

# REPORT OF THE ONTARIO CIVILIAN POLICE COMMISSION: THE WINDSOR POLICE SERVICE AND THE WINDSOR POLICE SERVICES BOARD

(Disponible en Français)

## Introduction

In 2018, the Ontario Civilian Police Commission (“Commission”) received five complaints from members of the Windsor Police Service (“Service”). These complaints raised issues about how the Service treated them, as well as larger systemic issues. The complaints contained allegations against the Service’s senior leadership and the Windsor Police Services Board (“Board”).

The Commission decided to investigate some, but not all, of the issues raised in the complaints.<sup>1</sup> The investigation’s Terms of Reference identify those issues:

1. whether the promotional processes, particularly to administration rank positions, are fair and transparent and whether the Board exercises appropriate oversight of those promotional processes
2. whether the hiring processes relating to the potential hiring of relatives are fair and transparent
3. whether the Board is appropriately informed about administration issues relating to its mandate, including the promotional processes involving candidates for senior administration
4. whether there has been improper interference in specific legal proceedings and whether any such interference has been initiated, encouraged, and/or sustained by the current administration of the Service and/or the Board
5. whether a poisoned work environment has been created, encouraged, and/or sustained by the current administration of the Service in relation to workplace policies and/or accommodation requests
6. whether the Service has fair and transparent processes to address workplace harassment and human rights complaints; and
7. whether the Board is fulfilling its statutory oversight role in relation to items 5 and 6

The Terms of Reference contain additional parameters to the investigation:

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<sup>1</sup> See s. 25(1)(a) and (b) of the *Police Services Act*, RSO 1990, c P.15, as amended (“Act”).

Assessment of the above issues shall be conducted with regard to subsection 31(4) of the *Act*, 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 also with regard to all other applicable provisions of the *Act* and other applicable law.

The Commission's investigation will not interfere with any ongoing human rights proceedings. Nor will the Commission report on the merits of any specific workplace harassment or human rights complaint.

The Commission's investigation will relate to the items identified above, insofar as they remain relevant to the current administration of the WPS and current oversight of the Board.

Mid-investigation, several people raised additional issues. These issues related to an incident involving a 911 call to attend Chief Frederick's home. The Commission added the following issues for investigation. They all relate to the Service's response to the 911 call:

8. whether the incident that resulted in the 911 call involved any misconduct under the *Act*

9. whether the way in which the 911 call was responded to by the Service involved any misconduct under the *Act*

10. whether the Service properly and/or adequately responded to the 911 call

11. whether the Board properly and/or adequately responded to any issues or concerns raised about the 911 call and subsequent investigation by the Service

12. whether there was any improper interference in any investigation conducted by the Service and/or in the investigation conducted by the Ontario Provincial Police into the 911 call incident, and whether any such interference was initiated, encouraged, and/or sustained by the current administration of the Service and /or the Board; and

13. whether the Service and/or the Board have in place or have taken steps to put in place adequate policies regarding criminal investigations and responses to calls involving Service members including senior administration

Mark Sandler, external senior counsel, led the Commission's investigation. He has served as counsel to many public inquiries or systemic reviews. He has also conducted a s. 25 investigation into another police service and served as the Administrator of another police services board.

He was assisted by Shannon McDonnough, internal Commission counsel until late December 2019. Two other counsel joined the investigative team at various stages: The first was Tom Lockwood, external senior counsel. He is presently serving as Administrator of the Thunder Bay Police Services Board. He has conducted a number of Commission investigations. The second was Astrid Arzu, internal Commission counsel. At the latter stages of the investigation, they were assisted by Mark Pritchard, former Chief Superintendent of the Ontario Provincial Police ("OPP"). He provided independent policing expertise.

### **The Investigation**

The investigators interviewed many former and current members of the Service. These included sworn officers and civilians. They also interviewed Board members, several officers of other services, an Assistant Crown Attorney and others. Everyone interviewed could participate alongside their own counsel, a support person or, if applicable, a representative of the Windsor Police Association ("Association").

All interviews were conducted in the strictest confidence. Investigators told the participants the Commission would not unnecessarily disclose information that could lead to their identification. The confidentiality of interviews promoted candid conversation and reduced fears of reprisals, expressed by some.

Investigators told participants that, in some limited circumstances, the investigators might have to disclose what they said to enable others to respond. This was particularly true when addressing the allegations made by the original five complainants. The complainants understood this limitation on confidentiality and cooperated fully in the Commission's work. This Report also attributes a few comments to senior leadership where doing so was unavoidable.

The Commission also asked for many documents from the Service and the Board. These documents related to the specific complaints, as well as to systemic issues. Investigators reviewed thousands of pages of documents. Sometimes, the Commission issued a summons for documents, particularly where privacy or statutory considerations prevented the Service or the Board from simply turning over the documents. The Service and the Board cooperated in responding to the Commission's requests and summonses. The Commission also summonsed documents held at the Office of the Independent Police Review Director (the "OIPRD") and the Ministry of the Solicitor General.

The investigation lasted longer than originally contemplated. There are several reasons why. Many employees, past and present, wanted to speak to the investigators. Many interviewees identified others they felt had relevant information. Many provided information not directly related to the Terms of Reference; however, it was important they be heard. In this Report, we comment on several issues raised that fall outside the Terms of Reference but should not be ignored.

Many interviewees provided hearsay and double hearsay information. Where relevant, investigators had to evaluate the reliability of such information, or interview those with first-hand knowledge.

Scheduling of interviewees and investigators was, at times, challenging due to other commitments, illnesses and the need to postpone some interviews until we completed other interviews or obtained relevant documents. The investigators carried a heavy workload in addition to this investigation. Near the investigation's end, COVID-19 Guidelines required that we conduct remaining interviews by telephone.

Investigators spoke with complainants, and counsel for the Service and the Board at various points during the investigation and updated them where possible.

### **Challenges and Limitations**

An investigation undertaken by the Commission can result in disciplinary charges against current Service members, the Service's senior leadership or Board members. It may also produce recommendations directed to the Service and the Board arising out of systemic issues.

Here, the investigation focused on systemic issues for several reasons.

First, most of the complainants are involved in existing litigation, the subject matter of which is arguably encompassed by the Commission's Terms of Reference. It is important we do not interfere with or impede that litigation. The parties to that litigation should have the full opportunity to advance their cases at a tribunal or in court based on tested evidence. By "tested evidence," we refer to evidence given under oath that is subject to cross-examination. The Commission's deference to existing litigation meant we attempted not to make factual findings on matters being litigated. (In fairness, we might not have been privy to every issue raised in existing litigation.)

We explained this limitation on our findings to the complainants as well as to the Service and the Board. This approach is consistent with the parameters contained in the Terms of Reference.

Although this limitation prevented the Commission from making factual findings respecting important components of the complaints, it did not prevent the Commission from identifying systemic issues to be addressed through our recommendations. Indeed, we hope this Report's recommendations will reduce the need, in the future, for these issues to be litigated in tribunals or courts. Litigation exacts a heavy financial

and/or emotional toll on those involved, particularly Service members who feel unable to adequately address their concerns within the workplace.

Second, many interviewees described events that took place some time ago. Often, they described the conduct of officers no longer with the Service and therefore, no longer subject to discipline. Sometimes, they spoke about alleged past corruption or a coverup said to involve an officer who ultimately went to jail for criminal misconduct. However, they provided no evidence that such activities continue or are widespread.

That is not a criticism of the interviewees who shared those stories. It was important that the Commission understand the Service's legacy – good and bad – in evaluating the measures since taken. Chief Frederick was candid in acknowledging legacy issues he sought to address. It was also important that we evaluate whether the evidence brought forward substantiated the existence of continuing misconduct.

In summary on this point, the Commission remained focused on issues that have current relevance to the Service and how it is run, while mindful of the legacy issues that have existed. That focus is, again, consistent with the parameters set out in the Terms of Reference.

Third, as we already said, many interviewees shared information that was anecdotal, hearsay or double hearsay. This did not relieve investigators of their responsibility to evaluate such information or make their own inquiries. In many instances, despite complete good faith, the information was demonstrably inaccurate. Indeed, several stories have become accepted facts within certain circles, despite proof that they are untrue. Again, it was important that investigators receive this information not only to determine its merits, but also to consider the systemic issue raised by the widespread acceptance of such information within the Service. The Service has not done a good job in communicating with its members about a range of issues. Poor communication contributes to misunderstandings and potential loss in morale.

Fourth, quite a few interviewees described alleged misconduct committed by former and in some instances, current members of the Service. However, they did not wish to pursue complaints or expose themselves in the process. We respected these wishes. Of course, if the public interest compelled us to address ongoing misconduct, we would have done so despite these expressed wishes.

These challenges or limitations do not diminish the importance of this investigation or the good faith of most interviewees. The investigation identified true systemic issues that should be addressed. All of this to say, the evidence, properly understood, supported the investigation's systemic focus, rather than a focus on potential disciplinary proceedings.

### **Anonymization**

This Report does not contain a detailed interview-by-interview or document-by-document description of the evidence. It is constructed in a way to permit its disclosure

to the public, while protecting confidentiality, to the extent possible, of those who spoke with us.

Complainants are referred to as “A”, “B”, “C”, “D” and “E.” This does not necessarily insulate them from being identified, especially by fellow officers. As the Commission investigators explained to the complainants, this is unavoidable for several reasons. Most have commenced public litigation. Some have chosen, as is their right, to speak more broadly about their experiences to others. Their personal circumstances and grievances are known to a number of Service members.

Nonetheless, this Report does not unnecessarily disclose information pertaining to these complainants. The Report takes greater measures to protect the identities of those whose accounts are not more generally known. Some of these individuals have been deeply affected by their lived experiences and are concerned about their identities becoming known. At times, the Report does explicitly refer to the accounts of the Service’s most senior officers, recognizing that their anonymization was impractical. Indeed, a number had no difficulty with their accounts being reproduced in the Report.

In summary, this Report is predicated on the principle that the Commission should “do no more harm” in reporting to the public, the Service and the Board on its work, while remaining true to the need for transparency.

### **Alleged Interference in Specific Legal Proceedings**

#### **Terms of Reference (Issue 4) Whether there has been improper interference in specific legal proceedings and whether any such interference has been initiated, encouraged, and/or sustained by the current administration of the Service and/or the Board**

This issue was largely prompted by Complainant A’s allegations. He is a Windsor officer. It was also prompted by a complaint made by Complainant E, another Windsor officer. In addition to allegations about her own treatment, she raised a concern based on information conveyed to her about an OIPRD-directed disciplinary prosecution. Both allegations are dealt with here.

#### **The Criminal Charges Arising Out of the Golf Course Incident**

Complainant A was involved in an off-duty incident on a Windsor golf course. He was playing golf with other officers. One member of the golfing group playing ahead of them, a civilian, confronted Complainant A. A physical altercation followed. Complainant A was injured. He contacted the Windsor police and returned to the clubhouse. His fellow officers resumed play. Front-line officers arrived in response to his call. They arrested the civilian for assault. He was later processed on an additional charge of uttering threats. The uttering threats charge related to the civilian’s verbal comments after the physical altercation.

Complainant A later learned that the civilian was a Board member's son. The decision was made to investigate the matter internally. It was assigned to a sergeant ("Sergeant F"<sup>2</sup>). Several senior officers oversaw the investigation. The senior leadership was informed of the investigation and its progress. Complainant A expressed deep concern to Sergeant F and others about a coverup. He believed that the civilian would get preferential treatment because he was the Board's member's son. The complainant understood (correctly or incorrectly) that several charges against the civilian had been laid and then dropped in the past.

When Sergeant F completed the internal investigation, he concluded that the altercation between Complainant A and the civilian was consensual, and that the injury was not directly caused by the civilian. He also concluded that the threatening allegation had no merit, in part, because it was not a credible threat and the civilian was not in a position to carry it out. Sergeant F interviewed quite a few individuals. He conducted some re-interviews of those who had spoken to the original responding officers or had provided statements. Sergeant F was largely unimpressed with the accounts of the officers who accompanied Complainant A on the golf course. He felt Complainant A had, in effect, "egged on" the civilian and, as already stated, the physical altercation was consensual.

Following Sergeant F's decision, he met with the civilian. He told him the charges were being dropped. Sergeant F immediately arranged for destruction of the civilian's photographs and fingerprints. The civilian indicated he did not wish to pursue a complaint against Complainant A. Nonetheless, Sergeant F arranged for him to meet with Professional Standards officers. The civilian then pursued a public complaint against Complainant A and others. That complaint was filed with the OIPRD. The OIPRD "retained" that complaint.<sup>3</sup> The OIPRD ultimately decided no disciplinary charges were warranted against Complainant A.

Complainant A attended court to swear a "private information"<sup>4</sup> against the civilian. After several court appearances, the Crown withdrew the charges against the civilian based on the absence of a reasonable prospect of conviction. The Crown also concluded that it was not in the public interest to proceed on the charges.<sup>5</sup>

Complainant A's complaint includes the following allegations:

- 1) Senior leadership and/or the Board caused the civilian's charges to be dropped just because he was a Board member's son. This was no surprise to

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<sup>2</sup> The officer has since been promoted to staff sergeant.

<sup>3</sup> Under existing legislation, the Director may retain the investigation of a public complaint or refer it back to the officer's service or another service for investigation.

<sup>4</sup> Canada's *Criminal Code* creates a procedure for initiating a private prosecution. The complainant must appear before a justice of the peace to move the case forward. This procedure is often used when police decline to lay charges.

<sup>5</sup> A prosecution is ethically prohibited from proceeding to trial if there is no reasonable prospect that the prosecution will result in a finding of guilt or if the prosecution is contrary to the public interest.

Complainant A. He predicted this would happen, based on the civilian's prior history with the police – a history that had never resulted in a conviction. Complainant A's complaint letter alleges the Chair of the Board, along with the Board member "colluded with Windsor Police" to have the civilian's arrest "disappear once again."

- 2) The internal investigation was tainted by the desire or direction of Sergeant F's superiors to end the case against the civilian for improper purposes.
- 3) The Service improperly influenced the Crown Attorney's office to drop the charges against the civilian.
- 4) The Service engaged in reprisals against Complainant A for pursuing these allegations. Reprisals included:
  - a. The Service improperly urged the civilian, despite his expressed unwillingness, to make a public complaint to the OIPRD against Complainant A
  - b. When Complainant A faced a domestic charge,<sup>6</sup> the Service treated him differently than others in the same situation. This different treatment included restrictions imposed on him when he returned to active work after his initial suspension. Those restrictions were greater than those imposed on a fellow officer who faced a similar charge
  - c. The Service sought to discipline him for not keeping notes when he met with the OIPRD to answer the complaint against him. He says there was no legitimate basis for discipline
  - d. When Complainant A's former father-in-law initiated a complaint against him, the Service forced Complainant A to respond to questions unrelated to the complaint. These questions were only relevant to Complainant A's continuing claims against the Service arising out of the golfing altercation
  - e. Deputy Chief Hill followed him at one point, purportedly to monitor his movements

Complainant A alleges he was the victim of workplace harassment and unfair treatment, leading to his disability. He has pursued that claim at the Workplace Safety and Insurance Board ("the WSIB"). He is also currently suing the civilian for damages. He is

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<sup>6</sup> The charge was ultimately dismissed.

also pursuing legal action against the Service for alleged negligent investigation arising out of the domestic accusation against him.<sup>7</sup>

The Commission interviewed Complainant A on several occasions. It fully reviewed the voluminous materials he provided. These materials included his detailed analysis of the statements of those involved in the golf course incident. He did this analysis to challenge the legitimacy of Sergeant F's decision that charges against the civilian were unwarranted.

The Commission also interviewed many other people in connection with Complainant A's allegations. These included Sergeant F and his supervisors, senior leadership, one of the front-line officers who responded to the initial radio call, current and former Board members, including the civilian's father, and an Assistant Crown Attorney. We also reviewed the Service's file, as well as relevant Board and OIPRD documents.

