Ontario Police Arbitration Commission

Annual Report

Fiscal Year 2019-20

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Message from the Chair

The Ontario Police Arbitration Commission (OPAC) fulfilled all legislated obligations under Part VIII of the Police Services Act, by providing conciliation and arbitration services to the Ontario policing community. All the Commission's mandatory reporting requirements have been completed including the Commission's business plan, annual report, compliance of attestation, quarterly risk assessments, financial reports, year to date and projected budget, public information/website postings, and performance measures. All mandatory service delivery timelines were met or exceeded.

After completing a two-year appointment as OPAC Chair, I was reappointed for an additional three-year term commencing November 1, 2019. OPAC's intention is to foster a professional working relationship with police organizations, and to assist police services and police associations in finding ways to mitigate undue labour relations strife. Since becoming Chair of the Commission, I have reached out to the Ontario Association of Police Services Boards (OAPSB), the Police Association of Ontario (PAO), and the Ontario Association of Chiefs of Police (OACP). Subsequent to the June 7, 2018 Ontario general election, OPAC temporarily deferred moving on its strategic direction until the new government had the opportunity to fully transition. Execution of the Chair's plan to meet with police associations and police services were significantly delayed by the outbreak of the COVID-19 pandemic.

As a result of COVID-19, OPAC had to decisively re-evaluate how conciliation and arbitration services would be delivered during the pandemic. The requirement for physical distancing pre-empts face-to-face meetings that would normally take place. Accordingly, where it is clear parties want to proceed to conciliation, OPAC strongly recommended to defer proceedings to a later date when face-to-face conciliation could resume or take place. Notwithstanding OPAC's strong recommendation to defer, if a party wished to immediately proceed to conciliation, OPAC complied by providing the conciliation service via video conference or teleconference call. Arbitrators who hold jurisdiction over a matter in dispute are permitted to make their own determination as to how they wish to proceed with a hearing.

OPAC continues to make improvements to the collection and storage of statistical data for the use of stakeholders and senior ministry officials. Additionally, OPAC is evaluating and planning for administrative and strategic changes likely to arise out of the Comprehensive Ontario Police Services Act, 2019 and regulations.

Sig M. Walter

Chair

Executive Summary

During the 2019-20 fiscal year, the OPAC met, or exceeded, all mandated requirements set out under Part VIII of the Police Services Act.

The Chair continued consultation regarding mitigation of labour relations disputes in policing with the Commission Members associated with the OAPSB and the PAO. The Commission also liaised with the President and Executive Director of the OACP. Prior to the outbreak of the COVID-19 pandemic, the Chair was in the process of meeting with select police services to discuss ways of mitigating undue labour relations strife and relationship breakdowns. Participants in the discussions included police services board Chairs, Chiefs of Police and Presidents of associations. Due to the pandemic and the requirement for physical distancing the Commission is holding off on further meetings with police services until normalcy is re-established.

A new Commission Member was appointed and confirmed in March 2020 which has resulted in a full complement of OPAC Members. Additionally, OPAC's Executive Officer continued a renewed secondment, necessitating his extended appointment as acting Executive Officer.

OPAC handled a total of 128 conciliation and 57 arbitration cases. Refer to Appendix 1 for an activity summary for conciliations and arbitrations which occurred in 2019-20. The total number of conciliation and arbitration files, including carryover from earlier years, reached 185 compared to the 10-year average of approximately 171 files. The 10-year activity summary is in Appendix 2.

The following strategic objectives, outlined in the 2019-20 Business Plan were successfully implemented:

- Ensure timely delivery of professional service by qualified Conciliators and Arbitrators;
- Inform the Deputy Solicitor General, Community Safety and Solicitor General about important emerging issues and areas of concerns in the policing sector, or within OPAC;
- Evaluate the implications and likelihood of an expanded mandate arising from legislative changes.
- Develop and implement a strategy to mitigate Policing labour relations strife with the agreement of Police Associations, Police Services Boards and Chiefs of Police (PAO, OAPSB and OACP):
- Develop and implement succession planning for OPAC staff and appointees;
- Implement a Statistical Database to improve case management, ability to automate querying of statistical data, and to increase sophistication in data collection.

