



Tribunals Ontario

Ontario Civilian Police
Commission

Administrator's Report to OCPC dated August 18, 2022

(Disponible en français)

Table of Contents

- Introduction
- Governance
- The situation as of the end of 2018
- The Board and leadership of the Police Service from 2019 to date
- 2019
- 2020
- 2021
- 2022
- After the end of the Lockwood Administration
- Events in 2020
- The collective agreement and the Promotional Grievance MOU
- The Webster text and the three investigations
- Returning to the Collective Agreement and the Promotional Grievance
- Events in 2021
- The OPP Investigation
- The March and April 2021 Board meetings
- Completion of the OPP Investigation
- The Ontario Civilian Police Commission
- Issues of confidentiality and conflicts of interest
- The OCPC Report and recommendations
- The QIPRD Report and Recommendations
- Other Board work in 2020, 2021 and 2022
- Summary, comment and conclusion
- Policing in Thunder Bay
- Civilian oversight and governance
- What happened?
- The broader impact and what need be done

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August 18, 2022

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Dear Mr. Weir

Re: Thunder Bay Police Services Board

As you well know, I was appointed by the Ontario Civilian Police Commission (OCPC) on April 19, 2022. Since then I have met with more than thirty people to better understand the circumstances leading to my appointment and their perspectives on the way forward. I reviewed the 2018 reports of examinations of the Thunder Bay Police Service (the "Police Service") by the Ontario Independent Police Review Director ("OIPRD") and the OCPC as well as their recommendations. I have reviewed the work of the Thunder Bay Police Services Board (the "Board"), and the minutes of their meetings, since the beginning of 2019. I have reviewed internal reports of the Police Service as well as relevant information from OCPC.

I have not conducted an investigation. My role is to act as Board Administrator. But to properly undertake my role and to decide how best to proceed, I have had to reach some conclusions about the events that led to my appointment.

There are other ongoing investigations. I have attempted not to inadvertently interfere with the work of others and so have focused carefully on the broader picture and on the work of the Board and its members. This report is written on the premise that the Board, and its members, have been well intentioned and have collectively done good work – but also on the basis that there have been failures of governance, significant distractions, and a very concerning failure to advance the recommendations that were made as a result of the investigation led by Senator Murray Sinclair.

In my view, there are lessons properly to be learned from the events of the last 2 ½ years but the most important thing is to start to move forward to do what must be done.

Governance

At the outset, it is useful to sketch out governance of policing under the *Police Services Act*, R.S.O. 1990, P.15 as amended (the "Act").

Under the Act, the City of Thunder Bay is required to "provide adequate and effective police services in accordance with its needs". Adequate and effective police services is defined to include, at a minimum, all of the following police services:

1. Crime prevention
2. Law enforcement
3. Assistance to victims of crime
4. Public order maintenance
5. Emergency response

In accordance with the Act, Thunder Bay has established the Police Service, the members of which are appointed by the Police Services Board (the "Board").

There are five members of the Board. Three members are appointed by City Council (two members of council and one non-member). Two members are appointed by the province.

As the Honourable John W. Morden observed in the *Independent Civilian Review into matters relating to the G20 Summit* (the "G20 Report") at p. 82:

In the municipal policing context, civilian oversight is the process adopted by the legislature to ensure the public's accepted values and norms will guide their police service. Two critical assumptions underlie this approach: first, that police services require some form of governance and

second, that elected officials are not the appropriate individuals to provide that governance. The Police Services Act creates a system where non-police steer the police service towards certain objectives, decide how resources will be allocated in attaining those objectives, and establish the policy framework in which those objectives will be achieved.

Under the Act, the Board is responsible for the provision of adequate and effective police services in Thunder Bay. Its' important and weighty responsibilities include:

- a. appointing the members of the municipal police force;
- b. appointing the chief of police and any deputy chief of police, and annually determine their remuneration and working conditions;
- c. directing the chief of police, but not with respect to specific operational decisions or day-to-day operations;
- d. monitoring the performance of the chief of police;
- e. generally determining, after consultation with the chief of police, objectives and priorities with respect to police services in the municipality;
- f. establishing policies for the effective management of the police force;
- g. establishing guidelines for dealing with complaints;
- h. reviewing the chief of police's administration of the complaints system and receiving regular reports on its administration;

It is important to recognize that the Board is responsible to generally determine objectives and priorities and to establish policies. The Board appoints and directs the Chief of Police.

Notably:

- The Board may give orders and directions to the Chief of Police
- The Board may not give orders and directions to other members of the Police Service,
- No individual member of the Board may give orders or directions to the chief of police or any other member of the Police Service.
- The Board may not direct the Chief of Police with respect to specific operational decisions or with respect to the day-to-day operation of the police force.

The Board, as a whole, has a vital responsibility to determine policing objectives and priorities and to establish policies. The Board, as a whole, can direct the Chief of Police but not with respect to specific operational decisions or with respect to the day-to-day operation of the Police Service.

In this way, there is civilian oversight of policing with the Chief of Police having operational authority. This said, the respective authorities of police services boards and polices services is an important and sometimes difficult question. To paraphrase from the *Final Report of the Ipperwash Inquiry*¹, it is equally dangerous for police services boards to become either too involved in policing or not involved enough². To paraphrase from the *G20 Report* at p. 84, bright lines should not be fashioned between the "the realm of the overseers and the function of the police" and there should not be "a complete separation between matters of policy and operational matters". Section 31 of the *Police Services Act* requires consultation with the chief of police which can properly include "the Board asking questions about, commenting on, or making recommendations concerning operational matters"³.

The regulations to the Act establish a *Code of Conduct* for members of the Board. Some of the provisions of the Board *Code of Conduct* are as follows:

- Board members shall not interfere with the police force's operational decisions and responsibilities or with the day-to-day operation of the police force, including the recruitment and promotion of police officers.
- Board members shall keep confidential any information disclosed or discussed at a meeting of the board, or part of a meeting of the board, that was closed to the public.
- No board member shall purport to speak on behalf of the board unless he or she is authorized by the board to do so.

- Board members shall discharge their duties loyally, faithfully, impartially and according to the Act, any other Act and any regulation, rule or by-law, as provided in their oath or affirmation of office.
- Board members shall uphold the letter and spirit of the Code of Conduct set out in this Regulation and shall discharge their duties in a manner that will inspire public confidence in the abilities and integrity of the board.
- Board members shall not use their office to advance their interests or the interests of any person or organization with whom or with which they are associated.
- Board members shall refrain from engaging in conduct that would discredit or compromise the integrity of the board or the police force.

In addition to the *Code of Conduct*, Board members are subject to the *Municipal Conflict of Interest Act* as members of a "local board" as defined. Board members must comply both with the *Code of Conduct* and the *Municipal Conflict of Interest Act*.

The *Code of Conduct* reflects that it is the Board as a whole, not individual board members, that has authority and that the Board does not have operational authority.

In addition to non-interference with operational matters, the *Code of Conduct* makes clear that Board members have duties of confidentiality, loyalty, faithfulness, impartiality and integrity. These important duties are unsurprising for members of a board with the important responsibilities described above.

The requirement that Board members discharge their duties loyally, faithfully and impartially is relevant and important. The obligations of loyalty and faithfulness are well recognized fiduciary obligations. The obligation of impartiality is a well-recognized obligation for decision-makers where procedural fairness is required.

The legal content of the duty of loyalty is well known and includes the duty to avoid conflicting interests⁴.

The duty of impartiality is similar to, but different than, duty to avoid of conflicts of interest. Impartiality is required of judges and others who make adjudicative decisions. Impartiality requires there not be actual bias or a reasonable apprehension of bias. The *Code of Conduct* presumably requires impartiality because police services boards sometimes must make decisions that require impartiality in respect of those affected.

In my view, it would be better if the *Code of Conduct* could be more easily understood by people without legal training. Nevertheless, I consider that the *Code of Conduct* clearly requires confidentiality, avoidance of both conflicts and bias, acting collectively as a board and not interfering with operational matters that are the responsibility of the chief of police.

The *Code of Conduct* recognizes and supports the important responsibilities of police services boards. As is recognized by the requirement to uphold the letter and spirit of the *Code of Conduct*, the provisions of the *Code of Conduct* are not mere technical requirements.

The situation as of the end of 2018

Having reviewed the legal and governance context, I now turn to the factual context.

By the end of 2018, it is no overstatement to say that policing and governance of policing in Thunder Bay had undergone intense scrutiny and faced important challenges.

