL YEAR
2013-14

June 30, 2014

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ONTARIO POLICE ARBITRATION COMMISSION

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MISSION STATEMENT

The Ontario Police Arbitration Commission (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* in an effective and timely manner.

LEGISLATIVE AUTHORITY

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

ROLE OF THE COMMISSION

The Commission was established in 1972 to provide a fast and efficient method of appointing conciliators and mediator-arbitrators to assist Police Services Boards and Police Associations resolve contract bargaining disputes and rights grievances.

On October 29, 1997, the *Public Sector Dispute Resolution Act, 1997* amended the *Police Services Act* for municipal police and the *Public Service Act* for the Ontario Provincial Police to make provision for an assisted dispute resolution (ADR) mechanism to deal with all police contract bargaining disputes. While the Commission had previously provided conciliation and arbitration services to assist parties in resolving such “interest” disputes, the amended legislation enabled the Commission to provide for the following ADR schema: conciliation; mediation-arbitration; mediation-final offer selection and conventional arbitration.

The Commission also provides conciliation and mediation-arbitration services to assist the parties in resolving “rights” disputes arising out of the interpretation, implementation or administration of a collective agreement.

MANDATE

Responsibilities of the Ontario Police Arbitration Commission

The Commission has the following responsibilities:

- promote harmonious labour relations in the police community;
- provide conciliation services prior to arbitration;
- administer the mediation-arbitration process for police contract bargaining disputes and rights grievance;
- maintain a register of arbitrators who are available for appointment under section 124 of the Police Services Act;
- assist arbitrators by making administrative arrangements in connection with arbitrations;
- fix the fees of arbitrators appointed by the Minister under section 124;
- sponsor the publication and distribution of information about agreements, arbitrations and awards;
- sponsor research on the subject of agreements, arbitrations and awards;
- maintain a file of agreements, decisions and awards made under this Part.

COMPOSITION OF THE COMMISSION

Section 131(2) of the *Police Services Act* sets out the composition of the Commission which is to be composed of a Chair and two representatives of boards, recommended for appointment by the Ontario Association of Police Services Boards (OAPSB) and two representatives of members of 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. Terms of office for appointees are set within Government of Ontario guidelines.

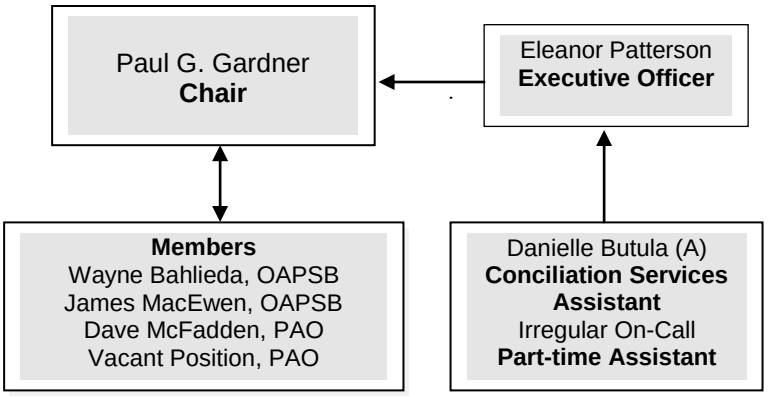
Current Appointments:

Chair	Paul Gardner, March 9, 2014 to March 8, 2016
Members	Wayne Bahlieda, June 20, 2012 to June 19, 2017 James MacEwen, April 9, 2013 to April 8, 2015 Dave McFadden, April 10, 2013 to April 9, 2018 Paul Di Simoni, December 11, 2013 to March 3, 2014 – position vacant

Staff

Staff is comprised of an Executive Officer and one full-time and one part-time irregular on call Conciliation Services Assistant. Employees of the Commission are appointed under Part III of the *Public Service of Ontario Act, 2006.*

Organization



RECRUITMENT

Appointments/Reappointments

In accordance with the legislated requirements under section 131 of the *Police Services Act,* and the *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009,* as well as the directives, policies and guidelines governing the recruitment of appointees through the Public Appointments Secretariat, Paul Di Simoni was recommended for appointment by the Police Association of Ontario. Mr. Di Simoni's Order in Council was dated December 11, 2013 for a two year period. He resigned from the Commission on March 3, 2014 and the position is currently vacant. James MacEwen represents the Ontario Association of Police Services Boards for the term April 9, 2013 to April 8, 2015.