OPAC ensured the maintenance of high-quality conciliation and arbitration services. Since OPAC's registers had sufficient numbers of conciliators and arbitrators, additions were not required. OPAC's budget for fiscal year 2019-20 was $458,700 and operated under-budget with a total expenditure of $413,700. The Financial Report section is located on page six.

Legislative Authority

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

131 (5) The Arbitration Commission has the following responsibilities:

1. Maintaining a register of arbitrators who are available for appointment under section 124.
2. Assisting arbitrators by making administrative arrangements in connection with arbitrations.
3. Fixing the fees of arbitrators appointed by the Solicitor General under section 124.
4. Sponsoring the publication and distribution of information about agreements, arbitrations and awards.
5. Sponsoring research on the subject of agreements, arbitrations and awards.
6. Maintaining a file of agreements, decisions and awards made under this Part.

Mandate

OPAC 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.

OPAC's key responsibilities as outlined in the Memorandum of Understanding between OPAC and the Ministry of the Solicitor General 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
- Assist parties negotiating a voluntary collective agreement
- Sponsor research with respect to police arbitration processes and awards.

OPAC Role

OPAC was established in 1972 to facilitate an effective, efficient process to assist police associations and police services boards in Ontario to resolve labour and contract bargaining disputes.

There are four dispute categories:

1. “Rights” disputes involve the interpretation, application, administration or alleged violation of an existing agreement or award

2. “Interest” disputes involve settling, amendments to an existing collective agreement, or establishing terms for a new collective agreement

3. “Duty of Fair Representation” or “DFR” grievances by individual officers may not be filed against a police services board. However, arbitral jurisprudence has allowed individual officers to bring a DFR grievance against a police association

4. “Section 40” of the Police Services Act deals with severance issues arising from the abolition or reduction of a police force.

In accordance with Labour Relations Part VIII of the Police Services Act, OPAC appoints conciliators and mediator/arbitrators to resolve rights and interest disputes between police associations and police services boards throughout Ontario.

OPAC does not influence or interfere in the conciliation or mediation/arbitration process. OPAC promotes harmonious labour relations to improve the effectiveness of policing in Ontario.

OPAC Composition

The Police Services Act, Section 131(2) sets out the composition of OPAC. It consists of a Chair and two representatives of police services boards, recommended for appointment by the OAPSB and two representatives of police associations, recommended for appointment by the PAO. The Solicitor General must consult with or attempt to consult with the bargaining agents or employers’ organizations prior to a Chair being appointed to OPAC.

2019-20 Appointments

Ontario Police Arbitration Commission Chair
Reappointment: Sig Walter: November 1, 2019 to October 31, 2022

Ontario Association of Police Services Boards Representatives
Patrick Weaver: January 15, 2019 to January 14, 2021
New appointment: Kevin Holland: March 18, 2020 to March 17, 2022

Police Association of Ontario Representatives
Bruce Chapman: April 11, 2019 to April 10, 2021
Mark Baxter: April 11, 2019 to April 10, 2021

Staff

OPAC's staff consist of an Executive Officer and two full-time Conciliation Services Assistants. Employees of OPAC are appointed under Part III of the Public Service of Ontario Act, 2006. In 2019-20, OPAC filled the second Conciliation Services Assistant position (the Executive Officer's home position) for approximately eight months and continued to utilize a temporary, On Call Admin position. The On Call Admin position has been highly utilized in the past. The position will be used to assist with the ongoing maintenance of OPAC's database.

Conciliator and Mediator-Arbitrator Register

The Chair has, in the course of his appointment, recruited additional mediator/arbitrators to OPAC's register of arbitrators allowing for establishment of a reserve list. Two of OPAC's most senior conciliators retired from the Commission. The updated registers reflect retirements and new appointments, giving OPAC three conciliators and twenty-seven mediator/arbitrators. The Commission continuously reviews the effectiveness of the conciliator and arbitrator registers.