In November 2016, Ontario's Independent Police Review Director initiated a systemic review of the Thunder Bay Police Service, and events that occurred in Thunder Bay, to investigate and respond to concerns including investigations of Indigenous deaths and other interactions with Indigenous people.

In July 2017, Senator Murray Sinclair was retained to lead an OCPC investigation into the Board. The investigation followed expression by First Nations leaders of a lack of confidence in the Board's ability to oversee adequate and effective policing in Thunder Bay.

Senator Sinclair's investigation and the resulting OCPC Report was completed in November 2018. The OCPC Report found, among other things, that:

- The Board did not demonstrate meaningful engagement in its own strategic or operational planning, relying for the most part on input from the Chief of Police and staff. There are no Board-developed, Board-driven planning policies or formal instruments to support long-term strategic or annual operational planning in place.
- The Board did not demonstrate meaningful engagement in the development of governance and oversight policies. There is a heavy reliance on standard templates developed by MCSCS, and a lack of Board-level policies developed to address the obvious and critical needs relating to the policing to protect the Indigenous community. There is no schedule or procedure for initiating reviews of existing policies or for developing new policies in response to emerging needs.
- The Board has not shown leadership in proactive, committed outreach to key Indigenous community organizations, other Indigenous communities or organizations in the region, or Indigenous policing agencies active in Northern Ontario.
- The Board has made no apparent effort to make its policies, plans and activities visible and transparent to the public at large or to the First Nation community.

In order to address these and other findings, Senator Sinclair made 45 recommendations most of which proposed significant activities to be undertaken by the Board. Senator Sinclair also made recommendations directed at the Provincial government, including the Ministry of Children, Community and Social Services and the City of Thunder Bay.

Senator Sinclair also concluded that an administrator should be appointed by OCPC for a period of time to temporarily exercise all of the powers of the Board while the Board is reconstituted. As recommended, OCPC appointed Thomas Lockwood Q.C. as administrator effective December 14, 2018. Mr. Lockwood was appointed for an initial term of one year. His appointment was later extended to June 30, 2020.

The OIPRD Report was completed in December 2018. The OIPRD Report, entitled *Broken Trust, Indigenous People and the Thunder Bay Police Service*, included 44 recommendations. These recommendations proposed significant activities to be undertaken by the Police Service, the Ontario Government, the Office of the Chief Coroner, Ontario's Chief Forensic Pathologist, the Regional Coroner, Ontario's Forensic Pathology Service.

As should be obvious from the above governance review, the OIPRD Report required attention by both the Police Service and the Board. The OIPRD Recommendations required operational actions, setting objectives and priorities and establishing policies. Serious attention from the Board, the Chief of Police and members of the Police Service was required for effective implementation of the recommendations. The Board had an important role in monitoring the performance of the Chief of Police in implementing the OIPRD recommendations as well as determining the policy implications to be addressed by the Board.

The Board and leadership of the Police Service from 2019 to date

2019

As of January 2019, the Board had four members. Ms. Celina Reitberger was a provincial appointee, appointed in late 2017. Ms. Reitberger was the elected board chair for a term ending in December 2019. As of January 2019, there was a vacancy in the second provincial appointment which remained outstanding until December 2019 when Dr. Kyle Lansdell was appointed.

Mayor Bill Mauro was a board member as head of the municipal council. Councillor Kristen Oliver was appointed by council to the Board as a member of council. Georjann Morriseau was appointed by council to the Board as a non-council member. Mayor Mauro and Councillor Oliver were elected in October 2018. Ms. Morriseau was appointed by the newly elected council in early 2019 for a term ending in November 2022 (being shortly after the 2022 municipal elections).

Notably given the events leading to, and the recommendations of, the OCPC and OIPRD Reports, Ms. Reitberger and Ms. Morriseau are Indigenous people and members of the Fort William First Nation. Ms. Reitberger is a senior lawyer. Her experience included having been the Nishnawbe Aski Legal Services executive director. Ms. Morriseau has had a number of leadership and board roles including terms as councillor and as chief of the Fort William First Nation.

Sylvie Hauth was recently appointed chief of police as of January 2019. She was appointed in November 2018, having been appointed deputy chief in January 2017 and acting chief in June 2017. Chief Hauth joined the Police Service in 1993 and was the first female chief of the Police Service.

As of January 2019, Don Lewis was the acting deputy chief of the Police Service. The Board appointed Ryan Hughes as deputy chief in July 2019.

2020

At the beginning of 2020, the Board was comprised of Dr. Lansdell, Mayor Mauro, Ms. Morriseau, and Ms. Oliver. Ms. Morriseau was the board chair for a term ending in December 2020. The appointment of Administrator Lockwood continued until June 30, 2020. Mr. Lockwood only had one vote on the Board during 2020 rather than having the sole vote as he did previously.

Dr. Lansdell resigned from the Board effective October 31, 2020. Ms. Reitberger's term as a provincial appointee ended in late 2020. Michael Power was appointed by the Solicitor General effective November 27, 2020.

2021

At the beginning of 2021, the Board was comprised of Mayor Mauro, Ms. Morriseau, Councillor Oliver, Mr. Power. Councillor Oliver had become board chair in December 2020.

Mr. Roydon Pelletier was appointed by the Solicitor General effective March 4, 2021. Mr. Pelletier is an Indigenous person and a member of the Fort William First Nation.

2022

At the beginning of 2022, the Board was comprised of Mayor Mauro, Ms. Morriseau, Councillor Oliver, Mr. Pelletier and Mr. Power. Ms. Oliver remained board chair.

In late January 2022, the Board suspended Deputy Chief Hughes pending a conduct investigation. Superintendent Dan Taddeo was appointed acting deputy chief in February 2022.

On April 19, 2022, I was appointed administrator. Councillor Oliver, Mr. Pelletier and Mr. Power resigned from the Board on April 22, 2022. Shelby Ch'ng has since been appointed by City council to replace Councillor Oliver.

In June 2022, the Board⁵ suspended Chief Hauth following of the delivery of a Notice of Hearing by OCPC. Dan Taddeo was appointed acting chief.

Currently, the Board is comprised of Councillor Ch'ng, Ms. Morriseau and Mayor Mauro There are no current provincial appointees. It remains to be seen after the fall municipal election who the municipal Board members will be.

After the end of the Lockwood Administration

Events in 2020

Mr. Lockwood ceased to be administrator on June 30, 2020. At that time, Ms. Morriseau was Board Chair. Mayor Mauro, Councillor Oliver, Dr. Lansdell, and Ms. Reitberger were the other Board members. Mr. Power was appointed in late 2020 as noted above.

I will first describe and comment on certain events that occurred (and did not occur) in 2020, 2021 and 2022.

By way of overview, I note that public health measures in respect of the COVID 19 pandemic were in place beginning in March 2020. It is worth keeping in mind that these measures and the pandemic itself had significant impact through the period in question. This likely had particular effect on outreach by the Board.

I also note that there appears to have been division within the Board itself at least by early 2020.

The collective agreement and the Promotional Grievance MOU

The collective agreement with the Thunder Bay Police Association was in negotiation from January to June 2020. Mr. Lockwood and Ms. Morriseau were the Board representatives on the management bargaining committee for negotiations with the Police Association. Chief Sylvie Hauth attended the bargaining sessions as did Holly Walbourne, legal counsel to the Police Service⁶.

Jason Rybak was the chair of the Police Association bargaining committee.

Just before bargaining was to commence in January 2020, the Police Association filed a grievance in respect of a change to the promotional system. Their position was that Chief Hauth had improperly changed the promotions process so that individuals who would have been eligible for promotion under a previous competition had to compete again for promotion under changed rules. There were allegations of favoritism made against Chief Hauth which are vigorously denied.

Jason Rybak was one of the two officers who had to compete again under the changed process. Under the new competition, Dan Irwin and Mike Dimini were promoted having placed at the top of their respective promotional pools. Jason Rybak was not promoted. It was a matter of significant contention whether those who would have been promoted under the 2019 promotional competition should have been promoted or whether management was entitled to change the promotional process.

This issue became part of collective bargaining as a policy matter. An agreement was reached and became part of the new collective agreement.

At the same time as the collective bargaining process, Ms. Morriseau met with union representatives in respect of the 2020 promotions. Without the involvement of the Chief Hauth and without Board involvement, she reached an agreement in principle which was disclosed to Chief Hauth late in the bargaining process. Ms. Walbourne was directed to draft a memorandum of understanding (the "Promotional Grievance MOU") with respect to the promotional grievance which she did on June 30, 2020, the last day of bargaining.