Commission Staff

During peak seasonal and holiday times, the Commission uses an irregular, part-time, on-call, unclassified contract position using the appropriate Human Resources-assisted competition.

BUDGET: $459,000

The Printed Estimate for 2013-14 was four hundred and fifty-nine thousand dollars ($459,000). In 2013-14, the Commission operated under-budget for a savings of fifty-four thousand, two hundred and sixty-two dollars ($54,262) or for a total expenditure of four hundred and four thousand, seven hundred and thirty-eight dollars ($404,738). There was no revenue. 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 Financial Report for Fiscal Year 2013-14 can be found at Appendix 1, page 10.

CORE BUSINESSES

- **Conciliation Services**
- **Mediation-Arbitration Services**
- **Appointment of Mediators/Arbitrators**
- **Dissemination of Labour Relations Information and Research Materials**

In accordance with the *Police Services Act*, 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. The Commission maintains and disseminates research materials including files of police arbitration awards/decisions, collective agreements and summary reports of arbitration awards.

There are two types of disputes: “rights” disputes and “interest” disputes.

A rights dispute is a grievance arising out of the administration, application or alleged violation of a police collective agreement. These are issues that, for the most part, clearly arise out of the terms of collective agreement. More recently, they may involve disputes arising out of the interpretation of Ontario Court of Appeal decisions which expand the definition of party to include the right of an individual member to bring a Duty of Fair Representation grievance against the Association.

An interest dispute involves settling the terms of a new collective agreement. 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, or in the case of the OPP, the negotiating committee, may request the appointment of an arbitrator by applying to the Chair of the Commission who will select the method of arbitration and appoint the arbitrator.

All conciliation and mediation/arbitration hearings are held in the municipality.

Conciliators and mediator/arbitrators today are also likely to be asked to address legislative cross-over issues such as human rights disputes and workplace discrimination and harassment complaints, discipline issues for civilian personnel such as abusive conduct, insubordination, assault and more recently, for uniform personnel, alleged disciplinary transfers.

A detailed look at core business activities for 2013-14 follows. Performance Standards and Achievements are located at Appendix 2, page 11.

Conciliation Services

The purpose of conciliation is to assist the parties in reaching a mutually agreeable resolution to a dispute without proceeding to arbitration.

Conciliation is the preferred method of settling disputes. In 2013-14 the Commission received 100 new requests for conciliator appointments. Overall, including carryovers, the Commission handled 123 conciliation files with a total of 92 conciliation meetings being held during the year in municipalities across the Province.

Since the Commission established a four-person roster of experienced, private-sector conciliators (instead of the previous single conciliator), staff of the Commission have been able to draw on a greater number of meeting dates within a given timeframe. As a result, staff are able to schedule multiple hearings on the same day at various locations throughout the Province. The Commission staff are now able to set a conciliation meeting date within 14 days of the receipt of the request for conciliation if requested by the parties. The average number of business days from the receipt of the application to first contact is 1.28 days.

Conciliation Applications Summary Fiscal Year 2013-14

REQUESTS FOR APPOINTMENT	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: The right of an individual member of an Association to bring a *Duty of Fair Representation (DFR) grievance against the Association was the result of the *Renaud* decision which expanded definition of “party”.

