

# ***Investigation of the Thunder Bay Police Services Board Pursuant to Section 25 of the Police Services Act***

## ***Interim Report of the Honourable Murray Sinclair submitted to the Executive Chair, Ontario Civilian Police Commission***

(Disponible en français)

**October 31, 2017**

### **1. Introduction: The Investigation of the Thunder Bay Police Services Board**

- 1.1. In July 2017, I was retained to lead an Ontario Civilian Police Commission (“OCPC” or “the Commission”) investigation into the Thunder Bay Police Services Board (“the Board” or “TBPSB”). This investigation follows a request from First Nations leaders from Grand Council Treaty #3, including Rainy River First Nations, and Nishnawbe Aski Nation. By letter dated May 29, 2017, the First Nation leaders have expressed a lack of confidence in the Board’s ability to oversee adequate and effective policing in Thunder Bay and took the position that there is a “crisis of confidence in policing”.<sup>1</sup> The focus of the letter was primarily on the role of the Board in relation to police handling of investigations of the deaths of Indigenous people in Thunder Bay. In response, the Commission advised that an investigation would commence pursuant to section 25 of the *Police Services Act* (“PSA”)<sup>2</sup> to inquire into the way in which the Board has been providing oversight of the Thunder Bay Police Service.
- 1.2. Under section 25 of the PSA, and in keeping with my Terms of Reference (set out as Appendix “A” to this Interim Report), I was retained to consider a variety of issues, such as the way in which the Board carries out its responsibilities under the PSA, the Board’s role in determining objectives and priorities, and its role in establishing policies. My mandate includes examining areas of strength and areas for improvement in relation to the Board’s oversight of policing. I further have the ability to make recommendations to the Board, Ministry of Community Safety and Correctional Services, and the Commission, itself.
- 1.3. This Interim Report is designed to formally update the Executive Chair of the Commission, the Minister of Community Safety and Correctional Services, the Board, First Nations, the people of Thunder Bay and Northwestern Ontario, and

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<sup>1</sup> Letter from Grand Chief Alvin Fiddler (Nishnawbe Aski Nation), Ogichidaa Francis Kavanaugh (Grand Council Treaty #3) and Chief Jim Leonard (Rainy River First Nations) to Linda Lamoureux, Ontario Civilian Police Commission (29 May 2017), online: Nishnawbe Aski Nation <<http://www.nan.on.ca/upload/documents/ltr-2017-05-29-executive-chair-linda-lam.pdf>> [May 29 Letter].

<sup>2</sup> *Police Services Act*, R.S.O. 1990, c. P.15 [PSA].

the general public on the status of the investigation and to advise about the next steps.

- 1.4. The Ontario Civilian Police Commission is established under Part II of the PSA. It is an arm's length agency of the Ontario Government with a variety of responsibilities in relation to civilian oversight of policing. The current investigation is being conducted under section 25 of the PSA. Such investigations are part of the Commission's investigative and quasi-regulatory mandate.
- 1.5. In Ontario, both police services and police services boards are also established under the PSA. Subsections 4(1)-(2) of the PSA requires that municipalities provide "adequate and effective" police services, which must, at a minimum, include: crime prevention, law enforcement, assistance to victims of crime, public order maintenance, and emergency response. Under subsection 31(1), police services boards ("PSBs" or "boards") are responsible for "...the provision of adequate and effective police services in the municipality". The same subsection also sets out a lengthy list of specific duties placed on boards.
- 1.6. As noted, the current investigation into the Thunder Bay Police Services Board was initiated as a result of a variety of serious concerns about police board governance in Thunder Bay. These concerns involve the manner in which the Thunder Bay Police Service ("TBPS") and the Board have addressed allegations of racism, including systemic racism, in policing involving Indigenous people in Thunder Bay. My mandate is not to investigate the TBPS, rather it is about the manner in which the TBPS is being governed, directed, and held accountable by the Board. The TBPS is being investigated by the Office of the Independent Police Review Director ("OIPRD") under the leadership of Mr. Gerry McNeilly. As will be discussed later in this report, I am working cooperatively with Mr. McNeilly and his officials in relation to our respective tasks.
- 1.7. The impetus for this investigation was the letter of May 29, 2017 ("May 29 Letter") addressed to the Executive Chair of the OCPC from Grand Chief Alvin Fiddler of Nishnawbe Aski Nation ("NAN"), Ogichidaa Francis Kavanaugh of Grand Council Treaty #3 ("Treaty #3") and Chief Jim Leonard of Rainy River First Nations ("RRFN").<sup>3</sup>
- 1.8. The May 29 Letter drew particular attention to the deaths of three individuals from Indigenous communities and expressed concerns about the response to those deaths by the TBPS and the Board. The three deceased individuals were:

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<sup>3</sup> May 29 Letter, note 1.

- Ms. Tammy Keeash, 17, of North Caribou Lake First Nation;
- Mr. Josiah Begg, 14, of Kitchenuhmaykoosib Inninuwug First Nation (“KI”); and
- Mr. Stacy DeBungee, 41, of Rainy River First Nations.

1.9. The bodies of all three individuals were recovered from rivers in the Thunder Bay area. These “River Deaths” were similar to previous deaths that occurred between 2000 and 2011 in Thunder Bay and which were the subject of a Coroner’s Inquest in 2016 (“Seven Youths Inquest”).<sup>4</sup> The Seven Youths Inquest produced a verdict with numerous recommendations aimed at addressing the safety of Indigenous youth temporarily resident in Thunder Bay from Northern communities, particularly those sent to attend school. There were a variety of recommendations dealing with police and policing. For example, Recommendation #48 addressed the continuation of a police program that sends officers on visits to remote First Nations communities so as to establish positive relationships with students planning to attend school in Thunder Bay. Recommendation #91 (made to the City of Thunder Bay, the TBPS, NAN, and others) was aimed at ensuring “...timely reporting of missing students and consistent practice among institutions when students are reported missing or during sudden death investigations.” Recommendation #91 addressed the establishment of a working group to examine “...best practices applicable to their respective roles pertaining to students from remote First Nations communities attending secondary school in Thunder Bay.”

1.10. The May 29 Letter further expressed significant concern about the alleged unwillingness by the TBPSB to take action in relation to the TBPS’ investigative process. The authors of the letter stated:

We write to express our lack of confidence in the Thunder Bay Police Service Board’s (TBPSB) ability to deliver adequate and effective services to our community members in Thunder Bay. Despite irrefutable examples of chronic problems in the Thunder Bay Police Service (TBPS) the overseeing Police Services Board steadfastly refuses to acknowledge any problems with its delivery of services respecting our community members. This crisis of

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<sup>4</sup> Ontario, Office of the Chief Coroner, *Inquest into the deaths of: Jethro Anderson, Curran Strang, Paul Panacheese, Robyn Harper, Reggie Bushie, Kyle Morrisseau, and Jordan Wasasse* (28 June 2016) online: Ministry of Community Safety and Correctional Services <<https://www.mcscs.jus.gov.on.ca/english/Deathinvestigations/Inquests/Verdictsandrecommendations/OCCVerdictsSevenFirstNationsYouths.html>> [Seven Youths Inquest].

confidence in policing has led to the ongoing investigation into systemic racism in the force.

- 1.11. There were further concerns raised in the May 29 Letter regarding the speed by which the TBPS determined that certain Indigenous deaths were deemed non-criminal. The May 29 Letter also noted concerns about criminal charges which had been brought against the Chief of Police.
- 1.12. It is in this context that the OCPC advised that an investigation would be commenced in relation to the Board. Following discussions over the course of June and early July of this year, I agreed to lead the OCPC's investigation.
- 1.13. Sadly, shortly after this investigation was established, on September 23, 2017, another young Indigenous person, Mr. Dylan Moonias, was found dead in the Neebing-McIntyre Floodway in Thunder Bay.<sup>5</sup>

## 2. The Ontario Civilian Police Commission

### *The Role of the OCPC*

- 2.1. The Commission is established under Part II of the PSA. Since 2010, the Commission has been subject to the *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009*.<sup>6</sup> In 2013, the Commission was grouped or "clustered" with several other Ontario tribunals to form the Safety, Licensing Appeals and Standards Tribunals Ontario ("SLASTO").<sup>7</sup>
- 2.2. The OCPC currently exists alongside two other provincial civilian oversight bodies established under the PSA. The OIPRD handles public complaints against police officers pursuant to Part V of the PSA. Established under Part VII, the Special Investigations Unit ("SIU") conducts criminal investigations in relation to deaths or serious injuries that have resulted from police action.
- 2.3. The Commission's main function is to hold adjudicative hearings, specifically appeals from police disciplinary hearings. In addition to these court-like tribunal functions, the Commission also has various roles that are of an investigative and

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<sup>5</sup> Tanya Talaga, "More grief in Thunder Bay as body of Indigenous man pulled from river" *The Toronto Star* (9 September 2017) online: The Toronto Star <<https://www.thestar.com/news/queenspark/2017/09/25/thunder-bay-reels-as-body-of-indigenous-man-pulled-from-river.html>>.

<sup>6</sup> *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009*, S.O. 2009, c. 33, Schedule 5.