Administrator Lockwood has indicated that he cautioned Ms. Morriseau that she did not have the authority to enter into the Promotional Grievance MOU without Board approval. At the time, he was just one of five voting members on the Board. Administrator Lockwood understands that Ms. Morriseau signed the Promotional Grievance MOU in November 2020 several months after the term of Mr. Lockwood had expired and without Board approval. It appears that the Police Association understood that the Promotional Grievance MOU had had Board approval. Mr. Lockwood has also advised that Ms. Morriseau had significant direct involvement with the Police Association bargaining committee. Mr. Lockwood advises that he told Ms. Morriseau that it was problematic to engage this way without the knowledge and support of the management bargaining committee.

As I understand her perspective, Chief Hauth considered that Ms. Morriseau's approach tended to undermine the bargaining process and that Ms. Morriseau became something of an advocate for the Police Association rather than acting as a management representative in collective bargaining.

Having spoken with Ms. Morriseau, I have no doubt that she was persuaded that the Police Association's position in the promotional grievance was correct and that she saw value in supporting the membership of the Police Service. In other words, my view is that Ms. Morriseau thought it appropriate and useful as Board Chair to form direct relationships and deal directly with the Police Association and its members on what may be considered operational matters. Indeed, Ms. Morriseau does not agree with Mr. Lockwood's recollection of these matters. She says that Mr. Lockwood was fully involved and aware of her dealings with the Police Association and that he specifically agreed with and approved execution of the Promotional Grievance MOU as administrator.

She advises that Chief Hauth agreed in June 2020 with the Promotional Grievance MOU as negotiated. Ms. Morriseau advises that she first signed the Promotional Grievance MOU in June 2020 but that the MOU had to be signed again in the fall of 2020 because the original could not be found. I do not consider it necessary or useful to determine exactly what happened in this period but set out these matters as context.

The Webster text and the three investigations

In recent years, Facebook bloggers had released specific details about criminal offences prior to those details being made public by the Police Service. This was of concern because of the possibility that confidential information might have been leaked by members of the Police Service.

Brian Webster was one of these bloggers. In the spring of 2020, an investigation was commenced into possible breach of trust involving a member or members of the Thunder Bay Police Service. It does not appear that any particular individual was the subject of this investigation.

On July 24, 2020, a text was received on a cell phone that was previously assigned to Michael Dimini. The phone was then currently assigned to Detective Constable David Excell. The text appeared to have come from Brian Webster's telephone number. The text stated:

Hey Mike, I see they are thanking Thunder Bay Police in their bust announcement. Any anonymous info about what hardworking TBPS officers did?

On its face, this text suggested that Brian Webster was seeking confidential information from Sergeant Michael Dimini, as he then was, and that Sergeant Dimini might, therefore, have been the source of prior leaks of confidential information.

However, my understanding is that Michael Dimini had attempted previously to engage with Mr. Webster in an attempt to learn whether Mr. Webster had a source within the Police Service. Mr. Dimini acknowledges text communications with Mr. Webster through his old phone prior to July 2020. Michael Dimini indicates that this contact was disclosed at the time within the Police Service. Deputy Chief Hughes has said that he knew that Michael Dimini had been attempting to find out information from Mr. Webster. Ms. Walbourne has also indicated that she was aware that Michael Dimini was in contact with Mr. Webster for this purpose to the knowledge of Deputy Chief Hughes.

In any event, the investigation into possible breach of trust by a member of the Police Service was completed in December 2020 with the conclusion that there were no reasonable grounds to lay charges against anyone. Indeed, it appears that no suspect was ever identified and that, despite monitoring, little information had been seen on the blog pages that would suggest a breach of trust.

Notwithstanding that this July 24, 2020 text turned out not to be evidence of improper disclosure of confidential information, the text led to a lengthy and unfortunate chain of events.

On August 7, 2020, Deputy Chief Hughes received a telephone call from Ms. Morriseau who advised that someone had told her that Michael Dimini's cellphone had received a text message from the "Courthouse guy" asking for information and that this text was received on Michael Dimini's old work phone that another member now had. This call from Ms. Morriseau raised two separate issues for Deputy Chief Hughes. One was the then ongoing possible breach of trust investigation that had been commenced in the spring of 2020. The other was communication of confidential information by a police officer to Ms. Morriseau.

On August 17, 2020, Inspector Fennell interviewed Ms. Morriseau as part of the breach of trust investigation. According to Inspector Fennell, Ms. Morriseau advised that, on what appears to have been August 4, 2020, she had bumped into an officer at HomeSense store and that the officer advised her of the text message sent to Michael Dimini's old phone. Ms. Morriseau said that she did not know the name of this officer and she was unable to provide a description. However, she said that she would be able to recognize the officer in a photo lineup or when she is in the police station. Inspector Fennell asked whether it was Detective Constable Colin Woods, Detective Jason Rybak, Detective Sergeant Dan Irwin or Detective Constable David Exell who had

spoken to her at the HomeSense store. Ms. Morriseau said that she knew that it had not been Colin Woods or Jason Rybak and indicated that she did not know who David Exell was.

I note here for context that the July 24, 2020 text message was received by David Exell and that Colin Woods had been advised by David Exell in July regarding the text message. Dan Irwin was also aware of the text message having dealt with the matter on July 27, 2020.

On August 30, 2020, Ms. Morriseau was interviewed by Staff Sergeant Gombola. This interview was not in the context of the breach of trust investigation in respect of suspected disclosures to Mr. Webster but rather was part of an internal conduct investigation relating to disclosure of information to Ms. Morriseau. It appears that Ms. Morriseau was questioned by Robert Gombola on a statement subsequently signed by her on September 11, 2020. In her signed statement, Ms. Morriseau stated that the officer who spoke with her at HomeSense said that:

He was tired of the gossip and how people treat each other and the double standards officers feel exist. He continued by saying something along the lines of "for example, the officer who replaced Mike Dimini told a bunch of us he received a text on his phone which was Mike's old phone. The text came from someone from Thunder Bay Courthouse inside edition asking if he had anymore intel to share with them" the officer apparently reported this incident immediately to a superior and handed over his phone. The officer in Homesense (sic), said everyone is talking about it and that they don't think anything will be done about it because its Mike Dimini and he is favoured by the Chief and that if it was any other officer they would be charged or fired.

It is notable that Ms. Morriseau was not merely told of the text message from Webster but also that "everyone is talking about it" and that Michael Dimini was said to be favoured and, by implication, protected. The rationale for this disclosure to Ms. Morriseau and the expectation as to what Ms. Morriseau would do with this information are worth considering.

Ms. Morriseau's written statement says that "I do not know the name of this officer in homesense (sic) nor could I recognize him due to mask. I felt it would be rude of me to ask his name since he knew who I was."

In her interview with Robert Gombola, Ms. Morriseau was asked whether the officer who spoke with her was David Exell, Colin Woods, Jason Rybak or Lee Arnone. She said that it was not Colin Woods, Jason Rybak or Lee Arnone but that she did not know David Exell. She provided a description. When asked if she could pick the person out in a photo lineup, Ms. Morriseau said that that she might or might not be able to do so. At the end of this interview, Ms. Morriseau expressed irritation or frustration that she had been interviewed twice and had had to provide a statement and questioned the reason for this.

On September 23, 2020, Holly Walbourne met with Ms. Morriseau. According to Ms. Morriseau (through counsel in April 2021), Ms. Walbourne questioned her at length about the HomeSense incident and insisted that Michael Dimini was the subject of investigation or discipline having legitimately previously dealt with Brian Webster. Ms. Morriseau further said that she was questioned by Ms. Walbourne whether it had been Jason Rybak or Colin Woods who had spoken with her and that Ms. Walbourne spoke very critically of Rybak and Woods.

Ms. Walbourne acknowledges meeting with Ms. Morriseau on September 23, 2020 and, among other matters, speaking about the investigations of the HomeSense incident. She disputes much of what Ms. Morriseau has described. Ms. Walbourne has indicated that Ms. Morriseau said that she had been asked whether the person was Jason Rybak, Colin Woods, or other named officers. Ms. Walbourne also has acknowledged that she said that some of her interactions with Colin Woods had been toxic and that he had been one way to her face and another way behind her back.

I have not reached any conclusions as to what actually happened during this conversation between Ms. Morriseau and Ms. Walbourne and am not in a position to do so. However, I observe that it seems to be common ground that the HomeSense incident, the interviews by Fenell and Gombola about the HomeSense incident and Michael Dimini were discussed and that, irrespective of who raised the point, there was discussion about the possibility that Jason Rybak had been the officer who spoke with Ms. Morriseau at HomeSense.