Conciliation Hearings Summary Fiscal Year 2013-14

NUMBER OF CONCILIATIONS	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	8
Average Number of Days per Conciliation Appointment	0.76				

Workplace Relationship Improvement Program (WRIP)

The Workplace Relationship Improvement Program (WRIP) was introduced as a new initiative in previous years. This program is gradually gaining acceptance within the police community as Commission conciliation officers, as part of the conciliation process, continue to work with Police Services Boards and Police Associations to identify and discuss with them ways of improving 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 Fiscal Year 2013-14, the Commission received 31 new requests for the appointment of an arbitrator. Overall, including carryovers, the Commission handled 47 arbitration files during the Fiscal Year. The average number of business days from the receipt of the application to first contact is 1.76 days. With the change in legislation, and its emphasis on mediation prior to arbitration in collective bargaining disputes, the average settlement rate has increased in both interest and rights disputes.

The Commission continues to look at ways to address conflict in workplace relationships before they translate into grievances. The utilization of the voluntary Workplace Relationship Improvement Program (WRIP) to assist Police Associations and Police Services Boards develop good working labour relations has grown through word-of-mouth recommendations.

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 30 private sector mediator/arbitrators to hear both interest and rights disputes. The 2013-14 summary for mediation-arbitration services follows:

Mediation-Arbitration Applications Summary 2013-14

REQUESTS FOR APPOINTMENT	Totals	*Duty of Fair Representation Grievances	Rights Disputes	S. 40	Interest Disputes
Carryover of files 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: The right of an individual member of an Association to bring a *Duty of Fair Representation (DFR) grievance against the Association was the result of the *Renaud* decision which expanded definition of "party".

Mediation-Arbitration Hearings Summary 2013-14

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				

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 they state:

> … *"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" (DFR) 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.

Individual and Duty of Fair Representation Grievances
Activity Summary Fiscal Years 2008-09 to 2013-14

Conciliation

Individual and Duty of Fair Representation Grievances	**S. 123 Rights Disputes**
Applications Received and Outcome	**23**
Settled through informal discussion prior to conciliation	*0*
Withdrawn	*2*
No jurisdiction	*4*
Settled at conciliation	*1*
In process	*0*
Unresolved and no further action to date	*4*
Unresolved DFR grievances proceeded to arbitration	*12*

Arbitration

Duty of Fair Representation Grievances	**S. 124 Rights Disputes**
Applications Received and Outcome	**12**
Settled through informal discussion prior to arbitration	*0*
Mediated Settlements	*4*
Awards Delivered	*8*
In Process	*0*

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".

To date, two individual officers have filed applications for judicial review with Divisional Court. In the first instance, the arbitrator's award respecting lack of jurisdiction to hear an individual's grievance against the Police Services Board was upheld.

In the second instance, the parties involved have sought to bring various motions before the courts, the latter of which was to have the application dismissed. In its most recent decision, Divisional Court found that the refusal to appoint a conciliator by the Deputy Minister of Community Safety was reasonable since many of the matters in the statement of claim fell outside the purview of section 123 of the *Police Services Act.*

Maintain and Disseminate Labour Relations Information and Research Materials

The Commission continues to be committed to providing information on the Commission and its services to stakeholders in a transparent and easily accessible manner.

The design and implementation of a Commission website was the first of its kind in the Ontario Government which allowed access to a comprehensive research tool for stakeholders and their representatives, legal counsel, labour relations personnel in the broader public sector and the general public.

Recent improvements have included the following:

1. introducing a Google-like search function in addition to the existing classification search to enhance the ability of stakeholders and the public to access police labour relations materials and arbitration decisions.

2. identified a private-sector service provider to maintain continuous internet and website access for stakeholders and general public to Commission decisions and information. The previous, tendered, supplier was unable to provide the service. The new service provider approved and used by the Ministry provided a fifty-percent saving on costs.

3. staff continue to build relationships with Ministry and Government technical staff. As a result, when access to the Commission’s website was interrupted, Ministry personnel acted swiftly and service was running again within six hours instead of the standard twenty-four hours.