It was unnecessary for the Commission to interview individuals who were directly involved in the golf course altercation (other than Complainant A) for two reasons. First, the Commission reviewed their prior interviews. Some were interviewed at the scene of the incident. Some were interviewed or re-interviewed during the subsequent criminal investigation. Some were re-interviewed by the OIPRD. Second, the Commission's role was not to make findings about the merits of the golf course charges, but only about the complaint that the Service acted improperly in dealing with those charges.

This complaint raises the following questions:

- 1) Did the Service's senior leadership and/or the Board improperly intervene in or direct the internal investigation into the charges against the Board member's son?
- 2) Regardless of the answer to that question, should the criminal investigation have been conducted internally or externally?
- 3) Did the Service improperly intervene in the private prosecution against the civilian?
- 4) After the decision not to proceed against the civilian was made, did the Board member's son receive preferential treatment by the Service? Regardless of the answer to this question, did the Service's conduct undermine the perception that the matter was dealt with appropriately?
- 5) Did the Service engage in reprisal activity?

Questions 1 to 4 relate directly to our Terms of Reference. Question 5 is being addressed in litigation.

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<sup>7</sup> We have not reviewed the precise allegations in this lawsuit or the precise defendants.

**1. Did the Service's senior leadership and/or the Board improperly intervene in or direct the internal investigation into the charges against the Board member's son?**

There is no evidence – as opposed to unsupported speculation or innuendo – that the senior leadership and/or the Board improperly intervened in or directed the internal investigation into the charges against the Board member's son.

Based on our detailed interviews and the relevant documents, it is clear the former Board member did not seek to direct the investigation in any way. Indeed, he resigned as a Board member before his term expired. He felt a conflict existed in continuing to serve as a Board member in the circumstances. Chief Frederick received no direction from the Board member about the civilian's case and told the Board member he could not even discuss the matter with him. The Board did not discuss the charges and took no action to influence how the charges were dealt with. There is also no evidence that the Board's Chair played any improper role in relation to these charges.

Similarly, there is no evidence the Service's senior leadership improperly directed Sergeant F or his immediate supervisor to give preferential treatment to the civilian or drop the charges against him for an improper motive. The Commission interviewed Chief Frederick, the deputy chiefs at the material time, Sergeant F's supervisors and other senior officers. Complainant A's allegations in this regard are unsupported by the evidence.

Complainant A contends the civilian's guilt was compelling, if not overwhelming; therefore, the decision to drop the criminal charges can only be explained by a "coverup" or "whitewash."

The Commission closely questioned Sergeant F and senior officers about the decision not to proceed. We concluded that a detailed analysis of the witness statements **might** support the existence of reasonable grounds to believe that the civilian committed several criminal offences. We also found there was imprecision around the distinction between the "absence of reasonable grounds" and "no reasonable prospect of conviction." There was also imprecision around the elements of an uttering threats charge. However, we also recognize there were significant frailties in the case against the civilian – especially in the context of a criminal rather than a civil case. These frailties undoubtedly could support the decision not to proceed. Simply put, the decision not to proceed was not an unreasonable one, regardless of whether the Commission would have made the same decision. We are satisfied Sergeant F was not improperly motivated in making the investigative decision he did. Moreover, the involvement of officers in the golf course altercation prompted him to conduct an extensive investigation despite the relatively minor nature of the allegations.

As stated earlier, the civilian filed a public complaint with the OIPRD against Complainant A and others. In relation to Complainant A, the civilian alleged

- (a) Complainant A should have identified himself as an officer at the outset of the altercation; and
- (b) Complainant A should not have escalated the interaction between them to a point of physical confrontation.

In his 88-page report, the Director did not substantiate either complaint. In relation to the first complaint, he concluded that Complainant A was off-duty at the time and was not obliged to identify himself as a police officer. The Director implicitly accepted there were valid reasons for Complainant A not to identify himself as a police officer. Accordingly, he saw no connection between Complainant A's conduct and his position as a police officer.

In relation to the second complaint, the Director concluded that both the civilian and Complainant A (the respondent in the public complaint) "could have handled the situation leading up to the altercation and the whole confrontation differently, but both contributed to the escalation." He added that it may have been prudent for Complainant A to disengage from the civilian. Complainant A's off-duty status obviously influenced the Director's decision that Complainant A's conduct did not rise to the level of professional misconduct.

The OIPRD investigators interviewed 12 individuals, including the civilian and Complainant A, reviewed additional written statements and examined the Service's investigative files. Although the Director was not making factual findings based on sworn evidence subject to cross-examination, his conclusion about the contribution by both the civilian and Complainant A to what happened reinforces the difficulties earlier identified by Sergeant F in treating this matter as a criminal assault case.

Complainant A also relies on evidence from Complainant E, a senior officer, that her supervisor told her he attended a meeting about the golf course incident with the Chief of Police. It was reportedly decided that no criminal charges would be laid against the Board member's son as a courtesy to the Board member and because the Board member could assist the Windsor Police Service in other ways in the future.

Of course, that evidence, if accurate, would be devastating to senior leadership's position.

The Commission first heard about this allegation when it appeared in reasons given by a WSIB Appeals Resolution Officer in connection with Complainant A's workplace harassment disability claim. The Appeals Resolution Officer said Complainant E gave this evidence.<sup>8</sup> The Commission had interviewed Complainant E before this allegation came to our attention. We re-interviewed her based on the Appeals Resolution Officer's reasons.

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<sup>8</sup> We cannot comment on the accuracy of the WSIB Appeals Resolution Officer's description of Complainant E's evidence. We do not have a transcript of what was said. It was unnecessary to obtain a transcript because the underlying facts were determined as a result of our interviews, including our interview of Complainant E.

Complainant E advised the Commission her supervisor never said this. She could only speculate why the charges were dropped against the civilian. The supervisor also denied he ever said this. This allegation is, therefore, unfounded. We return to this evidence when describing Complainant A's workplace harassment claim against the Service.

In conclusion, the evidence does not support an allegation that Sergeant F, senior leadership, the Board or the civilian's father caused the charges against the civilian to be dropped for an improper motive.

Nor does the evidence support the allegation that the civilian's history with police demonstrated preferential treatment because he was the son of a Board member. Any such history predated the appointment of the civilian's father as a Board member.

## ***2. Should the investigation have been conducted internally or externally?***

However, that is not the end of the matter. We are satisfied this matter should have been investigated externally rather than internally. Chief Frederick felt strongly that the Service has endured and overcome a legacy that included past corruption. He contended that one measure of the Service's maturity is its ability to objectively investigate its own members or their family members. He identified the challenges to existing financial resources when the Service too readily assigns investigations to outside agencies.<sup>9</sup> This is particularly true when the criminal allegations are not terribly serious. He outlined circumstances in which responding Windsor officers have taken effective action against fellow officers or their relatives in accordance with their moral and statutory duties as police officers.

The Commission understands this perspective. The desire for enhanced accountability and professionalism within the Service is a laudatory goal. But the circumstances here compelled a different approach.

Sometimes, it is imperative that matters be dealt with externally to enhance the appearance of accountability, professionalism and fairness in the minds of those directly affected or the public at large. The civilian was a Board member's son. This was not merely a dispute between an officer and any community member. Front-line officers laid charges against the civilian based on their assessment of the evidence. A decision to reverse that assessment, while available, would *inevitably* raise issues of a conflict of interest or preferential treatment. Complainant A pressed the Service to conduct an external investigation because he believed the matter would be covered up and the civilian had avoided criminal responsibility for past misconduct.

A complainant cannot dictate how an investigation is to be conducted. However, the above factors, viewed cumulatively, should have prompted Chief Frederick to order an

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<sup>9</sup> The Service generally bears the costs associated with another service's investigation at the Service's request.

external investigation or an external review of the internal investigation. An external investigation or review would counter any allegation or perception of preferential treatment or subconscious bias. As already indicated, the Commission found no evidence that anyone intended to give preferential treatment to the civilian because he was a Board member's son. However, to state what is perhaps obvious, it is extremely difficult for anyone, including the Commission, to evaluate whether and when subconscious bias influences decision-making in such situations.

The Commission's conclusion that this matter should have been dealt with externally was supported by several members, past and present, of senior leadership (though certainly not by other senior officers), as well as by the independent policing expert retained by the Commission.

The Commission's interviews revealed that senior leadership failed to give sufficient attention to the perceptions created by an internal investigation in these circumstances. Superintendent St. Louis recognized, at the time, that any complaint against the officers arising out of this incident should be retained by the OIPRD, rather than returned to the Service for internal investigation. Indeed, that is what happened when the civilian filed a public complaint with the OIPRD. That same approach should have equally applied to the criminal investigation. It would have enhanced confidence in the decision-making around the golf course incident and avoided the issues now being addressed.

Several senior officers, including Chief Frederick, were critical of the officers' conduct during the golf course incident, particularly of the supervisor in the group. They felt he failed to take appropriate steps to intervene in, and potentially head off, the altercation at the golf course. They observed that this officer continued to play golf after the incident, suggesting this was incompatible with Complainant A's allegation.

The Commission does not necessarily agree with how these senior officers characterized the supervisor's conduct during the incident. It is unclear whether the supervisor could have prevented or de-escalated the situation. However, senior leadership was hard pressed to explain why nothing was done to address this issue if it was such a pressing concern. The failure to deal with this issue, informally or otherwise, was somewhat incompatible with what these same senior officers, including Chief Frederick, said about the need for supervisory accountability.

In summary, Complainant A's complaint raises an important systemic issue to be addressed by the Board and Service. The decision whether to investigate matters internally or externally is largely uninformed by existing policies or procedures.<sup>10</sup> The Service relied upon its existing policy on conflicts of interest in challenging the merits of

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<sup>10</sup> Very recently, the Board adopted a new policy on investigations involving the Chief and Deputy Chiefs. A recent Directive also addresses workplace harassment complaints against the Chief or Deputy Chiefs. Neither addresses the issues raised here.

this complaint.<sup>11</sup> However, the policy does not provide direction or guidance on whether or when such an investigation will or should be done externally or internally. Such a policy is needed.

Such a policy will not predetermine how each case is dealt with. Cases have idiosyncratic features. However, decision-making around how an investigation will be conducted should be guided by a list of factors and clear direction as to how certain types of cases must be dealt with.

The Commission recommends such a policy should be created.

In addition to a policy or procedures on how such investigations should be conducted, the Board should consider what its expectations are for Board members whose family members face criminal charges. In our view, it may have been unnecessary for the civilian's father to resign from the Board if it was clear from the outset that his son's case would be investigated by an external agency or service.<sup>12</sup> The Board's policy on its own conflicts of interest should be re-examined.

Complainant A's complaint relates to the internal investigation of a **criminal** matter. However, the same issue arises in relation to how non-criminal complaints are investigated. This point is addressed later in this Report.

### ***3. Did the Service improperly intervene in the private prosecution against the civilian?***

Complainant A did not accept the Service's decision to drop the criminal case against the civilian. He pursued a private prosecution. He was entitled to do so as a private citizen, regardless of how the Service felt about the case's merits.

Where a charge is privately laid, the court must decide whether to issue legal process (such as a summons) to move the charge forward. The Crown Attorney's Office must also decide whether to intervene in the prosecution. The Crown will intervene in most cases either to carry on the prosecution or to end the case by withdrawing or staying the charge. This is a decision within the Crown's discretion.

Complainant A alleges that the Service improperly influenced the Crown to end the private prosecution. He relies on the mixed messages he purportedly received from the various prosecutors assigned to the file. According to him, one prosecutor was adamant the case would proceed and saw no reason to end it. Complainant A also maintains no one gave him a reason why the case was being dropped. In his view, that decision was made without even the most basic due diligence by the Crown Attorney's Office about

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<sup>11</sup> Under the *Act*, the Board generally creates policies; the Service or the Chief of Police creates or issues directives, procedures or orders. Sometimes, the term "policy" is used by services to include policy documents created by the services or their chiefs of police. The Commission sometimes uses the term "policy" in this Report to include Board policies and the Service's directives or procedures, unless the context suggests otherwise.

<sup>12</sup> We express no definitive view on this point since the civilian's decision to file a complaint against several officers was also arguably relevant to whether his father could remain a member of the Board.

the case's merits. Complainant A also questions why the Crown who supported the prosecution later departed.

The Commission received a statement from the original prosecutor who participated in the original hearing respecting the privately laid charges. The decision was quickly made that the charges should be dealt with by an outside Crown to avoid any perceived conflict of interest. That is what happened.

The case was assigned to an outside Crown who retired before the case was concluded. His retirement was unrelated in any way to this case. We interviewed the Crown who inherited the file. He, too, was not a Windsor prosecutor. He withdrew the charges because there was no reasonable prospect of conviction and, in any event, it was not in the public interest to proceed. He was ethically required not to proceed if either criterion applied.

The Crown did not know the civilian or his father. He did not speak to either individual before deciding not to proceed. Nor did he speak to any member of the Service about the case other than Complainant A. The father's status as a Board member played no role in his decision.

Before making his decision, the Crown examined the entire prosecution brief provided to him. Based on Complainant A's expressed concern, he also took steps to ensure he had the entire file. He met with Complainant A on multiple occasions. Complainant A also telephoned him on multiple occasions. He explained to Complainant A why there was no reasonable prospect of conviction based on the evidentiary challenges in the case. He also felt that it was not in the public interest to proceed based on the lack of seriousness of the allegation and the likely length of a trial. Although the decision was his to make, he consulted with his superior who also reviewed the materials. His superior also consulted with his superior. They both agreed with the Crown's assessment.

Complainant A expressed his disagreement with the Crown's decision. That was his right. But the evidence was overwhelming that the decision was not improperly motivated in any way. Although Sergeant F's decision not to proceed on the earlier charges involved a different test, the Crown's independent position that there was no reasonable prospect of conviction reinforces the reasonableness of Sergeant F's earlier assessment.

***4. After the decision was made by the Service not to proceed against the civilian, did the civilian receive preferential treatment? If so, is it relevant to whether the earlier decision not to proceed against the civilian was affected by preferential treatment?***

Almost immediately after he decided to drop the charges against the civilian, Sergeant F took steps to have the civilian's photographs and fingerprints destroyed. On instructions

from an inspector, he also arranged for the civilian to meet with Professional Standards officers so they could advise the civilian of his right to lodge a complaint against Complainant A or the other officers involved in the altercation. The civilian had already advised Sergeant F he did not intend to pursue a complaint. Complainant A alleges these steps would not normally be taken for other civilians. The civilian later filed a complaint with the OIPRD. Complainant A suggests Professional Standards officers must have pushed the civilian into making a complaint.

Sergeant F advised the Commission his actions were not motivated by favouritism towards a Board member's son. Once he made the decision to drop the charges against the civilian, he felt it was appropriate to take steps to remove the civilian from the system. This included instructions to destroy fingerprints and photographs. There was no continuing basis to retain the civilian's photographs and fingerprints once the decision was made to drop the charges, especially in circumstances where the charges had not yet been filed in court. It was also important for Sergeant F to take related steps to remove the civilian's charges and conditions of release from police information databases, such as CPIC. In our view, Sergeant F's actions were not improper in any way.

We understand why Complainant A views, with suspicion, the decision to refer the civilian to Professional Standards despite the civilian's earlier indication he did not intend to file a complaint. That may well be regarded as unusual. But in our view, the decision to refer the civilian to Professional Standards was motivated by senior leadership's view that the officers had acted improperly at the golf course, and that their conduct should be examined by the OIPRD. It was obvious that senior leadership "bent over backwards" to ensure the officers did not receive preferential treatment. However, the unfortunate effect, in the absence of an external investigation or review, was that Complainant A felt the civilian was getting preferential treatment because he was a Board member's son.

Several senior officers indicated that a public complaint by the civilian was preferable to examining the officers' conduct through a Chief's internal complaint. Chief Frederick told us he always prefers a public complaint over a Chief's complaint. In some circumstances, it might well be preferable for officers' conduct to be examined through the prism of a public complaint, with the OIPRD retaining and conducting an independent investigation. However, this explanation is unconvincing in the particular circumstances of this case. As we stated earlier, if senior leadership felt that Complainant A's golfing companions, particularly the supervisor, should be accountable for their behaviour on the golf course, they should have recognized that the civilian's public complaint was unlikely to address that accountability -- indeed, the civilian would be indifferent to the responsibilities of a supervisor.