On November 10, 2020, Deputy Chief Hughes had a discussion with Jason Rybak who was upset that he understood that his name had apparently been brought up during the internal investigation arising out of the HomeSense incident.

On November 12, 19 and 26 and December 3, 2020, unsuccessful attempts were made to arrange a further interview with Ms. Morriseau in respect of the internal conduct investigation for the purpose of having her review a photo lineup to see if she could identify the person with whom she had spoken at HomeSense.

On November 19, 2020, Deputy Chief Hughes again spoke with Detective Rybak. The Deputy Chief asked who had told Rybak that his name had been used in an internal investigation.

Detective Rybak was interviewed by Detective Sergeant Irwin on November 26, 2020. Detective Sergeant Irwin advised that this interview was in the course of a criminal investigation, but that Detective Rybak was being interviewed as a witness rather than as a suspect.

According to Detective Sergeant Irwin, he advised Detective Rybak that Deputy Chief Hughes had asked him to inquire what Ms. Morriseau had told Detective Rybak. Detective Rybak is reported to have said that he had spoken often with Ms. Morriseau about Police Association business and that he had spoken with Ms. Morriseau about this matter in mid to late October 2020. Detective Rybak apparently said that Ms. Morriseau told him that he was said to have been the leak to her.

Detective Sergeant Irwin's report does not indicate the context in which Detective Rybak said that Ms. Morriseau had said he had been said to be the leak to Ms. Morriseau. The report does indicate that Detective Rybak believed that senior management was accusing him of being the leak. Subsequently, Detective Rybak has stated that he was given to understand that Ms. Walbourne had asked Ms. Morriseau to state that Detective Rybak had been the leak to her at HomeSense.

To reiterate, Detective Rybak's name had been raised with Ms. Morriseau by Inspector Fenell and by Sergeant Gombola in their interviews with her as well as during her discussion with Ms. Walbourne in September. However, the Police Service records do not detail the discussion with Ms. Walbourne and it may be that Deputy Chief Hughes and Detective Sergeant Irwin would have understood that Ms. Morriseau had spoken to Detective Rybak about the formal interviews with Police Service officers rather than the informal discussion with Ms. Walbourne.

On November 30, 2020, an officer was tasked by Deputy Chief Hughes to write a production order request to obtain phone records for Ms. Morriseau's cell phone for the ongoing criminal investigation into possible breach of trust by a public officer and obstructing a police investigation.

A production order and a sealing order were obtained on December 1, 2020 for records during the period from July 24, 2020 and November 30, 2020. It is not obvious why phone records prior to the August 2020 interviews could have been relevant to leaking what was said during either of those interviews. A production order is necessarily (and only) for the purpose of a criminal investigation.

In Notice of Particulars that has recently been delivered by OCPC under the *Act*, it is alleged that Chief Hauth tacitly or overtly consented to this criminal investigation or omitted to immediately terminate or transfer this criminal investigation, into Chair Morriseau to another police service as it is not appropriate for a police service to investigate a member of its board. The decision by Chief Hauth to refer the investigation to the Ontario Provincial Police (OPP) was made on December 9, 2020.

Ultimately and as described below, the OPP concluded that there were no reasonable and probable grounds for charges against Chair Morriseau.

According to Chief Hauth, she had previously indicated to John Hannam, Board secretary, that a report was expected to be brought to the Board regarding Ms. Morriseau's conduct. However, Chief Hauth says that, once the matter became a criminal investigation, rather than a Code of Conduct matter, doing so would have been inappropriate. According to Mr. Hannam, he had been advised that a report would be brought to the Board that

was critical of Ms. Morriseau for informing someone that their name had come up in an investigation. Mr. Hannam advises that he was subsequently advised that the report would not be brought in December and that a report in January was anticipated. This did not occur. Mr. Hannam has indicated that he gave a heads-up to Mayor Mauro and Councillor Oliver, being the remaining Board members, but not to Ms. Morriseau as she was the subject of the expected report.

To conclude this part of the narrative, a text by Brian Webster to Michael Dimini's old cell phone seeking information led to a complicated series of events. It appears to me that animosity between some members of the Police Service with Michael Dimini, Ms. Walbourne and Chief Hauth played an important part as did Ms. Morriseau's relationship with the Police Association.

Returning to the Collective Agreement and the Promotional Grievance

While the investigations arising out of the Webster text were playing out from August to December 2020, matters continued in respect of the collective agreement and the promotional grievance.

I reiterate that Jason Rybak was the disappointed candidate from the 2019 promotional competition and the bargaining chair for the 2020 collective agreement negotiations.

On September 15, 2020, the Board approved the collective agreement with the Police Association as presented to the Board. There was a subsequent issue as to whether the collective agreement as presented was the collective agreement as negotiated. This issue need not specifically be considered here other than to note that this must have added both complication and stress.

Despite having been drafted in June 2020, Ms. Morriseau signed, or re-signed, the Promotional MOU, apparently on behalf of the Board, on November 17, 2020. Colin Woods signed, or resigned, the Promotional Grievance MOU for the Police Association.

The Promotional Grievance MOU was presented to the Board on December 15, 2020. The Minutes state that:

Ms. G. Morriseau provided an overview of a meeting held in June, 2020 relative to the subject MOU. She noted that the MOU was drafted and agreed upon with Mr. T. Lockwood (Administrator of the Board at that time).

Ms. H. Walbourne reported that both she and Chief S. Hauth never agreed to this MOU. Ms. Walbourne raised concerns that the Thunder Bay Police Association believes that this MOU was presented to the Board and approved for signing. Discussion was held relative to if the undertaking set out in the signed MOU was binding.

Discussion followed relative to the MOU and what authority the Board's bargaining committee had (for the Collective Agreement). Ms. Walbourne noted that the Collective Agreement for the Association was separate and distinct from the MOU.

Mr. Lockwood has advised that his understanding in June 2020 was that the Promotional Grievance MOU required Board approval. In June 2020, Mr. Lockwood had one vote at Board meetings. Ms. Walbourne advised the Board that she was tasked to draft the Promotional Grievance MOU on morning of the final day of collective agreement negotiations and that "... the MOU was [then] discussed and wording was agreed upon between the parties. Association counsel was to make a clean copy and distribute. It was made clear to all parties that the MOU, while accepted in theory, would have to be presented to the Board for final approval as that is where the authority lies."

The Promotional Grievance MOU provided that promotions would be made from the 2019 list of vacancies occurred and that, if no vacancies occurred, the Board Chair would request an increase in complement. The Promotional Grievance MOU further provided that it would become null and void if the increase in complement was not approved by the Board. The Board decided on December 15, 2020 not to create vacancies by increasing the complement. Ms. Morriseau dissented. As a result, the Promotional Grievance MOU (if binding) became null and void.

I summarize these events because stresses in the fall of 2020 with respect to the Collective Agreement and the Promotional Grievance MOU regarding the promotional issue may be context for the events following from the July 24, 2020 Webster text. Ms. Morriseau's positions were at odds with the Chief and did not receive support from other Board members. Ms. Morriseau's positions were supportive of the Police Association's positions. It would appear that Ms. Morriseau was in close contact with the Police Association on these matters in the fall of 2020.

Events in 2021

The OPP Investigation

As a result of Chief Hauth's request, the OPP conducted an investigation described as follows by the OPP:

The mandate was to determine if TBPS Board Chairperson, Ms. Georjann Morriseau had committed the criminal offence of breach of trust by a public official contrary to Section 122 of the Criminal Code. It was alleged that Ms. Morriseau divulged information pertaining to an ongoing internal investigation to a TBPS member.

The OPP assigned a lead investigator on December 24, 2020. The investigative team interviewed a number of witnesses as well as Ms. Morriseau.

Ms. Morriseau was interviewed by the OPP on February 23, 2021.

The March and April 2021 Board meetings

At the next Board meeting held on March 16, 2021, Ms. Morriseau raised this investigation with the Board. The Board minutes state:

Member G. Morriseau described for the Board an overview of her experience with an ongoing internal investigation being conducted by the Thunder Bay Police Service, in which she was sought out as a witness to the matter under investigation. G. Morriseau shared that she was upset and disturbed by the manner in which she was treated by investigators, feeling that she was no longer a witness to the matter but now also a target of it. G. Morriseau asked the Board for its support through a review of her circumstances by the Board's Legal Counsel.

It was the consensus of the Board that the Chair contact Legal Counsel to engage his office in reviewing the events with G. Morriseau and providing the Board with a written chronology of her involvement with the investigation, for the Board's subsequent consideration.

I note that the Minutes refer to an ongoing internal investigation by the Thunder Bay Police Service rather than an OPP criminal investigation.