<sup>7</sup> Ontario, *Safety, Licensing Appeals and Standards Tribunals Ontario, 2013 – 2014 Annual Report*, (Toronto: Safety, Licensing Appeals and Standards Tribunals Ontario, 2014), online: <<http://www.slsto.gov.on.ca/en/Documents/ATAGAA%20Documents/Accessible%20English%20Documents/2013%20-%202014%20Annual%20Report%20-%20Safety%2c%20Licensing%20Appeals%20and%20Standards%20Tribunals%20Ontario%20.htm>>.

regulatory nature. Under subsection 25(1)(a) of the PSA, the OCPC has the ability to investigate alleged misconduct about individual police services board members, police officers, and various other law enforcement officials.

2.4. The present investigation in Thunder Bay is not an investigation into the conduct of any particular Board member or any other individual. Subsections 25(1)(b)-(d) of the PSA allow the OCPC to investigate, inquire into, and report on:

- (b) the administration of a municipal police force;
- (c) the manner in which police services are provided for a municipality; and
- (d) the police needs of a municipality.

2.5. Subsection 25(3) of the PSA requires the Commission to communicate its report of an investigation under subsection 25(1) to the Solicitor General, to the respective police services board, and to any other person the Commission thinks advisable.

#### *Extraordinary Measures: Sections 23 and 24 of the PSA*

2.6. Under section 23 of the PSA, the OCPC can take extraordinary measures in relation to police services and PSBs. Subsection 23(1) sets out a list of measures the OCPC can take if it is of the opinion "...after holding a hearing, that a board or municipal police force has flagrantly or repeatedly failed to comply with prescribed standards of police services." The measures set out under subsection 23(1) include powers to suspend chiefs of police and board members, remove chiefs of police, and appoint administrators for boards.

2.7. Under section 24 of the PSA, the Commission may make an interim order under subsection 23(1) without notice and without holding a hearing. This can be done if the Commission is of the opinion that an emergency exists and that the interim order is necessary in the public interest. The Commission has exercised this power once recently due to a situation in Peterborough, Ontario.<sup>8</sup> In that situation, the Commission appointed an administrator to take over the functions of the Peterborough Police Services Board for approximately six-months.<sup>9</sup>

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<sup>8</sup> *Peterborough Police Services Board (Re)*, 2016 CanLII 87301 (ON CPC).

<sup>9</sup> Ontario, Ontario Civilian Police Commission, *Independence, Accountability, and Effective Police Oversight: Maintaining Public Confidence in the Peterborough Police Services Board*, Report by Mark Sandler, Administrator (Toronto: Ontario Civilian Police Commission, 2017), online: Safety, Licensing Appeals and Standards Tribunals Ontario <<http://www.slsto.gov.on.ca/en/OCPC/Documents/Maintaining%20Public%20Confidence%20in%20the%20Peterborough%20Police%20Services%20Board.pdf>>.

## *PSA Compliance Orders*

- 2.8. Under subsection 22(1)(a)(i) of the PSA, the OCPC may direct a PSB to comply with prescribed standards of service. In order for the provision to apply, the Minister of Community Safety and Correctional Services must advise the OCPC that a board (or police service) is not complying with prescribed standards of police services. The Commission could then direct compliance or take measures in accordance with subsection 23(1).

## *The Tulloch Recommendations and Possible Changes to the OCPC*

- 2.9. In April of 2017, the Hon. Michael Tulloch, a Justice of the Court of Appeal for Ontario, issued the *Report of the Independent Police Oversight Review*.<sup>10</sup> Justice Tulloch had been given a broad mandate to examine civilian oversight of policing in Ontario. In particular, he examined the mandates of Ontario's three province-wide agencies tasked with oversight of police and policing: the SIU, the OIPRD, and the OCPC. In general, the recommendations included a move away from investigative/regulatory functions for the OCPC. His recommendations also touched on the role of PSBs. Recommendations made in my Final Report may be impacted by the status of any proposed amendments to the PSA coming out of Justice Tulloch's report.

## **3. Police Services Boards**

- 3.1. Like the Commission, the statutory foundation for PSBs is found in the PSA. In order to explain the role and parameters of the OCPC's current investigation, it is important to have an understanding of the role that PSBs play in Ontario.
- 3.2. PSBs are established pursuant to section 27 of the PSA. Their functions include establishing priorities, objectives, and policies for policing in their communities, as well as monitoring police performance and leadership.
- 3.3. Larger municipalities, such as Thunder Bay, with a population of over 25,000 people, have five-member boards. Boards consist of two municipal council members, two provincial appointees and a community representative appointed by municipal council.
- 3.4. Subsection 31(1) of the PSA provides that PSBs are responsible for providing "adequate and effective police services in the municipality" and sets out 10 specific responsibilities in relation to adequate and effective policing. These responsibilities include working with the chief of police to determine objectives

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<sup>10</sup> Ontario, Independent Police Oversight Review, *Report of the Independent Police Oversight Review*, Report by the Hon. Michael H. Tulloch (Toronto: Independent Police Oversight Review, 2017), online: Ministry of the Attorney General <[https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/police\\_oversight\\_review/](https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/police_oversight_review/)>.

and priorities with respect to local policing as well as establishing management policies, recruiting a chief, and monitoring the handling of public complaints.

- 3.5. Subsection 31(4) provides that boards are not to give chiefs of police direction "...with respect to specific operational decisions or with respect to the day-to-day operation of the police force." Subsection 31(3) indicates that a board as a whole can give orders and directions to police chiefs, but not to other members of police services.
- 3.6. There are also numerous regulations made under the PSA. The key regulation dealing with PSBs is O. Reg. 3/99, Adequacy and Effectiveness of Police Services ("Adequacy and Effectiveness Regulation"). Key sections of the regulation include the requirement to prepare a business plan at least every three years (section 30) and a provision that requires protocols on information sharing with municipal council (section 32).

#### *Budgetary Roles for PSBs*

- 3.7. PSBs have a major role in setting police budgets, although they are not autonomous in doing so. Subsection 39(1) of the PSA requires a board to submit operating and capital estimates to municipal council so that the police service can be maintained and so that equipment and facilities can be provided. Municipal council is entitled to determine the format and timing of the estimates and the time period covered by the estimates.<sup>11</sup> Council establishes an overall budget based on the estimates, but is not obligated to adopt a board's estimates.<sup>12</sup>

#### *Roles and Responsibilities of Individual Board Members*

- 3.8. Individual members of PSBs are bound by a Code of Conduct set out in O. Reg. 421/97, Members of Police Services Boards—Code of Conduct ("Code of Conduct"). The Code of Conduct places duties and responsibilities on individual board members as opposed to boards as a whole. For example, section 4 requires members to keep information discussed at closed meetings confidential. Section 5 provides that members are not to speak on behalf of the board unless authorized to do so, while section 6 provides that members must make it clear that when they disagree with a board decision, they are expressing their own personal opinion.
- 3.9. Breaches of the substantive Code of Conduct provisions may be investigated by the OCPC. Upon completion of an investigation of a board member's individual misconduct, subsection 25(5) provides for a hearing by the Commission that may

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<sup>11</sup> PSA, note 2, s. 39(2).

<sup>12</sup> PSA, note 2, s. 39(3)-(4).

then lead to suspension or removal. Such findings may be appealed to the Divisional Court under subsection 25(6).

### *Oversight of PSBs by MCSCS*

- 3.10. The Minister of Community Safety and Correctional Services is generally responsible for policing in Ontario.<sup>13</sup> The Public Safety Division at the Ministry of Community Safety and Correctional Services provides training and monitoring of PSBs.<sup>14</sup> In standard training materials, the Ministry discusses the various statutory and regulatory requirements that PSBs must comply with. The Ministry's materials also set out some additional commentary on the role of PSBs. For example, in its training materials, the Ministry indicates that: "Governance in policing refers to the authority and responsibility for the development of policies that become the framework within which decisions will be made and actions will be taken by police services."<sup>15</sup>
- 3.11. The Ministry's training materials also set out a number of key principles for PSBs. Key principles include "providing accountability to the public", "promoting independence in policing", and "translating community-defined needs into effective policing."

## **4. The Thunder Bay Police Services Board and the Current Investigation**

- 4.1. The TBPSB is a five-member board composed of three municipal members (two elected officials and one appointed member) along with two provincial appointees. At the time of writing, one of the provincial spots on the board is vacant.<sup>16</sup> The Board has written to the Province asking that the vacancy be filled by an Aboriginal person.
- 4.2. As noted, the May 29 Letter directly preceded the decision of the OCPC to launch an investigation. The May 29 Letter expressed a lack of confidence in the Board's "...ability to deliver adequate and effective services to our community members in Thunder Bay." The letter alleged that the Board refused to acknowledge problems with the delivery of services to community members in Thunder Bay.

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<sup>13</sup> PSA, note 2, s. 3(2).

<sup>14</sup> Ministry of Community Safety and Correctional Services, "Policing Services", online: Ministry of Community Safety and Correctional Services <[https://www.mcscs.jus.gov.on.ca/english/police\\_serv/about.html](https://www.mcscs.jus.gov.on.ca/english/police_serv/about.html)>.

<sup>15</sup> Ministry of Community Safety and Correctional Services, *Civilian Governance of Police Services: Police Services Board Information Session* (2017), [unpublished].

<sup>16</sup> Ontario, Public Appointments Secretariat, "Police Services Board – Thunder Bay (City of)" (October 2017), online: Government of Ontario <<https://www.pas.gov.on.ca/scripts/en/BoardDetails.asp?boardID=1070>>.

