



Tribunals Ontario
Ontario Civilian Police Commission

15 Grosvenor Street, Ground Floor
Toronto, ON M7A 2G6
Email: OCPCRegistrar@ontario.ca

Tribunaux décisionnels Ontario
La Commission civile de l'Ontario sur la police

15, rue Grosvenor, rez-de-chaussée
Toronto (Ontario) M7A 2G6
Email: OCPCRegistrar@ontario.ca

In the Matter of Thunder Bay Police Service and the Thunder Bay Police Services Board under sections 23(1) & 24(1) of the Police Services Act, R.S.O. 1990, c. P.15, as amended ORDER
(Disponible en Français)

Order Made by: Sean Weir, Executive Chair, Tribunals Ontario, Chair, Ontario Civilian Police Commission

Date of Order: April 19, 2022

File: 22-FIL-001

Case Name: Thunder Bay Police Services Board (2022) (Re)

A. Overview

1. By letter dated December 15, 2021, Thunder Bay Police Services Board (hereinafter called the TB Board) member Georjann Morriseau requested *inter alia* the appointment of an Administrator on an interim basis under s. 23(1) & 24(1) of the *Police Services Act*, R.S.O. 1990, c. P. 15 (hereinafter called the *PSA*).
2. In a letter dated December 18, 2021, all members of the TB Board except for Georjann Morriseau brought Issues of Concern regarding Board Member Georjann Morriseau to the Commission's attention.
3. By letter dated January 22, 2022, Solicitor General Sylvia Jones requested a s. 25 Investigation into the Thunder Bay Police Service (hereinafter called the TB Police Service).
4. In response to these requests for Commission intervention, the Commission conducted a preliminary review. Having reviewed the information gathered by the Commission, I am of the opinion that an emergency exists in the TB Board oversight of the TB Police Service. The TB Board is not able to work effectively as a board at a time when the earlier recommendations from The Honourable Murray Sinclair's Final Report into the Thunder Bay Police Services



Board Investigation (hereinafter called the Sinclair Report), are alleged to remain unfulfilled. The dysfunction of the TB Board is being regularly reported in the media. It is reasonable to conclude that this continued public display of fundamentally divergent opinions among TB Board members will have created significant doubt in the Thunder Bay community of the TB Board's ability to provide adequate oversight of the TB Police Service.

5. There are allegations of reprisals by one TB Board member against the rest of the TB Board coupled with allegations of improper disclosure of confidential information and breaches of conflict of interest by those Board members against another member.

6. Based on the above, I am of the opinion that an emergency exists, and that an interim Order appointing an Administrator pursuant to PSA subsections 23(1) and 24(1) is necessary in the public interest.

B. Statutory Framework

The role of municipalities

7. Ontario municipalities are required to provide adequate and effective police services in accordance with their needs, including all the infrastructure and administration necessary for providing such services. A municipality which elects to discharge this duty by maintaining a police service pursuant to *PSA* subsection 5(1) is also required to establish a police services board.

The role of police services boards

8. Police services boards are responsible for the provision of adequate and effective police services in the municipality. Two significant aspects of this mandate are police services boards' responsibilities to provide i) administrative guidance to the police service, and ii) their public oversight of police services. A board acts as a civilian overseer of the police service on behalf of the community: *Booth v. Huxter* (1994) 111 D.L.R. (4th) 111 (Ont. Div. Ct.), leave to appeal to the C.A. refused.

9. With respect to the police service, police services boards' responsibilities include working with the chief of police to establish priorities, objectives, and



policies for policing in their communities, as well as monitoring police performance and leadership, specifically by directing and monitoring the performance of the chief. Police services boards' duties also include the hiring of deputy chiefs and the chiefs of police, giving performance reviews, and in rare cases, the dismissal of deputy chiefs and the chiefs of police. Police services boards are also responsible for submitting operating and capital estimates to municipal council. Police services boards' public oversight role includes establishing guidelines for dealing with public complaints under Part V of the *PSA* and reviewing the chief's administration of the public complaints system pursuant to *PSA* subsection 31(1). Police services boards also review complaints related to the conduct of the chief or deputy chief and hold hearings into their conduct pursuant to *PSA* subsections 69(1) and (8).