The Board next considered this matter on April 20, 2021. The Minutes indicate that Ms. Morriseau had provided Donald Jarvis, counsel to the Board, with a chronology of events, that Mr. Jarvis provided an update and his opinion to the Board and that both Mr. Jarvis and Ms. Morriseau responded to questions.

The Board continued discussion of these matters at a reconvened meeting on April 27, 2021. The Minutes recite an exchange of correspondence between Ms. Chantelle Bryson, as counsel to Ms. Morriseau, and Ms. Walbourne. By letter dated April 12, 2021, Ms. Walbourne responded to a letter from Ms. Bryson indicating that any investigation undertaken by the OPP was not a furtherance of the matters in respect of which Ms. Morriseau had been interviewed by the Police Service in mid to late 2020. Ms. Walbourne advised that "we are unable to dictate to [the OPP] who they can and cannot approach while conducting their investigations".

The Minutes also reflect receipt of a letter from Ms. Bryson dated April 16, 2021 to Board counsel. This letter contained the chronology of events mentioned above. This letter referred to Ms. Morriseau's initial contact with Deputy Chief Hughes as well as her interviews by Inspector Fennell and Staff Sergeant Gombola and her meeting with Ms. Walbourne in September 2020 as well as other communications with Deputy Chief Hughes.

The letter also refers to requests that Ms. Morriseau attend to review a photo lineup. The letter states that Ms. Morriseau considered, having previously been told that she was not longer required for these investigations, that she had advised the investigator and Chief Hauth that "she was concerned this now resembled harassment by retaliation for other matters dealt with at the Board".

Ms. Bryson's letter also described the February 23, 2021 OPP interview and stated that:

Member Morriseau was not given any further details about the investigation or who it involved. They stated that Member Morriseau was a witness only and that she may have information that could be helpful.

Ms. Bryson summarized Ms. Morriseau's position stating that Ms. Morriseau believes that:

- The interactions described were not for a legitimate purpose but were intended to harass Ms. Morriseau in retaliation for matters addressed at the Board:
 - including the promotion of Sergeant Dimini
 - addressing Ms. Walbourne's employment contract with the Chief
- Sergeant Dimini should have been investigated regarding the texting and information sharing relationship with Brian Webster
- Officers were improperly targeted for discipline for the purpose of protecting Sergeant Dimini and harassing her
- There was not proper authority for calling in the OPP for further investigation under the PSA when done without Board notice or approval and that the OPP investigation must be related to that internal matter of the TBPS in addition to any criminal aspect

While Ms. Morriseau's stated beliefs are serious allegations, the letter does not provide a substantial factual basis for these allegations. The letter closed with the expressed view that the OCPC should be asked to investigate.

The letter also asserted that Ms. Morriseau's only obligation in respect of conflicts of interest arose from the *Municipal Conflict of Interest Act* and that, accordingly, Ms. Morriseau would only consider direct and indirect pecuniary interests as they relate to Board discussions and votes on matters subject of this correspondence and subsequent, related events. As discussed above, this was not a correct assertion in my opinion. In my view, Ms. Morriseau was required to avoid conflicts of interest generally and not merely in respect of pecuniary interests. While I understand that it is difficult to stay uninvolved in matters of intense personal importance, this is when judgment is at greatest risk of compromise and when the appearance of self-dealing is of greatest concern. While difficult, my view is that Ms. Morriseau should not have participated in Board decisions where her personal interests were engaged.

Finally, the letter requested indemnity from the Board for Ms. Morriseau's legal costs to date and any necessary costs pertaining to continuing investigations and potential investigations and proceedings in which she may be required to provide evidence.

After discussion, the Board decided to request an investigation by the OCPC and to provide the OCPC with all materials provided by Ms. Morriseau. At this point, the Board's insight into the OPP investigation was from Ms. Morriseau and not from the OPP or the Police Service.

In respect of request for indemnity, the Board recommended that Ms. Morriseau apply for indemnity from the City of Thunder Bay under City of Thunder Bay By-law No. 104-2005 which provides for indemnity of Board members.

Completion of the OPP Investigation

The OPP investigation was completed by a report dated July 25, 2021. A copy of the OPP report was provided to Chief Hauth in late August. The OPP report states that it is not to be "disseminated outside of the Thunder Bay Police Service without prior approval of the Commissioner of the Ontario Provincial Police". Chief Hauth requested that the OPP provide an Executive Summary to be provided to the Board which was done.

On October 19, 2021, the Board received reports from Chief Hauth and the OPP's Executive Summary. The Executive Summary stated that:

Upon completion of the investigation, the team met with representatives from the Ministry of the Attorney General — Crown Law Division, and shared their findings. It was determined that no reasonable and probable grounds exist that Ms. Morriseau committed the criminal offence of breach of trust by a public official.

The Minutes state that Ms. Morriseau's response to the report from Chief Hauth and the Executive Summary was as follows:

Member Morriseau expressed her frustration, stress and lack of Board support with this matter. She confirmed that she never ever goes outside of her role as a board member - at least not intentionally. She felt that this investigation has spiralled out of control. This Board needs to protect the integrity of what they do. Member Morriseau felt that there should be nothing less than a suspension for Chief Hauth, Deputy Chief Hughes, and Ms. Walbourne.

On a motion moved by Ms. Morriseau, the Board decided to forward the report from Chief Hauth and the OPP Executive Summary to the OCPC.

The Ontario Civilian Police Commission

On January 22, 2022 the Solicitor General requested that the OCPC conduct a s. 25 investigation into senior members of the TBPS as it relates to the investigation of Board Member Georjann Morriseau, the management of discipline with the TBPS and its administration.

On January 28, 2022, the Board notified the OCPC of the suspension of TBPS Deputy Chief Ryan Hughes and requested the OCPC to assign the chief of police of another police service to conduct an investigation. The OCPC has assigned the chief of the Toronto Police Service to do so.

On February 10, 2022, the OCPC decided to conduct an investigation pursuant to ss. 25(1)(a) and (b) of the PSA into:

- a. Allegations that TBPS Deputy Chief Ryan Hughes:
 - initiated a criminal investigation into Board Member Morriseau for alleged breach of trust by a public official, without sufficient grounds and without the Chief's knowledge, despite an apparent conflict of interest in investigating a member of the Board;
 - directed a subordinate to obtain a Criminal Code Production Order for information from Board Member Morriseau's cell phone on misleading grounds, which was obtained, without the Chief's knowledge;
- b. Allegations that TBPS Chief Sylvie Hauth:
 - failed to take appropriate steps to address Deputy Chief Hughes' aforementioned actions;
 - provided misinformation to the Thunder Bay Police Services Board regarding the aforementioned investigation;
 - failed to take appropriate steps to address the allegations of misconduct relating to certain members of the Thunder Bay Police Service; and
- c. Allegations that Chief Hauth, Deputy Chief Hughes, and Ms. Walbourne colluded in their responses to recent inquiries from the Ontario Civilian Police Commission relating to the Board's request for investigation under subsection 25 (1) of the PSA.

This investigation has now resulted in a Notice of Hearing and a Notice of Particulars in respect of certain allegations against Chief Hauth. It remains to be seen what else, if anything, arises from the OCPC investigation.

It would be inappropriate for me to directly or indirectly comment in this report on these allegations, the ongoing investigations, the Notice of Hearing and the Notice of Particulars.

I am also aware that there is an ongoing OPP criminal investigation that may have some connection to some related matters. As I do not know the subject matter or timing of this investigation, I will limit my comments to matters involving the Board.

Issues of confidentiality and conflicts of interest

There were a number of issues of confidentiality and conflicts of interest arose during 2021 and 2022.

In the Board meeting of September 21, 2021, the Board considered issues relating to claims by Constable Ken Ogima, a claimant for whom Ms. Bryson acted and for whom a claim was subsequently made to the Human Rights Tribunal of Ontario ("HRTO"). In response to concerns raised, Ms. Morriveau stated, according to the Board minutes, that she does not disclose any Board discussions with Ms. Bryson, that she takes her job as a Board member very seriously, that the Board was not at risk on this matter, and that she does not find herself in any conflict of interest.

At the October 19, 2021 Board meeting, Don Jarvis, counsel for the Board, advised that:

Yesterday, I received an email from Ms. Chantelle Bryson at 5pm. Ms. Bryson has made false and inaccurate allegations in respect of my comments at the last Closed Session of this Board held on September 21, 2021. She also advises that she intends to file a complaint with the Law Society of Ontario in respect of my actions.