Our examination of the Director's investigative report on the civilian's complaint reinforces this point. Complainant A's golfing companions were not named in the complaint. The civilian told OIPRD investigators he didn't really have a complaint

regarding their conduct. Other than his concerns about Complainant A, he complained about the conduct of two officers who responded to the call for service, and an officer who transported him to the station. Simply put, there was little or no correlation between his concerns and the key concerns expressed by senior leadership.

In any event, we are confident that the steps taken by Sergeant F were unrelated to the civilian's status as a Board member's son. Indeed, it was a failing of the Service that it did not appreciate why that status compelled a different approach all along.

Finally, there was no evidence the Professional Standards officers acted improperly in pressuring the civilian or pushing him into making a complaint. We received the civilian's written complaint itself. It was not completed while he was with the Professional Standards officers. We also reviewed, among other things, the evidence collected by the OIPRD in response to a complaint by Complainant A's wife (at the time) that the civilian had received preferential treatment because he was a Board member's son. Ultimately, Complainant A's wife withdrew her complaint after she and Complainant A broke up. However, the OIPRD interviewed one of the two Professional Standards officers who met with the civilian. We are satisfied the Professional Standards officers did not pressure the civilian into filing a public complaint. Nor did they draft his complaint for him.

#### **5. *Did the Service engage in reprisal activity against Complainant A?***

Complainant A claims he is the victim of workplace harassment. He says this harassment was prompted by his allegation that the Service improperly interfered with the civilian's criminal charges.

On October 1, 2019, the WSIB's Appeals Resolution Officer upheld Complainant A's claim after receiving testimony and documentary evidence. The Commission only learned about the WSIB proceedings well into our work.

The Service would have us place little or no reliance on this WSIB decision because the Service did not participate in the hearing and because the Appeals Resolution Officer never heard from witnesses who could refute Complainant A's claim.

The Commission was initially mystified by the Service's failure to participate in the WSIB hearing given the serious allegations made by Complainant A and their potential relevance to the Commission's investigation. Chief Frederick advised Commission investigators that this fell "between the cracks" and that the Service should have participated in the process. The Director – Human Resources also described how this litigation was overlooked in the transition to a new Director. The Service has since appealed the Appeals Resolution Officer's decision. The matter remains outstanding.

The Service contends that, as a matter of law, the WSIB Tribunal must conduct a *de novo* hearing -- that is, the WSIB Tribunal must consider the entire matter afresh, owing no deference to the decision of the Appeals Resolution Officer. The Commission takes no position on the WSIB Tribunal's standard of review. However, it is unfortunate this

litigation remains unresolved and must now be the subject of yet another hearing. Indeed, we are sympathetic to Complainant A, regardless of the merits of the case, who wanted the Service to participate in the earlier hearing.

The situation is further complicated because the Commission has relevant evidence, available to us, that was never introduced at the earlier hearing. We already commented on the most significant example. It bears repetition.

The Appeals Resolution Officer's reasons state that a senior Windsor officer (Complainant E) testified that her supervisor told her he attended a meeting about the golf course incident with the Chief of Police. It was reportedly decided that no criminal charges would be laid against the Board member's son as a courtesy to the Board member and because the Board member could assist the Windsor Police Service in other ways in the future. The Appeals Resolution Officer relied on this evidence. However, the Commission's investigation established this conversation did not take place.

Complainant E does maintain that her supervisor told her the Service was targeting the officers, rather than the civilian. However, this is not incompatible with the Service's position as expressed to us. Complainant E's supervisor told the Commission that senior leadership did believe the officers' conduct potentially undermined respect for the Service. He was angered that the situation had been handled so poorly by the officers. He indicated that Complainant E agreed with that perspective when they spoke though he denied using the term "targeting."

We need not decide whether Complainant E agreed with the supervisor's perspective at the time. We are satisfied the supervisor's conversation with Complainant E provides no support for the serious accusation made against the Service's senior leadership.

During its investigation, the Commission heard detailed explanations from several officers as to why Complainant A was not the victim of reprisals. We also reviewed the OIPRD documents pertaining to the complaint by Complainant A's former father-in-law against him, as well as the Service's investigative report following the Director's decision to refer the complaint to the Service for investigation. The latter documents are relevant to Complainant A's allegation that the Service forced him to respond to questions purportedly unrelated to his father-in-law's complaint.

It is unnecessary to summarize the evidence here. The Commission will not substitute its findings for those of a properly constituted tribunal or court. The WSIB litigation is not over. Equally important, even a finding that the Service engaged in reprisals would not mean that its officers improperly interfered with the civilian's criminal case. Any reprisals, if they occurred, could have been motivated by Complainant A's accusations of corruption against the Service, even if those accusations were without merit.

Complainant A also alleges Deputy Chief Hill followed him, presumably to monitor his activities. This allegation was not addressed in the WSIB proceedings.

Complainant A provided the Commission with considerable evidence demonstrating that Deputy Chief Hill attended a location where Complainant A was engaged in activity unrelated to the Service. He assumed that Deputy Chief Hill had no valid reason to be at that location. Deputy Chief Hill did attend that location. His presence was completely unrelated to Complainant A. The evidence available to the Commission is unequivocal on this point. The Commission accepts that Deputy Chief Hill was not following Complainant A.

We will comment on one feature of Complainant A's reprisal claim. It raises a systemic issue. Complainant A alleges the Service placed unwarranted restrictions on him when he returned to active duty after he was charged with a domestic offence. One of those restrictions prevented Complainant A from secretly recording conversations with his fellow officers. The Appeals Resolution Officer found merit in this allegation.<sup>13</sup>

Complainant A told the Appeals Resolution Officer he was fully entitled, in law, to secretly record his conversations with fellow officers. It is true that private citizens can lawfully record conversations they have with others. It is also true they can do so without telling the other parties to those conversations. The Service contends that police officers are differently situated.

The Commission need not decide this legal issue. However, we recommend the Service create a policy that addresses this issue. For example, the Rules of Professional Conduct for Ontario lawyers prohibit the surreptitious taping of conversations with another lawyer.<sup>14</sup> In our view, surreptitious taping, unrelated to an official investigation, can potentially poison a work environment. Even if such taping is not prohibited by our criminal laws, it may be prohibited through workplace policies.

### **Alleged Interference in an OIPRD-Directed Disciplinary Hearing**

Complainant E claims the Service's senior leadership interfered with an inspector's prosecution of an OIPRD-directed hearing. She said senior leadership refused to allow the prosecutor to call the OIPRD investigators and the Service and Board failed to appropriately address the prosecutor's report alleging obstruction of justice or improper interference.

The Commission interviewed the former prosecutor, now retired, as well as senior leadership and the officer who conducted the hearing. The prosecutor felt

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<sup>13</sup> It is unclear whether the Appeals Resolution Officer ultimately based her decision on this particular restriction.

<sup>14</sup> See 7.2-3 of the Law Society of Ontario Rules of Professional Conduct

his prosecutorial discretion was undermined by the Deputy Chief or the Chief. He also believed, based on his conversation with Deputy Chief Derus, that the Deputy Chief or Chief had discussed the issue with Superintendent St. Louis who was the assigned hearing officer on the matter.

Chief Frederick, Deputy Chief Derus and Superintendent St. Louis denied they discussed this issue. We are unable to substantiate the former prosecutor's allegation.

Apart from that unsubstantiated allegation, the Chief, directly or through the Deputy Chief, was entitled to instruct the prosecutor on the conduct of the prosecution, as long as the instructions were not improperly motivated or otherwise unethical.

The issue arose as to the necessity of calling OIPRD investigators at the discipline hearing. Senior leadership's opinion was well-motivated. It was influenced by larger systemic concerns about unnecessarily compelling OIPRD investigators to testify. The police prosecutor acts on behalf of the Chief. It did not constitute an attempted obstruction of justice for the Chief or Deputy Chief to instruct the prosecutor within the limits described above. We found no evidence that the instructions given to the police prosecutor were improperly motivated or otherwise unethical.

Justice Michael Tulloch examined the issues around the Ontario police disciplinary model in the Report of the Independent Police Oversight Review. One of those issues involves the dual role of police chiefs. Chiefs effectively serve as both prosecutor and adjudicator, although they delegate those responsibilities to others. This prompted Justice Tulloch to recommend that an independent tribunal adjudicate police disciplinary hearings. Successive provincial governments have wrestled with the right model for police discipline. But that systemic issue is well beyond the scope of this Review. The evidence did not establish any impropriety by senior leadership here.

### **The Call to Service at Chief Frederick's Home**

**Terms of Reference (Issues 11 to 17) Whether the way in which the 911 call was responded to by the WPS involved any misconduct under the Act**

**Whether the Service properly and/or adequately responded to the 911 call**

**Whether the Board properly and/or adequately responded to any issues or concerns raised about the 911 call and subsequent investigation by the Service**

**Whether there was any improper interference in any investigation conducted by the Service and/or in the investigation conducted by the Ontario Provincial Police into the 911 call incident, and whether any such interference was initiated, encouraged, and/or sustained by the current administration of the Service and /or the Board; and**

**Whether the Service and/or the Board have in place or have taken steps to put in place adequate policies regarding criminal investigations and responses to calls involving Service members including senior administration**

A number of individuals contacted the Commission to raise concerns about the Service's response to an event at Chief Frederick's residence. There is no need to separately set out what each individual alleged. They all challenged whether Chief Frederick received preferential treatment and whether the event was dealt with in a transparent way.

On November 12, 2018, a civilian ("G") at Chief Frederick's home called 911. G reported a domestic dispute involving Chief Frederick. However, G did not state that Chief Frederick had assaulted, threatened or intimidated her. She never alleged, at any point, that Chief Frederick assaulted, threatened or intimidated her.

It is not unusual that community members call the police when upset or in a domestic dispute unrelated to criminality. That is what occurred here. However, it is important the police respond to any domestic call promptly. Just because a 911 caller does not specifically identify criminal conduct or express fear provides no assurance that a criminal offence has not taken place or will not take place. The call must be treated as a potential call for help.

Two Windsor constables were dispatched immediately to Chief Frederick's home. They arrived in a timely way. They were joined by a sergeant. Existing Windsor policy requires that a sergeant attend any domestic incident involving a Service member. One of the constables and the sergeant ran checks through the Canadian Police Information Centre ("CPIC") on Chief Frederick and G. The officers at the scene interviewed Chief Frederick and G separately. Both were calm. The responding officers were joined by Deputy Chief Hill who took charge of the situation. He too spoke to Chief Frederick and G separately. G confirmed what she told the other officers, namely that Chief Frederick had not assaulted or threatened her. Chief Frederick agreed to leave the home temporarily to further calm the situation. He advised Deputy Chief Hill he would tell the Board Chair about this incident. He did.

The following day, Deputy Chief Hill spoke to the Board Chair. Deputy Chief Hill reported that the incident did not involve anything more than a verbal dispute. Nonetheless, the Chair advised all Board members of the incident. The Board requested that the OPP conduct an independent review of the matter. The OPP agreed to do so.

Senior OPP officers conducted the review. They examined all relevant reports, listened to the 911 call, reviewed existing Windsor policies and re-interviewed G. The Commission was provided with the same materials, as well as the OPP report.

The OPP review concluded:

It is the opinion of the OPP reviewing officers that, from the moment that the 911 call was received, all involved WPS members, both uniform and civilian, responded in an appropriate and proper manner. The reviewers are satisfied that this was indeed an argument ....and not a situation involving domestic violence. During [G's] interview with the OPP officers, [G], recognized the attending WPS officers as professional, compassionate and attentive. In addition, the Windsor Police Service Directives outlined above were adhered to. As the relevant Conflict of Interest Directive does not speak to responding to a situation involving the Chief of Police, the attendance of the Deputy Chief of Police in this incident was the most appropriate and commonsense approach to the situation.

In conclusion, both the initial response and investigation of this incident, and the subsequent report and notifications, were completed in a proper, transparent manner by the involved members of the Windsor Police Service. The relevant Directives were adhered to and, where the Directives concerning Conflict of Interest did not address the circumstances, the appropriate decisions to manage a difficult situation were made.

Based on the Commission's own investigation, we are satisfied that:

- Chief Frederick was involved in a verbal dispute. He did not assault, threaten, or intimidate G
- The responding constables and sergeant acted professionally throughout
- Deputy Chief Hill acted professionally throughout
- Chief Frederick acted appropriately in reporting the matter to the Board
- The Board acted appropriately in referring the matter to the OPP for an independent review
- No one interfered or sought to interfere with the Service's initial investigation of this incident or the OPP's review.

The incident at Chief Frederick's home quickly became the subject of rumour, gossip, speculation and accusations within the Service. Some alleged that Chief Frederick received preferential treatment. Some suggested that the incident had not been investigated thoroughly, or that Chief Frederick should have been suspended or placed on restricted duties pending a full investigation as others would have been.

Chief Frederick received no preferential treatment. The matter was investigated thoroughly. It was unnecessary for Chief Frederick to be suspended or placed on restricted duties when no crime or misconduct was even raised. This would be equally true for any other officer within the Service.

Some, including the Association raised a separate concern – namely, the lack of transparency around the incident. The Association President felt the Chief was to be held to a higher standard and should have told Service members about the incident. Some said his failure to do so was inconsistent with the transparency and accountability Chief Frederick expected when the Service investigated front-line officers.

During a later interview with the media, Chief Frederick was questioned, without warning, about this event. By his own admission, he did not handle the questioning well. This exacerbated the perceived lack of transparency over what had happened.

This incident raises two important systemic issues.

The Service's Conflict of Interest Directive 141-02<sup>15</sup> provides that investigations involving a member of the Service or another law enforcement agency are to be conducted by the supervisor or another member holding a rank higher than the subject member.

The Directive says nothing about how allegations against the Chief are to be dealt with. It fails to provide direction or guidance on when investigations should be conducted or reviewed externally. Nor does it adequately address the investigation of Deputy Chiefs. Although not explicit, the existing Directive contemplates the Chief will lead or conduct investigations into the Deputy Chiefs. In the Commission's view, this would be unwise. Our view reflects the realities of the Chief's other responsibilities. It also recognizes how the critical relationship between the Chief and the Deputy Chiefs could be impaired if one investigates the others. Finally, it would undermine any perception of objectivity. Absent exceptional circumstances, such investigations should be done externally.

The Directive should identify those circumstances in which the Service is to refer investigations to an external agency or service. It should also identify circumstances in which the Service's own officers must respond to an incident. For example, the investigation of the Chief or the Deputy Chiefs for fraud should be completely external. However, the initial response to a 911 domestic call, whether it involves a civilian, an officer or even the Chief, must be done in most cases by Windsor officers. It may be unrealistic to expect an external agency or service to respond immediately to a

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<sup>15</sup> Section III, Part B.1 (C).

domestic call. That immediate response is necessary. If the event involving Chief Frederick had truly involved a domestic-related crime, Windsor officers would have been criticized – and deservedly so – for any failure to respond in a timely way. Any domestic situation can easily escalate or place those involved at risk.

The Commission's recommended approach is consistent with the obligation imposed on Ontario police services to preserve a scene pending arrival of the Special Investigations Unit ("the SIU") in a case that falls within its mandate. The SIU then carries out the investigation.

The Service's Directive should complement a policy developed by the Board that provides direction to the Service. The combination of a Board policy and a Service's Directive on point is consistent with the governance structure set out in the Act. We use the terms "Directive" interchangeably with "procedures." Both represents documents created by a service to operationalize a Board policy.

The need for a Board policy and a new Directive relating to investigations of the Chief or Deputy Chiefs has been apparent for some time. When the Board Chair, Mayor Dilkens, asked the OPP to review the Service's response to the 911 call back in November 2018, he indicated:

Unfortunately, our current policy is silent to the appropriate action needed when the call involves the Chief of Police.....We will also be reviewing our own policy with the intent to provide direction to our Members related to future calls for service involving the Chief of Police.