Role of the Commission

10. The Commission is an independent agency of the Ontario Government and has a variety of responsibilities in relation to civilian oversight of policing. The Commission exercises "ultimate responsibility for the oversight of municipal policing in Ontario": see *Canadian Civil Liberties Association v. Ontario Civilian Commission on Police Services* (2005), 260 D.L.R. (4th) 754; revd 275 D.L.R. (4th) 744 (C.A.); leave to appeal to SCC refused.

11. The Commission oversees the performance of police services boards and board members to ensure that they discharge their statutory duties, as well as comply with the Board Members' Code of Conduct found in *PSA O. Reg 421/97*, as amended.

12. Under *PSA* subsection 23(1).4, the Commission may appoint an Administrator to perform specified functions with respect to police matters in the municipality for a specified period.

13. Under *PSA* subsection 24(1), the Commission may make an interim order under subsection 23(1) without notice and without holding a hearing, if it is of the opinion that an emergency exists, and such an order is necessary in the public interest.



C. Findings

14. As noted in the Overview, TB Board member Morriseau requested *inter alia* the appointment of an Administrator in her letter to the Commission dated December 15, 2021. She alleged discrimination and reprisals based upon the way the TB Board was treating her public disclosure of allegedly confidential information.

15. While the December 18, 2021 letter from all the TB Board members except for TB Board member, Georjann Morriseau, did not request the appointment of an administrator, it raised serious issues against member Morriseau regarding her public disclosures of information allegedly received in confidence in her role as a TB Board member and alleged breaches of conflict of interest. Board members are prohibited from disclosing information received during the closed part of board meetings pursuant to s. 4 of O. Reg 421/97 of the PSA entitled 'Members of Police Services Boards – Code of Conduct'.

16. There have been numerous media articles in the last year documenting discord within the TB Board with headlines such as 'Police board member Georjann Morriseau criticizes board and police leadership', 'Morriseau absolutely believes a change in TBPS leadership is needed', 'Police Association seeking independent investigation into Police Service', 'Former chair of Thunder Bay Police Services Board outlines serious concerns with service in open letter' and 'Thunder Bay Police on the Brink of Collapse, a Board Member Says'.

17. Solicitor General Sylvia Jones' letter of January 22, 2022 to my Office focused on senior command. However, it also requested an investigation into the general administration of the TB Police Service and its relationship to the TB Board. It specifically mentioned that TB Board dysfunction "may impede the Board's attempts to implement the December 2018 recommendations" emanating from the Sinclair Report and "otherwise effectively govern the police service, despite the board members' best efforts".

18. The Commission was engaged in a prior investigation of the TB Board conducted by The Honourable Murray Sinclair leading to the Sinclair report, released November 1, 2018. The Sinclair Report was the basis of the Commission's appointment of an Administrator in December 2018 and may be found at 2018 ONCPC 19 (CanLII).



D. Analysis

19. As mentioned above, having reviewed the information gathered by the Commission, I am of the opinion that an emergency exists in the TB Board oversight of the TB Police Service. The TB Board is not able to work effectively as a board at a time when the earlier Sinclair recommendations are alleged to remain unfulfilled. And, as indicated above, the dysfunction of the TB Board is being regularly reported in the media. It is reasonable to conclude that this continued public display of fundamentally divergent opinions among TB Board members will have created significant doubt in the Thunder Bay community of the TB Board's ability to provide adequate oversight of the TB Police Service.

20. There are allegations of reprisals by one TB Board member against the rest of the TB Board coupled with allegations of improper disclosure of confidential information and breaches of conflict of interest by those Board members against another member.

21. Based on the above, I am of the opinion that an emergency exists, and that an interim Order appointing an Administrator pursuant to PSA subsections 23(1) and 24(1) is necessary in the public interest.

E. Conclusion

Appointment of an Administrator

22. The Administrator's role is to restore proper governance, to ensure that the TB Board is providing sufficient oversight of police services in Thunder Bay, and to re-establish public confidence in the TB Board and TB Police Services' ability to deliver adequate and effective policing services in the community.

23. Pursuant to PSA subsections 23(1) and 24(1), the Commission will appoint an Administrator for the initial term of six months, reserving to itself the power to extend the term, if necessary.