- 4.3. The May 29 Letter discussed the three most recent River Deaths in Thunder Bay and the similarities to the deaths which had been examined during the Seven Youths Inquest. The letter also noted the existence of the OIPRD's ongoing review of systemic racism in the TBPS.
- 4.4. The letter goes on to discuss concerns regarding the TBPSB. The letter alleges: "The Thunder Bay Police Services Board has failed to provide any leadership during these investigations and the OIPRD systemic review." The letter outlines concerns regarding the lack of communication between the RRFN, the TBPS, and the Board during the summer and fall of 2016. The letter also cites concerns about a request on behalf of the DeBungee Family and the RRFN to make deputations to the TBPSB, which had gone unanswered. According to the May 29 Letter, the Chair of the TBPSB advised that it would be inappropriate for there to be dialogue with the Board while the OIPRD investigation was underway.
- 4.5. The May 29 Letter also raised concern about a comment made by the Board Vice-Chair on May 25, 2017 that there was no systemic racism involving the TBPS. The authors of the letter also took issue with a newspaper article that reported that the Vice-Chair did not see the need for leadership change on the police service, despite the fact that the Thunder Bay Chief of Police was subject to criminal charges.<sup>17</sup>

- 4.6. The authors of the May 29 Letter stated:

By simply aligning itself with officers after months of silence and closing its collective mind to glaring investigative oversights, it appears the Board has failed to understand or execute its role as a civilian oversight body. The Thunder Bay Police Services Board has now taken a fully adversarial position to the Indigenous people it is supposed to represent and used evidence of systemic failures as an opportunity to show solidarity with police. It has buried its head in the sand and denied any need for change while closing its mind to independent review. Under these circumstances, it cannot be said that it is providing adequate and effective services to Thunder Bay's Indigenous community.

- 4.7. The May 29 Letter asked not only for an investigation under subsection 25(1)(b) of the PSA, but also for the immediate appointment of "...an administrator (culturally competent in respect of Indigenous issues) to oversee the Board pursuant to subsection 23(1)(4) of the *Act*."

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<sup>17</sup> Doug Diaczuk, "Police board responds to OIPRD review" *tbnewswatch* (25 May 2017), online: [tbnewswatch <https://www.tbnewswatch.com/local-news/police-board-responds-to-oirpd-review-623896>](https://www.tbnewswatch.com/local-news/police-board-responds-to-oirpd-review-623896).

- 4.8. On the following day, a letter was sent from Ms. Linda Lamoureux, Executive Chair of SLASTO, advising that the OCPC would be launching an investigation in relation to the TBPSB pursuant to section 25 of the PSA.<sup>18</sup> The letter noted that the OCPC would not be taking immediate steps to appoint an administrator. Rather the Executive Chair said: “At this time, the Commission requires evidence from its investigation before considering the appointment of an administrator pursuant to section 24. Should our investigation provide such evidence, the Commission will not hesitate to act accordingly.”
- 4.9. On May 31, 2017, the TBPSB responded to the May 29 Letter and took issue with some factual assertions and conclusions therein. It noted that PSBs are not permitted to take action or provide direct supervision with respect to the day-to-day operations of police services. While accepting that systemic racism is a barrier to Indigenous people, the statement included the following sentences: “A police service cannot cure systemic racism. We accept that our Service has a role to play.”<sup>19</sup>
- 4.10. The May 31 statement went on to highlight a variety of steps that the TBPS has taken to respond to the recommendations made in the Seven Youths Inquest.
- 4.11. It is trite to say that there are significant concerns in Thunder Bay about the manner in which police conduct death and missing person investigations of Indigenous persons.
- 4.12. As noted, the situation in Thunder Bay was the subject of a very significant Coroner’s Inquest in 2016.
- 4.13. Moreover, the Thunder Bay Police Service is currently being investigated by the OIPRD pursuant to section 57 of the PSA. I understand that a central focus of the OIPRD’s investigation is the “...Thunder Bay Police Service’s practices for policing Indigenous Peoples, and specifically, their policies, practices and attitudes regarding missing person and death investigations involving Indigenous Peoples.”<sup>20</sup> The OIPRD investigation was launched on November 3, 2016 at which time the Director noted that “alarming questions” have been raised about

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<sup>18</sup> Letter from Linda Lamoureux, Ontario Civilian Police Commission, to authors of the May 29 Letter (30 May 2017), online: Nishnawbe Aski Nation <<http://www.nan.on.ca/upload/documents/2017.05.30-letter-to-nan-gct3-rrfn.pdf>>.

<sup>19</sup> Thunder Bay Police Service, “Statement by Thunder Bay Police Services Board” *Thunder Bay Police Service* (31 May 2017), online: Thunder Bay Police Service <<http://www.thundebaypolice.ca/news/statement-thunder-bay-police-services-board>>.

<sup>20</sup> “OIPRD to Review Thunder Bay Police Service Practices for Policing Indigenous Peoples” *Office of the Independent Police Review Director* (13 February 2016), online: <<http://www.oiprd.on.ca/EN/PDFs/OIPRD%20Extends%20Deadline%20for%20Submissions%20to%20Review%20of%20Thunder%20Bay%20Police%20Service%20Practices%20for%20Policing%20Indigenous%20People.pdf>>.

the way the TBPS investigates the disappearances and deaths of Indigenous people.<sup>21</sup>

4.14. Nationally, the Inquiry into Missing and Murdered Indigenous Women and Girls (“MMIWG”) was launched in September 2016 after having been advocated for many years.<sup>22</sup> The Government of Canada’s website notes: “Indigenous women and girls in Canada are disproportionately affected by all forms of violence. Although Indigenous women make up 4 per cent of Canada’s female population, 16 per cent of all women murdered in Canada between 1980 and 2012 were Indigenous.”<sup>23</sup>

4.15. Tragically, grave concerns about murdered and missing Indigenous women and girls throughout Canada are not a new development, nor are the concerns in the Thunder Bay area. A *Globe and Mail* article of November 27, 1993 reported:

Native groups and a Thunder Bay police commissioner are calling for a federal inquiry into unsolved slayings of native women, but city police are defending their handling of homicide investigations.

Philip Edwards, a provincial appointee to the Thunder Bay Police Services Board, said he believes the deaths of native women are not pursued as thoroughly as those of non-natives because of “systemic racism” in the police force.<sup>24</sup>

4.16. There have been many longstanding concerns about systemic or institutional racism and general racism in Thunder Bay that go well beyond the issue of “missing and murdered” investigations. This statement is not meant to unfairly or unnecessarily single out Thunder Bay. Systemic racism and general racism is obviously a problem that all areas of Ontario and Canada grapple with on an ongoing basis. However, my mandate is in relation to the TBPSB and thus the situation in the Thunder Bay-area is my primary area of focus.

4.17. The *Report of The Race Relations And Policing Task Force* was released in 1989. Led by Mr. Clare Lewis, a retired Ombudsman and Judge, the Task Force was established in 1988 by the Solicitor General of Ontario. The work of the

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<sup>21</sup> Cathy Alex, “‘Alarming questions’ raised about police treatment of Indigenous people in Thunder Bay, Ont., watchdog says” *CBC News Online* (3 November 2016), online: CBC News <<http://www.cbc.ca/news/canada/thunder-bay/oiprd-thunder-bay-police-terms-1.3834320>>.

<sup>22</sup> Missing and Murdered Indigenous Women and Girls, “National Inquiry into Missing and Murdered Indigenous Women and Girls” online: Missing and Murdered Indigenous Women and Girls <<http://www.mmiwg-ffada.ca/en/about-us/>>.

<sup>23</sup> Indigenous and Northern Affairs Canada, “Background on the Inquiry” (22 April 2016), online: Government of Canada <<https://www.aadnc-aandc.gc.ca/eng/1449240606362/1449240634871>>.

<sup>24</sup> Rudy Platiel, “Police accused of ‘Systemic racism’: Groups call for inquiry into unsolved killings of Thunder Bay natives” *The Globe and Mail* (27 November 1993) A7.

Task Force remains of enduring interest as it was designed to deal with "...very serious concerns of visible minorities respecting the interaction of the police community with their own."<sup>25</sup> The Task Force held public hearings in Thunder Bay in February of 1989. An article dated February 18, 1989 detailed concerns raised by the Ontario Native Women's Association about police investigations into deaths of Indigenous people at the Task Force's public hearings.<sup>26</sup>

- 4.18. More recently, Diversity Thunder Bay issued *A Community of Acceptance: Respect for Thunder Bay's Diversity* in 2002. The report was aimed at investigating "...general awareness of race, racism and racialization in the community."<sup>27</sup> The report concluded that racism and racialization impacted "Thunder Bay's ability to function in a cohesive manner."<sup>28</sup> The report went on to flag the need for addressing systemic factors saying:

Such factors are bigger than Thunder Bay. But it dramatically affects Thunder Bay and both individual lives and community development. A diverse Canada is the country that Canadians will increasingly encounter. An increasingly diverse Thunder Bay will happen as the Aboriginal population grows and both in-migration and out-migration change the demographics of the population.<sup>29</sup>

- 4.19. In 2003-2004, the Diversity in Policing ("DIP") project arose and a report was issued in 2007.<sup>30</sup> According to a CBC article, the DIP project "...was initiated in 2004 by former police chief Bob Herman, the Thunder Bay Multicultural Association, and the Thunder Bay Indian Friendship Centre to address people's complaints about systemic discrimination within the police service."<sup>31</sup>
- 4.20. The DIP Phase I Report was prepared by Leisa Desmoulins, currently a professor in the Faculty of Education at Lakehead University. The project covered the time period from its inception in January 2004 to March 31, 2006.