In September 2019, Commission investigators reiterated the need for such a policy when they interviewed the Board members as part of the Commission's s. 25 investigation. The Board, as it was then constituted, advised the Commission that it had determined that no template existed for such a policy. The Ministry's advisor provided some broad advice to the Board in April 2019 and offered to assist in navigating the complexities of such a policy. No policy was developed at that time. Some, but not all, of the delay in developing such a policy was attributed to the Board's decision to await Chief Frederick's retirement in June 2019 and the appointment of a new Chief in October 2019. In our view, there was no need to await Chief Frederick's departure to develop this policy.

In any event, in November 2019, a CBC reporter asked the Board whether the policy review referred to by Mayor Dilkens had been completed, and if so, what were the results of that review. This inquiry appeared to refocus the Board's attention to this issue. On December 5, 2019, the Ministry advisors met with the Chair and Chief Mizuno to assist in developing both a Board policy and related Service procedures.

While the Commission's Report was being finalized, we learned that on April 23, 2020, the Board had adopted such a policy. On our request, it was provided to us.

Policy AR-AI021 directs the Chief is to establish or prepare procedures for

- (a) “contact protocols” in the event of a call for service of a criminal nature involving the Chief or Deputy Chiefs;
- (b) notifying the Deputy Chiefs and the Deputy Chiefs notifying the Board Chair in the event of a call for service where criminality is suspected involving the Chief or an immediate family member; and
- (c) notifying the Chief and the Chief notifying the Board in the event of a call for service where criminality is suspected involving a Deputy Chief or immediate family member.

The Policy also provides the Chief will establish communication between the Board Chair and the “investigative entity” to determine the appropriate course of action, following a thorough investigation,

We recognize that detailed operational direction is to be provided in a Directive or in procedures created by or on behalf of the Chief. However, this Policy does not adequately address the issues identified during our investigation or provide meaningful policy guidance to the Chief. In particular:

- The role assigned to the Chief to establish communication between the Board Chair and the investigative entity to determine the appropriate course of action is inappropriate in cases involving the Chief. Indeed, it undermines the rationale for the Policy
- The Policy refers to “the investigative entity”. It should explicitly refer to an external agency. It should also consider and address the options available for external investigations: requests for assistance from other police services on a case-by-case basis; a pre-arrangement with another service, such as the OPP, to conduct external investigations subject to a conflict of interest; requests to the Commission for a s. 25 investigation.<sup>16</sup>
- The Policy is unclear on the role, if any, of the Chief in a criminal investigation involving a Deputy Chief or on the role, if any, of the Deputy Chiefs in a criminal investigation involving the Chief. That should be central to the Policy and not merely addressed in operational details
- It fails to provide any real direction to the Chief on critical components to be included in procedures, such as the initial response to a call for service and different approaches to a call for service depending on the nature of the call or the type of criminality suspected

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<sup>16</sup> Before this Policy was created, one Deputy Chief felt any such Policy should name the agency to which such matters will normally be referred.

We recommend the Board amend this Policy and the Chief create complementary procedures or amend the existing Directive based on the commentary contained in this Report.

The Board's approach may have been shaped by its perception that the Policy was prompted by a very unusual situation with little precedent or likelihood of recurrence. But we see this Policy as part of a larger reevaluation of how decisions are made on what matters are dealt with externally and what matters are dealt with internally. As stated earlier, the criminal charges involving the Board's member's son should have been investigated or reviewed externally. The Policy pertaining to the investigation of a Chief or Deputy Chief should be part of that larger reevaluation.

Second, policies and procedures will often be responsive to issues unique to a particular police service or to an incident within that service. Other services may not have faced this situation yet. Or they may have developed a culture that already promotes the use of external agencies in analogous situations.

The Board and Service should be commended for how they dealt with the 911 call. But public confidence in both can only be enhanced through the development of policies and procedures addressing not only the unusual situation of a service call at the Chief's home, but the larger issues surrounding how investigations should be conducted in sensitive cases.

The 911 incident also raises another systemic issue. The Board and the Service have no policy or procedures to address whether, how, or when allegations involving the Chief or Deputy Chiefs should be publicly disclosed.

Here, Chief Frederick felt G was entitled to the same privacy provided to domestic complainants.<sup>17</sup> The Commission appreciates that domestic complainants are entitled to confidentiality, to the extent possible, when they call police. However, the Chief of Police is in a different position than other officers. The Chief leads the organization and, in a real sense, personifies it. The public may judge a police service based on its perception of its Chief. A lack of perceived transparency and accountability involving the Chief may undermine respect for the Service and the public's confidence in it.

In our view, the Service and/or the Board should have reported to its members and publicly on this event at the earliest opportunity. This could have been done in a sensitive way so as not to explicitly name G, while explaining how the event was responded to, and how it would be followed up on. The poor communications strategy contributed to misinformation, speculation and some cynicism. In fairness to Chief Frederick, some Service members may have acted unprofessionally in how they circulated misinformation about this incident.

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<sup>17</sup> This point is based on the analogy between G and a domestic complainant. G made no complaint.

The Commission recommends that the Board and Service develop a communications strategy and related procedures around such investigations and analogous situations. Those procedures should be captured in the appropriate policy, Directive or procedures.

## **The Fairness of Promotional Processes**

**Terms of Reference (Issues 1 and 3) Whether the promotional processes, particularly to administration rank positions, are fair and transparent and whether the Board exercises appropriate oversight of those promotional processes**

**Whether the Board is appropriately informed about administration issues relating to its mandate, including the promotional processes involving candidates for senior administration**

These issues were largely prompted by complaints made by Complainants C, D and E. Accordingly, this Report briefly summarizes, at this point, the parts of these complaints relevant to these two issues.

**Complainant C** is a senior Windsor officer. She applied for leadership positions in the Service, ultimately awarded to others. She alleges that the promotional process was skewed by Chief Frederick who held her back. She connected being held back to her support for another officer who brought a workplace harassment complaint against another officer.

**Complainant D** is a longstanding Windsor officer who has serious concerns about the ongoing harassment of Service members and questionable practices within the Service. Her complaint letter challenges the qualifications or suitability of some applicants for the Deputy Chief positions that have since been filled. She also alleges the Service remains an “old boy’s club” with a majority of senior management being former members of the Emergency Services Unit (usually referred to as the “TAC Team” or “TAC Unit”). She also maintains the percentage of women in positions of rank is unacceptably low.

**Complainant E** is a senior Windsor officer. Quite a few of her allegations are tied, directly or indirectly, to her two complaints currently before the Human Rights Tribunal of Ontario. She maintains she was denied promotions due to gender bias, and that gender bias pervades the Service’s promotional processes. She states that, in 2012, the promotional process for the rank of staff sergeant resulted in the intentional placement of males with TAC Team experience over other deserving candidates. She asserts this amounted to a “fraudulent” process.

Complainant E’s allegations of discriminatory promotional practices are being vigorously advanced by her and defended by the Service before the Human Rights Tribunal.

It is unfortunate the human rights litigation has dragged on. It would have been extremely helpful to the Commission's work if this litigation, as well as the other litigation referred to in this Report, had been completed before the Commission reported on its work. We say more about this dilemma below. Suffice it to say here, this unresolved litigation significantly hampered the Commission's ability to address some issues identified in several complaints.

### ***The Promotional Process up to Inspector Level***

It is convenient to separate out the promotional process for positions up to inspector level<sup>18</sup> from the promotional or hiring process for the Chief and Deputy Chief positions. The Board appoints the Chief and Deputy Chiefs. It does not employ the same process used for promotion to lower ranks.

We first address the promotional process up to inspector level.

We spoke to many officers who had opinions about past or existing promotional processes. Our interviews included officers who sought promotions. Some were successful; some were not. We also interviewed officers who have no interest in being promoted. We spoke to current and former officers of all ranks.

A number of officers believe the promotional process is seriously flawed and provides scope for senior management to manipulate promotional decisions in favour of certain candidates. Statements made by former and current officers included the following:

- People do not know how they are doing in their position and therefore end up feeling surprised and taken aback by their 360 review<sup>19</sup>
- Women are less likely to apply for promotion as they do not think they will be successful due to their gender
- Officers are more likely to be successful in promotions if they served a rotation in the TAC Unit or in the Investigations Unit. This success is said to reflect the backgrounds of senior management in the TAC Unit or the Investigations Unit
- In the past, members of the TAC Unit have been given a copy of the promotional exam and/or answers to the exam in advance, leading to above average scores.

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<sup>18</sup> Civilian employee promotions are not addressed here. Nor are promotions to superintendent. The process for promotions to superintendent is currently under review. The Service should take into consideration the recommendations in this Report in reviewing that process.

<sup>19</sup> This point is best addressed in the section of this Report devoted to morale.

- The preference for officers from the TAC Unit has limited the promotion of women as no woman has ever been assigned to the TAC Unit
- Women are not encouraged to apply for the TAC Unit while men are encouraged to train and run the course with TAC members
- People who have a negative history related to human rights and workplace harassment complaints are promoted, much to the consternation of many officers. The effect on morale has been profound
- Scores in interviews are changed for favourite candidates so these candidates will get the promotion; similarly, unwelcome candidates are underscored or marks are manipulated to support desired results
- Marks are inappropriately changed during the appeal process
- Some candidates have been given preferential treatment through being provided in advance with the questions to be answered either orally or in writing
- Favourite candidates are given opportunities to engage in activities that will benefit them in the promotional process. Other officers do not have equal access to these opportunities

A number of officers hold contrary views to those expressed above. These included:

- Membership in the TAC Unit provides the opportunity for officers to build competencies that are important in the professional process.
- In any event, TAC Unit members are not currently promoted in disproportionate numbers. This complaint is untrue
- The TAC Unit members and the Service now encourage and support the addition of women to the Unit. However, the Service has not yet been successful in adding women to the Unit
- Women are encouraged to seek promotion. The real problem is not that the Service discourages such promotion, but that women continue to be underrepresented in the Service

- There is no perfect promotional process. The current process was designed with valuable feedback from the Association. The process is as objective and fair as any promotional process can be
- Chief Frederick introduced rigid duty rotations, in part, to provide greater opportunities for officers to build competencies for promotion
- Rigid duty rotations are unfair for a variety of reasons
- Complaints about the promotional process are outdated. They are no longer valid
- Most candidates for promotion are unsuccessful. There are only limited spots available for promotion. Complaints about the promotional process are often driven by a candidate's lack of success
- Candidates cannot compare themselves to other candidates either because they cannot be objective or because they do not know how other candidates performed in the promotional process – so they blame the process

The Commission also asked former and current senior leadership to describe any steps taken, particularly during Chief Frederick's tenure as Chief to address the fairness and perceived fairness of the promotional process, how the current process compares to earlier processes, whether senior leadership regards these steps as successful, how success is measured, what, if any, continuing deficiencies they see in the promotional process or how the process is perceived, and how any such deficiencies should be addressed going forward. The Commission also inquired into the role the Board is or should be playing in addressing these issues.

There is no single promotional process for Ontario police services. Each service designs its own. There is no perfect process. Nor is there any process that everyone agrees upon.

Every promotional process includes a scoring system. No scoring system is immune from criticism. No scoring system can possibly exclude any element of subjectivity.

However, every candidate is entitled to a promotional process that is fair. This means that the process must be designed to reasonably measure skills or competencies for promotion and must be free from corruption. Corruption involves the deliberate manipulation of scores or other efforts to subvert the process to "fix" the result. It involves decision-making based on ulterior motives or improper considerations.

Every candidate is also entitled to a process free from bias or discrimination, whether intended or not.

The current promotional process includes:

- competency testing at all levels
- a written component
- an oral component
- a 360 review
- a three-person panel for each promotional level that remains the same for all candidates for that level and involves officers who are superior in rank to the candidate
- the inclusion of at least one female panelist on the three-person panel. If a Windsor female officer of appropriate rank is not available, a female senior officer from another service is brought in
- training for the panelists on competency evaluation, currently provided by the Director – Human Resources
- an appeal mechanism<sup>20</sup>

Officers who met with the Commission debated the components of this process. For example, some questioned the value of the 360 review. Others supported it. Some debated whether members of the three-person panel should produce their own individual scores or reach consensus as to the score for each candidate. But this promotional process was arrived at by senior leadership in partnership with the Association.<sup>21</sup> It should be re-evaluated on a regular basis, in consultation with the Association and the membership at large. However, its structure and components represent a defensible way to measure candidates' skills and competencies.

The more significant issue for the Commission was whether the promotional process is corrupt and/or tainted by systemic bias.

Serious accusations have been leveled against the Service that the process includes the manipulation of score results by panels, by senior leadership or during the appeal process.

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<sup>20</sup> These components are reflected in Promotional Process Directive 352-01. For example, II. A. 5 and 6 state that whenever practical, the Trained Competency Evaluators panel and the Oral Interview Board shall each include at least one female member.

<sup>21</sup> The Promotional Process Directive II.S provides that changes to this Promotional Process shall only be made upon the mutual consent of the Board and the Association.

We heard a great deal of innuendo, hearsay, and speculation about corruption in the promotional process. Again, those interviewed sometimes failed to distinguish between past and current practices.

We are satisfied that past promotional processes were, at times, suspect. There is evidence that at least one senior officer made efforts to ensure that “his people” were promoted over others. There was also evidence some officers attempted to obtain the questions in advance: for example, by having a colleague (who had no interest in being promoted) apply for promotion only to obtain and pass on to others the questions asked. We also heard concerns about past manipulation of test scores, although the information provided to us was largely anecdotal. One component of the promotional process now involves “pass/fail” rather than numerical scores, in part, to reduce legitimate concerns about the process.

However, no compelling evidence was presented that the **current** promotional process is corrupt. On the contrary, panels appear to act professionally in how they evaluate candidates for promotion. We received no evidence that scores are currently being manipulated by panels or during the appeal process. Indeed, the appeal process appears to be highly deferential to the scores awarded by panels.<sup>22</sup> There is also no compelling evidence that senior leadership is improperly intervening in the promotional process.

A large number of current and former senior officers served on the TAC Unit. This raised legitimate issues about whether the promotional process was skewed in favour of TAC Unit members. One Deputy Chief described a time when all staff sergeants were former TAC Unit members. This was described as a “nightmare.” It created, to some extent, “one-dimensional” senior leadership. It also limited promotional opportunities for women, a point discussed in more detail below.

We are satisfied that poor – indeed, inappropriate – past promotional processes contributed to the disproportionate promotion of TAC Unit members.

However, we reviewed the promotions made while Chief Frederick was Chief with particular emphasis on the percentages of promoted officers who served with the TAC Unit.<sup>23</sup> The data does not support the allegation that, at a systemic level, TAC Unit members are now given unfair preferential treatment in promotions, despite some existing perceptions to the contrary. This represents one of several instances in which changes have been made for the better, though misperceptions persist.

Nevertheless, the Commission recommends the Service examine, in a comprehensive way, the competencies for promotion. As police services move from more traditional, paramilitary models to community-based policing, they must evaluate the emphasis

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<sup>22</sup> This deference accords with the Promotional Process Directive II. G. Members will base their appeal on process related issues only.

<sup>23</sup> Some officers also alleged disproportionate promotion of Drug Squad and Intelligence Unit members, an issue we also examined.

placed on certain competencies in preference to others. Chief Frederick acknowledged this exercise should take place.<sup>24</sup> He believes competencies have not kept up with new approaches in policing. Simply put, policing is changing, and the Service needs to change with it. Very recent events, including George Floyd's death, the arrest of Minneapolis officers, and the protests that follow, undoubtedly reinforce the timeliness of reexamining competencies in policing.

In our view, the Board should play an important role in overseeing how the Service re-evaluates how competencies are weighed and evaluated.

The Service must also do a much better job of communicating with its officers and civilian employees about its decision-making around promotions as part of an ongoing dialogue.<sup>25</sup> Senior leadership's communication with the Service's members represents a systemic issue further developed in this Report.

