

July 25, 2025

SOLICITOR-CLIENT PRIVILEGED

Ontario Civilian Police Commission

**S. 25 Investigation Report into the Durham Regional Police
Service and Board**

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Part I

Introduction

1. Introduction

On November 2, 2018, the Deputy Minister of the Ministry of Community Safety and Correctional Services received a letter from lawyer, Mr. Peter Brauti, who represented a number of Durham Regional Police Service (DRPS) members requesting an investigation of its Service. That letter contained allegations against Senior Command of DRPS as well as its Board. It was far reaching in its allegations, alleging favouritism, cronyism, reprisals and criminal activity at the highest levels of the Service. His letter contained, as attachments, letters from four complainants, all former or current members of the Service:

S.21; S.21(2)(f);

On January 16, 2019, the Ontario Civilian Police Commission (Commission) received a request from the Ministry of the Solicitor General (Solicitor General) to initiate a preliminary review and then possible investigation pursuant to s. 25 of the former *Police Services Act (PSA)* into the conduct of senior members of the Service and the ability of the Durham Regional Police Services Board (Board) to provide proper oversight of the administration of the Service.¹

Based upon that request and information provided and collected, the Commission initiated a preliminary review to determine which senior officers and members of the Board, if any, should be subject to a s. 25 investigation into their individual conduct and/or performance of duties. The review was to also determine if a s. 25 investigation should be initiated into the administration of the Service and to identify any potential systemic issues. On May 23, 2019, the Commission, on its own motion, decided to conduct an investigation pursuant to ss. 25(1)(a) and (b) of the former *PSA* into fifteen different issues, all of which are listed in its Terms of

¹ R.S.O. 1990, c. P. 15, as amended.

Reference (TOR), found below.² The Commission appointed external counsel, Messrs. Thomas J. Lockwood, K.C. and Ian Scott, as the lead investigators for this s. 25 investigation.

2. Terms of Reference

1. Whether a number of specific promotions were improperly implemented contrary to established policies, practices, and/or procedures, and/or were improperly based on favoritism, cronyism, and/or paybacks.
2. Whether the Board exercised appropriate oversight regarding the hiring processes and contract extensions of senior officers, including the Chief of Police and Deputy Chief of Police.
3. Whether a poisoned work environment has been created, encouraged, and/or sustained by the current senior administration of the Service.
4. Whether the senior administration made decisions that affected operations of the Service, training opportunities for members, and/or disciplinary matters that were improperly based on favoritism, cronyism, and/or paybacks.
5. Whether the Board is appropriately informed about administration issues relating to its mandate.
6. Whether the senior administration and/or individuals within the senior administration of the Service allowed, tolerated, encouraged, sustained, committed, and/or were willfully blind to incidents of workplace harassment/violence and/or workplace sexual harassment/misconduct committed by any member of the Service.
7. Whether the Service has fair and transparent policies/processes to address incidents of workplace harassment/violence and/or workplace sexual harassment/misconduct, and whether the senior administration is following these policies/processes.

² The full Terms of Reference may be found at Appendix #1. As well, the Commission appointed Toronto Police Service Deputy Chief Michael Federico (retired) as administrator for certain issues in DRPS on May 23, 2019. That aspect of the Commission's Order was extended for six months on May 20, 2020. This Report does not directly discuss the Administrator's role.

8. Whether the Board has provided proper oversight concerning complaints regarding a poisoned work environment; complaints regarding workplace harassment/violence and/or workplace sexual harassment/misconduct; how the Service addresses these complaints; and the outcomes of these complaints.

9. Whether

acted in an overbearing, intimidating, harassing, and/or tyrannical manner towards sworn and/or civilian members of the Service, and/or allowed, encouraged, tolerated, and/or requested subordinates to act in an overbearing, intimidating, harassing, and/or tyrannical manner towards other sworn and/or civilian members.

10. Whether _____ provided false testimony under oath in order to gain favour with _____ and/or be rewarded with a promotion.

11. Whether _____ ever _____ to initiate, threaten to initiate, and/or maintain complaints against sworn members of the Service as an improper form of reprisal, intimidation, and/or coercion.

12. Whether _____ engaged in corrupt and/or discreditable practices regarding secondary employment, promotions, and/or pay raises of other members of the Service.

13. Whether _____ ignored, covered-up, attempted to cover-up, allowed, tolerated, encouraged, participated in, and/or were willfully blind to potential and/or alleged criminal conduct and/or misconduct (as defined in the PSA and its regulations) committed by and/or directed towards subordinates.

14. Whether _____ improperly influenced and/or prevented investigations into alleged violations of the *Controlled Drugs and Substances Act*.

15. Whether the Board has displayed proper oversight regarding complaints about members of the senior administration of the Service.

3. Recommendations

This Report discusses these fifteen Terms of Reference, and makes the following thirty-three recommendations:

S.21; S.21(2)(f);

Recommendation #2: The Chief make it clear that his office, and only his office, is ultimately responsible for promotions up to and including the Superintendent rank among sworn officers and for all civilian members of the Service. (TOR#1)

Recommendation #3: The Chief and the Board each draft a Directive designed to comply with Part XI of the *Community Safety and Policing Act*, and ensure all members are aware of their right to report misconduct without fear of reprisal. (TOR#1)

Recommendation #4: The Chief, in consultation with the DRP Association, place a cap on the length of time members are placed in acting positions. (TOR#1)

Recommendation #5: The Board develop a policy ensuring adequate safeguards for questions used during the interviewing process to protect the integrity of the promotional process. (TOR#2)

Recommendation #6: The Board receive copies of any written decisions of the courts, arbitrators, or hearing officers regarding members of the Service which may be relevant to the performance of the member's duties or the reputation of the Service. (TOR#2)

Recommendation #7: Candidates provide copies of any written decisions of the courts, arbitrators, or hearing officers in which they either gave evidence or were a party as part of the screening process for a deputy chief or chief position. (TOR#2)

Recommendation #8: The Service immediately provide the Board with any disciplinary reports it requests. (TOR#5)

S.21; S.21(2)(f);

Recommendation #10: The Respect in the Workplace Committee exercise due diligence in the review of any reports it receives from investigators, and ensure that they were conducted in a thorough, professional and independent manner that complies with the purpose of the Service's Respect in the Workplace Directive, that being to maintain a working environment that is based upon the dignity and rights of everyone in the organization. (TOR#7)

Recommendation #11: The Service consider reviewing the investigative reports S.21; S.21(2)(f); to determine whether they were conducted in a thorough, professional, and independent manner that complied with the stated purpose of the Service's Respect in the Workplace Directive, that being to maintain a working environment that is based upon the dignity and rights of everyone in the organization. (TOR#7)

Recommendation #12: All interviews by Respect in the Workplace investigators whether conducted by internal or external investigators be recorded, and copies of the recordings be considered work product, copies of which are retained in the investigation file. (TOR#7)

Recommendation #13: All retainers for external workplace investigations be made between either the Service on the one hand and the investigator or the investigator's firm on the other, and not by legal counsel acting for the Service. Further, the retainer agreement should clearly state that the external investigator is being retained in the capacity of an independent workplace investigator and not as counsel, and must provide copies of all work product to the Service upon completion of its Report. Finally, the retainer agreement should stipulate that the Report and all work product are the property of the Service. (TOR#7)

Recommendation #14: The Service include a clause in its external Workplace Investigations contracts that all reports and work product may be shared with oversight agencies such as the Inspector General of Policing and the Law Enforcement Complaints Agency. (TOR#7)

Recommendation #15: All supervisors receive further instruction and training regarding their responsibilities under the Respect In The Workplace Directive HR-02-011, and in particular, the duty under s. 5 of the Directive to "immediately contact the Respect in the Workplace Committee upon receiving a complaint of workplace harassment or violence ... or being made aware of harassing or violent behaviour." (TOR#9)

Recommendation #16: The Board establish a policy that a copy of the investigative report referred to in either ss. 76(9) of the former *Police Services Act* or ss. 198(6) and 201(a) of the current *Community Safety and Policing Act* be memorialized and included as part of the Board's responsibilities under ss. 37(1)(i) of the *CSPA* to "monitor the chief of police's handling of discipline within the police service." (TOR#10)

Recommendation #17: All Professional Standards Unit files be closed by way of a memorandum to file copied to the Chief explaining the reason for closure. (TOR#13)

Recommendation #18: Information in all Professional Standards Unit files have access restricted to those in that Unit and those officers in the appropriate chain of command up to the Chief. Any breach must be treated as misconduct under either the Code of Conduct to the *Community Safety and Policing Act* for sworn members or a disciplinary issue under the Collective Bargaining Agreement for civilian members. (TOR#13)

Recommendation #19:

S.21; S.21(2)(f);

Further, the Board shall direct the Service to require in all of its retainer agreements with external legal counsel that external counsel must inform the Chief in a timely manner of any conflict of interest or potential conflict of interest. (TOR#14)

Recommendation #20: Section 12 of the Secondary Activities Directive HR-02-001 be amended to ensure that any application for secondary employment include copies of relevant licences or other required approvals. (TOR#14)

Recommendation #21: The Service shall provide the Board at every regularly scheduled Board meeting a written report of all disciplinary matters involving members of the Service and its administrative staff and the Board shall proactively make inquiries regarding such disciplinary matters, even if they do not involve senior administration. (TOR#15)

Recommendation #22: The Chief table annually with the Board as part of the public record an educational fund report containing available funding, the names, amounts of funding, what educational opportunity the recipients are pursuing, and whether the recipients completed the funded educational programme. (TOR#15)

Recommendation #23: The Chief provide any reports he receives related to disciplinary matters to the Board (as noted in Recommendation #21), and their receipt be noted in the minutes. (TOR#15)

Recommendation #24: The Board receive ongoing training with respect to its role in the supervision and governance of the Service and the role of provincial bodies responsible for oversight of Police Services and Boards. (TOR#15)

Recommendation #25: The Board carefully monitor any litigation by the Service against provincial bodies responsible for oversight over Boards and chiefs such as the Inspector General of Policing and the Law Enforcement Complaints Agency. (TOR#15)

Recommendation #26:

S.21; S.21(2)(f);

Recommendation #27: The Board direct the Service to consider employing internal legal counsel as a cost-reducing measure. (TOR#15)

Recommendation #28: The Board direct the Service to retain a primary law firm and a secondary law firm in order to provide the Service with a choice of alternate counsel when appropriate, through a Request for Proposal process. All external counsel must be subject to a written retainer agreement that specifies, among other usual terms, what is the appropriate level of interaction between the law firm and members of senior command (including for example, attending social events, meals, gifts, sporting events, joint vacations, etc.), all of which is to be reported to the Board at least annually. (TOR#15)

Recommendation #29: Retainer letters referred to in Recommendation #28 should require external counsel to provide a reasonable estimate of legal fees and expenses for services upon request. (TOR#15)

Recommendation #30: Going forward, the Board direct the Service to conduct an annual audit of legal billings supervised by someone with appropriate legal training and experience. (TOR#15)

Recommendation #31: Each of the Board and Service provide a written report to the Regional Municipality of Durham itemizing the legal costs each has incurred in connection with the Commission's investigation since its inception in 2019. (TOR#15)

Recommendation #32: The Chief report his response to the Commission's recommendations involving the Chief every six months after the release of this Report to the Board and the Executive Chair of Tribunals Ontario or his successor. (GENERAL)

Recommendation #33: The Board report its response to the Commission's recommendations involving the Board every six months after the release of this Report to the Executive Chair of Tribunals Ontario or his successor, and its response to the Chief's Report referred to in Recommendation #32 one year after the release of this Report to the Executive Chair of Tribunals Ontario or his successor. (GENERAL)

A consolidated list of recommendations which groups the recommendations under the appropriate Term of Reference may be found in Appendix #2.

In addition, in two instances, misconduct charges were laid by the Commission against

S.21; S.14 (1) (l); S.14 (2) (a); S.21(2)(f);

The Commission is not initiating any further misconduct charges.

As mandated by ss. 25(3) of the former *PSA*, the Report's findings shall be shared with the Solicitor General and the Durham Board. The Commission is also providing a copy to the Attorney General because Tribunals Ontario falls under his office's jurisdiction, and to the DRPS Chief because many of the recommendations are directed to his office. Beyond these copies, the Commission is bound by the confidentiality provision found in former *PSA* ss. 21(10).

4. Change in Governing Legislation

In 2019, the Ontario government enacted Bill 68, entitled the *Comprehensive Ontario Police Services Act, 2019 (COPS Act)*.⁵ That Act contains a series of schedules, Schedule 1 being the *Community Safety and Policing Act, 2019 (CSPA)* and Schedule 2 amendments to the *Police Services Act (PSA)*. By virtue of Schedule 3 of the *COPS Act* entitled 'Complementary Repeals,' the former *PSA* was repealed and replaced by the *CSPA* on April 1, 2024.⁶ The transfer of policing governance from the *PSA* to the *CSPA* transferred the majority of the Ontario Civilian Police Commission's functions to the newly established Inspector General's Office, and the *CSPA* contemplates the eventual dissolution of the Ontario Civilian Police Commission. At the same time, the government passed O.Reg 125/24 entitled "Transitional Matters" which grandfathers s. 25 investigations that began before the repeal of the *PSA*.⁷ Accordingly, this investigation continues to be governed by the prior legislation. However, the Report refers to the current *CSPA* when relevant to the recommendations it makes.