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<sup>25</sup> Ontario, *Report of The Race Relations and Policing Task Force*, Report by the Hon. Clare Lewis (Toronto: Race Relations and Policing Task Force, 1989) at 1.

<sup>26</sup> "Police do little to solve crimes against her people, native says" *The Toronto Star* (18 February 1989) A5 (ProQuest Historical Newspapers: The Toronto Star).

<sup>27</sup> Randolph Haluza-DeLay, *A Community of Acceptance: Respect for Thunder Bay's Diversity*, (2002) at 126, online: Diversity Thunder Bay <<http://www.diversitythunderbay.ca/uploads/documents/A-Community-of-Acceptance.pdf>> [Community of Acceptance Report].

<sup>28</sup> Community of Acceptance Report, note 27, at 125.

<sup>29</sup> Community of Acceptance Report, note 27, at 126.

<sup>30</sup> Leisa Desmoulins, *Diversity in Policing Project: Phase 1 report*, (6 June 2007), online: Diversity in Policing <<http://www.diversitythunderbay.ca/uploads/documents/diversity%20in%20policing%20project%20phase%20i.pdf>> [DIP Report].

<sup>31</sup> "Thunder Bay police lauded for diversity project" *CBC News Online* (1 August 2012), online: CBC News <<http://www.cbc.ca/news/canada/thunder-bay/thunder-bay-police-lauded-for-diversity-project-1.1234993>>.

The DIP Phase I Report indicates that in November 2003, Chief Herman presented the proposal for the DIP project to the City of Thunder Bay: “He noted that institutional racism exists, and police are an institution, therefore the police have racism within their policies and practices.”<sup>32</sup>

- 4.21. The project began with an extensive series of interviews and focus sessions with community members to “...orient and inform the coordinator of community perceptions of policing.”<sup>33</sup> The three guiding questions asked were: “What should Thunder Bay Police stop doing, start doing and continue doing?”<sup>34</sup>
- 4.22. In terms of “Stop Doing”, responses focused on race-based police conduct (e.g., profiling, differential treatment) and officer behavior (e.g., excessive force, holding back medications from people in custody).
- 4.23. There were a wider variety of proposals for things the police should start and continue doing. This included cultural sensitivity and anti-racism training, community involvement and hiring racialized staff. There were proposals to increase community policing and strengthen the Aboriginal Liaison Unit (“ALU”). There were a significant number of types of officer behaviors that were identified as being areas for improvement.
- 4.24. The report highlighted the need for institutional leadership: “Institutional change projects need organizational will. To marshal will, every project needs champions.”<sup>35</sup> The report commented extensively on the role of the Chief of Police of the day, Robert Herman:

Early in the project Bob Herman took an unconventional stance, from a policing standpoint. He tells the story of being at a meeting of the Ontario Association of Police Services Boards that was open to the public. Within that forum, Bob Herman stated to his colleagues “there is systemic racism in policing and we need to deal with it” (B. Herman, interview, 90-03-07). After the meeting a CBC reporter followed up with the Chief on his assertion. He gave an interview, reiterating that systemic racism in policing needs to be eliminated. After the interview a police chief from another jurisdiction was asked by reporters for his thoughts on systemic racism in policing. His colleague was taken aback and later phoned Chief Herman to ask what he might have been thinking by making such a statement.

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<sup>32</sup> DIP Report, note 30, at s. 1.2.

<sup>33</sup> DIP Report, note 30, at s. 3.1.

<sup>34</sup> DIP Report, note 30, at s. 3.1.1.

<sup>35</sup> DIP Report, note 30, at s. 3.2.

Recently Bob Herman gave the keynote address for the city's International Day for the Elimination of Racial Discrimination. He noted that it was appropriate for a police officer to speak because of the day's origins in 1960 when police in South Africa opened fire on a peaceful demonstration protesting apartheid. He stated the goal of the TBPF to "eliminate systemic racism from its policies and its practices" is necessary in order to "ensure that police officers of a service do not behave in a racially prejudiced manner towards individuals" (speech given 21-03-07, p. 6).<sup>36</sup>

4.25. Therefore, it can be seen that concerns about the intersection of racism, systemic racism, and policing in Thunder Bay are not new. One of the areas of investigation that I intend to pursue, in preparation for my Final Report, is the TBPSB's level of awareness of previous reports and the concerns expressed therein, and the measures taken to address the various recommendations. I note that on October 18, 2017 the TBPSB adopted a new Diversity Initiative.<sup>37</sup> The Diversity Initiative explicitly seeks to build on the earlier DIP project. According to correspondence from the Board, the project includes four elements:

- Revamping the Aboriginal Liaison Unit;
- Invigorating efforts to attract Indigenous and other under-represented groups to the TBPS;
- Structured and ongoing diversity training for TBPS staff; and
- Enhanced TBPS communications to convey organizational changes and foster accountability.

The TBPSB further indicates that it will be forming a working group, developing Terms of Reference, and setting objectives and timelines for the initiative. A slide deck provided by the TBPSB recognizes a number of issues with the previous Diversity project, specifically unclear long-term goals and a lack of renewal, review and continuity.<sup>38</sup>

4.26. The rebirth of the DIP project is one of a number of positive steps taken in Thunder Bay by public institutions in response to racism concerns. Such steps are certainly necessary and welcome given the context in the City. Over the course of 2016 and 2017, there has been an increasing sense of concern about relations between Indigenous and non-Indigenous people in Thunder Bay. In January 2017, Ms. Barbara Kentner, a First Nations woman, was walking down a

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<sup>36</sup> DIP Report, note 30, at s. 3.2.

<sup>37</sup> Cathy Alex, "Thunder Bay police to revamp recruiting, training as part of new diversity efforts" *CBC News Online* (18 October 2017), online: CBC News < <http://www.cbc.ca/news/canada/thunder-bay/thunder-bay-police-board-initiative-1.4358835>>.

<sup>38</sup> Letter to OCPC counsel from TBPSB counsel (20 October 2017).

street in Thunder Bay when she was struck in the abdomen by a trailer hitch thrown from a passing car. One of the people in the car is alleged to have said: "I got one!" Eighteen year old Brayden Bushby was charged with aggravated assault immediately after the incident.<sup>39</sup> Ms. Kentner died in July of 2017, and it has been reported that the Crown is considering whether the criminal charges pending in relation to the incident should be amended because of her death.<sup>40</sup> Moreover, the deaths of the seven youths are the subject of a recent book.<sup>41</sup> As noted, Mr. Dylan Moonias was found dead in September 2017.

- 4.27. Unfortunately, the circumstances involving Ms. Kentner are not uncommon for Indigenous peoples in Thunder Bay. In addition to the stories I have been told regarding hate-related crimes that have occurred in Thunder Bay, Statistics Canada recently released a report entitled "Police-reported hate crime in Canada, 2015". According to the report:

The highest rate of police-reported hate crime among [census metropolitan areas] in 2015 was recorded in Thunder Bay (22.3 per 100,000 population)...The rate of police-reported hate crime in Thunder Bay was mostly the result of 10 incidents against Aboriginal populations, which accounted for 29% of the total anti-Aboriginal hate crimes reported in Canada in 2015.<sup>42</sup>

- 4.28. This recitation of circumstances is designed to place the concerns about the Board in the broader context of on-going issues in Thunder Bay.

## 5. The Investigation: Work to Date and Goals

- 5.1. I was officially retained to commence the investigation of the TBPSB on July 21, 2017. A press release was issued on July 24, 2017 by the OCPC.
- 5.2. It is important to be clear that the current investigation under section 25 of the PSA is not in relation to any particular person. That is, the investigation does not concern potential misconduct by any particular member of the Board. Although it is possible that conduct investigations under section 25 could be initiated in

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<sup>39</sup> Jody Porter, "First Nations woman dies after being hit by trailer hitch thrown from passing car in Thunder Bay, Ont." *CBC News Online* (4 July 2017), online: CBC News <<http://www.cbc.ca/news/canada/thunder-bay/trailer-hitch-death-1.4189426>>.

<sup>40</sup> Doug Diaczuk, "Crown continues to review Kentner pathology report" *tbnewswatch* (10 October 2017) online: *tbnewswatch* <<https://www.tbnewswatch.com/local-news/crown-continues-to-review-kentner-pathology-report-736352>>.

<sup>41</sup> Tanya Talaga, *Seven Fallen Feathers: Racism, Death and Hard Truths in a Northern City* (Toronto: House of Anansi Press Inc., 2017).

<sup>42</sup> Statistics Canada, "Police-reported hate crimes, 2015" *The Daily Catalogue* No 85-002-X (Ottawa: Statistics Canada, 13 June 2017) <<https://www.statcan.gc.ca/pub/85-002-x/2017001/article/14832-eng.htm>>.

relation to individual board members, the evidence does not suggest that any individual member of the Board has committed misconduct.