Complainant E alleges that she was bypassed for promotion based on gender bias. Another complainant felt strongly that she was bypassed for promotion based, in part, on her support for another officer who alleged workplace harassment. For the reasons already given, we make no factual findings in relation to Complainant E's complaints that are being heard by the Human Rights Tribunal. Nor was it necessary or desirable for us to evaluate individual promotional decisions. However, we can address an important systemic issue raised by these complaints.

There is underrepresentation of female sworn officers in the Service.<sup>26</sup> We were advised the Service has taken measures to encourage more women to apply. These include women-only training sessions to help candidates prepare for their physical readiness evaluations; participating in Women on Fire sessions and University of Windsor career days; spotlighting career opportunities through Build A Dream; and other recruiting initiatives led by female officers. However, the numbers remain relatively low. Chief Frederick expressed pride at a range of initiatives introduced during his tenure as Chief. However, he candidly gave himself a failing grade on this issue.

Underrepresentation of women means, among other things, that female officers will also be underrepresented in higher ranks. Five staff sergeants are women. One inspector is a woman. By the time this report is released, a second female inspector may well be in place. The current Chief is a woman. It is also a positive development that at least one woman participates in every promotional panel. However, virtually everyone agreed that these numbers remain inadequate.

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<sup>24</sup> Other services are wrestling with these same issues. The challenge is to recognize the full range of competencies (some more traditional and longstanding; some, more closely tied to community related activities) that predict leadership success.

<sup>25</sup> This recommendation is in addition to the desirable practice of promotional panels meeting with candidates once decisions have been made to discuss candidates' strengths and weaknesses. This encourages personal growth and professional development and builds acceptance of the process.

<sup>26</sup> The number of female civilian employees is much more encouraging.

In fairness, we compared promotions of women before Chief Frederick became Chief to promotions during his term as Chief. There were significant reductions in the number of available positions for promotions during Chief Frederick's tenure. There were a variety of reasons for these reductions, including budgetary considerations. Whether these reductions were wise or unwise – an issue well beyond the scope of this Review – it meant that much fewer opportunities for promotion were available. Nonetheless, the number of women promoted during Chief Frederick's tenure was higher than in the comparable prior period. Some of those women were promoted more than once during Chief Frederick's tenure.

When Commission investigators met with the Board, the Board was enthusiastic about the efforts being made by the Service to recruit more women. Its members acknowledged the numbers still need improvement but regarded the strategies to recruit women to be successful. The Commission acknowledges the Board supports the recruitment of more women. However, the Board was also unable to identify how it measures the success of the Service's recruitment strategies. No such metrics for success exist in the Service. The Commission believes the Board and the Service must together create a new strategic plan, with outside expert assistance, for recruiting women as a high priority.

The strategic plan must identify existing barriers to recruitment and new ways to overcome those barriers. For example, the Commission recommends the Service consider waiving the fees for applicants who take fitness tests. Chief Frederick acknowledged that these fees, imposed by the Ontario Association of Chiefs of Police, may constitute a barrier in recruiting a truly diverse group of applicants.

The Service should also more formally engage the community, perhaps through an advisory group in developing a partnership to recruit women. Its strategic plan should develop ways in which to engage female Service members in this strategic plan, beyond how they are currently involved. Such engagement might take place through committee work, and anonymous surveys. The strategic plan should be made available to the public.

The Commission was advised the Service was in the process of hiring a Diversity, Inclusion and Equity Coordinator, a sergeant rank position. We reviewed the job description for this position. It contemplates the Coordinator will assist in the Service's strategic Equity, Diversity and Inclusivity organizational strategy, develop metrics for measuring the effectiveness of equity, diversity, and inclusivity initiatives to facilitate reporting to the senior leadership team and the Board, and in concert with the Service's Community Services and Training Branch, establish community partnerships with diverse communities for the purpose of engagement and recruitment.

In our view, the new Diversity, Inclusion and Equity Coordinator should figure prominently in the development of a new strategic plan for recruiting women. The job description contemplates the Coordinator will report to the Inspector, Training Branch

and the Director – Human Resources. In our view, the priority to be given to this work would also support a line of direct reporting to the Chief or Deputy Chief.

This strategic plan the Commission recommends must form part of a larger conversation about the role of women within the Service. The Commission interviewed many officers and a number of civilian employees, past and present, about how women are treated within the Service. Some female officers described truly appalling behaviour they or female co-workers encountered while at the Service, particularly earlier in their careers. Understandably, they often did not bring this behaviour to the attention of the Service, out of concern they would face repercussions in the workplace for identifying sexist comments or harassment. Some female officers believe their fellow officers are respectful of women, and the culture within the Service has fundamentally changed for the better. Some feel far differently.

This Report cannot speak with any precision about the extent to which female officers continue to be regularly exposed to discriminatory, sexist conduct. A police service is only successful if it equally values men and women – indeed, all its officers and employees regardless of sex, gender identity or expression, and other bases for discrimination set out in the Human Rights Code. A police service is only successful if it makes officers accountable, regardless of rank, for discriminatory conduct, whether that conduct involves sexist comments, jokes, inappropriate questions, or other forms of harassment. The Service has yet to prove that officers are truly made accountable for discriminatory conduct.

Complainant E also alleges the Service engaged in its Human Rights Project “as a form of lip-service to human rights and as a barrier to any criticism, while not making any meaningful change.” The Commission disagrees. The Human Rights Project under Chief Frederick, and led largely by Pam Mizuno, then an inspector, represented an important initiative and a catalyst for change. The challenge now for the Service is to build on that initiative.

In a June 27, 2019 interview with CBC Windsor, Pam Mizuno, then Deputy Chief, said, “I think some of the attributes of females are valued ... much more in our police service and across Ontario. I don’t think an old boy’s network exists in the Windsor Police Service today.”

We were told that some female officers were disturbed by Deputy Chief Mizuno’s comment. They felt that this comment failed to recognize the challenges they have faced and continue to face in the workplace. Chief Mizuno advised the Commission that there definitely was an old boy’s club at the Service in the past, but that it no longer exists. She acknowledged both that her perspective may not be shared by every female member of the Service and that the Service could do better, because “we can always do better when it comes to gender equity within the Service.”

We believe that Chief Mizuno is committed to equity within the Service. We also believe the Board and Service must be proactive in addressing equity within the Service. For example, Chief Mizuno should conduct exit interviews, in confidence, with every departing officer and employee. These exit interviews can assist her in evaluating what is happening both good and bad within the Service. The Service should employ anonymous surveys, expertly designed, as another tool in that evaluative process. This proactive approach should form part of the Service's strategic plan for recruitment. To state the obvious, if the Service is perceived, rightly or wrongly, as a workplace that does not equally value men and women, this perception constitutes a continuing barrier to the recruitment of women.

For example, some continue to believe that only one woman per specialty unit is permitted at the Service. This belief may be grounded in the Service's pre-existing culture. One Deputy Chief said he would not be surprised if there was a time when a female officer would not be considered for a specialty unit unless another female officer created a spot for her by departing the unit. It does not represent the current reality at the Service. However, these misperceptions, together with remaining issues around equity in the Service, undoubtedly contribute to the difficulty in recruiting more women to the Service.

We wish to address one final point relating to equity in the workplace. Some officers regard Pam Mizuno's appointment as tokenism. Indeed, even several officers concerned about gender bias in the promotional process made this assertion. It is inaccurate. The Commission carefully reviewed Chief Mizuno's qualifications for senior leadership, including her qualifications for the Deputy Chief and Chief's positions. We reviewed the materials supporting her promotions, including the work-up done by an external search agency.

We met with Chief Mizuno (then Acting Chief) and spoke to officers who have worked directly with her. Chief Mizuno is well qualified to lead the organization and has the requisite skills to do so. It does a disservice to her to characterize her promotions as "tokenism." It is a credit to the Service that she has risen to the level of Chief and should be regarded as such by the Service's members. There should be no need for her to prove herself to anyone, especially to her own Service members. But we can unequivocally say that she is highly qualified to serve in those capacities, and that assertions to the contrary are unwarranted.

Although equity represents a stand-alone issue, the Commission observed that the Service has made efforts to promote diversity within the Service. It has had some success in recruiting officers from some, but not all, communities. For example, the Service is certainly more diverse in the religious affiliation or backgrounds of its members than ever before. By contrast, the number of black officers within the Service has not increased at all despite the Service's recruitment efforts. The Service must be

equally proactive in addressing the diversity of its workforce. Again, we expect the new Diversity, Inclusion and Equity Coordinator to play an important role in developing a proactive strategy to increase diversity within the Service.

We wish to briefly address two issues that arose in the context of the Service's promotional process: (a) the role of women in the TAC Unit, and (b) duty rotations. Duty rotations are also relevant to accommodation.

### *The Role of Women in the TAC Unit*

Earlier, we indicated the **current** promotional process is not inappropriately skewed in favour of TAC Unit members. However, membership in the TAC Unit does (and should) provide one route to promotion. But apart from routes to promotion, the TAC Unit should include female members. Their inclusion would enhance the Unit in important ways. Although the Unit reports to a female staff sergeant, its operational members are all male. There has never been a female member of the Unit.

Officers identified several barriers to overcome. At one point, the TAC Unit had no change facilities for female members. This deficiency has since been addressed.

Second, the physical tests have amounted to a barrier for female candidates. There are variations to those physical tests across the province. Indeed, the Service modified its own physical tests though officers disagreed on whether this modification truly made it more likely that a female candidate would be successful. We recommend the Service re-evaluate whether those physical tests can be further modified in a way consistent with provincial adequacy standards to remove unnecessary barriers for women.

Third, we were advised that women who applied to the TAC Unit in the past were belittled. One such experience was shared with us. A former Deputy Chief also described the "pushback" he encountered when he took steps designed to enable women to join the TAC Unit. He told us it was hard to get buy-in. There was an old-fashioned mindset about working with women, especially among some older, influential officers.

In fairness, senior leaders also advised us that these negative attitudes are no longer typical. TAC Unit members recently worked with a female candidate to prepare her for the physical tests. They wanted her to succeed. Unfortunately, she has not yet been successful. We were presented with no evidence that women are currently being discouraged from applying. But more must be done to make this Unit truly inclusive. One approach is to create a formal mentoring initiative to encourage and assist members, particularly women, who express interest in joining the TAC Unit. Such a formal mentoring program could also form part of a larger plan to encourage women to

apply for promotions and overcome remaining barriers. This would signal the commitment of the Service and the Unit to creating a truly inclusive Service and Unit.

### *Duty Rotations*

Quite a few officers who met with Commission investigators challenged Chief Frederick's duty rotation protocols. During Chief Frederick's tenure as Chief, he introduced a new duty rotation regime that, at the risk of oversimplification, compelled officers, regardless of their experience, expertise or wishes, to rotate out of their existing units on the expiry of defined periods of time. At times, officers felt that:

- The rigidity of the duty rotation regime deprived units of much needed expertise and experience, at the expense of the public and the Service
- The regime compelled officers near the ends of their careers to resume patrol duties when this was unrealistic and unfair. It was suggested that this was done to force less favoured officers into retirement or to punish officers
- The regime transferred officers with specialized training and expert qualifications too soon after they acquired that expertise through specialized courses, training or court work. Forensic identification was often cited as the most problematic example. Duty rotation was said to force the Service to bring in outside expertise when it should not have been needed

Chief Frederick's approach to duty rotations was quite controversial. Some officers did resign from the Service rather than accept their rotations. Others were discouraged by the rotations. Still others felt their expertise was not valued.

The issue of duty rotations is hardly unique to this Service. Other police services struggle with striking the appropriate balance between tenure in a unit and renewal. There are three underlying reasons for duty rotations: first, they provide opportunities for officers to learn new competencies and thus, to be eligible for promotion. If the same officers remain indefinitely in coveted positions, it is more difficult to promote others or provide others with incentives to seek promotion. Second, officers may "outstay their welcome" in a unit. They may become complacent or jaded through time. Third, duty rotations back to patrol may enable officers to use the skills developed in specialty units to be better patrol officers and to counsel other patrol officers.

The Commission accepts Chief Frederick was well motivated in adopting a new approach to duty rotations. A number of officers welcomed the opportunities these duty rotations created for them. Chief Frederick felt that some rigidity to the rotations avoided any perception of favouritism or differential treatment. Some officers described the tension between Chief Frederick and former friends who were rotated out of coveted positions.

The Commission rejects the allegation that the duty rotations were malevolent or designed to punish or compel officers to retire. Commission investigators saw examples of officers who challenged their rotations because of their impending retirements, only to remain with the Service beyond their announced or anticipated retirement dates. The Commission understands, and accepts, in principle, the good faith rationale of the duty rotation regime.

However, an overly rigid approach to duty rotations may also negatively impact on morale, force older officers to seek accommodations, often regarded as stigmatizing, and deprive the Service unnecessarily of needed expertise. Most members of senior leadership, past and current, shared the view that duty rotations were applied in an overly rigid manner, and that changes are needed. The Commission has been advised the current Chief is reevaluating the approach to duty rotations, and that some changes are expected.

The Commission, as a policing oversight agency, should be deferential to reasoned decisions made in good faith by a Service or its Board that are compliant with existing legislation. However, the complaints here provided the Commission with the opportunity to hear from many officers on this subject. In the Commission's view, consideration should be given to a duty rotation regime that:

- lengthens the tenure for certain officers within certain units to reflect the considerations noted above, including the value in cultivating expertise in specialized areas and the time and financial resources needed to cultivate that expertise
- creates certain “anchor” positions within units – that is, recognizes that a certain number of high-performing officers within a unit remain critical to the Service's success;
- recognizes the impact that some late-career rotations may have on officers and morale; and
- also recognizes that compelling officers to seek accommodation to address an overly rigid rotation protocol can have a negative impact on morale

### ***The Process in Selecting Chiefs and Deputy Chiefs***

Quite a few officers, past and present, questioned the promotional process that led to the promotion of Inspector Hill and Superintendent Mizuno to the Deputy Chief

positions. These challenges figured prominently in the inclusion of issues around promotional processes in our Terms of Reference.<sup>27</sup>

During our Review, we learned the following:

- Quite a few officers allege that Deputy Chief Hill has a history of conduct incompatible with promotion to senior leadership positions. They said that his “history” should have disqualified him from consideration as Deputy Chief. Some inferred the Board must have been kept in the dark about that history or were improperly motivated in selecting him as Deputy Chief
- A number of officers also allege that Deputy Chief Hill’s interactions with other officers, apart from his “history” should equally have disqualified him from consideration as Deputy Chief
- A number of officers allege that Superintendent Mizuno’s promotion to Deputy Chief was based on tokenism. One officer suggested she was promoted to deflect talk about the Service’s lack of equity in senior leadership. Some claim she was given promotions despite her failure to seek out such promotions and she was promoted prematurely and without the appropriate experience
- A rumour circulated that there was a “deal” made between Chief Frederick and the Board Chair to hire Deputy Chief Hill for ulterior purposes

We have already addressed allegations that Chief Mizuno’s promotions are explained by tokenism. These allegations are completely unwarranted. The Board recognized her leadership skills and rewarded her for them. The Board and the Service were entitled to consider, as well, the importance of having highly skilled women in leadership positions. A number of current and former officers strongly endorsed her promotions as well. It is untrue that she did not apply for promotions. She certainly rose through the ranks more quickly than many, but deservedly so.

The questions about Inspector Brad Hill’s selection as Deputy Chief require a sensitive and more nuanced response.

Many officers in the Service know or think they know about his “history.” That history involved very significant personal challenges, disciplinary action taken against him, and

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<sup>27</sup> Some officers also questioned why Deputy Chief Power was not reappointed or appointed Chief. He chose not to apply for personal reasons. Speculation to the contrary was unfounded. Others questioned why Deputy Chief Derus’ appointment as Deputy Chief was not extended and why he was not considered for the Chief’s position. Based on our interviews, the Board may not have adequately communicated its thinking around these issues to Deputy Chief Derus or do so in a timely way. As well, its succession planning may also have been imperfect. But in our view, the systemic issues around Deputy Chief and Chief selections can be addressed without resolving any issues around Deputy Chief Derus’ departure.

a struggle with alcoholism. However, the evidence is clear that Brad Hill overcame these challenges, has abstained from alcohol for many years, and has a loving and supportive family. Deputy Chief Hill was extremely candid with the Commission about his personal history. To his credit, he welcomed the opportunity to describe that history and clear up any misunderstandings about it.