Organization

Ministry of the Solicitor General

The Honourable Sylvia Jones, Solicitor General

Deputy Solicitor General, Community Safety (reports to the Solicitor General)

Assistant Deputy Minister/Chief Administrative Officer, Corporate Services Division (reports to the Deputy Solicitor General, Community Safety)

Ontario Police Arbitration Commission

Chair (reports to the Solicitor General and the Deputy Solicitor General, Community Safety)

Four Members (report to the Chair)

- Two representatives of police boards (OAPSB)
- Two representatives of police associations (PAO)

Executive Officer (reports to the Chair and the Assistant Deputy Minister/Chief Administrative Officer)

Two Conciliation Services Assistant (report to the Executive Officer)

On Call Admin (reports to the Executive Officer)

Financial Report

Fiscal Year 2019-20 Budget: $458,700

Fiscal Year 2019-20	Budget	Actuals	Variance
Salaries & Wages	$182,000	$141,100	$40,900
Benefits	$23,500	$20,955	$2,545
Transportation & Communication	$40,000	$33,689	$6,311
Services	$199,200	$217,245	($18,045)
Supplies & Equipment	$14,000	$712	$13,288
Total:	**$458,700**	**$413,700**	**$45,000**

See further Services breakdown in the table below:

Services Breakdown

Fiscal Year 2019-20	Actuals
Conciliation Services	$80,041
Arbitration Services	$30,454
Other Services	$106,750
Total:	**$217,245**

The budget for 2019-20 was $458,700 with 2019-20 total expenditures of $413,700, resulting in an underspend of $45,000. Factors that affected OPAC's expenditures were reduced numbers of arbitration applications (in part due to OPAC's strategic direction to mitigate labour disputes) and OPAC staffing was not at full complement. OPAC's Services deficit of $18,045 was due to increases in conciliation applications. Total remuneration for all OPAC appointees for the 2019-20 fiscal year was $88,765.

Overviews of Programs and Activities

Conciliation Services

As a result of parties not being able to resolve their differences through negotiation, a police association, police services board, or an individual may request the appointment of a conciliator by applying to OPAC under sections 121 (interest disputes) or 123 (rights disputes) of the Police Services Act. An impartial conciliation officer is appointed to assist the parties to resolve or reduce the number of outstanding issues. Unresolved issues may be referred to arbitration at the request of either party. The purpose of conciliation is to assist parties in reaching a mutually agreeable resolution without proceeding to arbitration, which avoids an expensive and potentially lengthy process for all parties involved.

OPAC uses the services of three experienced conciliators, with flexible schedules that occasionally allow them to accommodate multiple hearings on the same day in various locations throughout the province.

2019-20 Conciliation Highlights

- 100 new applications for conciliator appointments
- 128 conciliation files were handled in total, including carryover from previous years
- 86 conciliations heard over 54 hearing days

Conciliation activity in fiscal year 2019-20 was on par with the 10-year average. New conciliation applications filed increased nearly 43 percent from last fiscal year, reaching 100 new applications for a total of 128 files. The detailed conciliation activity report, which includes grievance types and outcomes, is available in Appendix 1.

Mediation-Arbitration Services

In the event parties are unable to resolve differences through conciliation and cannot agree on a joint appointment of an arbitrator, a police association, police services board or an individual may request OPAC to appoint an arbitrator. In October 1997, the Police Services Act was amended to allow an assisted dispute resolution mechanism to deal with police contract bargaining disputes. As a result, the emphasis on mediation prior to arbitration has increased the number of settlements between the parties in interest and rights disputes, as reflected in OPAC's statistics.

2019-20 Arbitration Highlights

- 20 new applications for arbitrator appointments
- 57 arbitration files were handled in total, including carryover from previous years
- 13 arbitration files heard over 13 hearing days

Arbitration activity in fiscal year 2019-20 was below OPAC's 10-year average. Due to a low number of conciliations in 2018-19, a decrease of new arbitration applications filed occurred in 2019-20. The detailed activity report is available in Appendix 1.

Mitigation of Undue Labour Relations Strife - Strategic Direction

OPAC has, and will, continue to utilize its statistical database to identify the frequency with which police services and police associations apply to OPAC for conciliation services or for appointment of arbitrators. Where statistical analysis indicates 'out of the ordinary' increases in the number of applications for conciliation or arbitration, OPAC will make its observations known to the OAPSB and the PAO. Subject to the outcome of discussion with the Commission Members representing the OAPSB and PAO, the Chair may write to a police service and police association offering OPAC's assistance if the workplace parties mutually agree.

Distribution of Labour Relations Information

OPAC is committed to providing information about its services to stakeholders and the public in a transparent and accessible manner. OPAC's website (www.policearbitration.on.ca) provides historic information on arbitration decisions and communicates policies, procedures and accountability documents to stakeholders, legal counsel, labour relations personnel in the broader public sector and the public. Individuals can freely access this information and utilize the awards, summaries and agreements as research materials. OPAC's website has removed barriers for users in compliance with the Accessibility for Ontarians with Disabilities Act.