- 5.3. Although the current investigation is styled an “investigation” owing to the wording used in the PSA, it also bears similarity to a policy review. The outcome of a section 25 investigation is a report with recommendations. In my Final Report, I intend to provide a series of recommendations that I hope will be beneficial to members of the Thunder Bay community—Indigenous and non-Indigenous alike—and to the TBPSB.
- 5.4. During July and August, I assembled a small team including a former police investigator and three counsel to assist in my work. We began gathering information and making contacts.
- 5.5. My staff and I met with the Chair of the TBPSB and subsequently with the full TBPSB in early September. The Board has indicated its willingness to work cooperatively and has provided information as requested on an on-going basis.
- 5.6. Recognizing the extensive work conducted by the OIPRD in relation to the TBPS, as well as the issues of systemic racism that also affect the TBPSB, I aim to avoid duplication of the work of the OIPRD and to work in a complementary and collaborative way where possible. In light of this, my team and I met with Mr. McNeilly and his team in September. We had fruitful discussions about our respective investigations and agreed to work collaboratively. Members of my team also attended a large public meeting held by the OIPRD in Thunder Bay on September 25, 2017 to observe the proceedings with respect to Mr. McNeilly’s investigation of the TBPS in relation to Indigenous people.
- 5.7. Staff level meetings and communications have occurred with officials from the Ministry of Community Safety and Correctional Services to discuss the role of the Ministry in relation to PSBs, the appointment process to PSBs, and to seek information on potential updates to the PSA. I have also met with the Chief Coroner of Ontario.
- 5.8. Calls, e-mails and in-person meetings with a variety of other individuals and groups have also occurred.
- 5.9. Meetings have been held with First Nations leaders who authored the May 29 Letter to the OCPC and will continue as needed.
- 5.10. In addition to First Nations leadership, we will be seeking meetings with a variety of Indigenous organizations in Thunder Bay, as well as with interested families of those who have died. Also, we will seek to meet with officials from Dennis Franklin Cromarty High School and the Northern Nishnawbe Education Council. We will also be arranging meetings with past and present officials from the TBPS, convening further meetings with current TBPSB members, as well as

arranging meetings with municipal officials and some former members of the TBPSB.

- 5.11. The purpose of these meetings will be to become informed of concerns and views about policing in Thunder Bay and to explore whether groups and individuals believe the Board is meeting the needs of the community and fulfilling its various statutory responsibilities.

### *Goals*

- 5.12. As noted previously, the typical outcome of a PSA section 25 process—where no particular individual is being investigated—is a report by the Commission on its findings.
- 5.13. The Final Report is to be ready by the end of March 2018. It will likely make recommendations for a variety of policy and operational changes. As the TBPSB is the focus of the investigation, the majority of recommendations may likely be directed to the performance and training requirements of the TBPSB. However, I also anticipate that the investigation could reveal broader issues about the framework within which the TBPSB performs its functions and the advice it receives. For example, there may be structural issues in the existing PSA and associated regulations that may compromise the TBPSB's functioning. If this is the case, the report may offer recommendations for legislative or regulatory changes.
- 5.14. There is also the possibility that the outcome of an investigation of the TBPSB could lead to proceedings under section 23 or section 24 of the PSA.
- 5.15. Clearly, there are profoundly serious concerns about police handling of death and missing persons' investigations in relation to Indigenous people in Thunder Bay and other acts of overt racism by members of the public.
- 5.16. For example, in addition to the incident that injured Ms. Barbara Kentner and possibly led to her death, I have been made aware of other incidents in Thunder Bay where objects have been thrown at Indigenous people by non-Indigenous members of the Thunder Bay community. Such incidents are often, if not usually, accompanied by racial epithets. Most such incidents, though clearly illegal, are not always reported to Thunder Bay Police, I am told. It would be helpful to determine the reasons for non-reporting, whether it reveals a lack of faith in the police force of Thunder Bay, whether the Board members are aware of such lack of reporting, and what, if anything, they have done in response to that awareness. I am aware that the City of Thunder Bay's Anti-Racism and

Respect Advisory Committee along with community partners have recently released an online tool for reporting racism.<sup>43</sup> This tool is available online at:

<http://www.lspc.ca/incidentreport/>

This is also an example of a positive step by public institutions in Thunder Bay. It is hoped that this tool will help provide further information on the totality of racist incidents within the City of Thunder Bay with the ultimate aim of eliminating such incidents and the beliefs and attitudes underlying them.

- 5.17. The concerns about death and missing person investigations are set against broader and deeper concerns about systemic racism in policing as well as in the broader community. This investigation will deal with a relatively small part of what appears to be a much larger problem in Thunder Bay; yet a part that may be a significant contributing factor. It will deal with the role that the TBPSB plays in relation to the allegations of systemic racism in the entire policing system in Thunder Bay. At the highest level, this investigation will seek to help the Board lead the police and the community forward in a manner that identifies and acknowledges the problem of racism in the force and in the community, coupled with a sincere intent to assist the TBPSB in addressing unconscious bias, systemic racism, and discrimination against Indigenous people in the community.
- 5.18. The investigation seeks to determine if the Board is living up to its statutory and regulatory mandate and will delve deeper to examine whether systemic racism and discrimination have affected the Board in the discharge of its duties. If deficiencies are found, recommendations will be made to improve the Board's operations so as to create or restore confidence in the Board.
- 5.19. I will also seek to determine what the Thunder Bay community knows about the TBPSB and its role and what it expects of the TBPSB.
- 5.20. I will further attempt to identify and define the systemic challenges as I see them. This will include assessing whether the statutory and regulatory framework creates any challenges or barriers and making recommendations to the Province if the statutory and regulatory responsibilities are not aligned with the legitimate expectations of the community.
- 5.21. I also anticipate consulting with academics that study police governance and civilian oversight and speaking with organizations like the Canadian Association for Civilian Oversight of Law Enforcement ("CACOLE") and the Ontario Association of Police Services Boards ("OAPSB"). The investigation will explore

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<sup>43</sup> Kris Ketonen, "Racism in Thunder Bay, Ontario: people have new way to report it" *CBC News Online* (28 June 2017), online: CBC News <<http://www.cbc.ca/news/canada/thunder-bay/racism-reporting-service-launch-1.4180187>>.

best practices in PSBs (and similar bodies) domestically and internationally that may be helpful for the TBPSB and other Ontario boards.

- 5.22. The remaining portion of this report sets out a number of specific issues currently under consideration, however no conclusions have yet been drawn. These issues may or may not merit inclusion in the Final Report.

## **6. Systemic Racism, Discrimination & Bias**

- 6.1. Concerns about systemic racism, discrimination, and bias are central to this investigation. While moving forward with an analysis of these issues, I will offer clear and concise working definitions of each concept, along with hypothetical illustrative examples. Working definitions will ensure that the concepts are clearly understood by the Commission, the Board and the public. These definitions should guide the TBPSB and any future investigations in assessing systemic discrimination and racism and measuring results to address these matters. Further, we will seek to identify past and present examples of systemic racism and discrimination, and recommend the appropriate role of the Board in relation to any future concerns of systemic racism in policing.
- 6.2. Determining whether systemic racism has played a role in actual or perceived problems with police investigations would likely tread on the mandate of the OIPRD. Rather, the current investigation is concerned with the Board's actions or inaction, as the police oversight body, in relation to expressed concerns about systemic racism, discrimination and bias on the police service and on the Board itself. It will seek to determine the role the TBPSB ought to assume in identifying and combatting systemic racism, discrimination and unconscious bias in the future.
- 6.3. I will be looking comprehensively at various past and present TBPS and TBPSB related initiatives that addressed systemic racism and how the recommendations from such initiatives were implemented. In particular, I will be examining the way in which the Board is restarting the Diversity in Policing project. I will also be looking at the Board's role in relation to a current Human Rights Organizational Change initiative for both the TBPS and Board itself.

## **7. Relationship Building**

- 7.1. Developing positive and constructive relationships between all policing agencies, including PSBs, and Indigenous communities is integral to remediating the legacy of devastating police interactions with Indigenous peoples and charting a new collaborative path forward. I will be considering steps that the Board could take to foster a sustainable relationship through regularized engagement with Indigenous communities around Northwestern Ontario.

- 7.2. I recognize the overlap as between the City and the Board and between the Board and the Police. I have been asked to consider a variety of positive engagements involving those parties such as a recent friendship agreement entered into between the City of Thunder Bay, TBPS, Fort William First Nation, and North Caribou Lake First Nation.<sup>44</sup> Similarly, in the summer, the City of Thunder Bay and Nishnawbe Aski Nation and Fort William First Nation entered into a joint pledge to take steps to fight racism and make Thunder Bay a welcoming place for Indigenous youth.<sup>45</sup>
- 7.3. These are all positive steps, but it may be important to build in a framework for the TBPSB in particular to ensure that in the future new members of the Board are involved in outreach from the start of their appointments and to ensure that such efforts continue even after more immediate concerns may have dissipated.
- 7.4. As such, I may consider whether or not it would be helpful to establish regular meetings among Board members and First Nations leadership to identify issues of concern. Similarly, I may consider whether or not it would be helpful for the Board to invite delegations from various First Nations into Board meetings on a regular basis. It may also be helpful to ensure that all Board members have the opportunity to visit remote fly-in communities from time-to-time. All of the above may be provided for by way of a communications strategy or other form of protocol between the Board and First Nations.

## **8. Board Governance and the Policy/Operational Distinction**

- 8.1. There is a well-known (if not well-understood) line between PSBs and police services respecting the handling of operational matters. Subsection 31(4) of the PSA says: “The 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.” The issue of how this section is to be interpreted, how the Thunder Bay Police Services Board has interpreted it, the challenges presented by the provision, the proper balance between deference and direction, and the nature of the circumstances when it would be appropriate for the Board to give direction will all be considered as part of my Final Report.
- 8.2. This noted provision—along with board governance issues more generally—was considered in great detail by Justice John Morden in his 2012 report stemming from the *Independent Civilian Review Into Matters Relating to the G20 Summit*.