A number of officers also raised concerns about how Deputy Chief Hill treats fellow officers. They described bullying behaviour, angry outbursts and demeaning comments. At least one complainant has named him as a respondent in human rights litigation. Some attribute reprisal activities to him. Others who shared stories about Deputy Chief Hill did so confidentially. Deputy Chief provided his perspective on his strengths and weaknesses:

...I am firm but fair .... I expect a lot from people. [W]hen I went through the psychological background for the deputy's job, they told me that I am of a very low tolerance for incompetence, and that ... I'm probably too abrupt and ...too outspoken at times, and when people don't live up to my standards, I point that out to them, and it's not well received. ,, I am abrupt, and I expect very high standards, and when you don't live up to those high standards, I probably tell you. And I hold people accountable, and when you hold people accountable in our organization, we have a culture of not accepting accountability.

...

And so, yes, at times, I'm probably too abrupt and I'm probably too ..passionate about getting the job done, and if I have a fault, that's my fault. I'm passionate and, and I hold people accountable, and people don't like to be held accountable.

He also observed that a number of officers under his command would not share the opinions of those who spoke to us. We did speak to officers who acknowledged that Deputy Chief Hill was an excellent investigator, has a strong understanding of operational matters, and is devoted to the Service.

As already stated, the Commission should not make factual findings related to existing or pending litigation. Those who are involved in that litigation as parties or witnesses, including Deputy Chief Hill, will presumably have the full opportunity to provide relevant testimony. Equally important, Deputy Chief Hill had no chance to fully respond to the allegations of those who preferred to remain anonymous. In these circumstances, it would be unfair to make factual findings against or in favour of Deputy Chief Hill. Moreover, his pending retirement from the Service made such findings unnecessary. We are fully able without such findings to address the important systemic issues relating to the selection of Chiefs and Deputy Chiefs.

We examined the process that led to the selection of Deputy Chief Hill and Deputy Chief Mizuno.

The Board retained an outside agency to assist in the selection process. The use of an outside agency was commendable. Indeed, the Board cited the use of an outside agency to respond to concerns about the process. The agency was involved in components of the selection process, including a LeaderFit analysis, listing candidate strengths and weaknesses. However, the agency was never provided with the personnel files of any candidates. It was not the agency's role to determine whether candidates faced outstanding complaints or had a relevant disciplinary record. The Board spoke to Chief Frederick informally about each candidate. He advised the Board, in general terms, that some of the candidates had certain "baggage." So, for example, the Board was aware of Deputy Chief Hill's successful struggle with alcoholism. Chief Frederick's approach was well-intentioned. However, in our view, the Board was entitled to know somewhat more than it was provided about Deputy Chief Hill's history to make an informed decision about his selection.

Similarly, a significant number of officers within the Service feel that the way in which Deputy Chief Hill deals with lower-rank officers should have disqualified him from promotion to the Deputy's position. They may be right; they may be wrong. The point here is that the Board was unaware of the depth and breadth of these concerns.

As a result, its decision was not fully informed. There was also inadequate documentation on what the Board was told about each candidate.

To be clear, Deputy Chief Hill would have been fully prepared to discuss his history with the Board and explain why, in his mind, it was no impediment to his promotion. Equally, he would have been fully prepared to discuss any other concerns about his promotion. This is not about Deputy Chief Hill's lack of transparency. It is about a promotional process that was incomplete.

Having said that, we disagree with officers who suggested that Deputy Chief Hill's history disqualified him outright from promotion. Indeed, that position is inconsistent with the Human Rights Code. Nor does it represent sound policy to disqualify anyone outright from possible promotion because of a history that has been overcome. Indeed, it is important to incentivize – rather than punish – those who overcome or address disability and analogous challenges. We also disagree that Deputy Chief Hill's disciplinary history disqualified him outright from promotion. It was a dated history and no longer forms part of his record under the *Act*.

However, we also agree with officers who suggested that candidates for the Service's highest positions are differently situated, in important ways, from candidates for other positions within the Service. The Chief and Deputy Chiefs represent the public face of the organization. The Service is judged, to a significant degree, based on its most senior leadership. They are held to the highest standards.

Let's use a hypothetical unrelated to Deputy Chief Hill. This is preferable to a very public and unnecessary discussion about Deputy Chief Hill's history.

Assume that a candidate for promotion to Chief or Deputy Chief was informally disciplined years ago for a sexist or racist comment. That candidate was coping with mental health issues at the time. These issues have since been overcome. The candidate took impressive educational courses and now fully understands why his or her earlier misconduct was so wrong. He is unlikely to ever reoffend. These circumstances may permit that candidate's promotion through the ranks. However, one can make a compelling argument that, however commendable the steps the candidate took to overcome that legacy, his or her appointment could undermine respect for, and confidence in the Service. The point here is that the Board must be able to make that evaluation.

The selection process for Chief and Deputy Chief must be designed to ensure that the Board is fully aware of potential issues. This is true whether the applicant is a candidate from within or outside the Service. This can be done in a variety of ways that remain compatible with the *Act*. For example, candidates for the Chief or Deputy Chief positions should respond to a standardized series of questions that probe whether there are any issues (outstanding complaints, prior history, disputes with other officers etc.) that might reflect adversely on the Service or its reputation, or the candidate's character. The Board should closely question candidates on their answers. The Board should also obtain legal advice from its counsel on how to probe these issues and obtain relevant information about candidates in a way compatible with existing legislation.

As for the views of rank-and-file officers, we acknowledge that applications for the Deputy Chief and Chief positions are not popularity contests and should not be converted to such. Successful candidates for these positions must demonstrate, among other things, the ability and willingness to firmly, but fairly, make officers accountable for their actions. This skill is not always appreciated by those who are made accountable. However, the process should ensure the Board has an accurate sense of how applicants are regarded within the Service. This can be done in a variety of ways that also, to the extent possible, respect confidentiality.

The promotional process for less senior positions in the Service is known to the rank-and-file and to applicants. However, officers we spoke with generally have little understanding of how the Board selects the Service's Chief and Deputy Chiefs. The Commission believes the Board's selection process, including the type of due diligence done in relation to each candidate -- as opposed to their identities or personal information-- should be known more broadly. This transparency would assist in dispelling misinformation about these processes.

Near the end of this Review, two Deputy Chief positions had to be filled due to Deputy Chief Hill's impending retirement and Deputy Chief Mizuno's elevation to Chief. With the approval of the Commission's Executive Chair, Commission investigators met with the Board before these positions were filled. The Commission did not want its recommendations on the selection of Deputy Chiefs to come too late to be considered by the Board.

Accordingly, investigators shared with the Board some of the anticipated recommendations set out above. They also advised the Board that, in the Commission's view, one of the two Deputy Chief positions should ideally be filled by an outside candidate. This recommendation was prompted by several considerations. A sizable number of officers are skeptical about the selection process at the highest ranks and more generally, about the Service's leadership. An outside hiring brings a new and untainted perspective to leadership, generally a good thing.

The Board advised the Commission it had sought both internal and outside candidates, but that it is difficult to secure outside candidates in Windsor. A significant percentage of candidates for leadership policing positions in Ontario have no interest in settling in Windsor. This may well be true, but at the very least, the Commission recommended to the Board that it engage in a robust outreach to potential outside candidates and incentivize them to apply to Windsor.

The Commission met with a number of Windsor officers who were or likely were candidates for Deputy Chief positions. To be clear, we felt it was inappropriate to provide any views to the Board on preferred candidates. The expression of such views would be unfair to candidates and would be inconsistent with the importance of fully informed decision-making, a theme of our recommendations. Further, none of the Commission's recommendations on process are intended to reflect adversely on the new Deputy Chiefs very recently selected by the Board and publicly announced.

## **Workplace Harassment and Accommodation Issues**

**Terms of Reference (Issues 5 to 7) Whether a poisoned work environment has been created, encouraged, and/or sustained by the current administration of the Service in relation to workplace policies and/or accommodation requests**

**Whether the Service has fair and transparent processes to address workplace harassment and human rights complaints; and**

**Whether the Board is fulfilling its statutory oversight role in relation to the above issues**

The issues relating to workplace harassment and human rights complaints were raised in complaints made by Complainant B, C, D and E.

**Complainant B** is a Windsor officer who served, for an extended period, with the Service's Forensic Identification Branch. He was no longer with the Branch when he went on parental leave in 2017. He alleges that, prior to commencement of his parental leave, a supervisor said "you're quitting our team" despite his entitlement to parental leave. This forms part of a human rights complaint currently before the Tribunal. He also alleges the Service engaged in reprisals upon his return from parental leave. More

recently, the Service charged him with a disciplinary offence said to arise out of his possession of confidential documents. He denies any misconduct, maintaining that the disciplinary charge constitutes a further reprisal.

For the reasons already given, the Commission makes no findings pertaining to Complainant B's human rights complaint. That complaint is best addressed through the Human Rights Tribunal based on sworn evidence on behalf of the parties involved. We do address several systemic issues raised by Complainant B and others.

Complainant B also raised other concerns addressed later in this Report.

**Complainant C** is a senior Windsor officer. Her complaint relating to promotional processes was referred to earlier in this Report. She connected her lack of favour with Chief Frederick, in part, to her support for another officer who brought a workplace harassment complaint against another officer. She described a number of workplace harassment complaints within the Service and how investigators were chosen, including those in a conflict of interest, to predetermine or influence the result. She felt morale within the Service is at its lowest.

**Complainant D** is a longstanding Windsor officer who contacted the Commission due to serious concerns she had about the ongoing harassment of Service members and questionable practices within the Service. When she wrote to the Commission, she had a workplace complaint against an inspector and a superintendent. She was advised the complaints would be investigated internally despite her objections, and her complaint against the superintendent would be investigated by the Deputy Chief, though he was untrained in how to deal with harassment claims. She alleges, among other things, that:

- The membership has lost faith in the administration and the Board
- There is a culture of bullying and a poisoned environment at the Service
- Officers who request modified hours are harassed and bullied

**Complainant E** is a senior Windsor officer. Her letter to the Commission and related interviews contained multiple allegations. Quite a few of these allegations are tied, directly or indirectly, to two complaints currently before the Human Rights Tribunal. As previously reflected, the complainant alleges, among other things, that she was denied promotions due to gender bias, and that gender bias pervades the Service's promotional process. But she also alleges the Chair and the Board failed to address her workplace harassment complaints by improperly deferring those complaints pending determination of her Tribunal matters. She further alleges that she has been the victim of reprisals because she took steps to vindicate her rights.

In addition to Complainant E's allegations relating directly to her, she made many allegations pertaining to other Service members. Many of these allegations contained hearsay or double hearsay. They alleged corruption, criminality, collusion between

senior leadership and the Board or its Chair. Some of the allegations were demonstrably inaccurate. Others fell outside the Commission's mandate. The Commission found no evidence to support the most extreme allegations made unrelated to her own litigation before the Tribunal. We do address several of the allegations in this Report, listed below, that relate to the Terms of Reference. Some raise important systemic issues, even absent the findings urged upon us by Complainant E.

This Report addresses the following allegations raised by these complainants or in interviews the Commission conducted with other officers:

- The Service has had an unprecedented number of human rights complaints initiated with the Tribunal during Chief Frederick's tenure. The number of those complaints compare unfavourably to most other Ontario services
- The Board Chair has financially settled several human rights complaint files without the knowledge of other Board members. Board members are not provided with regular updates related to matters before the Human Rights Tribunal. Only the Board Chair is regularly aware of what is before the Human Rights Tribunal and the legal costs associated with human rights complaints
- There is no consistency in how human rights complaints are investigated, including whether they are conducted externally or internally and who is selected and why they are selected to conduct such investigations. Senior leadership directs investigators as to the desired outcome of an investigation into a complaint
- The Board is corrupt. It is operating outside of the scope of its responsibilities. The Board Chair is negligent in his oversight responsibilities. The Board has inadvertently created an atmosphere of chaos and dysfunction. It is causing record numbers of members to leave the Service. The Board is recklessly spending taxpayer dollars which is harming policing programs, training and initiatives to assist the community
- Once human rights matters are settled, no subsequent changes are made within the Service to prevent a future incident from occurring. This promotes continuing bad practices

The Commission also spoke to a number of officers and employees, past and current, about accommodation issues. Officers made allegations that included:

- Accommodations requested are denied in an arbitrary and injurious way while favored members requests are more readily granted

- Senior officers are, at times, dismissive about accommodation requests, and engage in sexist or otherwise inappropriate language in belittling such requests
- Accommodated officers are stigmatized by assignment to units composed of accommodated officers

A number of officers did not support some or all of the above allegations.

In addition to these specific concerns, we examined existing Accommodation and Workplace Harassment Directives.

### ***Accommodation***

There was no credible evidence, at a systemic level, that accommodations are denied in an arbitrary way or that favoured members are more readily granted accommodation. However, we did identify systemic issues surrounding accommodations. We heard from a number of officers and employees, sometimes in highly moving, emotional terms, how supervisors could respond, in belittling or insensitive ways, when employees, sworn or civilian, raised accommodation issues. Some of the accounts we heard were historical; others were current.

These individuals showed courage and resolve in sharing their experiences with us. We found their perspectives to be important and their concerns worthy of consideration. There have also been ongoing issues around how and whether accommodated positions should be created within the Service and whether certain approaches to accommodation stigmatize Service members. We also identified significant deficiencies in the Service's existing Accommodation Directive.

Directive 310-02 represents the Service's written accommodation policy. It was effective as of August 2014. It slightly revised an earlier version. The Directive provides that it was to be reviewed again in October 2016 and on a regular basis. However, it has not been modified for almost six years. It suffers from significant flaws:

- It combines accommodation for the public with accommodation for employees. Accommodation for the public raises different considerations and should be addressed in a separate document
- The Directive sets out the responsibilities of members, supervisors and others. Its structure makes it difficult for members to understand the process for requesting and obtaining accommodation on a step-by-step basis. As a result, it is a poor tool for educating and training the Service's membership
- The Directive fails to adequately articulate the important role of an outside agency or agencies in dealing with accommodation requests, follow-up and verification. The use of an outside agency is an important component of an accommodation process that respects, to the extent possible, confidentiality

- In section D, the Directive identifies the responsibilities of members who seek disability-related accommodation or who are absent from work due to injury or illness. It is difficult to understand why section D confines itself to only some of the grounds for seeking accommodation
- The Directive elsewhere attaches guidelines for addressing Creed/Religion and Family Status though the body of the Directive still says such guidelines “will be” developed. A previous version of the Directive contemplated that guidelines would also be developed for Disability. Again, it is difficult to understand why the guidelines address some but not all the grounds for accommodation. Indeed, it may be unnecessary to create separate guidelines that depend on the specific grounds for accommodation
- This Directive as well as other Directives continue to refer to the Manager – Human Resources, though Human Resources is now led by a Director. All such Directives should be updated
- The Directive provides that a member seeking accommodation is responsible for identifying any accommodation needs to their supervisor or to the Manager – Human Resources as soon as possible. In the Commission’s view, the role of the supervisor should figure less prominently in this process. Although the supervisor may represent, for some members, a preferred route for discussing accommodation needs, a more sophisticated approach to accommodation requests should (a) give greater prominence to the role of the Director – Human Resources at first instance and (b) recognize that accommodation needs may come to the Service’s attention in a variety of ways (through doctors, WSIB etc) not captured at all by the Directive
- The Directive places the onus on the member seeking accommodation to identify the provision in the Human Rights Code that supports his or her request. It should be the responsibility of the Director – Human Resources to identify what, if any, Code provision applies to the circumstances identified by the member
- The job description for the Director – Human Resources now provides for legal expertise. The current Director is an experienced labour law lawyer. That changed job description represented a positive development. It also means that greater emphasis should be placed in the Directive on the Director’s role in determining, as a matter of law, whether a proposed accommodation creates undue hardship for the Service, a decision ultimately delegated to the Deputy Chief – Operational Support

The Director – Human Resources agreed the current Directive is deficient; indeed, he identified some of the above deficiencies. He also described a “paradigm shift” in how accommodation requests are now being dealt with by the Service. At the risk of oversimplification, in the past, the Service attempted to pigeon-hole those who needed accommodation into certain available accommodated positions within a unit. This represented a point of contention with the Association and Service members. The Director now seeks to deal with accommodated requests on more of a case-by-case basis. This approach is intended to promote greater ability of employees to return to work or continue some meaningful work in a timely way. The Commission recommends the Service develop a new Accommodation Directive that should avoid the flaws in the existing Directive and capture the paradigm shift described above.