5. Structure of Report

The Report begins with a discussion of its methodology and a list of involved parties, followed by a recitation of related Court Applications. The latter heading is useful to appreciate both the lack of cooperation and obstruction the Commission received from the DRPS and Board in attempting to fulfill its statutory oversight function, as well as a significant cause of the delay in completing this Report. These Court Applications created a major distraction and cost in our investigation.

The Report, in this introductory part, reviews the complaints found in the four letters attached to Mr. Brauti's November 2, 2018 letter, and determines which ones fit within the parameters of the TOR. With the results of these reviews, the Report then analyzes them under the relevant TORs, and makes recommendations, if appropriate.

S.21; S.14 (1) (l); S.14 (2) (a); S.21(2)(f);

⁵ S.O. 2019, chapter 1, Schedule 1.

⁶ S.O. 2019, chapter 1, Schedule 1.

⁷ S. 15 of O.Reg 125/24 reads, in part: "... the Ontario Civilian Police Commission shall continue to investigate, inquire into and report on a matter under subsection 25 (1) of the *Police Services Act* if those activities began in respect of the matter before the transition date and if the activities were not completed before that day."

6. Methodology

Since the announcement of the s. 25 investigation in May 2019, many other witnesses came forward. The investigators interviewed approximately eighty witnesses, some more than once, with the material transcripts being transcribed and summarized. All witnesses had the opportunity to be accompanied by counsel or an Association representative, and many availed themselves of that right. Because the Terms of Reference were contained in a public document, those interviewed were aware of the parameters of the investigation.

Pursuant to *PSA* s.22(2), the investigators had the authority of s. 33 of the *Public Inquiries Act*, which includes the power to summons witnesses. While many witnesses came forward voluntarily, some were summonsed. Those summonsed witnesses had all the protections afforded to them under the *Public Inquiries Act* and the *Canadian Charter of Rights and Freedoms*. A complete list of witnesses may be found at Appendix #4.

As well, the investigators collected thousands of pages of documents as a result of voluntary disclosure, the execution of production orders under the *Public Inquiries Act* and the aforementioned Court Applications, many of which are referred to in this Report and may be found in the Appendices.

7. Standard of Proof

In considering the question of standard of proof to use when making findings of fact, the Commission reviewed comments made in several public inquiry reports. It noted that even within the context of a formal public inquiry, where interested parties had standing before an independent arbitrator and the right to cross-examine, there was no consensus on this issue. However, the majority of the Commissioners of these inquiries relied upon the standard used in civil and administrative litigation: balance of probabilities.

Accordingly, when it was necessary to make findings of fact in the face of conflicting information, the Commission adopted the “balance of probabilities” threshold, taking into consideration the reasonableness of those findings in the face of all surrounding circumstances. If the available information did not satisfy the Commission on this probability standard, it would conclude the allegation at issue was unsubstantiated.

At times, the Commission was not faced with conflicting evidence, but rather a set of circumstances from which to make findings of facts. The Commission expressed its

conclusions in terms of the probability or likelihood of something happening or not happening.

8. Involved Parties

The following is a list of the individuals mentioned in the Report, representing a subgroup of the individuals the Commission investigators interviewed.

⁸ Positions often changed due largely to promotions and retirements.

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S.21 ; S.21(2)(f) ;

of the Freedom of Information and Protection of Privacy Act / du loi sur l'accès à l'information et la protection de la vie
privée

S.21; S.21(2)(f);

9. Related Court Applications

The Commission's Orders and a Decision of Administrator Federico were the subject of multiple Court Applications by the Service and the Board. Copies of those decisions may be found at Appendix #5.

The following is a list of Court Applications and their outcomes.

Table Two
List of Related Court Applications

No.	Style of Cause	Outcome
1.	<i>Martin v Ontario Civilian Police Commission</i> , 2020 ONSC 1116 (Div Ct)	Application by DRPS and Board to stay OCPC Order; Dismissed April 2020 Leave to Appeal to C.A. dismissed October 2020 (no cost order)
2.	<i>Martin v Ontario Civilian Police Commission</i>	Application by DRPS and Board to stay extension order; Withdrawn on December 8, 2020 (no cost order)
3	<i>Rollhauer v. Federico</i> , 2021 ONSC 512 (Div Ct)	Application by DRPS to review Order by staying disciplinary charges against Dismissed January 2021 (OCPC awarded \$5000 costs)
4	<i>Durham Regional Police Service v The Ontario Civilian Police Commission</i> , 2021 ONSC 2065	Application by DRPS to review decision by OCPC to withdraw disciplinary charges against Dismissed May 2021 (no cost order)
5a	<i>Durham Regional Police Service v. OCPC, Scott & Lockwood</i> , 2024 ONSC 2214; costs endorsement: (2025), CV-21-00662351-0000	Application by DRPS to compel return of two reports written by Workplace Investigator Dismissed April 15, 2024; costs endorsement April 2, 2025 (OCPC awarded \$65,000 costs)
5b	<i>Durham Regional Police Service v Ontario Civilian Police Commission et al</i> , endorsement : (2022), CV-21-00662351-0000	Motion by DRPS to compel answers of I on his affidavit and requiring to reattend to answer the questions refused; Dismissed October 17, 2022 (OCPC awarded \$9,600 costs)
6	<i>Ontario Civilian Police Commission v. Moreira</i> , 2024 ONSC 3737	Stated case brought by the Commission under s. 33 of the <i>Public Inquiries Act</i> for certain emails; Dismissed on the basis of a finding of solicitor-client privilege (DRPS awarded \$15,000 costs)

S.21; S.21(2)(f);

10. The Four Original Complaints

The s. 25 investigation began with the receipt of four letters of complaint by current and former members of the DRPS. They were used to craft the 15 TORs which established the framework of this investigation. Those letters and supporting material may be found in the *Martin v. OCPC* Divisional Court Record of Proceedings in Appendix #6.

Below, the Commission itemized the incidents and indicated which ones are analyzed in Part II of this Report and, if they are not analyzed, the reason why.

S.21; S.14 (1) (l); S.14 (2) (a); S.21(2)(f);

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S.21 ; S.14 (1) (l) ; S.14 (2) (a) ; S.21 (1) (f) ;

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S.21 ; S.14 (1) (l) ; S.14 (2) (a) ; S.21(2)(f) ;

of the Freedom of Information and Protection of Privacy Act / du loi sur l'accès à l'information et la protection de la vie
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Part II

Discussion of Terms of Reference

A discussion of each of the Terms of Reference (TOR) based upon the distilled complaints referred to in Part I follows. As mentioned in the Introduction, under each heading the Commission makes Recommendations, if appropriate, and in two instances, refers to misconduct charges laid by OCPC.

Terms of Reference #1

Whether a number of specific promotions were improperly implemented contrary to established policies, practices, and/or procedures, and/or were improperly based on favouritism, cronyism, and/or paybacks.

The following Recommendations are related to this TOR:

Recommendation #1: S.21; S.21(2)(f);

Recommendation #2: The Chief make it clear that his office, and only his office, is ultimately responsible for promotions up to and including the Superintendent rank among sworn officers and for all civilian members of the Service;

Recommendation #3: The Chief and the Board each draft a Directive designed to comply with Part XI of the *Community Safety and Policing Act*, and ensure all members are aware of their right to report misconduct without fear of reprisal; and

Recommendation #4: The Chief, in consultation with the DRP Association, place a cap on the length of time members are placed in acting positions.

This TOR is discussed under two subsections: (a) manipulation of promotional processes

and (b) Alleged Misuse of Acting Positions.

(a) **Alleged Manipulation of Promotional Processes**

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S.21 ; S.14 (1) (l) ; S.14 (2) (a) ; S.21(2)(f) ;

of the Freedom of Information and Protection of Privacy Act / du loi sur l'accès à l'information et la protection de la vie
privée

S.21; S.14 (1) (l); S.14 (2) (a); S.21(2)(f);

Findings

The evidence was insufficient for the Commission to conclude that any specific promotion was improperly influenced. However, as the excerpts from the above interviews demonstrate, a number of members of the Service are strongly of the view that "the promotions were improperly based on favouritism, cronyism, and/or paybacks, and that _____ was directly or indirectly responsible for this practice."

The interviews referenced above demonstrate a perception that I

- Wields a disproportionate amount of power in the Service over the promotional process;
- Creates unnecessary camps and causes divisiveness;
- Has manipulated the promotional process, promoting favourites and freezing out those who have fallen into his disfavour;
- Works through proxies,

- Has intimidated staff, attempting to dissuade them from seeking the assistance of their Police Association.

These are serious allegations, the mere perception of which undermines the integrity of the promotional process. It is critical for the integrity of the Service that the promotional process not only be fair and transparent in practice, it must be also seen as fair and transparent.

Currently, as noted above, the promotional process is seen by a meaningful percentage of the members as being rife with favouritism, cronyism, and paybacks. This perception has a deleterious effect on the persons promoted. The integrity of their promotion is undermined. It likely has the further deleterious effect of inhibiting meritorious officers from putting their names forward as they do not believe that they have a fair chance of being promoted on their merits alone. It is who you know, not what you know and what you have previously accomplished in your career, that ultimately determines the outcome of the promotional process in their opinion.

S.21; S.14 (1) (l); S.14 (2) (a); S.21(2)(f);

As well, as the deleterious negative impact _____ had, or was perceived to have, on the integrity of the promotional process, as will be seen in the discussions under TOR #3, #9 and #14, in the Commission's view, the common perceptions of _____ are that _____ represents an ongoing disruptive force within the Service. In order for the Service to move forward, it requires the confidence of all its members

S.21; S.14 (1) (l); S.14 (2) (a); S.21(2)(f);

The Commission notes that this is a Recommendation and not an allegation of misconduct leading to a Hearing before it. The Commission is of the view that it does not have jurisdiction to order a Hearing

Based on the analysis set out above, the findings related to _____ under TOR #3 (adding to a poisoned work environment and disparaging officers with PTSD) and TOR #9 (failure to adequately address harassment), as well as numerous instances in which _____ contributed to an appearance of impropriety, such as TOR #13 _____ and TOR #14 (perceived favouritism towards _____) the Commission finds that there are a number of negative perceptions within and about the police Service, including perceptions of favouritism, a toxic atmosphere and a lack of trust in the Service. These negative perceptions either stem from _____ conduct or are otherwise directly associated with him. In leadership positions, perceptions matter. In dismissing the first of many judicial review applications commenced by the Service to challenge the Commission's oversight, Penny J. wrote: ³³

³¹ 2019, S.O. 2019, ch. 1, Sch. 1, proclaimed in force April 1, 2024. Transitional issues between the *PSA* and the *CSPA* are addressed in the Introductory Part, above.

The proper functioning of the chain of command requires that officers trust their leadership. A fear of reprisals, a belief that the decision-making of the senior leadership is unfair, or that senior leadership will not act to stop misconduct if the wrong-doer is on the "inside", all have the potential to strike at the heart of the proper functioning of that chain of command.

The Commission finds that, as long _____ remains _____ the negative perceptions will remain because they are directly and indirectly associated with _____

Therefore, the Commission makes the following Recommendation:

Recommendation #1:

Further, it would be of assistance to the members of the Service if the Chief made the line of authority regarding promotions clear to all members. Thus, the Commission also makes this Recommendation:

Recommendation #2: The Chief make it clear that his office, and only his office, is ultimately responsible for promotions up to and including the Superintendent rank among sworn officers and for all civilian members of the Service.

Finally, on this point, the Commission recommends that the Chief draft a Directive to ensure that all members are aware of their rights to report misconduct without fear of reprisal, a responsibility now mandatory for the Chief upon the enactment of ss. 183(1) of the *CSPA*. The Board should draft a similar directive with respect to alleged acts of misconduct engaged in by the Chief or Deputy Chiefs in compliance with *CSPA* ss. 183(2).

Recommendation #3: The Chief and the Board each draft a Directive designed to comply with Part XI of the *Community Safety and Policing Act*, and ensure all members are aware of their right to report misconduct without fear of reprisal.

(b) Alleged Misuse of Acting Positions

While not referring to specific promotions, some of the interviewees were of the view that management manipulated the promotional process by placing their preferred candidates in acting positions, often for long periods.

S.21; S.14 (1) (l); S.14 (2) (a); S.21(2)(f);

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S.21 ; S.14 (1) (l) ; S.14 (2) (a) ; S.21(2)(f) ;

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Findings

In the Commission's view, the Service's practice of placing members into acting positions for an extended period adds to a sense of distrust about the fairness of the promotional process. It is viewed by some members, as evidenced by the officers' comments above, as a tactic by which rewards their favourites. It is also seen as giving that person an advantage in any subsequent competition for that position. Whether management is intentionally manipulating the process by placing its preferred candidate in an acting position was unclear – the practice may have evolved more as a matter of convenience rather than intention.

The Commission understands the necessity of allowing this practice to continue; positions open up quickly and must be filled. However, at some point, the Service must make a decision and fill an acting position with a full-time member. Therefore, the Commission makes the following Recommendation:

Recommendation #4: The Chief, in consultation with the DRP Association, place a cap on the length of time members are placed in acting positions.

Terms of Reference #2

Whether the Board exercised appropriate oversight regarding the hiring processes and contract extensions of senior officers, including the Chief of Police and Deputy Chief of Police

The Board is mentioned in four of the fifteen TORs (#2, #5, #8 and #15) in this report. There is some inevitable overlap in the discussion of these four Terms which will be kept to a minimum by fully discussing them under this TOR.