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<sup>44</sup> Matt Prokopchuk, “Friendship agreement with Thunder Bay police, city, a ‘positive step’ says North Caribou Lake chief” *CBC News Online* (29 February 2017) online: CBC News <<http://www.cbc.ca/news/canada/thunder-bay/friendship-agreement-1.4313671>>.

<sup>45</sup> Kris Ketonen, “Thunder Bay and First Nations sign pledge to address racism and student safety” *CBC News Online* (1 August 2017) online: CBC News <<http://www.cbc.ca/news/canada/thunder-bay/statement-of-commitment-1.4230192>>.

- 8.3. Justice Morden’s Review was commissioned by the Toronto Police Services Board in response to the controversy around police handling of the 2010 G20 Summit in Toronto. The Review considered the role of the Toronto Police Services Board in relation to its supervision of the police and the subsequent police response. Issues covered in the report included the responsibilities of boards, public awareness of boards, potential roles of boards, and appointments to PSBs. In particular, there is a significant discussion around the difference between operational involvement and policy roles.
- 8.4. Although the Morden Report was not commissioned by the Government of Ontario and was not aimed at all police services boards in the Province, much of the analysis may continue to be instructive for present purposes, particularly in relation to the way the TBPSB navigates issues around the restriction on operational involvement. For example, Recommendation #4 deals with information exchange between the Toronto Board and Chief. Recommendation #5 was for the creation of a Toronto Board policy on “critical points” (i.e., identifying situations where the Board must receive information, including operational information). Recommendation #6 recommends that the Board should determine appropriate objectives, priorities and policies for major events, operations and operationally-significant issues.
- 8.5. Questions and issues that I will be taking up in the course of this investigation include:
- The way in which recommendations set out in Justice Morden’s report—particularly in relation to board involvement in operational issues—were received by Ontario in relation to police services boards generally.
  - If amendments to the PSA are proposed during fall 2017, will they clarify board roles in relation to operations?
  - The ongoing relevance that Justice Morden’s recommendations could have in relation to the TBPSB.
  - Whether the policy/operational distinction is impeding boards from properly overseeing their respective police services.
  - Whether the TBPSB (as well as other boards across Ontario) feels it has sufficient latitude and authority to direct a police service without interfering with operations.
  - Whether individual Board members have clear enough direction on the line separating police operational matters from other matters.
  - Whether there is a common understanding between the Chief of Police and the PSB in relation to the policy/operational distinction, and, if not, whether any existing mechanism can instill it.

- Would the TBPSB benefit from a policy on Critical Incidents involving Indigenous peoples?
- Does the TBPSB receive coroner's reports or summaries of coroner's reports from the Police Chief, and how could this inform the development of the business plan?

## 9. Board Training and Expertise

9.1. Leaving aside the issue of the substantive legal framework that boards should be operating in, there is the issue of the adequacy of training that board members receive in relation to their qualifications and duties as board members in addition to cultural awareness and unconscious bias training.

9.2. In his 2017 report, Justice Tulloch made some recommendations of interest at 12.100:

First, police services boards are a vital component of the civilian police oversight system in Ontario. As I explain below, the system would be strengthened by establishing consistent selection criteria for board members and providing them with mandatory training on their roles and responsibilities.

9.3. At 12.200, Justice Tulloch recommended that MCSCS:

...establish selection criteria through legislation or regulation for board appointees. These selection criteria should not be overly prescriptive, to ensure that individuals from diverse professional and personal backgrounds are attracted to apply. But they should take into consideration core competencies of board members, such as strategic planning and analysis, critical thinking, performance evaluation, and financial literacy. Efforts also should be made to recruit applicants who reflect the diversity of the communities they serve.

9.4. Justice Tulloch also commented on the lack of mandatory training for Board members. At 12.2, Justice Tulloch recommended:

...mandatory training for police services board members. This training should be developed in partnership with the Ontario Association of Police Services Boards and post-secondary institutions with expertise in the areas of public sector and not-for-profit governance.

- 9.5. In the context of this investigation, I would add that training in understanding and addressing systemic racism, overt and unconscious discrimination, and cross-cultural issues are necessary components.
- 9.6. Officials have commented that training can be a challenge. Municipal elections can lead to complete turn-overs on boards leaving little or no institutional memory.
- 9.7. No matter how sophisticated the members of a board are, it has also been noted that it is a “part-time job”. Board members, in Thunder Bay and elsewhere, often have full-time employment, serve as municipal councilors, and are involved in numerous other activities. This suggests that regular training in relation to board roles, responsibilities, and duties is important and that time needs to be made for such regular training. Similarly, it may be important to look at core skill-sets and knowledge that should be available on all boards, whether it be experience in the justice sector, finance expertise, and cross-cultural awareness.

## **10. Business Planning and Policy Development Processes**

- 10.1. As noted previously, a key responsibility of all PSBs is to prepare a business plan at least every three years in accordance with subsection 30(1) of the Adequacy and Effectiveness Regulation. Subsection 30(2) sets out content requirements for business plans. For example, they are to cover “objectives, core business and functions of the police force” and to deal with “community-based crime prevention” and “community satisfaction.”
- 10.2. In Thunder Bay, there has been a noticeable decline in terms of the proportion of the business plan dedicated to addressing Indigenous issues when compared to business plans in place in 2008-2010, and the current 2015-2017 plan. Business planning is important in the context of this investigation because it is an activity that establishes the priorities of the Board and the TBPS. The apparent decline of attention to Indigenous issues—in a context of ongoing concerns about a racist climate in Thunder Bay and the series of deaths of Indigenous people—will be a significant aspect of the investigation.
- 10.3. In the current 2015-2017 Thunder Bay Police Service Business Plan, the Board created four new priorities. The plan was developed by the Board and the TBPS. One of these priorities is: “Collaboration and partnerships through multi-sector engagement”.<sup>46</sup> Included as point (a) of (a)-(g) is “Maintain open communication with the Aboriginal leadership including the Chief’s Executive Committee on

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<sup>46</sup> Thunder Bay Police Service, “2015-2017 Thunder Bay Police Service Business Plan” at 15, online: Thunder Bay Police Service <<http://www.thunderbaypolice.ca/sites/default/files/pdfs/TBPS%2015637%20Business%20Plan%20LR7.pdf>>.

Aboriginal and Diversity Issues.” There is also reference to engaging in partnerships with the Aboriginal community.

10.4. By comparison, the 2008-2010 Business Plan appears to have put much more emphasis on issues of importance to First Nations and Indigenous people. For example, the 2008-2010 Business Plan set out five priorities in total. Of those five priorities, the second was: “To work in collaboration with the Aboriginal Police Liaison Unity Advisory Committee and other Aboriginal groups (First Nations, Metis & Inuit) to identify, prevent, and better respond to crime and disorder problems that impact aboriginal people.”<sup>47</sup> Relationships with Indigenous peoples are noted as a significant part of the “Environmental Scan”.<sup>48</sup>

10.5. The 2012-2014 Business Plan states that: “Engagement of the Aboriginal community to address safety and policing issues” was one of four key priorities for the TBPS during those years. Components of this priority included:

Maintain and support the Aboriginal Liaison Unit and Aboriginal Advisory Committee.

Develop and implement strategies to address the safety and well being of Aboriginal youth.

Collaborate with Aboriginal leaders and service agencies in establishing priorities and addressing policing and safety issues that are specific to the Aboriginal community.

Work with all levels of government, Aboriginal leaders, private corporations and policing partners in developing a comprehensive regional strategy to address safety and policing issues associated to northern economic development.<sup>49</sup>

10.6. The divergence between the 2008-2010/2012-2014 and the 2015-2017 business plans is striking and raises questions that will be explored further with the TBPSB and other parties. Some of these questions are:

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<sup>47</sup> Thunder Bay Police Service, “Thunder Bay Police Service 2008 to 2010 Business Plan” at 14, online: Thunder Bay Police Service <<http://www.thunderbay.ca/Assets/thunderbayassets/docs/police/Thunder+Bay+Police+Services+Business+Plan.pdf>> [TBPS 2008-2010 Business Plan].

<sup>48</sup> TBPS 2008-2010 Business Plan, note 47 at 7.

<sup>49</sup> Thunder Bay Police Service, “Thunder Bay Police Service 2012 to 2014 Business Plan”, online: Thunder Bay Police Service <<http://www.thunderbay.ca/Assets/Police/docs/Business+Plan+2012+to+2014.pdf>> [TBPS 2012-2014 Business Plan].

- Why is there significantly less focus on Indigenous and First Nations issues at this point in the business planning process than a decade ago, particularly given Seven Youths Inquest?
- How were the issues raised in 2008-2010 followed up?
- How far along is the current business planning process?
- What is the nature and scope of consultation with Indigenous groups being carried out as required by subsection 32(2) of the Adequacy and Effectiveness Regulation in relation to this next business plan?
- What sort of consultation on the business plan has been carried out in previous years?

10.7. The business planning process as set out in the Regulation also raises questions about whether or not the process itself needs to be reworked or reconsidered. For example, should all business plans across Ontario be required to deal with issues related to systemic racism, racial profiling or bias and compliance with the principles set out in section 1 of the PSA? In particular, those principles include the following: “The importance of safeguarding the fundamental rights guaranteed by the *Canadian Charter of Rights and Freedoms* and the *Human Rights Code*” and “The need for sensitivity to the pluralistic, multiracial and multicultural character of Ontario society.”