Appendix 1

FINANCIAL REPORT
Fiscal Year 2013-14

All Figures in $000.0 thousands

Account	*Approved Budget/ Estimates**	*Total Actual Expenditures***	*Variance*	*Explanation*
Salaries & Wages	435.1	133.8	301.3	Transfer of Salary Dollars to ODOE
Benefits	10.9	16.4	(5.5)	
Other Direct Operating Expenses	13.0	254.5	(241.5)	
TOTAL	**$459.0***	**404.7****	**54.3**	Surplus is the result of lower number of applications requesting conciliator/ arbitrator appointments

Note:

* Approved Budget = Printed Estimates
** Total Actual Expenditures

Appendix 2

PERFORMANCE STANDARDS AND MEASURES FOR CORE BUSINESSES 2013-14

Objective	***Measure***	***Monitoring***
1. CORE BUSINESS FUNCTION – CONCILIATION AND MEDIATION-ARBITRATION		
Informing and educating the police community to improve labour relations	***ACHIEVED - Scheduling Targeted Sessions -*** *Chair presented at Police Association of Ontario (PAO) mediation/arbitration seminar. Chair and Conciliator participated in collective bargaining seminar for PAO Members.*	**ONGOING/** Bi-annual Review
	ACHIEVED - Voluntary Workplace Relationship Improvement Program (WRIP) - *Ongoing education of police services by Commission's conciliators. Chair works individually with Police Associations/ Police Services Boards where there is an interest to proceed to WRIP.*	**ONGOING/** Bi-annual
2. CORE BUSINESS FUNCTION – CONCILIATION		
Ensure timely delivery of service by qualified professionals	***ACHIEVED - Scheduling multiple hearings*** *in the same location on the same day where appropriate – Total number of hearing days was 70 and 92 conciliations were held on those days for an average of 0.76 days per conciliation.*	**ONGOING/** Monthly Report
	ACHIEVED - Ability to provide hearing dates within 14 days *of receipt of request for conciliator when requested.*	**ONGOING/** Monthly
	ACHIEVED - Reducing first contact time from receipt of application to first contact *– Average 1.28 days. (Ministry standard is 5 days)*	**ONGOING/** Monthly Report

Objective	***Measure***	***Monitoring***
3. CORE BUSINESS FUNCTION – MEDIATION ARBITRATION		
Ensure timely delivery of service by qualified professionals	***ACHIEVED - Reviewing Arbitration Awards for Quality – Informal and Formal Review by Members.*** *Informal reviews: 14 decisions* *Formal Review as required: None*	**ONGOING**
	ACHIEVED - Monitoring Judicial Reviews – *2 Judicial Reviews filed by individual police officers on Non-Association grievances.* *1 – Arbitrator's decision upheld;* *2 – Several motions amongst the parties were scheduled at Divisional Court with the latest application requesting dismissal. Divisional Court upheld the Deputy Minister's decision to refuse to appoint a conciliator since many of the matters in the statement of claim fell outside the purview of section 123 of Police Services Act*	**MONTHLY**
	ACHIEVED - Reducing the time between receipt of application and first contact – *OPAC Average of 1.76 days (Last Fiscal Year average 1.5 and Ministry Standard is 5 days.)*	**MONTHLY**
4. CORE BUSINESS FUNCTION – MAINTAIN AND DISSEMINATE INFORMATION AND RESEARCH MATERIALS		
Improve stakeholder accessibility to the application process and research materials.	***ACHIEVED - Entering contract bargaining and rights decisions on OPAC Website within 1 week of their release –*** *New rights awards continue to be entered on website within 1.69 days of receipt of summary.*	**ONGOING/** Updated weekly
	ACHIEVED – Privacy concern for innocent party. *First website solution to protect identity did not hold. Addressed successfully with assistance of IT. Lawyer and client satisfied.*	**ONGOING/** Monitoring of requests for assistance.

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