This TOR is discussed under subsections: (a) Role of the Board in General;

S.21; S.21(2)(f);

The following Recommendations are made in relation to this Term:

Recommendation #5: the Board develop a policy ensuring adequate safeguards for questions used during the interviewing process to protect the integrity of the promotional process;

Recommendation #6: The Board receive copies of any written decisions of the courts, arbitrators or hearing officers regarding members of the Service which may be relevant to the performance of the member's duties or the reputation of the Service.

Recommendation #7: Candidates provide copies of any written decisions of the courts, arbitrators or hearing officers in which they either gave evidence or were a party as part of the screening process for a deputy chief or chief position.

(a) Role of the Board in General

In its review of the TORs related to the Board, the Commission took cognizance of The Honourable John Morden's report entitled *Independent Civilian Review into Matters relating to the G20 Summit (Morden Report)*, in which he concluded that the PSA was intended:

- to provide Boards, police officers and chiefs with a clear direction and a more precise definition of their roles and responsibilities;
- to strengthen the role of the Board;
- to bring about an enhanced level of interaction between the police and the community; and,

- to make police services more reflective of the community they serve.

Clause IV of the TOR states, in part:

Assessment of the above issues [the fifteen TORs] shall be conducted with regard to s. 31(4) of the PSA which provides that Boards are not to direct chiefs of police with respect to specific operational decisions or with respect to day-to-day operations. A similar section may be found in the CSPA.

While former *PSA* ss. 31(4) was drafted to prohibit interference by Board members into municipal chiefs' operational decisions, the *Morden Report* states that it was not intended to unnecessarily limit the flow of information. Justice Morden recommended a greater exchange of information between the Board and the chief.

The Board was defined by *PSA* Part III. Its main responsibilities include: determining objectives and priorities of policing in the Durham region; recruiting and hiring the chief and deputies; monitoring their performances; and overseeing the complaints system. The Board must also prepare and oversee a budget for submission to the municipal council that will provide for payment of adequate policing services. The Boards' duties under s. 37 of the newly enacted *Community Safety and Policing Act* are very similar to those listed under s. 31 of the former *Police Services Act*. Now, Boards must develop and adopt a diversity plan; this issue is not included in any TOR.

S.21; S.14 (1) (l); S.14 (2) (a); S.21(2)(f);

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S.21 ; S.14 (1) (l) ; S.14 (2) (a) ; S.21(2)(f) ;

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S.21; S.14 (1) (l); S.14 (2) (a); S.21(2)(f);

Findings

The Commission is of the view that the actions of the Board in granting the contract extension, in the manner that it did, were regrettable in the circumstances.

However, the requested extension was within the Board's purview. Thus, the criticism of the Board's actions is more form than substance.

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S.21 ; S.14 (1) (l) ; S.14 (2) (a) ; S.21(2)(f) ;

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Findings

Although the Commission accepts the evidence of [redacted] that [redacted] did not know of the relationship between [redacted] and [redacted] at the time of the hiring of [redacted], [redacted] should have known. The background check and the questions asked of candidates should have been rigorous enough to expose any such relationship. There is an appearance of bias. However, the assertion that [redacted] gained a material advantage, due to [redacted] association with [redacted], is not substantiated in light of [redacted] evidence.

S.21; S.14 (1) (l); S.14 (2) (a); S.21(2)(f);

While the memo and attachments were marked 'For members only', this process could have easily led to leakage of the critical draft questions into the hands of potential candidates, thereby tainting the selection process. Given the rumours of improper access to interview questions, there is a clear need for a higher degree of transparency in relation to the Board's promotional process. Potential candidates having close relationships to Senior Command are almost inevitable, but the promotional process must be protected by adequate firewalls to ensure no appearance of leakage of questions being asked of the candidates. Accordingly, the Commission recommends

that the Board develop a policy ensuring adequate safeguards for questions used in the interviewing process to protect both the integrity and the appearance of integrity of the promotional process.

Recommendation #5: the Board develop a policy ensuring adequate safeguards for questions used during the interviewing process to protect the integrity of the promotional process.

S.21; S.14 (1) (l); S.14 (2) (a); S.21(2)(f);

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S.21 ; S.14 (1) (l) ; S.14 (2) (a) ; S.21(2)(f) ;

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It is the Commission's opinion that the interviewing panel considering whether _____ should be promoted to the position of _____ should have been fully informed of all of the circumstances around the candidate, including the relevant findings of _____

S.21; S.14 (1) (l); S.14 (2) (a); S.21(2)(f);

While it may be adequate for the Board to receive 'tombstone' information about ongoing disputes, the Commission is of the view that the Board ought to receive copies of any written decisions of the courts, arbitrators or hearing officers of its members. Those decisions will inform the Board of labour relations in the more contentious scenarios.

The Commission was not provided with any information as to what steps, if any, the Hiring Panel or the Board took when it realized that it had not been provided with this key piece of information in a timely manner.

Thus, the Commission makes the following Recommendation:

Recommendation #6: The Board receive copies of any written decisions of the courts, arbitrators or hearing officers regarding members of the Service which may be relevant to the performance of the member's duties or the reputation of the Service.

These decisions are of particular relevance when a candidate is applying for a Deputy Chief or Chief position, whether or not they are internal candidates. Therefore, it is recommended that candidates must provide copies of any written decisions of the courts, arbitrators or hearing officers in which they either gave evidence or were a party as part of the screening process. Accordingly, the Commission recommends:

Recommendation #7: Candidates provide copies of any written decisions of the courts, arbitrators or hearing officers in which they either gave evidence or were a party as part of the screening process for a deputy chief or chief position.

Terms of Reference #3

Whether a poisoned work environment has been created, encouraged, and/or sustained by the current senior administration of the Service

While the Commission makes no specific recommendation under this Subheading, some of the allegations discussed below are, in its view, substantiated and add to the recommendation the Commission makes under TOR #1,

The roots of this TOR may be found in the written complaints

The complaints of a
poisoned work environment go back to

In sum, the Commission finds that a poisoned work environment was created at the DRPS.

S.21; S.14 (1) (I); S.14 (2) (a); S.21(2)(f);

it substantiated nine of the original twenty-two
complaints of harassment.

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S.21 ; S.14 (1) (l) ; S.14 (2) (a) ; S.21(2)(f) ;

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S.21; S.14 (1) (l); S.14 (2) (a); S.21(2)(f);

Findings

Was management's response, ordering the three corrective measures, based on the *R-T Report's* findings, reasonable? This is a difficult question to answer requiring the balancing of a number of factors beyond the reach of this Report, such as the employee's work history, value to the Service, and receptiveness to addressing the issues at hand. Had the [redacted] been completed with a ruling by Arbitrator [redacted] the Commission would be in a better position to answer this question. However, as mentioned, the negotiated Minutes of Agreement meant there was no formal decision.

What is not difficult to assess is whether management was diligent in ensuring compliance with its mandated corrective measures, and whether it misled the Association on whether compliance took place. On both points, Senior Command's position was seriously wanting.

Compliance With Corrective Measures

⁴⁵ Anti-Harassment and Violence Policy [HR-02-011].

⁴⁶ 2020 ONSC 1116.

⁴⁷ Tabs 1 & 2, Volume 1, Book of Documents of the Durham Regional Police Association, *In the Matter of an Arbitration Between Durham Regional Police Association v. Durham Regional Police Services Board*.

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S.21 ; S.14 (1) (l) ; S.14 (2) (a) ; S.21(2)(f) ;

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S.21; S.14 (1) (l); S.14 (2) (a); S.21(2)(f);

Findings

In the face of a substantiated finding that [redacted] engaged in workplace harassment, it seems somewhat cavalier for [redacted] to immediately allow [redacted] to fill [redacted] even if there was a rotating schedule. Whether [redacted] proactively appointed [redacted] or merely permitted a preexisting scheduling process to place [redacted] in that position, in the wake of the findings in the [redacted] it represented a form of temporary promotion which he could have stopped.

[redacted] may have not realised the message [redacted] was sending to both the complainants and the Association, but [redacted] actions signalled favouritism toward [redacted] and this contributed to a poisoned work environment.

(c) Service's Refusal to Disclose

[redacted] complaint also alleged that the Service would not voluntarily turn over the [redacted] to the Association, a point that is well-documented in the [redacted] This contributed to a poisoned relationship between the Service and the Association.

On September 15, 2015,

[redacted] pointed to the refusal of the Service to release this Report as an example of one of the roadblocks placed by the Service to stall the arbitration.

⁵²

⁵³ *DRPA v. DRPS* (Trachuk) 2015 CanLII (ON LA) which may be found at Appendix #17.

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S.21 ; S.14 (1) (l) ; S.14 (2) (a) ; S.21(2)(f) ;

of the Freedom of Information and Protection of Privacy Act / du loi sur l'accès à l'information et la protection de la vie
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It is another example of either Senior Command or the Board, through counsel, contributing to a poisoned work environment by not voluntarily sharing an investigative report written by a mutually agreed upon independent investigator even after it had entered into a written agreement stipulating that it would do so. This action again prevented the Association from fully understanding how management arrived at its determination of the appropriate corrective measures in these circumstances. It should be remembered that the Association represented the individuals who had been subject to harassment, and thus had an interest in understanding the outcome.

S.21; S.14 (1) (l); S.14 (2) (a); S.21(2)(f);

Findings

In a perfect world, all complaints and grievances would be settled early on. There are many reasons why a litigation matter may settle on the eve of a hearing. Some of those

reasons might be legitimate while others may be questionable. In any event, in the face of the statement under oath by _____ of 53 of the 54 grievance claims brought by the DRPA being settled or dismissed, it is hard to conclude that management has been unreasonable settling these matters at the last moment. Thus, this aspect of the _____ complaint is unsubstantiated.

S.21; S.14 (1) (l); S.14 (2) (a); S.21(2)(f);

This attitude towards those suffering psychological distress was also apparent in his advice to some officers not to seek counselling :

Page 066 to/à Page 067

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S.21 ; S.14 (1) (l) ; S.14 (2) (a) ; S.21(2)(f) ;

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S.21; S.14 (1) (l); S.14 (2) (a); S.21(2)(f);

Findings

In the face of evidence on this point and the lack of corroboration of the allegation that had improper access to members' medical information, this assertion cannot be substantiated, although there is anecdotal evidence in support of it.

Of much more concern is the documented attitude of towards those members of the Service who were diagnosed with PTSD, especially in light of the legislated Provincial change in the PTSD presumption. On April 5, 2016, the Ontario Legislature passed the *Supporting Ontario's First Responders Act*. This Act created a

presumption that post-traumatic stress disorder diagnosed in first responders is work-related. Prior to April 5, 2016, the onus was on the first responder to prove the existence of PTSD and that it was work-related. These onuses were often a heavy burden.

The new *Act* applies to police officers. The stated purpose of the presumption change was to “allow for faster access to WSIB benefits, resources, and timely treatment. Once a first responder is diagnosed with PTSD by either a psychiatrist or a psychologist, the claims process to be eligible for WSIB benefits will be expedited, without the need to prove a causal link between PTSD and a workplace event. This *Act* is part of the province’s strategy to prevent or mitigate the risk of PTSD and provide first responders with faster access to treatment and the information they need to stay healthy.”⁷²

Employers, who cared for the welfare of their first responders, welcomed this new legislation. The first responders themselves felt relieved that the PTSD diagnosis was left in the hands of professionals: psychiatrists and/or psychologists and they could concentrate on their recovery. The Commission heard considerable evidence that the Service took the opposite stance and vigorously opposed virtually every Application to the WSIB for presumptive PTSD. If a finding of PTSD was made, the Service appealed it. If there was a subsequent application for Chronic Mental Stress (CMS), on the basis of their opposition to the initial finding by the Member, they fought that as well.

It is not practical to exhaustively detail every case explored. A couple of examples will serve to describe the approach towards PTSD of Senior Management in general

S.21; S.21(2)(f);

S.14 (1) (l); S.14 (2) (a);

⁷² “Ontario Passes Legislation to Support First Responders with PTSD,” News Release, Minister of Labour, April 5, 2016; later incorporated into s. 14 of the *Workplace Safety and Insurance Act*, 1997 S.O. 1997, ch.16, Schedule A.

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S.21 ; S.14 (1) (l) ; S.14 (2) (a) ; S.21(2)(f) ;

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S.21; S.14 (1) (l); S.14 (2) (a); S.21(2)(f);

Findings

the Commission substantiates the following points:

1. Senior Command failed to ensure that fully complied with the mandated corrective measures, leaving the Association with the impression that had;
2. immediately after an outside investigator had made a series of findings that helped create a poisoned work environment;
3. The Board did not abide by its own Memorandum of Agreement signed in September 2014 in which it agreed to produce all investigative reports;
4. The Board, engaged in unnecessary litigation before Arbitrator leading to her 2015 ruling that the Report must be produced;
5. The Board, refused to produce the after I ruling, necessitating another appearance before the Arbitrator;
6. The Board, delayed and did not respond to letters from DRPA's counsel, process, as

⁷⁵ Ibid, pp. 112, 113.

evidenced by comments |

7. | made knowingly false and/or misleading statements in a Notice of Investigation, | and withdrawing the Notice when it had to know at the time they had no reasonable grounds to make those allegations, more fully discussed under TOR #11;
8. | did not report a sexual assault by one member on another to the Special Investigations Unit, telling an officer not to contact the Association, according to complainant |, and suggesting the victim of a sexual assault may have been in part responsible for what happened to her, more fully discussed under TOR #7; and
9. | made dismissive comments to members suffering from PTSD and the role of | in treating this disorder.