Specifically, she makes three false allegations in respect of the Closed Session of this Board held on September 21, 2021. First, she alleges that I advised this Board that Member Morriveau "would be in conflict" due to Ms. Bryson's representation of Cst. Ogima. Second, she alleges that I advised this Board that Ms. Bryson "would breach solicitor client confidence and privilege". Third, she alleges that I advised this Board that "Member Morriveau would breach her duty of confidentiality regarding Board matters".

It would appear that Ms. Morriveau disclosed information from the closed meeting of the Board to Ms. Bryson. While it is of concern that there is controversy as to the accuracy of what is disclosed, I note at this point that Ms. Morriveau is entitled to retain and speak with legal counsel with respect to her duties as a member of the Board. The matters raised with Mr. Jarvis by Ms. Bryson related to Ms. Morriveau and her role as a Board member. Making no comment as to the substance of these matters, I accept that Ms. Morriveau was entitled to seek counsel and to have counsel address issues in respect of her conduct with the Board.

On October 21, 2021, Ms. Bryson made an HRTO claim against on behalf of Ken Ogima alleging discrimination against him on the basis of race, ancestry, ethnic origin, marital status and alleging reprisal/threat of reprisal. The claims was against the Board as employer as well as Chief Hauth and former Chief Hayes. The claims have been defended.

On October 22, 2021, Ms. Bryson made an HRTO claim on behalf of Ms. Morriveau alleging discrimination on the basis of race and ethnic origin. This claim was against Chief Hauth, Deputy Chief Ryan Hughes, Ms. Walbourne, Councillor Oliver and Board Secretary John Hannam. The claim made very detailed allegations regarding the July 24, 2020 Webster texts and the subsequent events.

Three points may be made about Ms. Morriveau's HRTO claim. The first point is that Ms. Morriveau had not previously claimed that the investigations and other actions were connected to race or ethnic origin. The claim previously made by Ms. Morriveau was reprisal in respect of matters relating to Mr. Dimini, Ms. Walbourne and the Police Association. The second point is that the HRTO claim publicly discloses confidential information from closed Board meetings. The third point is that the HRTO claim includes substantial confidential information that is, in my opinion, beyond what was required for HRTO purposes.

On October 25, 2021, the Toronto Star published an article detailing the claims made in Ms. Morriveau's HRTO application which had not yet been released by the HRTO to the Board or the individual respondents. The article specifically referred to confidential information from closed Board meetings.

Since October 22, 2021, Ms. Bryson has made at least fourteen further HRTQ applications against the Board and individual members of the Police Service and the Board. In total, Ms. Bryson has made claims for at least ten individuals. The claims made and relief sought in a number of these HRTQ applications are interwoven. As said above, Ms. Morriveau is entitled to disclose confidential information to her lawyer for the purpose of legal representation. However, confidential information disclosed by a board member to a lawyer in order to obtain legal advice must remain confidential. This may be problematic where other clients are represented by the same lawyer in related matters.

As noted above, Ms. Morriveau's position at the Board meeting of April 27, 2021 was that only the *Municipal Conflicts of Interest Act* applied to Board members in respect of conflicts of interest. I disagree as noted above. In my view, the Code of Conduct requires avoidance of conflicts of interest and board members must comply both with the *Code of Conduct* and the *Municipal Conflicts of Interest Act*. I need not address whether Ms. Morriveau ought to have declared a conflict. It is sufficient for current purposes to say that, in my opinion, an incorrectly limited test was applied in deciding whether to do so.

The OCPC Report and recommendations

I have reviewed the Board minutes for 2019, 2020, 2021 and 2022 in detail. While there was some progress on the OCPC report recommendations in 2019 and early 2020, there has been little material progress since then.

Specifically, progress reports were provided to the Board regarding the OCPC recommendations on September 17 and October 15, 2019, February 5, 2020 and March 8, 2021. Mr. Lockwood advises that periodic reports were provided to the Board while he was administrator. As can be seen, the last update report took over one year to be provided from the prior update. There has been no update report since then.⁷

A detailed review makes it clear that a substantial part of the recommendations made in December 2018 remain outstanding some three and one-half years later. The remaining recommendations include:

- R. 1 - that there be a clear statement of the role of the Board in governing the police service, defining the key instruments required to provide governance, and specifying the authorities and constraints on the Board.
- R. 4 - that the Board develop a policy regarding relations between the Board and the Chief that clearly delegates operational responsibility to the Chief, but also outlines the Chief's duties at a high level to include:
 - The duty to manage the TBPS effectively and efficiently;
 - The duty to implement the policy direction of the Board;
 - The duty to ensure a service that reflects the community it serves;
 - The duty to provide information to the Board on the TBPS's performance, its compliance with policies, community relations, developing trends or significant incidents that would affect plans or changes to police services and annual training and reports on performance in delivering services free of bias, racism, discrimination and harassment; and
 - The duty to brief the Board on serious incidents that can affect the community, either past or anticipated.
- R. 5 - that a Governance Committee ... review and propose revisions where necessary to all existing policies, including its Missing Person Policy, and to oversee the development and regular maintenance of Board policies.
- R. 6 - that the Board undertake development of a Board Policy Manual to address governance and other matters that are general to all police forces, as well as those that are unique to the circumstances of the Thunder Bay Police Service.
- R. 7 - that the Board engage with First Nation organizations, including the Bear Clan and education authorities and local schools, to conduct a formal review of the Missing Persons Policy.
- R. 8. - that the Board develop and adopt an anti-racism strategy and policy for itself and the TBPS.
- R.9 - that all Board policies be publicly and easily accessible.
- R. 10 - the Governance Committee post all draft policies on the Board's website for public review.

- R. 11 – that the Board develop a Policy on Business Planning
- R. 13 - that that the Board develop a Policy on Trend Analysis, Critical Points and Risk Management.
- R. 15 - that the Board develop a policy regarding relations between the Board, the Chair, and the Chief that clearly delegates operational responsibility to the Chief, but also outlines the Chief's duties at a high level to include:
 - The duty to manage the TBPS effectively and efficiently;
 - The duty to implement the policy direction of the Board;
 - The duty to ensure the TBPS reflects the community it serves;
 - The duty to report to and provide information to the Board; and
 - The duty to brief the Board on serious incidents that can affect the community, either past or anticipated.
- R. 16 - that Board policy on Relations with the Chief specify the Chief's responsibility to report to the Board on operational matters that may become matters of concern to the Board, including:
 - The performance of the TBPS, specifically in delivering services free of bias, racism, discrimination and harassment;
 - TBPS compliance with policies;
 - The state of community relations;
 - Developing trends or significant incidents that would affect plans or changes to police services;
 - Implementation of operational and training plans; and
 - Board input or decisions required.
- R.18. - that the Board develop and publish online an annual outreach and consultation plan, identifying:
 - Groups that it plans to consult on specific issues or general matters;
 - First Nations affected by population flow between them and Thunder Bay; and
 - Indigenous organizations with actual or potential linkages to TBPS programs, services, and operations.
- R. 19 - . It is recommended that the TBPSB create a policy statement committing to the principle of openness and transparency in its communication. Specific measure reflecting this policy should include:
 1. ... Formal notice of the rationale for any closed or in-camera sessions or meetings;
 2. Online publication of Board policies, with opportunities for community members to provide input on policies under development;
 3. ... Posting video coverage of all public meetings; and
 4. Any other measures consistent with the principle of openness and transparency.
- R.20 - It is recommended that the TBPSB formally and explicitly adopt principles of reconciliation and recognition of Indigenous peoples in their governance and service delivery models.
- R.21 - It is recommended the Board establish a specific policy with respect to both the Board and the TBPS' relationship with First Nations communities, people, governments, organizations and service providers setting out the Board's goals, objectives, strategies, communication and consultation protocols, and other measures to facilitate more effective relationships.
- R.22. It is recommended that the Board establish formal agreements with First Nations governance bodies to share information and raise cultural awareness.

While the failure to sufficiently advance the OCPC recommendations is the responsibility of the Board as a whole, I note that the Board established a Governance Committee, as recommended, on June 23, 2020. Ms. Reitberger was appointed to the Governance Committee on June 23, 2020. Ms. Morriveau became a member of the Governance Committee on October 20, 2020. At this meeting, a motion was passed that:

With respect to the OCPC Report and Summary of Recommendations, the Board directs the Governance Committee to work with the Secretary to the Board to incorporate the recommendations into a Work Plan and to present the Work Plan at the November 17, 2020 meeting.

A Work Plan was adopted by the Board on November 17, 2020. The Governance Committee was directed to report to the Board at regular intervals of the progress of the Work Plan. The subsequent Minutes reflect no such reports as to the progress of the Work Plan.

