

ONTARIO POLICE ARBITRATION COMMISSION



ANNUAL REPORT FISCAL YEAR 2014-15

June 30, 2015



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ONTARIO POLICE ARBITRATION COMMISSION

ANNUAL REPORT

FISCAL YEAR 2014-15

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 as outlined in the *Police Services Act* and the Memorandum of Understanding between the Commission and the Ministry of Community Safety and Correctional Services:

- 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.

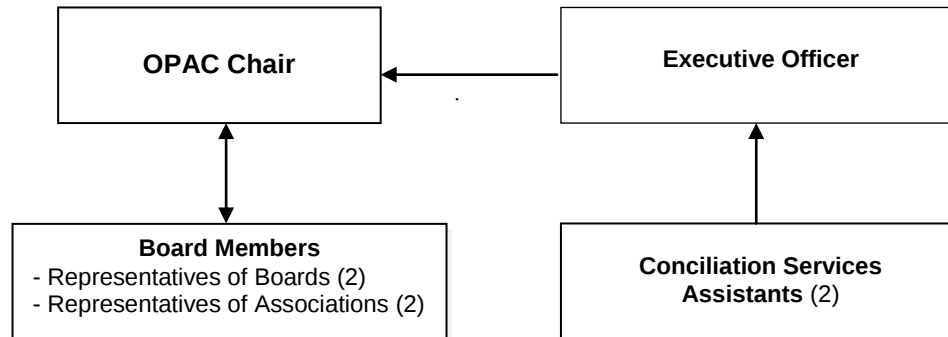
2014-15 Appointments:

Chair	Paul Gardner: March 9, 2014 to March 8, 2016
Members	Wayne Bahlleda: June 20, 2012 to June 19, 2017 James MacEwen: August 7, 2013 to August 6, 2015 Dave McFadden: April 10, 2013 to April 9, 2018 Vacant Position

Staff

The Commission staff is comprised of an Executive Officer and two full-time Conciliation Services Assistants. 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, the Police Association of Ontario has recommended Bruce Chapman to fill the vacancy created by former representative Paul DiSimoni's resignation from the Commission. Mr. Chapman's application is currently in process.

Commission Staff

During peak seasonal times and the transitional exit of a retiring employee, the Commission utilized an irregular, unclassified contract position. The increase in administrative activities and steady volume of applications resulted in the requirement for a full time staff member to meet the demands and supply consistent coverage for the organization. The Commission now employs two full-time Conciliation Services Assistants, each hired through appropriate Human Resources-assisted competition held September, 2014.

BUDGET: \$458,700

The Printed Estimate for 2014-15 was four hundred and fifty-eight thousand, seven hundred dollars (\$458,700). In 2014-15, the Commission operated over-budget for a pressure of sixty-six thousand, five hundred and ninety-eight dollars (- \$66,598) or for a total expenditure of five hundred and twenty-five thousand, two hundred and ninety-eight dollars (\$525,298). There was no revenue. This pressure was a result of costs related to employees exiting the Government through the Transitional Exit Initiative (TEI) and retirement, totalling forty-two thousand, eight hundred dollars (\$42,800.) The expense

incurred to hire temporary help on contract to fill the vacancy created by employees exiting the Government was twenty-three thousand, eight hundred and sixty-five dollars (\$23,865.) Additionally, the number of complex conciliation and arbitration cases handled during 2014-15 resulted in increased operational spending to fulfill business requirements in order to meet the responsibilities of the Commission as outlined in section 131 of the *Police Services Act*. The Financial Report for Fiscal Year 2014-15 can be found at Appendix 1, page 10.

CORE BUSINESSES

- **Conciliation Services**
- **Mediation-Arbitration Services**
- **Appointment of Mediators/Arbitrators**
- **Publish 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 publishes 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 may request the appointment of an arbitrator by applying to the Commission’s Chair 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 2014-15 follows. Performance Standards and Achievements are located at Appendix 2, page 11.

Conciliation Services

Where the parties are not able to resolve their differences through negotiation, either party representing a Police Association or Police Services Board may request the appointment of a conciliator by applying to the Commission under the *Police Services Act* section 121 for interest disputes or section 123 for rights disputes. A conciliation officer is an outside neutral who will assist the parties in resolving or reducing the number of outstanding issues which, if unresolved, may eventually be referred to arbitration. The purpose of conciliation is to assist the parties in reaching a mutually agreeable resolution to a dispute without needing to proceed to arbitration.