Attempting to remedy these findings of a poisoned work environment is problematic given the change of personnel at the DRPS Senior Command level and the Board. At the Senior Command level, | have left, and the Board members rotate through on a regular basis.

S.21; S.14 (1) (l); S.14 (2) (a); S.21(2)(f);

These points in themselves might not be grave enough to cause the Commission to make a Recommendation
However, they add substance to the Recommendation, made earlier under TOR #1, that comes to that conclusion. Issues regarding the retention of external counsel are more

⁷⁶ All letters may be found in Volume 1, Book of Documents of the Durham Regional Police Association, *In the Matter of an Arbitration Between Durham Regional Police Association v. Durham Regional Police Services Board*.

fully addressed under TOR #14 and TOR #15.

Terms of Reference #4

Whether the senior administration made decisions that affected operations of the Service, training opportunities for members, and/or disciplinary matters that were improperly based on favouritism, cronyism, and/or paybacks.

There were many allegations against members of senior administration of favouritism, cronyism and/or paybacks. These are the major ones:

- (a) Board indemnification of legal costs in the
- (b) the unfair allocation of tuition fees;
- (c) the issuance of a *Trespass to Property Act* notice against members of the Professional Standards Unit in relation to Snuffy's Grill; ⁷⁷

- (g) Favouritism towards

These allegations are discussed under the headings below. Briefly, the allegations that
misused his disciplinary powers by offering to withdraw misconduct charges
against in exchange for damaging information against
and favouritism toward the J are substantiated.

S.21; S.14 (1) (l); S.14 (2) (a); S.21(2)(f);

This grievance was very unusual. It began as one involving two parties: I and the Association. It then expanded as a result of Senior Command deciding to conduct another investigation into matters raised by the Association's letters

Those particulars were far-reaching. The March ones are contained in a twenty-one-page letter containing 120 separate allegations. In that investigation, I had potential liability and requested indemnification from the Board. In the Commission's view, it was not unreasonable for the Board to accede to this request, and it does not, on its face, suggest favouritism. Accordingly, this aspect of the complaint is unsubstantiated.

(b) Tuition Fees

The issue of favouritism with respect to I allocation of tuition fees arose in a number of contexts. There was a general sense that his choice of those receiving reimbursement for these fees was a form of favouritism. I

S.21; S.14 (1) (l); S.14 (2) (a); S.21(2)(f);

Page 078 to/à Page 083

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S.21 ; S.14 (1) (l) ; S.14 (2) (a) ; S.21(2)(f) ;

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S.21; S.14 (1) (l); S.14 (2) (a); S.21(2)(f);

The Commission can independently confirm the use of two lawyers at set dates. In the disciplinary prosecution, the Commission has the transcripts of nine set dates before the assigned Hearing Officer, appearances that are typically handled by the officer in charge of the case in other hearings. Instead, sent two lawyers to every appearance. It is difficult to think of a reason why appearances of two lawyers on set dates, which largely deal with housekeeping matters, would ever be necessary.

Also, two lawyers appeared on a motion brought by [redacted] in a disciplinary matter when only one lawyer appeared for the subject officer.⁹⁴ The Commission attempted to question [redacted] about these billing practices but [redacted] declined to be interviewed.⁹⁵

An area of particular concern related to allegations of significant billing is the WSIB appeals by the Service. The Commission has previously cited from [redacted] interview on the negative impact of the Service's WSIB appeals under TOR #3.

These concerns of significant billings are supported by a July 8, 2024, CBC news article entitled "\$2M of taxpayer money already spent investigating alleged Durham police corruption," in which it reported that:

The Durham police board said it's spent approximately \$500,000 on legal fees since the OCPC investigation began. The police service itself told CBC it has spent about \$1.46 million over the same time. They have separate legal teams.⁹⁷

This issue is addressed under TOR #14.

Conclusion

S.21; S.14 (1) (l); S.14 (2) (a); S.21(2)(f);

⁹⁷ <https://www.cbc.ca/news/canada/ottawa/investigation-durham-police-cost-money-1.7253075>.

In sum, the Commission has found some notable instances where the operation of the Service has been affected by senior administration for reasons related to perceived favouritism, cronyism and/or paybacks. While social contact outside of the employment relationship is inevitable, it cannot affect or be perceived to affect the Service's operational decisions. The perceived connections between and among [redacted] are the basis of many of the above allegations and should be brought to an end. It is for this reason—and others discussed throughout this Report—

S.21; S.14 (1) (I); S.14 (2) (a); S.21(2)(f);

Finally, there was a widely held perception among senior officers, particularly those in the Professional Standards Unit, that a significant amount of legal work was being referred to the [redacted]. The issue surrounding the relationship between the Service and the retention of external legal services is more fully addressed under TOR #14 and TOR #15.

Terms of Reference #5

Whether the Board is appropriately informed about administration issues relating to its mandate.

Please refer to the introductory comments at the beginning of TOR #2 entitled 'The Role of the Board in General'. The Commission makes one Recommendation in relation to this TOR:

Recommendation #8: The Service immediately provide the Board with any disciplinary reports it requests.

The Commission reviewed the Board's Minutes for the years 2017 to 2020. In general, it would appear that the Board is informed of major administration issues related to its statutory mandate in *PSA* s. 31. In a lengthy interview with I

- The Board would not be informed about complaints against I because is an employee of the Service and not the Board;⁸⁸
- had no knowledge of the allegation that wanted to force I out of the DRPS because would not support "tyrannical behavior;"
- was unaware as to how much the government supported the Victim Services Unit, and unaware that the provincial government threatened to cut off its funding. acknowledged that funding is something the Board is responsible for and that if the funding were cut off and the Service wanted to have a Victim Services program, the money would have to come from somewhere else;
- The names were not familiar to , but the Board would have been made aware of grievances and disciplinary matters at meetings with just a couple of sentences outlining the complaint. A recommendation found in TOR #2 addresses this point. The Board is

S.21; S.14 (1) (l); S.14 (2) (a); S.21(2)(f);

informed about the nature of the dispute and where it is in the system including what is going on with disciplinary matters that go to hearings;

- With respect to the questions raised S.21; S.21(2)(f); stated that understanding was that Hearing Officer signed off on everything being alright. stated that does not recall reading ruling. Again, a Recommendation found in TOR #2 addresses this point;
- recalled submitting a complaint to the Board about on June 12, 2018. As a result, the Board requested a s.25 investigation from the OCPC, advised about the medical restrictions submitted by and requested a follow-up. The OCPC responded on June 15, 2018, stating it would not investigate. The Board then held a special meeting on June 26, 2018, and advised the OCPC the same day that it was requesting the Commission assign the chief of another force to investigate. On July 9, 2018, the Board's complaint was referred to Niagara Regional Police Services for an outside investigation. That Service found the allegations to be unsubstantiated - the Board and received copies of the report;⁹⁹
- was aware of applying for secondary employment to permit stated that if an officer wanted secondary employment, he or she applies to the Chief and the Board is then notified very basically when it is approved. states that the Board does not do the approval process for secondary employment – they just receive notification after the approval process;
- did not recall being informed that secondary employment activity was approved but knew there was pushback, and that the issue was sent to the O.P.P. to review. said the issue came to the Board's attention due to a *Toronto Star* article. The Board did not see the O.P.P. investigation results. It asked for the O.P.P. report twice. said that the report was lacking and that it was in the process of being looked at again. was unaware that the requested the O.P.P. to change part of the report and that the O.P.P. declined. The Board has never seen the O.P.P. report;¹⁰⁰

⁹⁹ The NRPS report may be found at Appendix #16.

¹⁰⁰ The O.P.P. report may be found at Appendix #14.

- stated that to recollection, was not aware that a legal opinion had been produced with respect to whether had a licence.¹⁰¹ was also unaware of the allegation that at the same time as providing an opinion to the DRPS about the secondary employment issue. Please see the discussion under TOR #14 on this issue of conflict;
- Counsel for the Board, who was present during the interviews, clarified that the O.P.P. report fell under Part V, and that the Board does not usually receive a copy of these types of reports. stated that the *PSA* s. 95 confidentiality provision may have impeded the Board's access to the report;
- stated that with respect to Court Applications, it is the office of the Chief of Police that brings them forward. The Board is not necessarily a party but is aware of them;
- stated that the Board receives monthly reports from the Chief on administration of the complaint system;
- stated that the Board was informed of the dismissal of disciplinary charges against However, it was not aware, at the time, about the allegation that then but the Board heard about it later. stated that cannot recall if the Board did anything after hearing about the allegations;
- acknowledged being aware of allegations of preferential treatment regarding educational funds managed by recalled that the employee in question and it was suggested that education would be a good use of time. does not recall the Board being aware that I
- The issue of secondary employment also arose

S.21; S.14 (1) (l); S.14 (2) (a);
S.21(2)(f);

¹⁰¹ The legal opinion may be found at Appendix #15.

¹⁰² Further discussed under TOR #15.

stated that [redacted] was not aware of [redacted] secondary employment coming to the Board's attention. [redacted] said that [redacted] was not sure that anyone would see a conflict in that case since it was in [redacted] own field [redacted] stated that if someone is engaged in secondary employment, it is up to them to bring it forward; and

- [redacted] said the Board is made aware of approved applications for secondary employment but is not involved in the approval process. [redacted] stated that this interview is the first time [redacted] has seen the name [redacted]. To [redacted] knowledge, the Board was not made aware of [redacted] arrest. Further, this is the first time [redacted] has heard anything about [redacted] and stated that to her knowledge the Board does not know about the [redacted]

Findings

S.21; S.21(2)(f);

The Board was in a difficult position on the issue of being informed about administration issues related to its mandate. It largely relies upon information provided by the Service's Senior Command and in particular, its Chief. As well, some confusion may arise due to the drafting of *PSA* ss. 31(4) which stated, "[T]he Board shall 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." Some board members may have assumed – wrongfully, in the Commission's view – that the Board has no right to ask questions regarding any operational decisions.

As mentioned in the discussion of the role of the Board in TOR #2, reference was made to The Honourable John Morden's Report entitled *Independent Civilian Review into Matters relating to the G20 Summit (Morden Report)*. Mr. Morden critiqued the use of former *PSA* ss. 31(4) by the then Toronto police chief during the 2010 G20 Summit and recommended a much greater exchange of information between the board and the chief.

The admonitions contained in the *Morden Report* were no doubt taken into consideration in the drafting of an analogous section in the new *Community Safety and Policing Act*. S. 40 of that *Act*, entitled "Police service board directions" states:

- (1) The police service board may give directions to the chief of police.

(2) For greater certainty, the police service board shall not direct members of the police service other than the chief of police, unless that direction is specifically authorized under Part XII (Discipline and Termination).

(3) No individual member of a police service board shall direct the chief of police or, for greater certainty, any other member of the police service.

(4) The police service board shall not direct the chief of police with respect to specific investigations, the conduct of specific operations, the discipline of specific police officers, the day-to-day operation of the police service or other prescribed matters.

(4.1) Subsection (4) does not prevent a police service board from issuing directions that may affect operations.

(5) The police service board shall not direct the chief of police to provide personal information to the board under subsection (1) if other information will serve the purpose for which the information is to be used.

(6) The police service board shall not direct the chief of police to provide more personal information to the board under subsection (1) than is reasonably necessary to meet the purpose for which the information is to be used.

(7) The police service board shall not direct the chief of police to do anything that would,

- (a) contravene this Act or the regulations, or any other Act or regulation;

- (b) require a member of the police service to do something or refrain from doing something where this would be inconsistent with his or her duties under this Act or the regulations; or

- (c) prohibit a member of the police service from attempting to collect information for the purpose of investigating an offence or assisting with the prosecution of an offence.

(8) A chief of police may decline to provide information pursuant to a direction from the police service board if authorized to do so by the regulations.

(9) The police service board shall publish any directions given to the chief of police under subsection (1) on the Internet in accordance with the regulations made by the Minister, if any.

The Commission, therefore, encourages the Board to be more proactive in its questioning of Senior Command. This Board, through its Chair, pleaded ignorance with respect to many matters of concern. Some of the plethora of complaints which were investigated may not have occurred if the Board had been more proactive.

Referring to the Board's responsibilities, listed in former *PSA* s. 31, there are two subsections for which the Board should be better informed by Senior Command: those relating to its responsibilities under ss. 31(g) for receiving reports about secondary employment, and under ss. 31(j) for reviewing the police's administration of the complaints system. These Board responsibilities remain the same under ss. 37 (h) and (i) of the *Community Safety and Policing Act (CSPA)*.

Turning first to the secondary employment issue, it appears the Board only received those reports after the Chief had approved the requests and not if the request was declined. The Board Chair advised that it never saw the secondary employment application, more fully discussed under TOR #14, even though it had been accepted but then later withdrawn. S.21; S.21(2)(f);

apparently was engaged in secondary employment activities with ' acknowledged cannot recall if there was ever a secondary employment approval for brought to the Board's attention. clarified that officers are only obliged to seek approval for secondary employment if they feel that there is going to be a conflict or that it may violate former *PSA* s. 49.¹⁰⁴

These lacunae in fully reporting both approved and rejected requests for secondary employment to the Board are remedied with the enactment of *CSPA* by the addition of the following clause:

CSPA ss. 89(6) The chief of police shall submit a written report to the police service board respecting any decision he or she makes under subsection (4), with reasons.