We also wish to address reporting and training under the existing and any future Accommodation Directive.

The existing Accommodation Directive provides that the Manager – Human Resources shall submit an Annual Report to the Chief of Police. The Manager shall also review the impact and effectiveness of the Directive and related practices, procedures and policies and provide recommendations to help inform training and policy/guideline development or changes in the policy.

Last year, the Director reported in writing to the Chief following a Freedom of Information request by the media. However, his report was responsive to the issues raised by the media, rather than representative of a true Annual Report.

It is important that the Director regularly report in writing to the Chief (and the appropriate senior leadership) on accommodation, workplace harassment and other human resources issues. This report should include the Director’s review of the impact and effectiveness of existing Directives, practices, procedures and policies and include recommendations on change. This is already contemplated by the current Accommodation Directive. This regular reporting will enable senior leaders to fulfill their responsibilities. It also promotes their accountability if needed changes are not made.

Equally important, the Board should receive regular reports in writing on these same topics. The Board cannot adequately exercise its oversight responsibilities or be held accountable if it does not receive detailed information about these matters.

The Directive also states that the Manager – Human Resources shall

- provide advice and coaching to supervisors including senior staff regarding this Policy and its implementation, relevant legislation and the collective agreement, and related benefits and entitlements; and
- provide or arrange other related services, such as education/information for supervisors and employees on resolution of disputes related to employment accommodation and return to work

The Directive also states that all members shall receive initial training on their rights, responsibilities and related legal liabilities and that all training programs are to be evaluated regularly to assess their adequacy and effectiveness.

The Director – Human Resources has undertaken some training and counselling relevant to accommodation issues. This is fairly described as a “work in progress.” He foresees the development of various modes of delivery, including e-learning modules that address accommodation, workplace harassment, and civility.

The Commission supports these training initiatives. We do not intend to prescribe precisely what training should take place. However, the training must be fully documented and form part of the Director’s reporting obligation. His reports should include detailed descriptions of:

- training provided to new members
- new training or refresher training available for supervisors and other members and whether and to what extent such training is compliant with the existing or a new Accommodation Directive
- aggregated data on who has actually received such training, to ensure member compliance

Again, this reporting promotes informed decision-making by senior leaders, their accountability, and adequate oversight by the Board.

It is also important that competency questioning related to all promotional levels include case scenarios around accommodation, workplace harassment and related issues. We understand that such questioning has been included in some promotional evaluations. In our view, it is a critical part of competency evaluation. The inclusion of such content in competency evaluation should be reflected in the applicable Directives.

All Service members have the responsible to support accommodation. As stated in the existing Accommodation Directive, Service members, including supervisors, have an obligation to support employment accommodation and the return to work of employees, including accepting some change in duties when necessary to accommodate needs; treat with dignity and respect members who require accommodation; be expected to work cooperatively to facilitate the accommodation process; take accommodation requests seriously and deal with all accommodation requests in a timely manner.

Robust training and counselling, together with the paradigm shift described by the Director, will contribute to reducing any inappropriate responses to accommodation requests by supervisors or others, and enable the Association, the Service and employees to better work together to ensure that accommodation requests are

sensitively and fairly dealt with. Training and counselling can also better address issues around the stigma felt by accommodated employees. This stigma can relate both to how accommodated employees are dealt with by others and to a failure to appreciate the value of work assigned to such accommodated employees. For sworn officers, this failure of appreciation can relate to a policing culture in which work is less valued because officers are not performing more traditional policing roles or able to exercise use of force options. That culture must be recognized, addressed through education and training, and overcome. It should also be addressed through measures taken by the Service to acknowledge the value of work being done by accommodated officers, while mindful of their privacy interests.

### ***Workplace Harassment***

Directive 361-04 represents the Service's workplace harassment policy. It was effective as of August 2014. It slightly revised several earlier versions. It has not been modified for almost six years. There is no evidence the Directive has undergone any significant review until the current Director – Human Resources was hired in February 2018. He regarded the development of a new Workplace Harassment Directive as a priority and has created, in consultation with others, a draft Directive.

The existing Workplace Harassment Directive suffers from significant deficiencies, including but not limited to:

- The Directive sets out the responsibilities of members, supervisors and others. However, its structure and content make it difficult for members to understand, step-by-step, how informal and formal complaint processes work, and the range of resolutions or dispositions available depending on circumstances. As a result, it is another poor tool for educating and training the Service's membership
- It states that workplace harassment complaints against the Chief or a Deputy Chief are to be dealt with by the Board with no elaboration
- It presupposes that all investigations will be conducted internally, rather than provide for external investigations where required
- A previous version made reference to Equal Opportunity Directive 310-01 though the current Director – Human Resources has been unable to find such a Directive

The Commission reviewed the draft Workplace Harassment Directive. The draft sets out, in detail, the processes associated with formal and informal complaints. It more clearly articulates the role of supervisors. Although supervisors play an important role in identifying and preventing workplace harassment and in hearing concerns about

workplace harassment, the draft also makes it clear that options exist for members who prefer not to report workplace harassment to their own supervisors.

Like the existing Directive, the draft provides that complaints against the Chief or Deputy Chiefs are to be referred to the Board; however, it also states that the referral is to include a recommendation that an external investigator be appointed.

The draft creates a Review Committee populated by the Director – Human Resources, as its Chair, the Inspector in charge of Professional Standards and the President of the Association or a trained delegate. The Review Committee is to determine the appropriate investigative process for formal complaints and is to provide recommendations to the Chief following completion of a formal investigation. It may also make recommendations on possible interim measures pending the completion of a formal investigation.

The draft specifically addresses the possibility that an external investigation may be necessary in situations where a reasonable apprehension of bias cannot be mitigated by assigning an internal investigator. Where the Review Committee members unanimously hold this view, they are to make that recommendation to the Chief who continues to retain the ultimate discretion whether to appoint an internal or external investigator. Conflict of interest is also addressed by setting out the responsibility of investigators, the complainant and the respondent to declare any existing or potential conflict respecting the assigned investigator(s) or the Review Committee to the Director – Human Resources.

As stated earlier, some officers allege that, at times, workplace harassment investigators have been hand-picked by senior leadership to arrive at a desired result. The evidence presented to the Commission was insufficient to make that finding. However, it was obvious that some officers, in good faith, have little or no confidence in workplace harassment investigations based, in part, on the selection of the investigators. It probably explains, in part, why some employees initiate human rights litigation without resorting to existing internal processes.

We cannot quantify how widespread this lack of confidence is in the Service's internal processes. But it certainly exists to a point that justifies its treatment as a systemic issue.

In our view, it is best addressed through the following measures, some of which have been implemented or are in the process of being implemented:

- The creation of a new Workplace Harassment Directive that is fair and transparent, and that gains legitimacy, in part, through the active involvement of a Review Committee (which includes Association representation) in how complaints are dealt with. The draft Directive represents an important step

- The assignment of workplace harassment investigations to a small cadre of investigators trained in workplace harassment investigations. We were advised workplace harassment investigations are now assigned only to Professional Standards investigators who have completed such training. That is a change for the better
- The assignment of an investigator or investigative team to a particular complaint on a rotating basis, if at all possible, to minimize concerns about how investigators are selected for certain investigations. We understand that investigators are now generally assigned on a rotating basis depending on their workload. That, too, is a welcome change
- A process that provides for the possibility of external investigators in appropriate circumstances and for a mechanism for the affected parties to raise conflict of interest issues over the selection of a specific investigator. The draft Directive incorporates both suggestions. We recognize that under the draft Directive, the Chief retains the discretion not to direct an external investigation even in the face of a Review Committee's recommendation to the contrary. In our view, the Review Committee and the Chief should work together to develop some written guidance, with Board oversight and involvement, on when an external investigation is warranted. This recommendation parallels our earlier recommendation on how sensitive criminal investigations should be dealt with
- Education and training of all civilian employees and all sworn officers, regardless of rank on workplace harassment, discrimination, civility and related issues. Such education and training must take place
  - (a) initially, when employees join the Service;
  - (b) for all employees when new policies and processes are introduced (as they will be through the new Workplace and Harassment Directive); and
  - (c) at regular intervals after that. Those intervals should be set out in writing in the applicable Directives.
- It is equally important that an understanding of these issues form a part of the promotional evaluation process for candidates for supervisory positions

The Director – Human Resources has delivered some of this recommended education and training already and is working towards more comprehensive training when the new Workplace Harassment Directive is rolled out.

The existing Workplace Harassment Directive has detailed requirements for education and training. The draft Directive contains less detailed references to education and training. As we said in relation to accommodation, we do not intend to prescribe precisely what training should take place. However, the Service and its senior leaders cannot effectively exercise their responsibilities and be accountable unless:

- (a) the nature, content and frequency of education and training is set out in applicable Directives or procedures;
- (b) education and training is documented when it takes place; and
- (c) such education and training is reviewed on a regular basis.

Similarly, the Board cannot exercise its oversight responsibilities unless it is provided with detailed information about the Service's education and training programs and their implementation.

In our view, all the measures identified above, viewed cumulatively, are likely to increase confidence in the Service's processes for dealing with workplace harassment and reduce such harassment in the workplace.

We reviewed each of the workplace harassment and human rights complaints over the last number of years, particularly during Chief Frederick's tenure as Chief. Again, we will not make findings in relation to individual complaints or in relation to existing human rights litigation. The Human Rights Tribunal may ultimately determine whether human rights complaints currently in litigation raise additional systemic issues that should be addressed through remedial measures. But we do not agree that the number of complaints, without more, permits an inference that this Service compares unfavourably to other services generally. However, those complaints do reinforce the importance of measures to ensure fair and transparent processes for dealing with such complaints and the importance of educating the Service's employees on their rights and responsibilities to enhance confidence in those processes.

A final word about workplace harassment. The existing Workplace Harassment Directive describes the responsibilities of trained advisors for members who wish to discuss workplace harassment in a confidential setting. It also states that the Manager – Human Resources shall coordinate the activities of the advisors and coordinate the ongoing assessment of the risks of workplace harassment.

The Director – Human Resources is already providing training to designated advisors. However, there is nothing in place to determine whether members are indeed consulting advisors or even trust them. A mechanism should be created that enables advisors to report, without undermining confidentiality, on the extent to which their services are even being used and challenges in their work. This can inform policy recommendations

going forward. We were told by several individuals that Service members have no faith in the confidentiality surrounding peer counselling. This issue must be addressed.

The existing Directive also fails to explain how it reconciles the advisors' duty of confidentiality with the Service's obligation to end workplace harassment when it is ongoing. This should be explicitly addressed either in the new Directive or through education and training.

The Commission saw evidence that the settlements of human rights complaints are not necessarily approached in a consistent way. It was sometimes difficult to reconcile the approach of the Board and the Service to various human rights complaints. The Board should develop some guidelines on the considerations that should inform its decision-making around human rights settlements. There should be a regular review by the Board of ongoing human rights complaints and the lessons learned in individual cases. When a human rights complaint reveals a larger issue to be addressed, the Service and the Board must be transparent in acknowledging the existence of that issue to the Service's members as a whole, and in identifying how the Service and/or Board have addressed the issue.

### ***The Role of the Board's Chair and Board Oversight***

We saw no evidence whatsoever that the Board is corrupt or that its Chair acts improperly. Some questioned whether the Chair played too large a role in decision-making before the Board was consulted. In fairness, no Board member expressed that view directly to us. The current Chair has a strong personality. However, he is respected by his fellow Board members.

The Board's composition has recently changed significantly. It is important – especially now – that the Chair ensure that the entire Board is fully informed and engaged in the oversight of the Service. We briefly met with the new Board members, and were impressed with questions they asked, and their commitment to oversight.

However, there are challenges and responsibilities unique to a police services board. This means that training and education of Board members on governance and oversight are of critical importance. When Commission investigators last met with the Board, the Board had not received any training on its role and responsibilities, though the Board contemplated that such training would be arranged. Other police service boards have been proactive in obtaining governance training and education, not only when the composition of such boards change, but on an ongoing basis. The Commission recommends that such training and education, designed with Ministry involvement or input should take place as soon as possible.

Some of the systemic issues identified in this Report also invite consideration of the Board's role in providing robust oversight of the Service. For example, the Service's Accommodation Directive and Workplace Harassment Directive had not been reviewed on an ongoing basis, despite requirements for review in the Directives themselves. The

Board did not develop its policy on investigating the Chief or Deputy Chiefs for an extended period of time, and the ultimate development of that policy was prompted, in part, by media scrutiny.

The Board appeared, at times, to accept, without sufficient scrutiny, what it was told by the Service. We saw one example of a Ministry inspection report provided to the Service and the Board in relation to its drug exhibit controls. The Service and the Board appropriately asked the Ministry to conduct this inspection. The Ministry made 11 recommendations for change. The Service initially advised the Ministry and the Board that ten of 11 recommendations had been implemented and that implementation of the other recommendation was forthcoming. Additional Ministry scrutiny reflected that a number of the recommendations had, in fact, not yet been implemented. It appears that the Service's initial response would have gone unquestioned without further intervention by the Ministry. The lesson here is simply that the Board must play a critical role in asking the hard questions required to ensure that the Service is not merely "checking off the right box" or responding to issues in a less than effective way.

This need not be a reflection on the sincerity of the Service or its leadership. Nor does it compel the Board to independently investigate, on an ongoing basis, what it is told by senior leadership. The Board is necessarily dependent on the Service to provide it with relevant information. But public confidence in the Service is also dependent on the Board's ability to probe, question and, when necessary, challenge how things are being done.

We were also advised that the Board used to provide written performance evaluations of the Chief, but that practice ended. We did not examine how, when and if the Board does performance evaluations of the Chief, but the Board's statutory responsibilities require it to direct the Chief (subject to certain limitations) and monitor his or her performance. The failure to conduct regular, formal performance evaluations can signal a failure to provide appropriate oversight of the Service's leadership.

## **Hiring of Relatives**

### **(Terms of Reference Topic 2) Whether the hiring processes relating to the potential hiring of relatives are fair and transparent**

The inclusion of this topic in the investigation's Terms of Reference was largely prompted by Complainant E's complaint respecting former Deputy Chief Derus's role in the hiring of his son. Other officers expressed concern about his role in that hiring. To be clear, no one raised any issue about the competency of the Deputy Chief's son. The issue raised was whether the Deputy Chief changed the rules mid-stream to favour his son's application for employment with the Service.

The Deputy Chief's son first applied for employment with the Service on April 7, 2014.

On May 17, 2014, he did not achieve the desired score on his Essential Competency Interview. This is not uncommon for candidates, including those who ultimately succeed. Services in Ontario have varying practices or procedures on how long a candidate must wait (“the waiting period”) before redoing the Essential Competency Interview.

Surprisingly, we received conflicting information on even the most basic question: what was the length of the waiting period when the Deputy Chief’s son applied? When did it change?

Chief Frederick and others told us that the Service’s practices or procedures were changed to shorten the waiting period from one year to three months during the time period the Deputy Chief’s son applied to the Service. Chief Frederick said the one year period was too long, and the Service was losing out on good candidates as a result.<sup>28</sup>

The former Manager – Human Resources told us the waiting period was three months at the time, but her recollection (which turned out to be inaccurate) was that the Deputy Chief’s son was permitted to reapply before that period expired.

