Ontario Police Arbitration Commission

Annual Report

Fiscal Year 2020-21

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Message from the Chair

As in previous years, the Ontario Police Arbitration Commission (OPAC) fulfilled its legislated obligations under Part VIII of the Police Services Act (PSA) by maintaining registers of professional conciliators and arbitrators that provide conciliation and arbitration services to the Ontario policing community. All mandatory Commission 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.

The fiscal year 2020-21 presented ongoing challenges from the previous year related to the COVID-19 pandemic and planning for OPAC's impending expanded mandate pursuant to the Community Safety and Policing Act, 2019 (CSPA, 2019) whereby OPAC will be renamed the Ontario Police Arbitration and Adjudication Commission (OPAAC).

In 2020-21 OPAC had, and continues to have, PSA obligations to provide timely and effective conciliation and arbitration services to Ontario police services and police associations. Due to the ongoing COVID-19 pandemic and social distancing requirements, in-person conciliation meetings and arbitration hearings have been halted, and meetings continue to be conducted via video conference calls to meet mandatory service delivery obligations.

Conciliators, who were previously trained in the use of video conferencing technology, continue to conduct digital conciliation meetings. OPAC has provided written guidance to applicants and respondents as to the conduct of conciliation and arbitration proceedings during the COVID-19 pandemic. Arbitrators with jurisdiction over arbitral proceedings continue to be empowered to determine how arbitration hearings will be conducted during the pandemic.

OPAC has fulfilled all legal obligations to provide timely and professional conciliation services to the Ontario policing community and has retained and maintained Registers of Conciliators and Arbitrators. Notwithstanding the COVID-19 pandemic, the Solicitor General or her designate(s), continue to appoint conciliators to rights and interest disputes, including appointment of rights arbitrators. OPAC's Chair continues to appoint interest arbitrators only, in accordance with the PSA.

Prior to the COVID-19 pandemic, OPAC and its Commission Members agreed the Chair would identify police services where undue labour relations strife is recognized. It was further agreed the Chair would attempt to engage identified police services and police association representatives in consensual discussions on ways to mitigate current and future labour relations conflict. All activity in this regard has been temporarily suspended due to COVID-19.

As Chair of the Commission, I want to thank all Commission Members, appointed from the Ontario Association of Police Services Boards (OAPSB) and the Police Association of Ontario (PAO) for their insightful contributions and cooperation. The cooperation shown to date is particularly valued and important as the details of OPAAC's expanded mandate are being discussed and determined. I want to also sincerely thank OPAC's staff for their diligent work and professionalism, particularly during the challenging times of a global pandemic.

OPAC is grateful to be involved in regulation discussions affecting the future OPAAC. Discussions and shared information have been most helpful in OPAAC's planning process and preparedness for the implementation of the CSPA, 2019.

OPAC continues to make improvements to the collection and storage of statistical data for the use of stakeholders and senior ministry officials. As a matter of priority, OPAC is continually evaluating and planning for administrative and strategic changes likely to arise out of the CSPA, 2019 and subsequent regulations.

While 2020-21 presented challenges, OPAC and its staff look to the future with optimism and readiness for new challenges!

Sig M. Walter

Chair

Executive Summary

During the 2020-21 fiscal year OPAC met, or exceeded, all mandated requirements set out under Part VIII of the Police Services Act.

OPAC handled a total of 268 conciliation and 60 arbitration cases. Refer to Appendix 1 for an activity summary for conciliations and arbitrations which occurred in 2020-21. The total number of conciliation and arbitration files, including carryover from earlier years, reached 328 compared to the 10-year average of approximately 187 files. The 10-year activity summary is in Appendix 2.

The following strategic objectives, outlined in the 2020-21 Business Plan, were successfully implemented:

- Ensure timely delivery of professional conciliation and arbitration services;
- Inform the Deputy Solicitor General and Solicitor General about important emerging labour relations issues in policing or within the Arbitration Commission;
- Evaluate the potential implications of the Community Safety and Policing Act, 2019, and the operational impacts on the Arbitration Commission, post-proclamation;
- Manage records, including the retention and/or destruction of outdated core business, and financial files;
- Continue to implement the strategy to mitigate policing labour relations discord, with the agreement of the Ontario Association of Police Services Boards (OAPSB), the Police Association of Ontario (PAO) and the Ontario Association of Chiefs of Police (OACP):
- Review existing policies and identify new policies that require development;
- Review and add to the arbitrator and conciliator register as required;
- Continue succession planning for the Arbitration Commission staff and appointees; and,
- Continue improvement and implementation of the statistical database to improve case management, including the ability to automate queries of statistical data, and to advance 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 2020-21 was $458,700 and OPAC operated under-budget with a total expenditure of $363,475. The Financial Report section is found on page seven.

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; and,
- Sponsor research with respect to police arbitration processes and awards.

OPAC Role

OPAC was established in 1972 to facilitate effective and efficient processes 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 collective agreement or arbitral award
2. “Interest” disputes involve 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, the Solicitor General or their designate, appoints conciliators and mediator/arbitrators to resolve rights disputes. The OPAC Chair appoints interest arbitrators only, and the Solicitor General appoints conciliators to interest disputes.