OPAC is undergoing a webhosting transfer under the direction and management of the Justice Technology Services department. The project is expected to be completed in fiscal year 2020-21. Upon completion OPAC's new website will be fully operative and compliant with all regulatory standards.

Performance Measures – Fiscal Year 2019-20

The following performance measures outline desired results for meeting OPAC's business objectives and strategies.

1. Core Business Function: Conciliation

The following statistics are used to ensure efficient response to applications for conciliation services. The expectation is that every application is acknowledged within the same business day, apart from complex applications that require further interpretation or direction from the Chair. The results below indicate that OPAC's five-year average response time is 1.2 days. In fiscal year 2019-20, the average response time was **1.0 day**. OPAC achieved its objective.

Objective	Outcome Statement	Measure	Result Achieved
Ensure timely delivery of professional services by qualified conciliators	Efficient delivery of conciliation services	At or below the previous five-year average number of days to respond from receipt of application to first contact of **1.2 days**	Average number of days to respond from receipt of application to first contact: **1.0 day**

2. Core Business Function: Mediation/Arbitration

The statistics below are used to ensure efficient and timely response to applications for arbitration services. As with conciliation, every application for arbitration is acknowledged within the same business day, apart from complex applications that require further interpretation or direction from the Chair. The results below indicate that OPAC's five-year average response time is 1.2 days. In fiscal year 2019-20, the average response time was **1.0 day**. OPAC fully achieved its objective.

Objective	Outcome Statement	Measure	Result Achieved
Ensure timely delivery of professional services by qualified mediator/arbitrators	Efficient delivery of mediation/arbitration services	At or below the previous five-year average number of days to respond from receipt of application to first contact of **1.2 days**	Average number of days to respond from receipt of application to first contact: **1.0 day**

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

The statistics indicated below display the timeliness with which OPAC posts arbitration awards/decisions on the website for public use. OPAC has consistently met its requirement to publish and distribute collective agreement and arbitration award information. The results below indicate OPAC's five-year average posting time is 1.4 days. In fiscal year 2019-20, the average posting time was **1.4 days** of receipt of the summary. OPAC fully achieved its objective.

Objective	Outcome Statement	Measure	Result Achieved
Improve stakeholder accessibility to the application process	Enhanced access to information on OPAC's website	At or below the previous 5-year average number of days for new awards to be published on OPAC website from receipt of summary of **1.4 days**	Average number of days for new awards to be published on website from receipt of summary: **1.4 days**

Appendix 1

Activity Summary: Fiscal Year 2019-20

Conciliation Activity Summary

Results from Conciliation Appointments	Conciliation Files Processed	Rights Grievances	Interest Disputes	Duty of Fair Representation	Section 40
Carryover of files from 2013-14	1	1	0	0	0
Carryover of files from 2014-15	1	1	0	0	0
Carryover of files from 2016-17	1	1	0	0	0
Carryover of files from 2017-18	1	1	0	0	0
Carryover of files from 2018-19	24	21	2	1	0
New Conciliation requests 2019-20	100	83	11	6	0
Total Conciliation Files:	**128**	**108**	**13**	**7**	**0**
Conciliation files heard 2019-20	86	72	8	6	0
Number of Conciliation hearing days	54	43	5	6	0

Average Conciliation Hearing Days Per Case: 0.63

Conciliation File Outcomes in 2019-20

File Outcomes	Total
Withdrawn	12
Resolved	38
Unresolved	44
On Hold	17
In Process	17
Total Files Handled:	**128**

Arbitration Activity Summary

Results from Arbitration Appointment	Arbitration Files Processed	Rights Grievances	Interest Disputes	Duty of Fair Representation	Section 40
Carryover of files from 2014-15	1	0	0	1	0
Carryover of files from 2015-16	1	1	0	0	0
Carryover of files from 2017-18	10	10	0	0	0
Carryover of files from 2018-19	25	22	3	0	0
New Arbitration requests 2019-20	20	15	2	3	0
Total Arbitration Files	**57**	**48**	**5**	**4**	**0**
Arbitration files heard 2019-20	13	10	0	3	0
Number of arbitration hearing days	13	10	0	3	0