Mr. Pelletier also became a member on March 16, 2021 after Ms. Reitberger left the Board. There do not appear to be any minutes of meeting of the Governance Committee or reports by the Governance Committee to the Board.

The OIPRD Report and Recommendations

The recommendations from the OIPRD Report are principally directed to the Police Service and other actors but not to the Board. The Board has an oversight responsibility in respect of implementation by the Police Service. While I have not assessed its' work, it appears that the Board has received and considered reports by the Police Service in respect of its implementation of OIPRD recommendations.

On the other hand, the OIPRD Recommendations and their implementation by the Police Service gave rise to policy implications that required consideration by the Board. Much, if not all, of this policy work overlaps with work required by the OCPC Recommendations. The lack of progress on the OCPC Recommendations appears to have resulted in insufficient attention to the policy implications of the OIPRD Recommendations.

Other Board work in 2020, 2021 and 2022

The Board has undertaken much day-to-day work as well as important major projects.

On October 19, 2021, the Board approved a new Strategic Plan entitled *2021-2023 Thunder Bay Police Service Strategic Plan "Many Voices, One Vision: 2030"*. The development of the Strategic Plan was reported to have included a comprehensive consultation process, the survey of 1,200 respondents and survey responses from 145 Police Service employees.

In addition to the Strategic Plan, substantial work was done in support of a new Police Headquarters. According to the Minutes, this work started in 2019 and continues. Periodic reports have been made to City Council. City Council approved \$2.4 million in the 2022 budget to advance work on a new police headquarters.

Further, the Board appointed an expert panel in March 2022 to assist the Board in its work. According to the then Board chair, this appointment was made in recognition of its need to obtain expert advice given the important policy work for which it was responsible, including as contemplated by the OCPC recommendations.

Immediately after I was appointed, I met with Mayor Mauro, Councillor Oliver, Mr. Pelletier and Mr. Power together at their request. They said that they did not think that my appointment was necessary and emphasized the work that they had done on these major projects and on the work of the Board generally. They took my appointment by the OCPC as criticism of themselves personally. Three days later, Councillor Oliver, Mr. Pelletier and Mr. Power resigned from the Board.

In my view, it is important to be clear that Councillor Oliver, Mr. Pelletier and Mr. Power were committed to the work of the Board and the Police Service. They did good and valuable work. It is unfortunate that they chose to resign rather than to continue with this work. That said, my view now is that they did not fully appreciate the adverse impact effect of the divisions within the Board.

Summary, comment and conclusion

Policing in Thunder Bay

The role of policing in Ontario is incredibly important. This is reflected in the declaration of principles set out in section 1 of the *Police Services Act*:

Police services shall be provided throughout Ontario in accordance with the following principles:

1. The need to ensure the safety and security of all persons and property in Ontario.
2. The importance of safeguarding the fundamental rights guaranteed by the *Canadian Charter of Rights and Freedoms* and the *Human Rights Code*.

3. The need for co-operation between the providers of police services and the communities they serve.
4. The importance of respect for victims of crime and understanding of their needs.
5. The need for sensitivity to the pluralistic, multiracial and multicultural character of Ontario society.
6. The need to ensure that police forces are representative of the communities they serve.

Policing in Thunder Bay is particularly important and challenging. The Police Service is a municipal police force. The City of Thunder Bay faces particular challenges being the regional capital of Northwestern Ontario and the region's major transportation hub. Thunder Bay's violent crime rate is approximately twice that of Ontario generally. The Police Service responds a significant volume of calls for service for mental health, family violence and intoxication incidents.

Thunder Bay itself is a diverse community. It is also part of a broad complex and difficult history. Based on census information, approximately 120,000 people are resident in the Thunder Bay and Oliver Paipouge (which is also served by the Police Service). It is thought that the census information underestimates the actual population by perhaps 10,000 to 20,000 and that the Indigenous population of Thunder Bay is somewhere between 23,000 and 42,600 people. Thunder Bay is adjacent to the Fort William First Nation. First Nations, Indigenous, Metis and other people come to Thunder Bay from across Northwestern Ontario for shorter and longer periods of time for education, work and other reasons. The history of racism and attempted assimilation continues to have current effects. Despite the good of many intentions and ongoing efforts, institutions, policies and practices continue to require change to properly and fairly serve all of the peoples who live in, work in and visit Thunder Bay.

Civilian oversight and governance

The Board provides civilian oversight of the Police Service. The principle of civilian oversight is very important in a democratic society. The police have great responsibility and great power. Civilian oversight is accordingly central to our approach to governance of policing in Ontario.

As discussed above, the Board is comprised of five members under the *Police Services Act*. Two members are from City Council having been elected by residents of Thunder Bay. One member is appointed by City Council but is not an elected representative. Two members are appointed by the province. Despite how they came to be appointed, these five Board members must approach their work taking into account the interests of all of the people with whom the Police Service engages. The people who elect the Mayor and City councillors are only part of this diverse community. This may affect the perspective of the municipal members of the Board.

As well, it is notable that Board members provide part-time services. Board members ordinarily have busy lives and have limited time to contribute. The Board itself only has two employees, a Board secretary and an assistant Board secretary. It is questionable whether the Board has the capacity and resources to do the important work assigned to it. It may be appropriate when looking at the contributions of individual Board members to take into account that much is asked of part time members for whom limited resources are available.

All of this is of particular concern given the important findings of the OIPRD and OCPC Reports and the significant recommendations made in those reports.

What happened?

In assessing what has led to the current situation, it is clear that much relates back to the 2019 promotional competition in which Michael Dimini was successful and Jason Rybak was not. It appears that that there is further division within the Service that provides context for this dispute. I am not in a position to assess the root causes and the extent of this division. In any event and while disappointment and disagreement are understandable, Michael Dimini's success has been ascribed to favoritism and unfairness on the part of Chief Hauth and Ms. Walbourne. On the other hand, Chief Hauth and Ms. Walbourne forcefully reject these claims.

Early on, I met with representatives of the Police Association at their request. Much of this meeting was taken up with a presentation relating to the promotional and other issues and expressed lack of confidence in Chief Hauth. I was told that Chief Hauth did not effectively support and lead the members of the Police Service as her predecessors had done. I was left to wonder what to make of these claims which could simply be the result of change of leadership (and perhaps a reaction to female leadership), perhaps differences of style or perhaps something more serious.

For current purposes, I need only observe that some within the Police Service have taken an adversarial approach to Chief Hauth and to Ms. Walbourne including in respect of the promotion of Michael Dimini.

It is not clear what may have influenced Ms. Morriseau's objective of attempting to resolve the promotional grievance in the manner she did. However, the ultimately unsuccessful attempt to effect an agreement had several negative impacts: it caused concern on the part of the Police Association, it adversely affected the unity of the Board and a shared understanding of how authority was to be exercised, and it appeared to undermine the Police Chief.

The concerns arise with respect to negotiation of the collective agreement. Ms. Morriseau dealt directly, and formed relationships, with the Police Association. This appears to have led to both confusion and division.

I do not think that any of this was the result of ill-intention but rather emphasize that governance principles exist for important practical reasons.

Then, just three weeks after the completion of collective agreement negotiations, a text was received on Mr. Dimini's old cell phone, apparently from Brian Webster.

This led to a conversation between an unknown member of the Police Service and Ms. Morriseau a week or two later in early August 2020. Ms. Morriseau's description of the disclosure suggests that the motive for disclosure to Ms. Morriseau related to the issues described above. As Ms. Morriseau said in her statement:

The officer in HomeSense, said everyone is talking about it and that they don't think anything will be done about it because its Mike Dimini and he is favoured by the Chief and that if it was any other officer they would be charged or fired.

Ms. Morriseau reported this conversation to Deputy Chief Hughes. The result was that Ms. Morriseau was interviewed both in a previously initiated criminal investigation and a professional conduct investigation. Ms. Morriseau was not a suspect in either investigation. She was just a witness. Ms. Walbourne also spoke informally with Ms. Morriseau about the HomeSense incident during another meeting. Ms. Morriseau reasonably went back to Deputy Chief Hughes to check in having been spoken to repeatedly about the HomeSense incident.

On November 10, 2020, Deputy Chief Hughes was advised by Jason Rybak that he was concerned that he had learned that his name been brought up during an internal investigation about giving Ms. Morriseau information regarding the Webster text message. It was subsequently determined that Ms. Morriseau had spoken with Detective Rybak with whom she had become friends as a result of the collective bargaining process.