Boards ought to be now fully apprised of all secondary activity applications and the Chief's reasons for acceptance or rejection. Parenthetically, the new *Act*, like the old one, does not place an onus on the applicant to always apply for approval

¹⁰⁴ Please refer to TOR #14 for a discussion of Directive HR-02-001.

whenever he or she wishes to engage in secondary employment – the member only needs to disclose when he or she "proposes to engage in an activity that may contravene subsection (1) [the conflict provision] or who becomes aware that an activity that he or she has already undertaken may do so."

The secondary employment request also had consequences for the Board's responsibilities under former *PSA* ss. 31(j). The Chief's request that the O.P.P. investigate the incident is more fully addressed under TOR #14. The Board never saw the O.P.P. report notwithstanding a number of requests. added that the report was a Part V investigation and accordingly the Board does not usually receive a copy of these reports.

Board counsel stated that *PSA* s. 95 may have impeded the Board's access to the report. In the Commission's view, however, s. 95 should not act as a prohibition from the Board being apprised of disciplinary matters. *PSA* ss. 95(a) stated that an exception to the general confidentiality provision as: "may be required in connection with the administration of the Act and the regulations." Given the Board's statutory duties under former *PSA* ss. 31(j) and (7), the Service could have provided disciplinary reports to the Board without breaching the s. 95 confidentiality provision. Additionally, in the *CSPA*, the equivalent of former *PSA* s. 95 is found in Part VII entitled, "Law Enforcement Complaints Agency," and does not affect the operations of a police service. Accordingly, the Commission recommends that the Service provide the Board with any disciplinary reports it requests.

Recommendation #8: The Service immediately provide the Board with any disciplinary reports it requests.

Terms of Reference #6

Whether the senior administration and/or individuals within the senior administration of the Service allowed, tolerated, encouraged, sustained, committed, and/or were willfully blind to incidents of workplace harassment/violence and/or workplace sexual harassment/misconduct committed by any member of the Service.

This Term of Reference is addressed in TOR #7.

Terms of Reference #7

Whether the Service has fair and transparent policies/processes to address incidents of workplace harassment/violence and/or workplace sexual harassment/misconduct, and whether the senior administration is following these policies/processes.

This Term of Reference focuses on two aspects of the Service's workplace/harassment issues: policy and implementation of that policy. They are addressed by first discussing the policy under one heading and then the implementation of the policy. Under the latter heading, the focus is on five circumstances where the Service has initiated Respect in the Workplace ("RITWP") investigations under these headings:

S.21; S.14 (1) (l); S.14 (2) (a); S.21(2)(f);

Briefly, the Commission is of the view that the Service's policy is fair and transparent but its implementation, as evidenced by these investigations, leads to the following Recommendations:

Recommendation #9:

Recommendation #10: The Respect in the Workplace Committee exercise due diligence in the review of any reports it receives from investigators and ensure that they were conducted in a thorough, professional, and independent manner that complies with the purpose of the Service's Respect in the Workplace Directive, that being to maintain a working environment that is based upon the dignity and rights of everyone in the organization.

Recommendation #11: The Service consider reviewing the investigative reports to determine whether they were conducted in a thorough, professional, and independent manner that complied with the stated purpose of the Service's Respect in the Workplace Directive, that being to maintain a working environment that is based upon the dignity and rights of everyone in the organization.

Recommendation #12: All interviews by Respect in the Workplace investigators whether conducted by internal or external investigators be recorded, and copies

of the recordings be considered work product, copies of which are retained in the investigation file.

Recommendation #13: All retainers for external workplace investigations be made between either the Service on the one hand and the investigator or the investigator's firm on the other, and not by legal counsel acting for the Service. Further, the retainer agreement should clearly state that the external investigator is being retained in the capacity of an independent workplace investigator and not as counsel, and must provide copies of all work product to the Service upon completion of its Report. Finally, the retainer agreement should stipulate that the Report and all work product are the property of the Service.

Recommendation #14: The Service include a clause in its external Workplace Investigations contracts that all reports and work product may be shared with oversight agencies such as the Inspector General of Policing and the Law Enforcement Complaints Agency.

(a) Policy

The Service has a 'Respect in the Workplace' [Anti-Harassment and Violence Policy] Directive HR-02-011 (RITWP Policy) in compliance with s. 32.01(1)(b) of the *Occupational Health and Safety Act* and the *Ontario Human Rights Act*. The Policy, first in effect in 2008 and last revised in 2017, makes it clear that acts of harassment, discrimination and violence are a violation of the *Occupational Health and Safety Act*, and will not be tolerated.

The purpose of the RITWP Policy is set out in the first page, and is worth citing because of its relevance to Recommendations #10 and #11:

... the Durham Regional Police Service is committed to providing and maintaining a working environment that is based on respect for the dignity and rights of everyone in the organization. It is the Service's goal to provide a healthy and safe work environment that is free from any form of harassment or violence ...

The Policy continues to define discrimination, sexual and discriminatory harassment, harassment and bullying in the workplace, and workplace and domestic violence. It mandates the establishment of a Respect in the Workplace Committee that must investigate all complaints and consists of members of senior management including the Inspector of the Professional Standards Unit. As stated at clause 6(d), "...The Committee may choose to use either an internal or external investigator ..." Depending on the nature of the complaint, the Committee may attempt to resolve it by an informal or formal procedure. If the formal procedure is chosen, and an investigation

substantiates a breach of the Policy, the chief may impose corrective measures ranging from counseling to termination for sworn members under Part V of the former *PSA*, or similarly for civilian members under the terms of the 'Civilian Discipline Process' Directive.

The *CSPA* has similar disciplinary provisions for sworn members. Under s. 200, a chief may impose any combination of the following disciplinary measures:

- Suspend the officer without pay for a period not exceeding 30 days or 240 hours;
- Direct that the officer forfeit not more than three days or 24 hours pay;
- Direct that the officer forfeit not more than 20 days or 160 hours off;
- Reprimand the officer;
- Direct that the officer undergo specified counselling, treatment or training; and/or
- Direct that the officer participate in a specified program or activity.

If the DRPA makes a request following completion of a formal investigation, the Board must provide the Association with a full copy of the report along with all underlying documents. The report may only be read by senior members of the Association and counsel for the purpose of representing its members. The Policy also provides for protection for good faith whistleblowers and consequences for those making false or malicious complaints. The new *CSPA* also provides statutory protections for whistleblowers.

On its face, the Service's RITWP Policy is fair and transparent, and addresses incidents of workplace harassment/violence and/or workplace sexual harassment/misconduct. However, the real concern is the second part of this TOR: is the senior administration following these policies/processes?

(b) Implementation of the Anti-Harassment and Violence Policy

When the Service is confronted with serious allegations of workplace harassment, it has a choice: it can investigate internally or retain outside investigators.'

S.21; S.14 (1) (l); S.14 (2) (a); S.21(2)(f);

S.21; S.14 (1) (l); S.14 (2) (a); S.21(2)(f);

In March 2016, prior to this incident, Chief Martin had retained the services of Dr. Workman-Stark, a researcher with the Athabasca University Faculty of Business and former Chief Superintendent with the RCMP, to conduct an assessment of the DRPS as an inclusive workplace. She produced a report in October 2016 entitled "An Assessment of the DRPS as an Inclusive Workplace," which led to some follow up meetings with

staff. A copy of that report may be found at Appendix #7. |

S.21; S.14 (1) (l); S.14 (2) (a); S.21(2)(f);

¹⁰⁷ An identical duty exists under s. 16 of the new *Special Investigations Unit Act, 2019*, S.O. 2019, Schedule 5, ch. 1.

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S.21 ; S.14 (1) (l) ; S.14 (2) (a) ; S.21(2)(f) ;

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(c) The Use of External Investigators in RITWP Investigations

Often, the Service retains external investigators to conduct the investigations and write reports which either substantiate or do not substantiate the allegations in issue. This practice has some obvious advantages: the external investigators are experts in their field and are ostensibly in an arm's length relationship with Senior Command. They have to make difficult assessments of witnesses' reliability and credibility in what is often a politically charged environment.

As evidenced in the discussion of the reports below, some allegations raise issues concerning work related intimate relationships. In all cases, these external investigators must make difficult decisions central to resolving the allegations, leading some alleged and/or the respondents to feel aggrieved by the results. The Commission is, therefore, mindful that complaints regarding investigators' findings will often be criticized by the party perceived to be on the losing end of a credibility analysis. It is the nature of any investigation that negative conclusions will be upsetting to those most directly affected by its results. However, as previously discussed, investigators cannot lose sight of the purpose of the RITWP Directive; that being to maintain a working environment that is based on respect for the dignity and rights of everyone in the organization.

When allegations are substantiated, leading to a hearing under former Part V of the *Police Services Act* (now the *Community Safety and Policing Act*) or through the collective bargaining procedure, the consequences to those involved members can be grave: loss of employment, as well as reputation. If the complaint is not substantiated, the complainant can suffer reputational damage as evidenced in the _____ matter.

The Commission has reviewed a number of the external investigations which were the subject of complaints by summoning both copies of the RITWP reports along with their related work product. As discussed in the Introduction, the Service, through its lawyers,

¹⁰⁹ Please refer to Appendix #18.

brought an Application on July 16, 2021, to the Superior Court of Justice demanding the return of two of the . reports and refused to produce unredacted copies of other reports. On April 15, 2024, the Service's Application was dismissed, and shortly thereafter, it produced unredacted copies of all reports over which it had control.¹¹⁰ . This Court Application significantly impacted the Commission's ability to complete this Report in a timely fashion.

The Commission has reviewed five reports, all of which were the subject of complaints, authored by external investigators.

Each of these reports is discussed below, leading to Recommendations which, if adopted, may infuse a greater sense of transparency, accountability and confidence in future reports authored by external investigators.

S.21; S.14 (1) (l); S.14 (2) (a); S.21(2)(f);

¹¹⁰ *Durham Regional Police v. Ontario Civilian Police*, 2024 ONSC 2214.

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S.21 ; S.14 (1) (l) ; S.14 (2) (a) ; S.21(2)(f) ;

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A short note on methodology | The findings the
Commission makes below are based solely on the written record, t
report and follow up correspondence with the RITWP Committee. In the
Commission's view, the face of the record was sufficient to make these findings without
the need to interview

In the Commission's view, while it was reasonable for to conclude
allegation was not substantiated, it was *not* reasonable to conclude
on the basis of this lack of corroboration. may have made the comments
when no one else was within earshot, or others may have lied in their statements when
they said they did not hear make the comments in question. Lack of corroboration
of assertions of sexual comments does not make denials probably
true and a liar.

S.21; S.14 (1) (l); S.14 (2) (a); S.21(2)(f);

Those submissions were included in a Judicial Review proceeding, all underscoring the harm that these unreasonable conclusions can cause.

made a complaint against a senior officer, that complaint was investigated by an external investigator who substantiated some of it. Based on [redacted] faced disciplinary charges,

The process appeared to work fairly. However, a number of her allegations were not substantiated.

The Commission is of the view that his conclusions on this point were unreasonable.

Further, the rejection of the officer's complaint in this manner perpetuates a culture of disbelief of victims of sexual offences, a culture which courts have condemned for years.

S.21; S.14 (1) (l); S.14 (2) (a); S.21(2)(f);

These conclusions lead the Commission to make the following Recommendations in relation to the *Report*.

Recommendation #9:

Recommendation #10: The Respect in the Workplace Committee exercise due diligence in the review of any reports it receives from investigators, and ensure that they were conducted in a thorough, professional and independent manner that complies with the purpose of the Service's Respect in the Workplace

Directive, that being to maintain a working environment that is based upon the dignity and rights of everyone in the organization.

S.21; S.14 (1) (l); S.14 (2) (a); S.21(2)(f);

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S.21 ; S.14 (1) (l) ; S.14 (2) (a) ; S.21(2)(f) ;

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S.21; S.14 (1) (l); S.14 (2) (a); S.21(2)(f);

Findings

Material inconsistencies are always important in assessing a witness' credibility and, indeed, there are inconsistencies on some points between

¹¹⁶ Interview with Joshua Phillips, February 22, 2024, at p. pp. 4-5.

¹¹⁷ Interview with Joshua Phillips, February 22, 2024, at p. 19.

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S.21 ; S.14 (1) (l) ; S.14 (2) (a) ; S.21(2)(f) ;

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Recommendation:

Recommendation #11: The Service consider reviewing the investigative reports to determine whether they were conducted in a thorough, professional, and independent manner that complied with the stated purpose of the Service's Respect in the Workplace Directive, that being to maintain a working environment that is based upon the dignity and rights of everyone in the organization.

S.21; S.14 (1) (l); S.14 (2) (a); S.21(2)(f);

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S.21 ; S.14 (1) (l) ; S.14 (2) (a) ; S.21(2)(f) ;

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S.21; S.14 (1) (l); S.14 (2) (a); S.21(2)(f);

Findings

_____ said : _____ recorded these interviews but informed the investigators that _____ recordings were not accessible because they were located on an antiquated server and copies were not provided to either the law firm or the Service. The notes of the two interviews were reviewed. With respect to the first interview, in the absence of an audio

¹³³ Ibid, p. 46.