In 2014-15 the Commission received 106 new requests for conciliation. Overall, including carryovers, the Commission handled 120 conciliation files and 90 grievances were heard by a conciliator 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), Commission staff 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. Commission staff are now able to set a conciliation meeting date within 14 days of receipt of the request for conciliation if requested by the applicant. The average number of business days from the receipt of the application to first contact is 1.39 days.

Conciliation Applications Summary Fiscal Year 2014-15

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: 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 the definition of "party".

Conciliation Hearings Summary Fiscal Year 2014-15

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				

Workplace Relationship Improvement Program (WRIP)

The Workplace Relationship Improvement Program (WRIP) was introduced as a new initiative in 2006. WRIP is offered to parties who are experiencing difficulties in their ongoing labour/management relationship. The program is voluntary and requires commitment by senior members of the Police Association and the Police Services Board in order to be successful. WRIP provides a structure under which the parties can identify and jointly agree to the problems that are affecting the relationship. It is not designed to revise the terms of the collective agreement, existing board policies or resolve ongoing grievances.

The Commission will provide a facilitator team who are trained and well-experienced in workplace relationship improvement processes; they will work with the parties to develop an approach that is appropriate to the organization. This program is gradually gaining acceptance within the police community as the 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 2014-15, the Commission received 21 new requests for the appointment of an arbitrator. Overall, including carryovers, the Commission handled 44 arbitration files during the Fiscal Year. The average number of business days from the receipt of the application to first contact is 1.29 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 33 sector mediator/arbitrators to hear both interest and rights disputes. The 2014-15 summary for mediation-arbitration services follows:

Mediation-Arbitration Applications Summary 2014-15

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: 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 the definition of “party”.

Mediation-Arbitration Hearings Summary 2014-15

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				

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.”

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:

Individual and Duty of Fair Representation Grievances Activity Summary Fiscal Years 2010-11 to 2014-15

Conciliation

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

Arbitration

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

Maintain and Publish 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 to efficiently search thousands of labour dispute awards

In 2014-15, the Commission began work with Justice Technology Services to acquire a new tool to manage and host online content as OneSite strategy and implementation was announced to simplify Ontario's web presence by having one common platform. This has provided the Commission with the technical resources to ensure all future web content is accessible and user friendly to stakeholders.

The existing site functions will remain the same which include the following improvements:

1. 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. Ongoing update and review of existing accessibility functions to remove barriers for users in compliance with the Accessibility for Ontarians with Disabilities Act (AODA) requirements, including Web Content Accessibility Guidelines (WCAG) 2.0;

The Commission website and content will remain accessible to stakeholders during the update and review process to ensure uninterrupted service delivery to stakeholders.

Appendix 1

FINANCIAL REPORT Fiscal Year 2014-15

All Figures in \$000.0 thousands

Account	Approved Budget/ Estimates*	Total Actual Expenditures	Variance	Explanation
Salaries & Wages	182	190	(8)	23.8 paid to temporary help backfilling vacancy
Benefits	23.5	67.8	(44.3)	37.8 in separation payments, 5 in benefits for TEI
Other Direct Operating Expenses	253.2	267.5	(14.3)	Complex arbitration cases handled requiring additional resources
TOTAL	\$458.7*	525.3**	(66.6)	Pressure due to operational activities, benefits payout, staffing changes – retirements, TEI, temporary help

Note:

* Approved Budget = Printed Estimates

Appendix 2

PERFORMANCE STANDARDS AND MEASURES FOR CORE BUSINESSES 2014-15

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 71 and 90 conciliations were held on those days for an average of 0.79 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 1.39 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: 16 decisions

Formal Review as required: None

ONGOING

ACHIEVED - *Monitoring Judicial Reviews –*

1 Judicial Review filed by Police Service Board for Arbitrator's decision on a Section 40 matter regarding severance entitlement.

No decision to date.

MONTHLY

ACHIEVED - *Reducing the time between receipt of application and first contact –*

OPAC Average of 1.29 days (Last Fiscal Year average 1.76 and Ministry Standard is 5 days.)

MONTHLY

4. CORE BUSINESS FUNCTION – PUBLISH LABOUR RELATIONS 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 1.53 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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