It is understandable that it would have been assumed that Ms. Morriseau was referred in discussion with Detective Rybak to questions asked during the two formal interviews. However, it seems to me that, unknown to the officers involved, Ms. Morriseau may have been referring to her informal meeting with Ms. Walbourne when they spoke with Detective Rybak and others. In any event, an investigation was commenced on the basis that Ms. Morriseau appeared to have tipped off Detective Rybak about the investigative inquiry into who had disclosed confidential information to Ms. Morriseau.

Ultimately, the OPP concluded that there were no reasonable and probable grounds for laying a charge against Ms. Morriseau. Being the subject of this criminal investigation must have been upsetting for Ms. Morriseau. Indeed, Ms. Morriseau rightly suspected by early December 2020 that she was no longer being considered a mere witness. This would understandably have affected her trust in the Police Service. As an Indigenous woman

and as member of the Board, Ms. Morriseau might well have been particularly concerned whether she could trust the Police Service and might well have reacted particularly strongly to concerns in that regard.

While Chief Hauth appears not to have provided much detail to the Board Secretary Mr. Hannam, she did advise him that there was an issue regarding Ms. Morriseau's conduct that she expected would be raised with the Board. Mr. Hannam advised the two other Board members of this limited information. Ms. Morriseau takes issue with these communications and the failure to disclose these communications to her. In my view, Ms. Morriseau, the other board members and the board secretary were all in a very difficult position in December 2020. Ms. Morriseau rightly suspected that her conduct was being investigated by the Police Service. The other board members and the board secretary were made aware that there was an issue of some kind that was being addressed.

After Ms. Morriseau was interviewed by the OPP in February 2021, she raised her concerns with the Board. With Ms. Morriseau's concurrence, the Board referred the matter to the OCPC. It does not appear that the Board understood that a criminal investigation by the OPP was ongoing at that point.

In October 2021, the Board was advised of the OPP investigation of Ms. Morriseau's conduct and that reasonable and probable grounds had not been found. As can be seen from the above discussion and to this point, the broader context appears to have been individual issues and tensions within the Police Service and the specific context appears to have been related to matters arising from the Webster text, the HomeSense encounter and disclosure to Detective Rybak that he was considered to be a possible leak to Ms. Morriseau.

While the Board elected to provide this further information to OCPC, Ms. Morriseau appears not to have been satisfied that this was enough. She began an HRTQ application and put confidential information on the public record. It appears clear that the HRTQ information was somehow provided to the media and thereby was broadly disseminated. I do not think that it was necessary to disclose all of the confidential information that was disclosed in order to advance the HRTQ application.

As noted above, there is a further issue in that confidential information disclosed to Ms. Morriseau's counsel may have been disclosed to and used by other claimants despite Ms. Morriseau's confidentiality obligation.

Looking at all of this from Ms. Morriseau's perspective, it is not difficult to understand her frustration and anger at how things have played out. She must have felt that she had been mistreated and that her story needed to be told despite her obligations under the *Code of Conduct*.

Looking at this from the Board's perspective, the Board has collectively and individually been the target of Ms. Morriseau's HRTQ applications and allegations. While Board members might well have had sympathy for Ms. Morriseau's situation, her conduct was not blameless and she effectively demanded that the Board fully and immediately side with her against Chief Hauth.

The result was a divided Board that could not effectively function as a Board of five members. Confidential information was withheld from the Board out of concern for further public disclosure.

The broader impact and what need be done

Irrespective of the underlying merits, the result has been distraction and diversion of Board resources and attention over the last two years.

This is tragic as the work of the Board has suffered. While the Board has dealt with day-to-day matters and has done good work in developing the Strategic Plan and the Building Project, there has been unacceptable delay in advancing the OCPC recommendations and insufficient attention to policy implications of the OIPRD recommendations.

To be clear, while the events leading up to this unfortunate state of affairs do not directly relate to Indigenous issues, it may be that Ms. Morriseau would have received greater support and assistance if she had not been an Indigenous woman. To be clear, I do not suggest discrimination in a legal sense. Kristen Oliver was actively involved in Ms. Morriseau being appointed by City Council to the Board. Mr. Pelletier, also an Indigenous person,

was a Board member by the spring of 2021, having joined the Board with the support of Michael Power. However, there was existing division in the Board by the spring of 2021 that could be traced to earlier divisions within the Board during the administration. And there is always some risk that those perceived to be on the "outside" may not be as well-supported as those who are not.

But what is striking and clear is that fundamentally important work in advancing fair and effective policing through implementation of crucial recommendations has suffered.

In my view, it is important to move forward to address the work that needs to be done. This report is intended to provide transparency as to what has happened in order to move forward a good way.

There are a number of specific and important steps that must now be taken to move forward:

- Two provincial appointments to the Board are now required. Three municipal appointments will be made after the fall municipal election:
 - Consistent with recommendation 42 of the OCPC Report, careful attention should be paid in making these appointments to the attributes, characteristics and competencies that are required for effective contribution to the Board.
 - In appointing Board members, the province and the city should take into account the importance of ensuring Board insight into the needs and perspectives of the peoples and communities served by the Police Service. For Thunder Bay, this requires that the Board understand the perspective of longer-term and shorter-term residents of Thunder Bay as well as the perspectives of those who live, work and play in Thunder Bay. Said simply, there is a need for the perspective of First Nations people both from near by and from remote First Nations who are served by the Police Service while in Thunder Bay.
 - Board members should be prepared to do the hard work required, to be committed to the important work of Board including advancing the OIPRD and OCPC Recommendations and to doing their work in accordance with the Code of Conduct
- The Board must now recruit and appoint a new chief of police given Chief Hauth's announced retirement. This is an important decision that will have implications for years to come and which must take into account the needs of the peoples and communities served by the Police Service as well as effective leadership of the Police Service.
- Appointment of new Board members and new police leadership should include consultation with significant stakeholders including First Nations leadership.
- There is a pressing need for the new Board to advance the OCPC Recommendations and policies arising out of the OIPRD Recommendations and to put in place policies and procedures to ensure that this work is done, done well and seen to be done well.

In my view, an Administrator from Southern Ontario is not, and should not be seen as, the solution to the challenges faced by the Police Service and those it serves. Solutions must come from a properly functioning Board that addresses the important challenges that face the Police Service and the people and communities served by the Police Service. Going forward, I intend to focus on doing what can be done to best position a new Board for success.

But I do not think that simply appointing a new Board members and new police leadership will be sufficient. While I conclude that Board did not implement recommendations, policies and procedures as they should have done, I also conclude that the Board was not equipped to do all that was asked of it. A small part-time Board with part-time support will not accomplish what is needed in Thunder Bay. If all that happens is the appointment of new people, there is the very real prospect of yet another failure to advance crucial goals. I intend to report further on these matters.

Best Regards,

Malcolm Mercer

¹ The *Final Report of the Ipperwash Inquiry*, Part 2, para. 12.1.1, page 304. Section 12.1 of this report provides a valuable discussion of the delicate balance between the police and the government in the context of the OPP and the provincial government. While not perfectly applicable, the principles discussed are important for municipal police services boards and police services.

² As Justice Iacobucci wrote for the Supreme Court of Canada in *Odhavji Estate v. Woodhouse*, 2003 SCC 69 at para. 66:

It is possible, I concede, that circumstances might arise in which the Board is required to address a particular problem in order to discharge its statutory obligation to provide adequate and effective police services. If there was evidence, for example, of a widespread problem in respect of the excessive use of force in the detention of visible minorities, the Board arguably is under a positive obligation to combat racism and the resultant use of excessive force.

³ The *Independent Civilian Review into matters relating to the G20 Summit* at p. 84

⁴ *Soulos v. Korkontzilas* [1997], 2 SCR 217, *R. v. Neil*, 2002 SCC 70 at para. 19, *Peoples Department Stores Inc. (Trustee of) v. Wise*, 2004 SCC 68 At paras. 32, 34 and 35, *Ermineskin Indian Band and Nation v. Canada*, 2009 SCC 9 at para. 125, *Sharbern Holding Inc. v. Vancouver Airport Centre Ltd.*, 2011 SCC 23 at para. 148 and *Sun Indalex Finance, LLC v. United Steelworkers*, 2013 SCC 6 at para. 186

⁵ As I currently have the sole vote, this was practically my decision which was made following consultation and discussion with Board members during the June 2022 Board meeting.

⁶ Section 120(4) of the *Act* provides that “The chief of police or, if the parties consent, another person designated by the chief of police may also attend the parties’ bargaining sessions in an advisory capacity”.

⁷ I attach a report as to the current status of the OCPC recommendations.

[Return to Top](#)