10.8. I am advised that the current Business Plan will be extended so that the new plan can incorporate any recommendations that may be forthcoming from the OIPRD Review and this investigation.

## **11. The Board’s Role in Relation to the Complaints Process**

11.1. Police chiefs and their delegates are responsible for the internal discipline process set out in Part V of the PSA. Police chiefs and senior management also have significant involvement in the public complaints process. Although public complaints are received and screened by the OIPRD, some complaint investigations are referred back to police while disciplinary hearings are handled by adjudicators and prosecutors appointed by chiefs of police.<sup>50</sup>

11.2. On paper, PSBs appear to have a fairly limited role in the complaints process. Under subsection 77(1) of the PSA, a board may make a “complaint” against its own chief or deputy and then review its own complaint. Section 77 also sets out a process for investigation of such complaints by other police services, as assigned by the OCPC, and for the adjudication of alleged misconduct.

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<sup>50</sup> PSA, note 2, ss. 82, 94.

- 11.3. Under subsection 31(1)(i), boards are to establish guidelines for dealing with public complaints under Part V of the PSA, but subsection 31(1.1) clarifies that such guidelines shall not be established by a board unless they are consistent with the OIPRD's procedural rules/guidelines and any provincial regulations made in respect of the same subject matter.
- 11.4. Subsection 31(1)(j) places a duty on boards to review the chief of police's administration of the complaints system under Part V as well as to receive regular reports from the chief of police on his or her administration of the complaints system.
- 11.5. In relation to the police complaints process in Thunder Bay, I intend to pursue some or all of the following issues:
- The Board's role in relation to the complaints process.
  - The perception of members of the Board as to its role in the complaints process.
  - The degree to which the monitoring of complaints should inform the development of priorities in the Board's business plan.
  - Whether the role of the Board will be changed if (potential) amendments to the PSA are introduced and passed.

## **12. Appointment of an Indigenous Person to the Board**

- 12.1. PSBs are made up of municipal politicians, provincial appointees, and also at least one "community representative"—a person appointed by the municipality who is neither a municipal councilor nor an employee.
- 12.2. At the time of writing, there is a vacancy on the TBPSB to be filled by the Provincial Government. The position on the Board has been vacant for a number of months.
- 12.3. Thunder Bay has a very significant Indigenous population. According to recently released census data, approximately 13% of people in Thunder Bay in 2016 were Aboriginal.<sup>51</sup> However, this may be a very conservative estimate. The 2012-2014 TBPSB Business Plan itself suggested that the Indigenous population could be as high as 25%:

As acknowledged in the 2007 Urban Aboriginal Task Force Thunder Bay Report, an accurate population count for First

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<sup>51</sup> Statistics Canada, *Focus on Geography Series – Thunder Bay, (CMA) – Ontario*, 2016 Census Catalogue no. 98-404-X2016001 (Ottawa: Statistics Canada, 2016) <<http://www12.statcan.gc.ca/census-recensement/2016/as-sa/fogs-spg/Facts-CMA-Eng.cfm?TOPIC=9&LANG=Eng&GK=CMA&GC=595>>.

Nation peoples living in Thunder Bay and Oliver Paipoonge is difficult. A conservative estimate of our Aboriginal population is said to be between 15 to 25 percent of the total population based on the research of the task force.

As a regional hub, Thunder Bay is a demand destination providing services and opportunities for residents of remote communities. The population of the city ebbs and flows increasing the demand for emergency services.<sup>52</sup>

12.4. Given the substantial Indigenous population in Thunder Bay and the serious concerns that Indigenous people have about policing, the issue of Indigenous representation (or lack thereof) on the TBPSB has been raised.

12.5. Recommendation #113 from the Seven Youths Inquest was directed to both Ontario and Thunder Bay. It stated:

113. Ontario and the City of Thunder Bay, in exercising its appointment power to the Thunder Bay Police Services Board (“TBPSB”), should take into account the need for an Indigenous representative to reflect the nature of the Indigenous peoples within the City of Thunder Bay which is served by the TBPSB.<sup>53</sup>

12.6. As an interim measure, the Board has hired an Indigenous Resource person to advise it on Indigenous issues.<sup>54</sup> It has also been reported that the TBPSB has asked the Province to appoint an Indigenous individual as a full member of the Board to fill the current vacancy amongst the provincial appointees.<sup>55</sup> The Board has confirmed this request directly to the OCPC.

12.7. As part of the review, the Commission may also consider issues such as:

- The status of the Coroner’s Verdict recommendation from 2016 about Indigenous representation on the Board.
- Whether the TBPSB, in particular, should have a permanent position on the Board that should be designated for an Indigenous person.

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<sup>52</sup> TBPS 2012 to 2014 Business Plan, note 49 at 9.

<sup>53</sup> Seven Youths Inquest, note 4.

<sup>54</sup> Cathy Alex, “Indigenous Voice’ added to Thunder Bay police board” *CBC News Online* (22 March 2017), online: CBC News <<http://www.cbc.ca/news/canada/thunder-bay/thunder-bay-indigenous-resource-police-1.4034652>>.

<sup>55</sup> Cathy Alex, “Province seeks new member for Thunder Bay Police Services Board” *CBC News Online* (17 July 2017), online: CBC News <<http://www.cbc.ca/news/canada/thunder-bay/thunder-bay-police-board-vacancy-1.4206275>>.

- Whether consideration should be given to ensuring that Indigenous individuals are represented on PSBs in other areas in Ontario with significant Indigenous populations.
- The question of responsibility for ensuring Indigenous representation.
- Whether municipalities and/or PSBs have authority to appoint an Indigenous representative at their discretion or should be required to do so on a mandatory basis.
- Factors to consider in the appointment of Indigenous Board members.
- The issue of delays in filling Provincial appointments.

### **13. Recruitment, Promotion and Staff Development**

- 13.1. The Board's role in relation to recruitment of Indigenous police officers, as well as its role in monitoring for diversity, is a key issue. "The police are the public and the public are the police; the police are paid to give full time attention to duties that are incumbent upon every citizen in the interest of community welfare and existence." The statement is frequently attributed to Sir Robert Peel, the founder of the Metropolitan Police Service; other times, it is attributed to two early Commissioners of that Service.<sup>56</sup> With that statement in mind—and regardless of who said it—it is of vital importance that the police be reflective of the communities they serve in a diverse and multicultural/multiracial Canada. Diversity in policing can be difficult to achieve as highlighted by a 2016 CBC report which noted that the diversity of many major Canadian police services lags far behind the diversity of the local population.<sup>57</sup> This being the case, the gender, racial, and cultural composition of the Thunder Bay Police Service should be reflective of the makeup of the population of the Thunder Bay.
- 13.2. The number of Indigenous officers hired by the TBPS is but one measure of diversity. The gender, racial and cultural composition of those officers who get promoted or who are selected to advance to specialized technical positions (e.g., polygraph, forensic officers and collision reconstructionists) or high-profile public positions (e.g., public information officers) should also be reflective of the community being served.

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<sup>56</sup> Ottawa Police Service, "Sir Robert Peel's Principles of Law Enforcement 1829", online: Ottawa Police Service <<https://www.ottawapolice.ca/en/about-us/Peel-s-Principles-.asp>>; CIVITAS, "Principles of Good Policing", online: CIVITAS <<http://www.civitas.org.uk/research/crime/facts-comments/principles-of-good-policing/>>.

<sup>57</sup> Jacques Marcoux, Katie Nicholson, Vera-Lynn Kubinec, Holly Moore, "Police diversity fails to keep pace with Canadian populations" *CBC News Online* (14 July 2016), online: CBC News <<http://www.cbc.ca/news/canada/police-diversity-canada-1.3677952>>.

- 13.3. Other major police services across Canada, such as the Winnipeg Police Service, publish information in their annual reports on the racial composition of their membership.<sup>58</sup> Currently, the Thunder Bay Police Service Annual Report only provides statistics with respect to the gender of officers.<sup>59</sup> The TBPSB has advised that it will provide information on the number of Indigenous officers within the TBPS and the ranks attained.
- 13.4. As part of the next phase of this investigation, I will be seeking further information on steps that the TBPSB is and will be taking to ensure a diverse police service. In particular, I will be looking at the feasibility of voluntary declarations in relation to status as an Indigenous or visible minority person or status on other enumerated grounds, in keeping with all applicable human rights and employment law.

#### **14. The Code of Conduct and the Regulatory Regime for Individual Members**

- 14.1. The Code of Conduct applicable to PSB members makes it clear that members are not allowed to speak publicly about issues unless they make it clear that they are speaking personally and not for their PSB. Additionally, there are provisions that restrict members from speaking out about matters discussed *in camera*. Board members or the TBPSB as a whole may feel constrained by the statutory/regulatory restrictions.
- 14.2. Given that the Code of Conduct applicable to PSB members has not been amended significantly since 2000, it may be time for a comprehensive review and update. Similarly, the distinction between providing rigorous oversight of the police service and the restriction on interference with operational matters may, as indicated above, require significant clarification.
- 14.3. The oversight structure for PSBs may also require clarification. The investigation will include discussions with the Ministry to determine the approach it takes with PSBs in terms of providing oversight, information, and advice and the challenges associated with their roles.

#### **15. Board/Municipal Issues**

- 15.1. A question that arises in Thunder Bay, and elsewhere, is whether there is sufficient separation between the Board and the Municipality?