24. The Administrator should possess, at a minimum, the following attributes:



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1. The Administrator should not be a person who has a vested interest in the current situation and can be seen to be free from bias insofar as policing in Thunder Bay is concerned;
2. There should be no possible suggestion that the Administrator is part of the
“history” of the TB Board;
3. The Administrator’s function is to be limited in time and scope;
4. The Administrator should be legally trained so that he can preside over meetings of the Board and the subcommittee thereof and guide the Board with respect to the various legal challenges currently facing it;
5. The Administrator should also be knowledgeable in board governance matters generally;
6. The Administrator should be a person who will either have or who could gain the respect of both the Indigenous and non-Indigenous community.

ORDER:

Further to the above and pursuant to subsections 23(1) and 24(1) of the PSA, I order that an Administrator be appointed to carry out the following terms of this Order.

25. Pursuant to subsection 23(5) of the PSA, the Administrator will have all the powers necessary to perform the following functions detailed herein:
 1. Until the Administrator is of the opinion that the TB Board will perform its duties pursuant to its statutory obligations under the *PSA* and regulations, the Administrator shall preside over all regularly scheduled and special meetings of the TB Board, including the *in-camera* portions. The Administrator shall also attend and preside over all sub-committee meetings. The Administrator shall have the sole vote.
 2. After the Administrator is of the opinion that the aforementioned conditions have been satisfied, has given the Executive Chair five days written notice in advance of forming such an opinion, and has received the approval of the Executive Chair, the Administrator may at the Administrator’s sole discretion continue to attend, either in person or by conference call or video conference, all regularly scheduled and special



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meetings of the TB Board, including all *in-camera* portions. The Administrator may, in the same manner, attend all sub-committee meetings.

3. The Administrator shall review the TB Board's implementation of the recommendations applicable to the TB Board contained within the Sinclair Report. Within the six-month period of his appointment, the Administrator will prepare a report on the status on their implementation and decide which of the unfulfilled recommendations should be implemented on a priority basis. The Administrator's report will be made publicly available.

4. The Administrator shall have unrestricted access to any and all of the TB Board's past and current records as the Administrator may specify for the purposes of this Order on request, without delay.

5. The Administrator will liaise with the Commission's investigators to ensure the TB Police Service's compliance with its responsibilities vis-à-vis the s. 25 investigation into the TB Police Service and certain members of the TB Police Service which I ordered on February 10, 2022. The Administrator will also update the Commission's investigators on his activities and/or observations when requested by the investigators.

6. The Administrator will have the power and responsibility, upon the direction of the Commission, to secure any documents that are summonsed by the Commission. The Administrator will have the power to request documents from any member of the TB Police Service or TB Police Board in order to secure them.

7. On his own initiative or upon request from any member of the TB Board, the Administrator shall provide advice to the TB Board and/or individual members, where appropriate, about *inter alia*: TB Board processes including, but not limited to issues such as the recording of votes, taking of minutes, scheduling agenda items, delegation of authority and composition of subcommittees.

8. The Administrator will have full power and authority to make any changes to the TB Board processes which he, in his discretion, deems necessary or advisable to enhance governance of the TB Police Service;

9. The Administrator may make recommendations to the Executive Chair of the Commission on the TB Board's composition, including the power to suspend any or all of its members;



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10. The Administrator will advise the Executive Chair about the need to vary or cancel any Order made in response to changing circumstances and in consultation with the TB Board; and

11. The Administrator will report at such times as the Executive Chair directs, and not less than monthly to the Executive Chair, and will advise the Executive Chair about the need to vary or cancel his powers as necessary.

26. I hereby appoint Malcolm Mercer to be the Administrator. Mr. Mercer is a well-respected lawyer. He was selected due to his significant experience in relation to the justice system, legal ethics, public law, and governance issues. In my opinion he has the attributes set out in paragraph 24 hereof.

27. The Administrator is appointed for an initial term of six months. The Commission reserves to itself the power to extend the term, if necessary.

28. The Executive Chair may vary any of the Administrator's powers set out herein including his duties and responsibilities as needed.

29. The Administrator appointed under this Order has all the powers necessary for the performance of his functions pursuant to sections. 23(5) of the PSA.

30. The Administrator shall be given full power and authority to fulfill his mandate and functions.



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31. The Administrator shall be appointed effective April 19, 2022 until October 19, 2022.

Dated in Toronto, this 19th of April, 2022.

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

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