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.

2020-21 Commission Member Appointment Terms

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

Ontario Association of Police Services Board Representatives
Patrick Weaver: January 15, 2021 to January 14, 2023
Kevin Holland: March 18, 2020 to March 17, 2022

Police Association of Ontario Representatives
Bruce Chapman: April 11, 2021 to December 31, 2021
Mark Baxter: April 11, 2021 to December 31, 2021

Staff

OPAC's staff consists of an Executive Officer and one full-time Conciliation Services Assistant. Employees of OPAC are appointed under Part III of the Public Service of Ontario Act, 2006. In 2020-21, OPAC continued to use a temporary, On Call Admin position. The position will continue to assist with the ongoing maintenance of OPAC's database.

Conciliator and Mediator-Arbitrator Register

There were no new additions to the Conciliator and Mediator-Arbitrator Register.

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)

One Conciliation Services Assistant (reports to the Executive Officer)

On Call Admin (reports to the Executive Officer)

Financial Report

Fiscal Year 2020-21 Budget: $458,700

Fiscal Year 2020-21	Budget	Actuals	Variance
Salaries & Wages	$182,000	$119,390	$62,610
Benefits	$23,500	$17,780	$5,720
Transportation & Communication	$40,000	$3,645	$36,355
Services	$199,200	$221,823	($22,623)
Supplies & Equipment	$14,000	$837	$13,163
Total:	**$458,700**	**$363,475**	**$95,225**

See further Services breakdown in the table below:

Services Breakdown

Fiscal Year 2020-21	Actuals
Conciliation Services	$70,058
Arbitration Services	$28,216
Other Services	$123,549
Total:	**$221,823**

The budget for 2020-21 was $458,700 with 2020-21 total expenditures of $363,475, resulting in an underspend of $95,225. Factors that affected OPAC's expenditures were reduced travel due to the COVID-19 pandemic and OPAC staffing was not at full complement. OPAC's services deficit of $22,623 was due to the costs associated with the transfer of OPAC's webhosting provider and the procurement of an external, private investigator to investigate a complaint.

Appointee Remuneration

Total remuneration for all OPAC appointees for the 2020-21 fiscal year was $80,264.

Appointee	Total Annual Remuneration	Per Diem Remuneration
Sig Walter, Chair (Part-time)	$73,656	$744
Bruce Chapman, Member (Part-time)	$1,888	$472
Mark Baxter, Member (Part-time)	$1,416	$472
Kevin Holland, Member (Part-time)	$1,416	$472
Patrick Weaver, Member (Part-time)	$1,888	$472
Total:	**$80,264**	

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.

2020-21 Conciliation Highlights

- 234 new applications for conciliator appointments
- 268 conciliation files were handled in total, including carryover from previous years
- 104 conciliations heard over 65 hearing days

Conciliation activity in fiscal year 2020-21 exceeded OPAC's 10-year averages. New conciliation applications filed increased 134 percent from last fiscal year, reaching 234 new applications for a total of 268 files. The detailed conciliation activity report, which includes grievance types and outcomes is available in Appendix 1.

Mediation-Arbitration Services

If 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. With the emphasis on mediation prior to arbitration, it has increased the number of settlements between the parties in interest and rights disputes, as reflected in OPAC's statistics.

2020-21 Arbitration Highlights

- 16 new applications for arbitrator appointments
- 60 arbitration files were handled in total, including carryover from previous years
- 12 arbitration files heard over 12 hearing days

Arbitration activity in fiscal year 2020-21 was below OPAC's 10-year average. Due to the COVID-19 pandemic, there was a decrease in new arbitration applications filed in 2020-21. 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 continues to be committed to providing information about its services to stakeholders and the public in a transparent and accessible manner. OPAC's website (www.policearbitration.gov.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 use the awards, summaries and agreements as research materials. OPAC's website complies with the Accessibility for Ontarians with Disabilities Act.

OPAC's website underwent a webhosting transfer to increase the site's security. OPAC has taken the necessary steps for its website to be fully operative and to comply with all regulatory standards.

Performance Measures – Fiscal Year 2020-21

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 1.1 days. In fiscal year 2020-21, 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 **1.1 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 1.1 days. In fiscal year 2020-21, 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 **1.1 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 1.3 days. In fiscal year 2020-21, the average posting time was **1.0 day** 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 **1.3 days**	Average number of days for new awards to be published on website from receipt of summary: **1.0 day**

Appendix 1

Activity Summary: Fiscal Year 2020-21

Conciliation Activity Summary

Results from Conciliation Appointments	Conciliation Files Processed	Rights Grievances	Interest Disputes	Duty of Fair Representation	Section 40
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	4	4	0	0	0
Carryover of files from 2019-20	28	22	5	1	0
New Conciliation requests 2020-21	234	228	2	4	0
Total Conciliation Files:	**268**	**256**	**7**	**5**	**0**
Conciliation files heard 2020-21	104	97	6	1	0
Number of Conciliation hearing days	65	61	3	1	0