¹³⁴ Ibid, pp. 46-49.

¹³⁵ Ibid, p. 51.

recording, no comment can be made on its tone. Regarding the second interview, it is impossible to square recitation of the interview with notes.

In the absence of audio recordings, the Commission is not in a position to substantiate complaints regarding the questions asked and the tone of those questions. This lack of an evidentiary basis leads the Commission to make a Recommendation, discussed below, that all RITWP interviews be recorded and made available to the Service. Their absence also supports the previous Recommendation that the Service consider reviewing investigations.

S.21; S.14 (1) (l); S.14 (2) (a); S.21(2)(f);

further confirmed that the redacted allegations were raised in an unsolicited manner and not as a result of prompting by the questioner.¹³⁷

Findings

Because the interviews were recorded and disclosed – with the exception of the parts which [redacted] advised were unrelated to [redacted] investigation – the Commission has a thorough evidentiary basis for assessing the conclusions reached by the investigator. Assuming the redacted parts formed part of the work product for reasons unrelated to questions posed by the investigator, the Commission is of the view that [redacted] conclusions that both the allegations related to the claim and those of the counter-claim were unsubstantiated was reasonable. The Commission's ability to make this determination underscores the importance of the Recommendation made below for recorded interviews.

(d) Conclusion with respect to the Use of External Investigators

As evidenced above, the issue of bias in external Respect in the Workplace investigations was a recurring theme in the interviews. External investigators (usually lawyers) are retained either by the Service or counsel for the Service. Thus, as mentioned in the beginning of this subsection, the Association has expressed a concern of inherent bias with these investigations.

These findings support the view of DRP Association members that the investigations by external investigators are sometimes biased and unfair.

Some of these concerns have been addressed by the changes in 2017 revisions to the RITWP Directive which mandates that copies of the investigation reports, as well as the fruits of the investigation (documents and witness interviews for example), must be provided to the Association for the purpose of representation of its members. Now, the DRPA may assess the relationship between the underlying investigation and the report itself to independently determine whether its conclusions on witness credibility are reasonable ones. This represents a step forward in facilitating trust in the external RITWP reports. As such, the Commission has no Recommendations regarding Association access to investigative reports, so long as those reports are unredacted and include all work product.

(e) Other Recommendations

As discussed,

S.21; S.14 (1) (l); S.14 (2) (a); S.21(2)(f);

[redacted] It is further
noted that [redacted] agreed that recording of interviews was the best evidence of an

interview and has made it standard practice. Therefore, the Commission makes these Recommendation regarding future external Workplace Investigations agreements:

Recommendation #12: All interviews by Respect in the Workplace investigators whether conducted by internal or by external investigators be recorded, and copies of the recordings be considered work product, copies of which are retained in the investigation file.

Before ending a discussion of the role of external investigators, the Commission noted a change in the retainer agreement between the Service and the Service's lawyers

S.21; S.14 (1) (l); S.14 (2) (a); S.21(2)(f);

Recommendation #13: All retainers for external workplace investigations be made between either the Service on the one hand and the investigator or the investigator's firm on the other, and not by legal counsel acting for the Service. Further, the retainer agreement should clearly state that the external investigator is being retained in the capacity of an independent workplace investigator and not as counsel, and must provide copies of all work product to the Service upon completion of its Report. Finally, the retainer agreement should stipulate that the Report and all work product are the property of the Service.

Recommendation #14: The Service include a clause in its external Workplace Investigations contracts that all reports and work product may be shared with oversight agencies such as the Inspector General of Policing and the Law Enforcement Complaints Agency.

Terms of Reference #8

Whether the Board has provided proper oversight concerning complaints regarding a poisoned work environment; complaints regarding workplace harassment/violence and/or workplace sexual harassment/misconduct; how the Service addresses these complaints; and the outcomes of these complaints.

Please refer to the introductory comments at the beginning of TOR #2 entitled 'The Role of the Board in General.' The Commission makes no recommendations in relation to this TOR. While the Commission concludes that the Board's policies in this area were satisfactory, its oversight was problematic for reasons discussed below.

The Board's role in this area is defined by former *PSA* ss. 31(c) which stated: "A board is responsible for the provision of adequate and effective police services in the municipality and shall ... establish policies for the effective management of the police force." Its role is circumscribed by *PSA* ss. 31(4) which states: "The board shall not direct the chief of police with respect to ... the day-to-day operations of the police force."

Clause 37(1) (a) of the new *Community Safety and Policing Act* also states a police service board shall ensure adequate and effective policing but ss. 38(1) has a more expansive list of areas in which the board shall establish policies. It states:

A police service board shall establish policies respecting,

- (a) the administration of the police service;
- (b) the provision of adequate and effective policing in accordance with the needs of the population of the area for which it has policing responsibility;
- (c) disclosure by the chief of police of personal information about individuals;
- (d) disclosure of secondary activities under section 89 and decisions under that section;
- (e) the handling of discipline within the police service;
- (f) subject to subsection (4), the indemnification of members of the police service for legal costs; and
- (g) any other prescribed matters.

The *CSPA* goes further in articulating a limitation on the authority of a board in respect to policy making by stating in ss. 38(5), "The police service board shall not make policies with respect to specific investigations, the conduct of specific operations, the management or discipline of specific police officers or other prescribed matters."

Further, while the *CSPA* contains a clause similar to ss. 31(4) of the *PSA* prohibiting the board from directing the chief with respect to the day-to-day operations of the chief, the new *Act* nuances this restriction by including at ss 38(4.1), “subsection (4) does not prevent a police service board from issuing directions that may affect operations.”

The Commission is of the view that the Board's main responsibility, under either *Act*, is to establish policies but not be involved in their implementation unless they impact upon other Board areas of statutory responsibility. The Service, as represented by its chief, on the other hand, is responsible for addressing complaints. Therefore, the issues with respect to the service raised in this Term of Reference –how the Service addresses these complaints and the outcomes of these complaints – are more fully addressed under TOR #6 and TOR #7. Accordingly, the discussion here will focus on the first part of this Term: whether the *Board* has provided proper oversight concerning complaints regarding a poisoned work environment, complaints regarding workplace harassment/violence and/or workplace sexual harassment/misconduct.

S.21; S.14 (1) (l); S.14 (2) (a); S.21(2)(f);

For example, Tab 3 is entitled ‘By-law Administration of the Complaints System’ and sets out the by-law passed by the Board on December 13, 2011 which established the Part V complaints process.¹⁴⁰ It contains all the Chief’s reports the Board receives for information regarding the review of investigations conducted by the Service’s Professional Standards Unit from 2017 to 2022. It also contains a report dated June 27, 2022, by Acting People, Development and Learning Director Ms. Holly Britton finding that all provisions of the ‘Positive Workplace Culture policy’ have been complied with.

Tab 4 contains the ‘Treatment of Members Policy.’ It also contains reports to the Board spanning 2017 to 2020 when the policy was repealed and replaced with four policies, as explained in the memo found at Tab 5 dated July 21, 2020, entitled ‘Policy Review – Phase II’. The four new policies became effective on July 21, 2020, and may be found at Tabs 6 to 9.

¹⁴⁰ Presumably this by-law has been updated to accord with clause 38(1)(e) of the *CSPA* which states that the board shall establish policies for “the handling of discipline within the police service.”

Tab 6 contains the first of the new policies and is entitled 'Preventing and Responding to Workplace Violence and Harassment.' It was revised on March 23, 2021, and sets out in detail the Board's policy position and the Chief's duties. It has the following reporting provisions:

1. The Chief of Police shall advise the Board, at the conclusion of an investigation into a workplace harassment or workplace violence complaint, of the results of the investigation and any remedial actions taken or expected to be taken, including any disciplinary action.
2. On an annual basis, the Chief shall make a written report to the Board. The report shall include the following information:
 - i. A summary of the processes in place to demonstrate compliance with this policy;
 - ii. The number of workplace violence and harassment complaints filed and the disposition of such complaints.
3. A complaint of workplace harassment or violence against the Chief of Police or a Deputy Chief of Police shall be provided to the Police Services Board.

As well, Tab 6 contains the Service's 2021 and 2022 reports to the Board.

Tab 7 contains the Board's policy on 'Positive Workplace Culture' and the Service's 2021 and 2022 reports to the Board. The policy sets out the Board's policy statement, the duties of the Chief and mandates an annual report to the Board.

Tab 8 contains the Board's 'Administration of Human Resources' policy which was revised on September 20, 2022, and contains the Board's policy statement, the duties of the Chief and an annual reporting requirement.

Tab 9 contains the Board's 'Discipline of Members' policy statement and was drafted in anticipation of the enactment of the *Community Safety and Policing Act*. It sets out the principles the Chief is to apply when meting out discipline and contains the following reporting requirements:

Twice a year a report shall be prepared and presented to the Board that includes a summary of:

- a) The type of misconduct or unsatisfactory work performance that occurred

- b) The Division and/or Unit that the member was assigned to when the misconduct occurred
- c) The number and type of disciplinary measures imposed
- d) A comparison to the previous reporting period's statistics

Tab 9 also contains the reports to the Board for 2021 and 2022.

It may be recalled that this s. 25 investigation began in May 2019 and was based upon complaints that arose before that time. These policy initiatives only became effective in July 2020. They mark a considerable leap forward in articulating policy positions on these topics, the duties of the Chief, and the requirements to report to the Board. The Commission is of the view that these new policy statements and follow-up reports satisfy the Board's obligations to provide oversight on these issues. Accordingly, the Commission has no Recommendations related to this Term of Reference.

On the other hand, the Board was aware of both the nature of and the contents of the complaints. The Board presented no evidence to the Commission that they did any active investigation into any or all the complaints. The Board disregarded the frequent requests of the Commission for assistance.

S.21; S.14 (1) (l); S.14 (2) (a); S.21(2)(f);

S.14 (1) (l); S.14 (2) (a);

The Board was aware of the numerous court proceedings and, actually, took part in some of them. It had the capacity to expedite this investigation by assisting the investigators in getting speedy access to the requested documentation. The Board declined to do so.

The Board's response to the complaints was to draft and enact policies which were, on their face, satisfactory. However, oversight means more than satisfactory policies. It also means recognizing a problem and taking active steps to resolve it. This includes assisting oversight agencies in performing their legislated tasks. In this, the Board failed.

Terms of Reference #9

Whether

acted in an overbearing, intimidating, harassing, and/or tyrannical manner towards sworn and/or civilian members of the Service, and/or allowed, encouraged, tolerated, and/or requested subordinates to act in an overbearing, intimidating, harassing , and/or tyrannical manner towards other sworn and/or civilian members.

This Term of Reference focuses on

Issues involving _____ are also addressed under TOR #1 and #3, and those involving _____ under TOR #7. The discussion under this Term expands upon comments contained in the aforementioned TORs. Here, the Commission makes the following Recommendation:

Recommendation #15: All supervisors receive further instruction and training regarding their responsibilities under the Respect In The Workplace Directive HR-02-011, and in particular, the duty under s. 5 of the Directive to "immediately contact the respect in the workplace committee upon receiving a complaint of workplace harassment or violence ... or being made aware of harassing or violent behaviour."

S.21; S.14 (1) (l); S.14 (2) (a); S.21(2)(f);

Page 141 to/à Page 142

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S.21 ; S.14 (1) (l) ; S.14 (2) (a) ; S.21(2)(f) ;

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Findings

For this reason, the Commission recommends that all supervisors receive further instruction regarding their responsibilities under the Respect In The Workplace Directive HR-02-011, and in particular, the duty under s. 5 of the Directive to “immediately contact the respect in the workplace committee upon receiving a complaint of workplace harassment or violence ... or being made aware of harassing or violent behaviour.” Thus, the Commission makes this Recommendation:

Recommendation #15: All supervisors receive further instruction and training regarding their responsibilities under the Respect In The Workplace Directive HR-02-011, and in particular, the duty under s. 5 of the Directive to “immediately contact the respect in the workplace committee upon receiving a complaint of workplace harassment or violence ... or being made aware of harassing or violent behaviour.”

S.21; S.14 (1) (l); S.14 (2) (a); S.21(2)(f);

Terms of Reference #10

Whether . . . **provided false testimony under oath**

The background to this TOR may be found under TOR #2.

After an investigation, Commission investigators found this allegation to be substantiated.

S.21; S.14 (1) (l); S.14 (2) (a); S.21(2)(f);

Notwithstanding the withdrawal, the Commission recommends that the Board establish a policy that a copy of the investigative report presented to the Chief under former *PSA* ss. 76(9) be memorialized and included as part of the Board's responsibilities to "review the Chief of Police's administration of the complaints system under Part V" pursuant to *PSA* ss. 31(1)(j) during the transitional period to the new *Community Safety and Policing Act*.¹⁴⁸ The Commission notes that under ss. 31(i) of the *CSPA*, Board members continue to remain responsible for monitoring the chief's handling of discipline within the police service.

The concept of a 'written report' remains relevant under the *CSPA*. Ss. 198(6) of the *Act* states:

Once an investigation under this section is concluded, the person conducting the investigation shall prepare a written report summarizing its findings and shall provide a copy of the report to the investigated officer unless, in the chief of police's opinion, to do so might prejudice an investigation or prosecution ... [emphasis added].