Average Arbitration Hearing Days Per Case: 1.00

Arbitration Hearing Outcomes 2019-20

Outcomes	Total
OPAC Lacked Jurisdiction	0
Arbitration Cases Withdrawn	2
Parties Agreed to Non-OPAC Arbitrator	1
Settled Prior to Arbitration	6
Mediated Settlement	1
Final Awards Delivered	3
Adjourned Sine Die	0
In Process	44
Total Files Handled:	**57**

Appendix 2

Activity Summary – 10 Year Overview:

Conciliation Files

Categories	10-11	11-12	12-13	13-14	14-15	15-16	16-17	17-18	18-19	19-20	Average
New Conciliation Applications	**100**	**111**	**71**	**100**	**106**	**102**	**84**	**130**	**70**	**100**	**97.4**
Rights Grievances	84	89	61	84	94	84	72	117	62	83	**83.0**
Interest Disputes	11	19	7	11	7	15	7	9	3	11	**10**
Duty of Fair Representation (DFR)	4	3	2	4	5	3	5	4	5	6	**4.1**
Section 40	1	0	1	1	0	0	0	0	0	0	**0.3**
Total Conciliation Applications	**119**	**133**	**108**	**123**	**120**	**129**	**115**	**165**	**104**	**128**	**124.4**
Rights Grievances	101	107	91	104	106	109	97	148	93	108	**106.4**
Interest Disputes	13	19	12	13	8	17	13	13	6	13	**12.7**
Duty of Fair Representation (DFR)	4	5	1	4	6	3	5	4	5	7	**4.4**
Section 40	1	2	4	2	0	0	0	0	0	0	**0.9**
Conciliation Cases Heard	82	94	63	92	90	87	76	109	69	86	**84.8**
Conciliation Hearing Days	56	57	51	70	71	64	48	71	58	54	**60.0**
Average Number of Days Per Conciliation	**0.68**	**0.61**	**0.81**	**0.76**	**0.79**	**0.74**	**0.63**	**0.65**	**0.84**	**0.63**	**0.71**

Arbitration Files

Categories	10-11	11-12	12-13	13-14	14-15	15-16	16-17	17-18	18-19	19-20	Average
New Arbitration Applications	**31**	**34**	**22**	**31**	**21**	**15**	**29**	**23**	**32**	**20**	**25.8**
Rights Grievances	28	26	11	21	17	11	24	20	28	15	**20.1**
Interest Disputes	1	8	8	3	3	4	1	3	3	2	**3.6**
Duty of Fair Representation (DFR)	1	0	0	4	1	0	4	0	1	3	**1.4**
Section 40	1	0	3	3	0	0	0	0	0	0	**0.7**
Total Arbitration Applications	**49**	**56**	**44**	**47**	**44**	**37**	**39**	**41**	**51**	**57**	**46.5**
Rights Grievances	39	45	29	29	29	26	30	36	45	48	**35.6**
Interest Disputes	3	8	9	9	5	4	3	3	4	5	**5.3**
Duty of Fair Representation (DFR)	6	1	1	4	5	3	6	2	2	4	**3.4**
Section 40	1	2	5	5	5	4	0	0	0	0	**2.2**
Number of Arbitration Cases Heard	28	16	25	22	19	12	20	20	19	13	**19.4**
Number of Arbitration Hearing Days	60	27	36	35	36	18	18	22	23	13	**28.8**
Average Number of Days Per Arbitration Hearing	**2.14**	**1.69**	**1.44**	**1.59**	**1.89**	**1.50**	**0.90**	**1.10**	**1.21**	**1.00**	**1.4**

Total Files

Categories	10-11	11-12	12-13	13-14	14-15	15-16	16-17	17-18	18-19	19-20	Average
Total New Applications	131	145	93	131	127	117	113	153	102	120	**123.2**
Total New and Carryover Applications	168	189	152	170	164	166	154	206	155	185	**170.9**
Total Cases Heard	110	110	88	114	109	99	96	129	88	99	**104.2**
Total Hearing Days	116	84	87	105	107	82	66	93	81	67	**88.8**

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You may contact OPAC at:

25 Grosvenor Street
15th Floor
Toronto ON M7A 1Y6
Telephone: 416 314-3520
Facsimile: 416 314-3522
Email: opac.applications@ontario.ca

www.policearbitration.on.ca