Average Conciliation Hearing Days Per Case: 0.63

Conciliation File Outcomes in 2020-21

File Outcomes	Total
Withdrawn	38
Resolved	25
Unresolved	39
On Hold	32
In Process	134
Total Files Handled:	**268**

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	18	15	3	0	0
Carryover of files from 2019-20	14	10	2	2	0
New Arbitration requests 2020-21	16	13	2	0	1
Total Arbitration Files	**60**	**49**	**7**	**3**	**1**
Arbitration files heard 2020-21	12	12	0	0	0
Number of arbitration hearing days	12	12	0	0	0

Average Arbitration Hearing Days Per Case: 1.00

Arbitration Hearing Outcomes 2020-21

Outcomes	Total
OPAC Lacked Jurisdiction	0
Arbitration Cases Withdrawn	0
Parties Agreed to Non-OPAC Arbitrator	0
Settled Prior to Arbitration	1
Mediated Settlement	1
Final Awards Delivered	2
Adjourned Sine Die	0
In Process	56
Total Files Handled:	**60**

Appendix 2

Activity Summary – 10 Year Overview:

Conciliation Files

Categories	11-12	12-13	13-14	14-15	15-16	16-17	17-18	18-19	19-20	20-21	Average
New Conciliation Applications	**111**	**71**	**100**	**106**	**102**	**84**	**130**	**70**	**100**	**234**	**110.9**
Rights Grievances	89	61	84	94	84	72	117	62	83	228	**97.4**
Interest Disputes	19	7	11	7	15	7	9	3	11	2	**9.1**
Duty of Fair Representation (DFR)	3	2	4	5	3	5	4	5	6	4	**4.1**
Section 40	0	1	1	0	0	0	0	0	0	0	**0.2**
Total Conciliation Applications	**133**	**108**	**123**	**120**	**129**	**115**	**165**	**104**	**128**	**268**	**139.3**
Rights Grievances	107	91	104	106	109	97	148	93	108	256	**121.9**
Interest Disputes	19	12	13	8	17	13	13	6	13	7	**12.1**
Duty of Fair Representation (DFR)	5	1	4	6	3	5	4	5	7	5	**4.5**
Section 40	2	4	2	0	0	0	0	0	0	0	**0.8**
Conciliation Cases Heard	**94**	**63**	**92**	**90**	**87**	**76**	**109**	**69**	**86**	**104**	**87.0**
Conciliation Hearing Days	**57**	**51**	**70**	**71**	**64**	**48**	**71**	**58**	**54**	**65**	**60.9**
Average Number of Days Per Conciliation	**0.61**	**0.81**	**0.76**	**0.79**	**0.74**	**0.63**	**0.65**	**0.84**	**0.63**	**0.63**	**0.7**

Arbitration Files

Categories	11-12	12-13	13-14	14-15	15-16	16-17	17-18	18-19	19-20	20-21	Average
New Arbitration Applications	**34**	**22**	**31**	**21**	**15**	**29**	**23**	**32**	**20**	**16**	**24.3**
Rights Grievances	26	11	21	17	11	24	20	28	15	13	**18.6**
Interest Disputes	8	8	3	3	4	1	3	3	2	2	**3.7**
Duty of Fair Representation (DFR)	0	0	4	1	0	4	0	1	3	0	**1.3**
Section 40	0	3	3	0	0	0	0	0	0	1	**0.7**
Total Arbitration Applications	**56**	**44**	**47**	**44**	**37**	**39**	**41**	**51**	**57**	**60**	**47.6**
Rights Grievances	45	29	29	29	26	30	36	45	48	49	**36.6**
Interest Disputes	8	9	9	5	4	3	3	4	5	7	**5.7**
Duty of Fair Representation (DFR)	1	1	4	5	3	6	2	2	4	3	**3.1**
Section 40	2	5	5	5	4	0	0	0	0	1	**2.2**
Number of Arbitration Cases Heard	**16**	**25**	**22**	**19**	**12**	**20**	**20**	**19**	**13**	**12**	**17.8**
Number of Arbitration Hearing Days	**27**	**36**	**35**	**36**	**18**	**18**	**22**	**23**	**13**	**12**	**24.0**
Average Number of Days Per Arbitration Hearing	**1.69**	**1.44**	**1.59**	**1.89**	**1.50**	**0.90**	**1.10**	**1.21**	**1.00**	**1.00**	**1.3**

Total Files

Categories	11-12	12-13	13-14	14-15	15-16	16-17	17-18	18-19	19-20	20-21	Average
Total New Applications	145	93	131	127	117	113	153	102	120	250	**135.1**
Total New and Carryover Applications	189	152	170	164	166	154	206	155	185	328	**186.9**
Total Cases Heard	110	88	114	109	99	96	129	88	99	116	**104.8**
Total Hearing Days	84	87	105	107	82	66	93	81	67	77	**84.9**

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