And ss. 201(1)(a) states:

¹⁴⁸ As mentioned, under 'Change in Governing Legislation' in the Introduction, under O.Reg 125/24 to the *CSPA* entitled 'Transitional Matters', matters that begun under the *PSA* are largely 'grandfathered' until completion.

Before imposing a disciplinary measure or combination of disciplinary measures under section 200, the chief of police, police service board or Minister, as the case may be, shall, provide relevant information concerning the matter, including the written report prepared under subsection 198 (6), and written notice stating the reasons for imposing the disciplinary measure or measures to the police officer [emphasis added].

S.21; S.14 (1) (l); S.14 (2) (a); S.21(2)(f);

Under the *CSPA*, the following Recommendation would be a useful one to prevent a repeat of the issues arising in future situations.

Recommendation #16: The Board establish a policy that a copy of the investigative report referred to in either ss. 76(9) of the former *Police Services Act* or ss. 198(6) and 201(a) of the current *Community Safety and Policing Act* be memorialized and included as part of the Board's responsibilities under ss. 37(1)(i) of the *CSPA* to "monitor the chief of police's handling of discipline within the police service."

Terms of Reference #11

Whether [redacted] ever utilized [redacted] powers under s. 76 of the PSA to initiate, threaten to initiate, and/or maintain complaints against sworn members of the Service as an improper form of reprisal, intimidation, and/or coercion.

Under s. 41 of the former *PSA* and s. 79 of the current *CSPA*, the Chief is responsible for discipline within the Service. Further, former *PSA* s. 76 granted and *CSPA* s. 198 currently grants the Chief the authority to “make a complaint ... about the conduct of a police officer ...,” typically referred to as a Chief’s complaint or an internal complaint. Under the *CSPA*, unlike the former *PSA*, the Chief now has a discretion not to investigate a complaint. However, once the Chief decides to investigate, the results can lead to significant employment consequences up to dismissal. Thus, while on the one hand discipline is essential within a para-military organization such as policing, on the other hand, its improper use can lead to a toxic work environment.¹⁴⁹

The original complaint letters and interviews supported four instances of alleged misuse of those disciplinary powers. Senior Command was involved in a series of allegations against

- (a) [redacted] attempted to bribe and coerce witnesses in the arbitration;
- (b) [redacted] provided false or misleading information to [redacted] in the same arbitration; and
- (c) [redacted] breached the Respect In the Workplace Directive by conducting surreptitious surveillance on [redacted]

As well, there is a review of:

S.21; S.21(2)(f);

¹⁴⁹ As stated by Penny J. in *Martin v. OCPC* 2010 ONSC 1116 at para. 65: “A police force is a para-military organization whose members are authorized in appropriate circumstances to use force, including lethal force. In a para-military organization like a police service, maintenance of the chain of command is essential, *Durham Regional Police Service v. Sowa*, 2019 ONSC 1902 (Div. Ct.) at para. 38.”

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S.21 ; S.14 (1) (l) ; S.14 (2) (a) ; S.21(2)(f) ;

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S.19 ; S.21 ; S.14 (1) (l) ; S.14 (2) (a) ; S.21(2)(f) ;

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S.21 ; S.14 (1) (l) ; S.14 (2) (a) ; S.21(2)(f) ;

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S.19 ; S.21 ; S.14 (1) (l) ; S.14 (2) (a) ; S.21(2)(f) ;

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S.21 ; S.14 (1) (l) ; S.14 (2) (a) ; S.21(2)(f) ;

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Terms of Reference #12

Whether

engaged in corrupt and/or discreditable practices regarding secondary employment, promotions, and/or pay raises of other members of the Service.

Secondary employment issues arose in three contexts;

The Commission makes no Recommendations in relation to this TOR.

S.21; S.14 (1) (l); S.14 (2) (a); S.21(2)(f);

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S.21 ; S.14 (1) (l) ; S.14 (2) (a) ; S.21(2)(f) ;

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Terms of Reference #13

Whether

ignored, covered-up, attempted to cover-up, allowed, tolerated, encouraged, participated in, and/or were willfully blind to potential and/or alleged criminal conduct and/or misconduct (as defined in the PSA and its regulations) committed by and/or directed towards subordinates.

The complaints underlying this Term of Reference relate to two major concerns:

S.21; S.14 (1) (l); S.14 (2) (a); S.21(2)(f);

Commission does not have the jurisdiction to pursue disciplinary charges against the Commission has concluded that the complaints involving *Incidents* ought not to lead to Recommendations for further misconduct or criminal charges. However, it makes the following systemic Recommendations in relation to the

Recommendation #17: All Professional Standards Unit files be closed by way of a memorandum to file copied to the Chief explaining the reason for closure.

Recommendation #18: Information in all Professional Standards Unit files have access restricted to those in that Unit and those officers in the appropriate chain of command up to the Chief. Any breach must be treated as misconduct under either the Code of Conduct in the *Community Safety and Policing Act* for sworn members or a disciplinary issue under the Collective Bargaining Agreement for civilian members.

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S.21 ; S.14 (1) (l) ; S.14 (2) (a) ; S.21(2)(f) ;

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The closest the Commission can come to an answer as to why _____ made this order is from an exchange with PSU _____ who was one of the officers subject to the *Trespass* order.

S.21; S.14 (1) (l); S.14 (2) (a); S.21(2)(f);

S.21; S.14 (1) (l); S.14 (2) (a); S.21(2)(f);

The only reasonable inference the Commission can draw is that
was improperly interfering in a legitimate investigation to the benefit of

While the Commission has no jurisdiction over
it makes the following Recommendation in an attempt to
ensure that similar interference in a PSU investigation does not happen again.

Recommendation #17: All Professional Standards Unit files be closed by way of
a memorandum to file copied to the Chief explaining the reason for closure.

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S.21 ; S.14 (1) (l) ; S.14 (2) (a) ; S.21(2)(f) ;

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S.21; S.14 (1) (l); S.14 (2) (a); S.21(2)(f);

Moreover, the two incidents raise questions about a civilian member having access to confidential information. PSU files contain information of a sensitive nature and must be treated in a confidential manner. While the Chief must be informed of major decisions made by the Unit, the flow of information from the Unit must be restricted from the responsible Superintendent to the appropriate Deputy Chief and then the Chief, which leads the Commission to make the following, perhaps self-evident, Recommendation:¹⁹⁴

Recommendation #18: Information in all Professional Standards Unit files have access restricted to those in that Unit and those officers in the appropriate chain of command up to the Chief. Any breach must be treated as misconduct under either the Code of Conduct to the *Community Safety and Policing Act* for sworn members or a disciplinary issue under the Collective Bargaining Agreement for civilian members.

Terms of Reference #14

Whether _____ improperly influenced and/or prevented investigations into alleged violations of the Controlled Drugs and Substances Act.

TOR #14 focuses on allegations involving DRPS _____ outlined in _____ letter to the Solicitor General _____ He wrote that the officer is a long-standing friend of _____ and was treated with favouritism in his dealings leading to the receipt of secondary employment approval _____⁹⁵ As well, the _____ complaint alleged a conflict of interest between _____

S.21; S.14 (1) (l); S.14 (2) (a); S.19 (a); S.21(2)(f);

After listing the Recommendations with respect to this TOR, some background is provided with respect to _____ Secondary Employment Application

The Recommendations are the following:

(a) Regarding External Counsel:

Recommendation #19:

Further, the Board shall direct the Service to require in all of its retainer agreements with external legal counsel that external counsel must inform the Chief in a timely manner of any conflict of interest or potential conflict of interest.

¹⁹⁵ Pursuant to *PSA* s. 49, a member must disclose a request for secondary employment if it may be in violation of the conflict provisions and the Chief decides the member is permitted to engage in it. However, DRPS permits the member to decide if there may be a contravention of the section: "So secondary activity is (inaudible) in our policy is passive on the employer-, they have to tell you if they're in a conflict": Interview

(b) Regarding the Secondary Activities Directive:

Recommendation #20: Section 12 of the Secondary Activities Directive HR-02-001 be amended to ensure that any application for secondary employment include copies of relevant licences or other required approvals.

S.21; S.14 (1) (l); S.14 (2) (a); S.19 (a); S.21(2)(f);

Page 181 to/à Page 182

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S.21 ; S.14 (1) (l) ; S.14 (2) (a) ; S.21(2)(f) ;

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S.19 ; S.21 ; S.14 (1) (l) ; S.14 (2) (a) ; S.21(2)(f) ;

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As a result, the Commission recommends:

Recommendation #19: The Board consider directing the Service to make further inquiries to satisfy the question
was in a conflict '

Further, the Board shall direct the Service to require in all of its retainer agreements with external legal counsel that external counsel must inform the Chief in a timely manner of any conflict of interest or potential conflict of interest.

S.21; S.14 (1) (l); S.14 (2) (a); S.19 (a); S.21(2)(f);

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S.19 ; S.21 ; S.14 (1) (l) ; S.14 (2) (a) ; S.21(2)(f) ;

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S.19; S.21; S.14 (1) (l); S.14 (2) (a); S.21(2)(f);

In the Commission's view, the way to ensure no repetition is for the Service to amend the Secondary Activities Directive to ensure that any future application for secondary employment include copies of any required licences or other required approvals. Accordingly, the Commission makes the following Recommendation:

Recommendation #20: Section 12 of the Secondary Activities Directive HR-02-001 be amended to ensure that any application for secondary employment include copies of relevant licences or other required approvals.

Accordingly, the Commission recommends that Section 12 of the Secondary Activities Directive HR-02-001 be amended to ensure that any application for secondary employment include copies of any required licences or other required approvals.

S.19; S.21; S.14 (1) (l); S.14 (2) (a); S.21(2)(f);

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S.21 ; S.14 (1) (l) ; S.14 (2) (a) ; S.21(2)(f) ;

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S.21; S.14 (1) (l); S.14 (2) (a); S.21(2)(f);

Findings

Turning to the question of whether [redacted] improperly influenced investigations into alleged violations of the *Controlled Drugs and Substances Act*, this allegation is not substantiated for the following reasons. The Service began an investigation into the existence of [redacted] and the investigating officers were put on notice

[redacted] shut down [redacted] business shortly thereafter. Without evidence of actual purchases of marijuana products, the officers had no grounds to charge [redacted] under the *CDSA*.

S.21; S.14 (1) (l); S.14 (2) (a); S.21(2)(f);

If the Board in future is assured of receiving copies of all reports by external police agencies conducting investigations of Durham Regional Police Service members, as recommended in TOR #4, the lack of due diligence seen in the failure of the Service to charge a member in similar circumstances is less likely to be repeated in the future.

Since the time of the application in 2015, the Service significantly revised its Secondary Activity Directive, effective December 2018, no doubt in response to the O.P.P. recommendations in this area. Now, the applicant must indicate that he or she has all the relevant permits and/or licences on the first page of the form. The Directive has also added a clause (s. 9.2) which states that the secondary employment activity must not "tend to bring the reputation of the member or the DRPS into question."

²¹⁶ Former PSA ss. 76(4).

As previously noted, the Commission is recommending that the Secondary Activities Directive be amended to ensure that any application for secondary employment include copies of required licences, permits or other approvals.

The Commission further declines from recommending sanctioning of members of the DRPS involved in the application process, even though there was a lack of due diligence in insisting on production of the licence.

S.21; S.14 (1) (l); S.14 (2) (a); S.19 (a); S.21(2)(f);

the Commission makes the following recommendations:

Recommendation #19: The Board consider directing the Service to make further inquiries to satisfy the question of whether
was in a conflict

Further, the Board shall direct the Service to require in all of its retainer agreements with external legal counsel that external counsel must inform the Chief in a timely manner of any conflict of interest or potential conflict of interest.

Recommendation #20: Section 12 of the Secondary Activities Directive HR-02-001 be amended to ensure that any application for secondary employment include copies of relevant licences or other required approvals.

Terms of Reference #15

Whether the Board has displayed proper oversight regarding complaints about members of the senior administration of the Service.

Please refer to the introductory comments at the beginning of TOR #2 entitled "The Role of the Board in General."

For the purpose of this TOR, the Commission is focusing on complaints against _____ in the time frame of _____ leading it to make the following Recommendations:

Recommendation #21: The Service shall provide the Board at every regularly scheduled Board meeting a written report of all disciplinary matters involving members of the Service and its administrative staff and the Board shall proactively make inquiries regarding such disciplinary matters, even if they do not involve senior administration.

Recommendation #22: The Chief table annually with the Board as part of the public record an educational fund report containing available funding, the names, amounts of funding, what educational opportunity the recipients are pursuing, and whether the recipients completed the funded educational programme.

Recommendation #23: The Chief provide any reports he receives related to disciplinary matters to the Board (as noted in Recommendation #21), and their receipt be noted in the minutes.

Recommendation #24: The Board receive ongoing training with respect to its role in the supervision and governance of the Service and the role of provincial bodies responsible for oversight of Police Services and Boards.

Recommendation #25: The Board carefully monitor any litigation by the Service against provincial bodies responsible for oversight over Boards and chiefs such as the Inspector General of Policing and the Law Enforcement Complaints Agency.

Recommendation #26: The Board direct the Service to conduct an audit for a period of up to five years

21; S.14 (1) (l); S.14 (2) (a); S.21(2)(f);

Recommendation #27: The Board direct the Service to consider employing internal legal counsel as a cost-reducing measure.