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<sup>58</sup> Winnipeg Police Service, “Winnipeg Police Service 2016 Statistical Annual Report”, online: Winnipeg Police Service <[http://www.winnipeg.ca/police/AnnualReports/2016/2016\\_wps\\_annual\\_report\\_english.pdf](http://www.winnipeg.ca/police/AnnualReports/2016/2016_wps_annual_report_english.pdf)>.

<sup>59</sup> Thunder Bay Police Service, “Thunder Bay Police Service 2016 Annual Report”, online: Thunder Bay Police Service <<http://www.thunderbaypolice.ca/sites/default/files/pdfs/2017-08-24%202016%20Annual%20Report%20Final.pdf>>.

15.2. In standard training materials provided for PSBs, MCSCS emphasizes that section 32 of the Adequacy and Effectiveness Regulation provides the following:

“32. (1) Every board shall enter into a protocol with its municipal council that addresses, (a) the sharing of information with municipal council, including the type of information to be shared and the frequency for sharing such information.”

15.3. MCSCS further notes in its training materials that: “Information can be provided to council, as appropriate, by the board within legislative parameters—[information] must be provided by the board, and not individual board members.”

15.4. In Thunder Bay, as in other Ontario municipalities, there are signs indicating that there may not be adequate separation between the TBPSB and the City of Thunder Bay. The Board does not have its own staff, but rather relies on City staff for administrative matters. This could lead to practical difficulties in terms of the separation of Board business from City business and the sharing of information. At a minimum, the optics can be concerning and cause significant confusion regarding the role of the Board in relation to the City.

15.5. It is also worth noting that the TBPSB does not have its own website, rather it merely has a small section on the City of Thunder Bay’s website.<sup>60</sup> While it is not uncommon for PSBs to share a webpage with a municipality or police service, the current presentation suggests that the TBPSB is just a minor appendage of the City of Thunder Bay.

15.6. The communication protocol and the administrative relationship between the Board and the City is a matter I intend to look into further.

## **16. Communications and Transparency**

16.1. The Board has a limited presence on the internet and on social media.

16.2. Many other boards in Ontario have distinct websites that contain indices of links to meeting agendas, minutes, and webcasts. I plan on exploring the TBPSB’s approach to communications with an eye to determining what steps could be taken to enhance the Board’s accessibility and transparency. This would be helpful to educate and inform the public of Board activities and decisions regarding TBPS oversight.

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<sup>60</sup> City of Thunder Bay, “Police Services Board” (October 2017), online: City of Thunder Bay <[http://www.thunderbay.ca/Living/City\\_Services\\_and\\_Info/Guide\\_to\\_City\\_Services/Police\\_Services\\_Board.htm](http://www.thunderbay.ca/Living/City_Services_and_Info/Guide_to_City_Services/Police_Services_Board.htm)> [City of Thunder Bay Police Services Board].

- 16.3. While the above comment relates to what is generally considered “strategic communication”, I also plan to consider the TBPSB’s issues management and “crisis communication” strategy.
- 16.4. In a similar vein, I plan to examine TBPSB practices regarding their “*in camera*” sessions. A similar issue was considered in Mr. Mark Sandler’s recent report in relation to the Peterborough Police Services Board. Mr. Sandler recommended that the Peterborough Board develop a policy governing *in camera* meetings. I plan on reviewing Mr. Sandler’s report in further detail to determine if there are any similar concerns in Thunder Bay. I also plan on considering subsection 35(4) of the PSA which provides:

Exception

(4) The board may exclude the public from all or part of a meeting or hearing if it is of the opinion that,

(a) matters involving public security may be disclosed and, having regard to the circumstances, the desirability of avoiding their disclosure in the public interest outweighs the desirability of adhering to the principle that proceedings be open to the public; or

(b) intimate financial or personal matters or other matters may be disclosed of such a nature, having regard to the circumstances, that the desirability of avoiding their disclosure in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that proceedings be open to the public.

- 16.5. I plan to compare subsection 35(4) to similar provisions in the *Municipal Act, 2001*<sup>61</sup> and other provincial policing statutes to determine if it provides enough guidance for the TBPSB in terms of situations where the public may be excluded from meetings.

## 17. Conclusion

- 17.1. As can be seen, the investigation will be addressing a considerable number of issues. All of these issues require some clarity and understanding insofar as the roles and responsibilities of the Board and its members are concerned: some of which appear to have played a role in the relationship that has developed between the Indigenous peoples in and around Thunder Bay and the Thunder Bay Police Service and the Board.

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<sup>61</sup> S.O. 2001, c. 25.

- 17.2. At present, the members of my team are conducting the research necessary to provide a complete picture of the circumstances in the community and to uncover the root causes of the issues. In addition, interviews are being arranged with a number of individuals to discuss the issue of policing in the community and the role of the Board. Those interviews will include past and present members of the Board, the Acting Police Chief, Indigenous leadership, and local community leaders and those Indigenous peoples affected by policing in Thunder Bay.
- 17.3. In my Final Report, I will offer recommendations intended to ameliorate the systemic barriers and ancillary issues that have contributed to the crisis of confidence currently held by Indigenous groups towards the Board. It is my hope that my recommendations will provide guidance to the Thunder Bay Police Services Board to enable it to function at its fullest potential in the interests and safety of all residents of Thunder Bay.
- 17.4. All of which is respectfully submitted.

## **Appendix “A”: Terms of Reference for the Ontario Civilian Police Commission’s Investigation of the Thunder Bay Police Services Board**

There are serious concerns about the state of civilian oversight of policing in Thunder Bay in the context of both the ability of the Thunder Bay Police Services Board (TBPSB or “the Board”) to address concerns raised by Indigenous leaders and community members and also in respect of the recent criminal charges laid against the Chief of Police.

The Board’s ability to provide civilian oversight in a manner that reflects Indigenous concerns have been particularly focused on a recent series of deaths of Indigenous youth. The deaths have been investigated by the Thunder Bay Police Service (“TBPS”), however Indigenous people and First Nations communities across Ontario have raised concerns about the quality of the TBPS investigations and about systemic racism within the police service. While these police investigations have been conducted, the Office of the Independent Police Review Director (OIPRD) has been conducting a systemic review of policing in Thunder Bay to consider issues of racism within the police service. As recently as May 2017, Board representatives have stated that concerns about the quality of investigations and about systemic racism are without basis.

On May 23, 2017, the Chief of the Thunder Bay Police Service was charged criminally with breach of trust and obstruction of justice. This is an unprecedented and serious development that raises concerns about the effective delivery of police services in Thunder Bay. Members of the Board have been identified as potential witnesses in the investigation.

In light of all of these events, the Ontario Civilian Police Commission (OCPC) is concerned that public confidence in the delivery of police services in Thunder Bay be maintained and, relying on powers granted by s. 25(1)(b)-(d) of the *Police Services Act* (PSA), has initiated an investigation into

1. The TBPSB’s performance in carrying out its responsibilities pursuant to s. 31(1) of the PSA to ensure the provision of “adequate and effective” police services in Thunder Bay;
2. The TBPSB’s role in determining “objectives and priorities with respect to police services” in Thunder Bay, pursuant to s. 31(1)(b) of the PSA;
3. The TBPSB’s role in establishing policies for the effective management of the TBPS, pursuant to s. 31(1)(c) of the PSA;
4. The TBPSB’s role in ensuring that police services provided in Thunder Bay are provided in accordance with the Declaration of Principles set out in section 1 of the

PSA which provides that police services shall be provided throughout Ontario in accordance with the following principles:

- The need to ensure the safety and security of all persons and property in Ontario.
- The importance of safeguarding the fundamental rights guaranteed by the *Canadian Charter of Rights and Freedoms* and the *Human Rights Code*.
- The need for co-operation between the providers of police services and the communities they serve.
- The importance of respect for victims of crime and understanding of their needs.
- The need for sensitivity to the pluralistic, multiracial and multicultural character of Ontario society.
- The need to ensure that police forces are representative of the communities they serve.

The Commission has retained the Hon. Murray Sinclair to lead and direct its investigation. Without limiting its generality, the OCPC's investigation, report, and recommendations may address the following issues:

1. The practices, statements and policies of the Board in respect of its ability to reflect the concerns of the whole community when it comes to the delivery of police services in Thunder Bay.
2. Areas where the Board could improve and where it has demonstrated strengths in respect of providing civilian oversight to policing including, but not limited to, indigenous issues.
3. Any further action by the OCPC under section 23, 24 or 25 of the *Police Services Act* if necessary.
4. Any recommendations, proposals or best practices that should be considered or adopted by the TBPSB or by the OCPC or the Ministry of Community Safety and Correctional Services in respect of their roles in providing oversight to the TBPSB.

Assessment of the above issues shall be conducted with regard to subsection 31(4) of the PSA, which provides that police services boards are not to direct chiefs of police with respect to specific operational decisions or with respect to day-to-day operations and with regard to all other applicable provisions of the PSA and other applicable law.

The investigation shall be carried out with reference to related investigations including the Office of the Independent Police Review Director's systemic investigation into the TBPS and any ongoing Coroner's and police investigations. The Commission shall seek to work cooperatively with other organizations carrying out related investigations where practicable.

In accordance with s. 25(3) of the PSA, the Commission shall prepare an interim and final report which shall be provided to the TBPSB, First Nations communities, the TBPS, the Minister of Community Safety and Correctional Services and the general public. The interim report shall be completed by October 31, 2017. A final report will be completed by March 31, 2018.