Recommendation #28: The Board direct the Service to retain a primary law firm, and a secondary law firm in order to provide the Service with a choice of alternate counsel when appropriate, through a Request for Proposal process. All external counsel must be subject to a written retainer agreement that specifies, among other usual terms, what is the appropriate level of interaction between the law firm and members of senior command (including for example, attending social events, meals, gifts, sporting events, joint vacations, etc), all of which is to be reported to the Board at least annually.

Recommendation #29: Retainer letters referred to in Recommendation #28 should require external counsel to provide a reasonable estimate of legal fees and expenses for services upon request.

Recommendation #30: Going forward, the Board direct the Service to conduct an annual audit of legal billings supervised by someone with appropriate legal training and experience.

Recommendation #31: Each of the Board and Service provide a written report to the Regional Municipality of Durham itemizing the legal costs each has incurred in connection with the Commission's investigation since its inception in 2019.

These recommendations regarding the retention of external counsel focus on policy and are being suggested in an attempt to assist the Service and Board on finding a path forward which will provide the Durham taxpayers with independent and cost-effective legal advice.

S.21; S.21(2)(f);

However, before discussing the question of Board oversight of those in senior administration in more detail, it may be worthwhile to take a step back and consider discipline in a larger context within the time frame of this investigation.

Oversight regarding complaints of senior administration members for the purposes of this s. 25 investigation was statutorily governed in the following manner under the former *PSA*. Members of a police service were prohibited from complaining about the conduct of a chief or deputy through the OIPRD by virtue of former *PSA* ss. 58(2).6. Thus, all members had to submit their complaints to the Board, and the Board decided whether it would make a complaint against its chief or deputy under former *PSA* s. 77. The Board then investigated the complaint, and if it was of the view that the conduct

may have constituted misconduct, the Board asked the Commission to assign the investigation to another police service.²¹⁷

At the end of the investigation, the outside agency reported back to the requesting Board by way of a written report. If the allegation was unsubstantiated, the Board took no action. If substantiated, either the Board or the Commission held a hearing or engaged in informal resolution. If there was a hearing, the chief or deputy faced a penalty up to dismissal if found guilty of misconduct.

S.21; S.14 (1) (l); S.14 (2) (a); S.21(2)(f);

With respect to civilian members, complaints against them were governed by *PSA* Part VIII and the terms of their collective bargaining agreement. While the Board is the official employer of the civilian members, it has largely delegated its responsibility for grievances and arbitration to the Service.²¹⁸ In the event the Board denied a grievance, the Service's Human Resources and legal team managed the process. If a settlement was reached, its terms for approval were presented at the Board's next meeting.

The *Police Services Act* was repealed on April 1, 2024, and replaced by the *Community Safety and Policing Act*. Under the current *Act*, members of a police service may not complain about misconduct of their chief to the Complaints Director or the Inspector General: *CSPA*, s. 107 and s.154. However, the Complaints Director may investigate chiefs and deputy chiefs, and if the Director has reasonable grounds to believe that misconduct has occurred, he or she may refer the matter to the appropriate "designated authority" which is the relevant police service's board: *CSPA* s. 151 and s. 168. The board then may mete out discipline or refer the matter to an adjudicator.

²¹⁷ The investigative agency could have been the Commission.

²¹⁸ *PSA* ss. 31(2) stated, "The members of the police force ... are under the Board's jurisdiction." The *CSPA* has a similar provision: 37 (1) states: A police service board shall ... (b) employ members of the police service, and (c) appoint members of the police service as police officers;

The overall construct meant that the chief was responsible for all disciplinary matters but for ones involving him/herself or deputies, which fell under the jurisdiction of the Board.

As a result of s. 220 of the *CSPA*, _____ is no longer a member of the SOA, but continues to be under the direction and management of the Chief. The Board continues to have the same status of employer – either the signatory of the SOA collective agreement or by way of employment contract or Board by-law. The Board cannot direct the actions of any of the exempt status employees under the *CSPA*.²²⁰

S.21; S.14 (1) (l); S.14 (2) (a); S.21(2)(f);

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S.21 ; S.14 (1) (l) ; S.14 (2) (a) ; S.21(2)(f) ;

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All in all, the Commission is satisfied that the Board dealt appropriately with its oversight function in these instances.

The Commission is not considering the complaint against [redacted] for alleged *Highway Traffic Act* ticket fixing because the allegation [redacted] and no complaint was brought to the [redacted] attention. Also, the complaint lacks any corroboration. If one were brought to anyone's attention, it should have been investigated criminally as an obstruction of justice and not as a misconduct issue.

Further, the Board had no jurisdiction within the time frame of this investigation to address complaints against [redacted] due to his status as a member of the Senior Officers' Association, and therefore reporting to the Chief.²²⁶

Similarly, while the Commission is not considering the [redacted] allegation as one that would fall under the Board's jurisdiction, it did come to its attention. The [redacted] it had been investigated, and [redacted] was exonerated, when it appears that was not the case. However, there is no indication that the Board received any report regarding his exoneration.

S.21; S.14 (1) (l); S.14 (2) (a); S.21(2)(f);

In the Commission's view, the Board should be more fully apprised of any request it makes of the Chief for information regarding disciplinary matters.

S.21; S.14 (1) (l); S.14 (2) (a); S.21(2)(f);

Accordingly, this leads the Commission to make the following recommendation:

Recommendation #21: The Service shall provide the Board at every regularly scheduled Board meeting a written report of all disciplinary matters involving members of the Service and its administrative staff and the Board shall proactively make inquiries regarding such disciplinary matters, even if they do not involve senior administration.

Similarly, the Board needs more information regarding the recipients of the educational fund. The question of the payment of tuition fees is also discussed in TOR #4. Minimally, it ought to receive a report containing the available funding, names, amounts of funding, what educational opportunity the recipient is pursuing, and whether the recipient completed the educational programme. This report should be filed with the Board as part of the public record in order to dispel suspicions of favouritism in the allocation of these funds. Therefore, the Commission makes this Recommendation in an attempt to infuse more accountability and transparency into the allocation of educational funds:

Recommendation #22: The Chief table annually with the Board as part of the public record an educational fund report containing available funding, the names, amounts of funding, what educational opportunity the recipients are pursuing, and whether the recipients completed the funded educational programme.

Thus, the Commission makes the following recommendation:

Recommendation #23: The Chief provide any reports he receives related to disciplinary matters to the Board (as noted in Recommendation #21), and their receipt be noted in the minutes.

The Commission cannot leave the discussion under this TOR without commenting on the Board's reaction to the Commission's s. 25 investigation. The Board joined the Service's Judicial Review Application to seek to stop the Commission from continuing with its s. 25 investigation and to rescind the Commission's decision to appoint an Administrator to oversee disciplinary responsibilities.

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S.21 ; S.14 (1) (l) ; S.14 (2) (a) ; S.21(2)(f) ;

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S.21; S.14 (1) (l); S.14 (2) (a); S.21(2)(f);

[79] It was reasonable for the Commission to take the public interest in the integrity of its investigation into account when determining whether the Interim Order was necessary. This is particularly true where the potential impediment to the Commission's impartial investigation and public confidence in the investigation is one of the very ills which the Commission has been asked to inquire into and which it determined must be investigated. Ensuring the public has confidence in the investigation ensures confidence in policing, which in turn ensures effective policing.

The Commission existed to investigate allegations of misconduct at the highest level of policing – chiefs, deputy chiefs and police service board members – with the goal of facilitating public confidence in police leadership. While the Commission takes no issue with non-production based upon solicitor-client privilege, that privilege may be waived by the client. In the spirit of public confidence in policing, which can ensure effective policing, it behooved the Chief and his counsel in a request for emails by a statutorily mandated provincial oversight body for documents potentially covered by privilege to waive that privilege or, at a minimum, provide the Commission with enough information to allow it to make an informed decision on the question without the necessity of bringing a Stated Case Application.

While the Service had the right to commence this litigation and the Board a similar right to join the Service in pursuit of these judicial remedies, it did not, in the Commission's view, behoove the Board with significant oversight responsibilities of its own to attempt to stop the Commission from carrying out its statutory duties to conduct an investigation and appoint an Administrator. It is the Commission's opinion that the Board should not have taken or supported these obstructive actions.

Finally, on this point, the Board under former *PSA* s. 39 was responsible for submitting a budget to its municipal council and remains responsible under *CSPA* s. 50. As documented in Part I, the Board and the Service have been involved in multiple unsuccessful court actions against the Commission related to this investigation. As well as the aforementioned Judicial Review, the Service – joined by the Board – filed and then withdrew another Judicial Review Application challenging the Commission's Order extending its appointment of an Administrator.

The Board was not a party to the Service's unsuccessful attempt to force the Commission to return ²³⁴ The Commission notes that the Justice in that case ordered that the Service pay \$65,000.00 to the Commission, which, along with legal fees, were ultimately borne by the Durham regional taxpayer.²³⁵ In the Commission's view, the Board could have (and should have) ordered the Service to turn over the documents. It had the ability to

S.21; S.14 (1) (l); S.14 (2) (a); S.21(2)(f);

greatly shorten the length of this investigation, save the Durham taxpayer a considerable sum, and failed to exercise this power.

In fact, the Courts have been critical of the Service in many of the cases that it initiated to challenge the Commission's oversight. A.J. Frank admonished the Service for having "unnecessarily lengthened the hearing and made it more difficult."²³⁶ Penny J. described the Service's position as being "clearly" wrong, "minimizing" the issues, premised on "misunderstandings," "unworkable," and "contrary to the express language" of an unambiguous statute.²³⁷

Funding of litigation against the Commission is expensive – in an email response to a request by a CBC reporter, the Board wrote that it had spent "approximately \$500,000 in legal expenses ...since the investigation began."²³⁸

It is the Commission's opinion that the Board and Service are responsible for an unjustified significant expenditure of taxpayer funds in resisting and obstructing a lawful investigation by its statutorily appointed civilian oversight body, which investigation was requested by the Solicitor General of the Province of Ontario. The taxpayers of Durham have a right to know how much the Board and Service have paid to resist the Commission's investigation.

The Service's history of aggressive litigation demonstrates a pressing need to determine whether taxpayers are receiving value for money.

S.21; S.14 (1) (l); S.14 (2) (a); S.21(2)(f);

The Board is responsible for presenting estimates to its municipal council for the purpose of providing adequate and effective police services that meets the need of the community.²³⁹ Those estimates form the police budget, after approval by municipal

²³⁶ *Ibid* at para. 53.

²³⁷ *Martin v. OCPC*, 2020 ONSC 1116 at paras. 41, 57, 68, 89, and 102.

²³⁸ Email response by DRPSB to query from CBC reporter dated June 13, 2024.

²³⁹ Former *PSA* s. 39 & *CSPA* s. 50.

council, costs paid for by its taxpayers. Such costs, collateral to public safety concerns, will inevitably have a deleterious effect on public confidence in policing.

Accordingly, the Commission makes the following recommendations:

Recommendation #24: The Board receive ongoing training with respect to its role in the supervision and governance of the Service and the role of provincial bodies responsible for oversight of Police Services and Boards.

Recommendation #25: The Board carefully monitor any litigation by the Service against provincial bodies responsible for oversight over Boards and chiefs such as the Inspector General of Policing and the Law Enforcement Complaints Agency.

Recommendation #26: The Board direct the Service to conduct an audit for a period of up to five years

21; S.14 (1) (l); S.14 (2) (a); S.21(2)(f);

Recommendation #27: The Board direct the Service to consider employing internal legal counsel as a cost-reducing measure.

Recommendation #28: The Board direct the Service to retain a primary law firm, and a secondary law firm in order to provide the Service with a choice of alternate counsel when appropriate, through a Request for Proposal process. All external counsel must be subject to a written retainer agreement that specifies, among other usual terms, what is the appropriate level of interaction between the law firm and members of senior command (including for example, attending social events, meals, gifts, sporting events, joint vacations, etc), all of which is to be reported to the Board at least annually.

Recommendation #29: Retainer letters referred to in Recommendation #28 should require external counsel to provide a reasonable estimate of legal fees and expenses for services upon request.

Recommendation #30: Going forward, the Board direct the Service to conduct an annual audit of legal billings supervised by someone with appropriate legal training and experience.

Recommendation #31: Each of the Board and Service provide a written report to the Regional Municipality of Durham itemizing the legal costs each has incurred in connection with the Commission's investigation since its inception in 2019.

As mentioned, these recommendations regarding the retention of external counsel focus on policy and are being suggested in an attempt to assist the Service and Board on finding a path forward which will provide the Durham taxpayers with independent and cost-effective legal advice.

General

In an attempt to ensure accountability from both the Service's Chief and the Board, the Commission makes the following recommendations regarding implementation of these recommendations:

Recommendation #32: The Chief report his response to the Commission's recommendations involving the Chief every six months after the release of this Report to the Board and the Executive Chair of Tribunals Ontario or his successor.

Recommendation #33: The Board report its response to the Commission's recommendations involving the Board every six months after the release of this Report to the Executive Chair of Tribunals Ontario or his successor, and its response to the Chief's Report referred to in Recommendation #32 one year after the release of this Report to the Executive Chair of Tribunals Ontario or his successor.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Sean Weir', written in a cursive style.

Sean Weir, KC
Executive Chair, Tribunals Ontario
Chair, Ontario Civilian Police Commission

Date: July 25, 2025