Deputy Chief Derus told us the one year waiting period imposed by the Service came to his attention, possibly as a result of his son’s application. In his view, that lengthy waiting period was inconsistent with the three month waiting period adopted by the Constable Selection System created by the Ontario Association of Chiefs of Police. In his view, since the Service had opted into the Constable Selection System, it should have employed the three month waiting period. He brought the issue forward to the Chief, who agreed with him.

Deputy Chief Derus indicated that this change would have benefitted his son, as well as every candidate “in limbo.”

We reviewed available documents on point, although we saw nothing that documented the Service’s practice. The documents did resolve some of the confusing information provided.

On June 2, 2014, the Manager – Human Resources advised the Deputy Chief’s son that he did not achieve the desired score, and that, in accordance with the Constable Selection System, he must wait three months from the date of the interview (that is, until August 17, 2014) before he was eligible to attend another Essential Competency Interview with an Ontario Association of Chiefs of Police licensed service. Although it

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<sup>28</sup> Several officers also suggested that the shortened waiting period also had favourable financial implications for a candidate given changes in members’ benefits.

had no application here, the Manager also advised him that he must wait six months if this was not his first interview.

On September 4, 2014, the Deputy Chief's son reapplied to the Service. This was more than three months after his initial interview. On October 2, 2014, he passed his second Essential Competency Interview and was subsequently offered employment not only with the Service, but with the OPP. Back on June 26, 2014, he had successfully completed the OPP's Local Focus Interview.

The documents confirm that the Deputy Chief's son was told that the waiting period was three months and that he only reapplied after that waiting period expired. It is not entirely clear whether the waiting period was shortened between May 17, 2014 and June 2, 2014. If it was shortened during this time frame, there were strong policy reasons for doing so. As well, the change was approved by the Chief. However, if the issue was brought to the Chief's attention by the Deputy Chief based on his son's situation, there was an obvious danger that the change would be perceived as giving preferential treatment to his son. At the very least, every other candidate who had failed the ECI within the same time period should have been specifically notified that the waiting period had been shortened regardless of whether the change was reflected on the Service's website or elsewhere.

The other difficulty here arose out of Deputy Chief Derus's interactions with the Manager – Human Resources. He asked her how his son had done in the Eligibility Competency interview. After he was told, he expressed disappointment and some frustration. The Manager felt, at one point, that this affected the Deputy Chief's attitude towards her. She raised the matter with him. In response, the Deputy Chief advised her he had been upset for about three weeks about it, but had gotten over it, especially since his son had been accepted by the OPP. Indeed, it had been the Deputy Chief's preference that his son work for the OPP.

We understand why the Deputy Chief was somewhat disappointed or frustrated. He felt his son was obviously qualified, prompting him to question whether the Service was losing well qualified candidates through a flawed process. However, to his credit, he was not otherwise involved in the processing of his son's application. Moreover, in compliance with the Service's existing Employment Relationship Policy, the Board was advised of his son's later hiring and approved it.

The Commission is satisfied the Deputy Chief did not engage in misconduct. However, it would have been preferable if he made no inquiries about his son's status with the Manager – Human Resources and had not expressed his views, frustration or disappointment to her.

Someone in a position of senior leadership, such as a Deputy Chief, has to take extraordinary measures to avoid not only a relative's preferential treatment, but the appearance of preferential treatment. The Deputy Chief's expressed upset at the initial decision involving his son or even his inquiries about how his son had done could potentially influence subsequent consideration of his son's application or invite the very concern expressed by the Manager – Human Resources that her decision had impaired her relationship with the Deputy Chief. This was all avoidable.

There is another illustration of how perceptions around these kinds of issues can easily be skewed. Deputy Chief Derus initiated another change to the hiring process for sworn officers. A sworn officer rather than the Manager – Human Resources, a civilian, was given responsibility for the hiring process involving sworn officers. Rumours then circulated within the Service that the Deputy Chief made this change as a reprisal against the Manager – Human Resources. We are satisfied that these rumours are untrue. Deputy Chief Derus had identified problems with the recruitment and hiring processes prior to his son's application. The Chief supported the change. Moreover, in October 2014, the Manager wrote to the Deputy Chief, indicating there were "rumours going around that she strenuously objected to his son having a second interview so she was removed from the sworn recruitment process." She described these rumours as "absolute nonsense." We also observe that the other assessor at the Deputy Chief's son's ECI, a sworn officer, was subsequently elevated to the position of ECI Trainer for the Service. These rumours, although unsupported by evidence, reinforce the importance of avoiding conduct that might be perceived badly.

Of course, there is nothing wrong with relatives of Service members, including relatives of senior leaders, applying to the Service. Indeed, such relatives can and have served with distinction. However, senior leaders must recognize that they must not only avoid direct involvement in hiring or promotional decisions respecting their relatives, but any indirect involvement. This includes inquiring about how their relatives fared in the process or expressing views about the merits of their relatives' candidacy to those involved in the process. This is doubly important in this Service where perceptions of preferential treatment or favouritism continue to figure prominently in how some members think about their own Service.

### **The Service's Morale**

The Commission heard a wide range of views on whether a poisoned environment exists at the Service. A number of officers spoke in highly positive terms about the Service. They recognized legacy issues at the Service but believed they had largely been overcome and that the Service has much to be proud of. Others believed that morale is low and attributed that to the issues identified in the complaints the Commission received.

We have identified in this Report some systemic issues to be addressed. Indeed, senior leadership, past and present, acknowledged that systemic improvements should continue to be made, but reject the allegation that morale is generally low.

It is difficult to evaluate the Service's overall morale or the extent to which those interviewed are truly representative of the Service's civilian employees and sworn officers. In our view, the Service's senior leadership and the Board need to adopt additional measures to accurately assess the views of the Service's employees and promote morale. They include several measures earlier identified in relation to more specific systemic issues. The recommended measures are:

- An anonymous survey of the Service's employees. It should be professionally designed to ascertain their views on the range of issues raised by fellow employees during this Review. Its design should be informed, in part, by the issues set out in this Report. We earlier identified anonymous surveys as a tool to address one of those issues – equity in the workplace. A survey of the Service's members is overdue
- Exit interviews of every departing employee to be conducted by the Chief<sup>29</sup>
- The survey and the exit interviews should inform additional steps to be taken to promote good morale
- The development of a robust communications strategy, including greater dialogue between the Chief/ senior leadership and employees about the Service's direction. In our view, misperceptions persist at the Service due to poor communication, at times, between senior leadership and all employees. Chief Mizuno committed to improving these lines of communication. We were advised that one new initiative is for a senior officer to attend every patrol lineup to answer questions
- True training for supervisors on how to be supervisors. We found that some of the systemic issues identified in this Report could have been mitigated if supervisors had a better understanding of how to supervise those under their command. We understand the Service has recently introduced enhanced training for supervisors, including presentations on how to have difficult conversations with those under their command. As well, we were advised that supervisors will be meeting with those under their command three times a year. In our view, regular meetings will enhance the relationship between supervisors and those

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<sup>29</sup> The exit interviews might also be conducted by the Deputy Chiefs if the Chief is unable to do them all.

under their command, increase accountability and avoid some of the concerns expressed by officers who met with us. For example, there is no reason why officers should be surprised by their 360 evaluations if they are receiving ongoing feedback from supervisors. Chief Mizuno identified performance management as a priority. In our view, the challenge is to avoid simply “checking a box” by adopting inadequate training or education of supervisors on how to be supervisors. The inadequacy of this training was identified as an issue by a number of senior officers. The Service must also promote **sustainable** performance management through policies and procedures on what performance management looks like, along with appropriate Board oversight with defined deliverables and measurements for success.

These measures, together with implementation of the other recommendations in this Report, viewed cumulatively, should assist in addressing the Service’s morale. They are all designed to promote a respectful, harassment-free workplace that values equity and diversity, ongoing communication between senior leadership and the Service’s members with appropriate supervision and oversight.

## **Miscellaneous**

As indicated earlier, Complainant B raises a separate issue with the Commission. In September 2017, he applied to the OPP. He and his wife felt a posting in Ottawa with the OPP would provide him with a greater opportunity for advancement, give him an opportunity to return to forensics, and enable his wife to secure employment.

Complainant B alleges the Service – most particularly, members of senior leadership -- took his transfer application personally. He also believes senior Windsor officers improperly contacted the OPP to effectively undermine his transfer application. He was turned down by the OPP in January 2018.

Complainant B requested the Commission investigate the policies and procedures of the Service as they pertained to this allegation.

It appears that Complainant B relies on this allegation in his human rights litigation. For the reasons already given, the Commission makes no findings pertaining to Complainant B’s human rights complaint. That complaint is best addressed through the Human Rights Tribunal based on sworn evidence on behalf of the parties involved.

However, it is necessary to address any systemic issue arising out of Complainant B’s allegation. That requires us to at least describe some of the evidence bearing on his complaint.

The Commission interviewed Complainant B, members of senior leadership, several civilian employees of the Service and an OPP officer who is the Manager of Uniform Recruitment Services. He was familiar with Complainant B's file.

Complainant B has no direct evidence that the Service sabotaged his application to the OPP. He relies on information received from fellow Service members about senior leadership's apparent special interest in his transfer application, hearsay about Deputy Chief Derus having contacted the OPP to undermine his application, suspicions about Inspector Hill's role in potentially scuttling his application, and information from fellow officers describing the Service's negative attitude towards their transfer applications.

Inspector Hill advised us that he did not contact the OPP about Complainant B's transfer application. He told the Commission he had no interest in attempting to force an officer to remain with the Service who did not wish to be there. In his view, this would not be in the Service's interest.

Deputy Chief Derus advised the Commission that he never contacted the OPP to request that it place a temporary hold on hiring Windsor officers. Indeed, the Deputy Chief had been a strong advocate for the transfer of officers freely between police agencies. Complainant B contacted him in 2018, expressing his disappointment over his unsuccessful transfer application. The Deputy Chief did not know Complainant B and had no prior knowledge of his transfer application. Nonetheless, out of empathy, he reached out to a retired OPP officer who did background investigations. The OPP officer also had no knowledge of a hold on hiring Windsor officers. Deputy Chief Derus summarized all this in a March 2019 email to Complainant B.

The OPP officer advised the Commission that the OPP received no unsolicited feedback from Windsor's senior command. The OPP considered Complainant B's application in compliance with the process adopted by the Ontario Association of Chiefs of Police. There was nothing unusual about Complainant B's application or the process that was followed. Complainant B was not as competitive as others, and the OPP so advised him.

As indicated earlier, Complainant B requested the Commission investigate the policies and procedures of the Service as they pertained to his situation. We do wish to briefly address two systemic issues arising out his complaint.

Several officers told us their supervisors were upset they applied elsewhere for employment. One officer told us she was described in a deeply insulting way by a supervisor. The supervisor cited her lack of gratitude in applying elsewhere after everything the Service had done for her. This officer's account was credible, although it has not been tested through an adversarial process and the officer's anonymity has been protected here. In the Commission's view, it is incumbent on the Service to reinforce with its supervisors that members are fully entitled to seek employment elsewhere, and that there is no place for pejorative comments about those members

based their desire to depart. Such comments or similar harassment or reprisal activity should be appropriately dealt with.

Second, during the Commission's interviews, it became clear that officers – including senior officers – do not have a uniform understanding of existing policy, procedures or practices on reference letters or being a reference for a candidate seeking employment elsewhere. Some believe the existing policy, procedures or practices require the Chief's approval for anyone to serve as a reference. Others believe the policy, procedures or practices do not require the Chief's approval, but are intended only to ensure that references do not purport to speak for the Service.

We did not examine whether the Service has anything in writing to address this issue. But what was obvious is that there is no clear understanding of whether the Chief's approval is required for anyone to serve as a reference.

In the Commission's view, there is no need for any policy, procedure or practice that only permits a Service member to provide a reference with the Chief's approval. Indeed, that precondition may unnecessarily contribute to a perception of undue influence by the Chief or Service. Any policy, procedure or practice should merely remind anticipated references that they do not speak for the Service and that this should always be reflected when providing a reference. The Commission recommends that any relevant policy or procedures should so reflect.

Finally, we observe that Complainant B also alleges he was bypassed as a blood splatter expert for two homicide cases for no valid reason, and that senior leadership gave him a false explanation for bypassing him. Senior officers provided an alternative explanation for the decision not to use Complainant B as a blood splatter expert. This issue may also have relevance to Complainant B's existing human rights complaint or to other litigation. In the circumstances, we do not make any findings on this issue.

## **Conclusion**

The Service has much to be proud of. We were impressed with many senior and front-line officers and civilian employees we met with. Many of the Service's employees, sworn and civilian, perform their duties effectively. This reflects well on the Service as a whole. The Service has taken important steps to address a range of issues, including accountability. Chief Frederick acknowledged some of the Service's legacy issues and introduced some progressive measures to address them. However, as a result of the complaints made to the Commission, we identified a number of systemic issues. There is much to be done to address those issues.

In our view, our work does not end with this Report. As a policing oversight agency, we must monitor the extent to which the Board and the Service implement our recommendations or adopts credible alternatives to address the systemic issues

identified. The public is also entitled to know the extent to which our recommendations are being implemented.

Accordingly, we request the Board and the Service to each report on implementation of the recommendations of this Report within one year of its release. For convenience, those recommendations are listed in Appendix A to this Report.

## Appendix A

### **List of Recommendations**

Here are 37 recommendations contained in the Commission's Report. For convenience, they are listed under the subcategories contained in the Report, though the recommendations have relevance well beyond those subcategories.

#### ***The Alleged Interference in Specific Legal Proceedings***

- R.1** The Commission recommends that a policy be created that provide direction on whether and when an investigation should be done externally or internally. Sometimes, it is imperative that matters be dealt with externally to enhance the appearance of accountability, professionalism and fairness in the minds of those directly affected or the public. At present, the decision whether to investigate matters internally or externally is largely uninformed by existing policies or procedures. Decision-making around how an investigation will be conducted should be guided by a list of factors and clear direction as to how certain types of cases must be dealt with (pp. 12-14).
- R.2** In addition to a policy or procedures on how such investigations should be conducted, the Commission recommends that the Windsor Police Services Board ("Board") consider what its expectations are for Board members whose family members face criminal charges. In this context, the Board's policy on its own conflicts of interest should be re-examined (p. 14).
- R.3** The Commission recommends that the Windsor Police Service ("Service") create a policy that addresses the surreptitious recording of conversations by its members of other members, where such recording is unrelated to an official investigation (p. 19).

#### ***Call to Service at Chief Al Frederick's Residence***

- R.4** The Commission recommends that the Service's Conflict of Interest Directive 141-02 identify those circumstances in which the Service is to refer investigations to an external agency or service. It should also identify circumstances in which the Service's own officers must respond to an incident. The Service's Directive fails to adequately address investigations concerning the Chief or Deputy Chiefs. The Service's Directive should complement a policy developed by the Board that provides direction to the Service (pp. 23-24).

- R.5** The Commission recommends the Board amend Policy AR-AI021 and the Chief create complementary procedures or amend the existing Directive based on the commentary contained in this Report. The current Policy does not provide meaningful policy guidance to the Chief (p. 26).
- R.6** The Commission recommends that the Board and Service develop a communications strategy and related procedures around investigations of the Chief or Deputy Chiefs and analogous situations. Those procedures should be captured in the appropriate policy, Directive or procedures (p. 27).

### ***The Fairness of Promotional Processes, Recruitment and Workplace Equity***

- R.7** The Commission recommends the Service re-evaluate its promotional process on a regular basis, in consultation with the Association and the membership at large (p. 31).
- R.8** The Commission recommends that the Service examine, in a comprehensive way, the competencies for promotion. As police services move from more traditional, paramilitary models to community-based policing, they must evaluate the emphasis placed on certain competencies in preference to others (p. 32).
- R.9** The Commission recommends the Board play an important role in overseeing how the Service re-evaluates how competencies are weighed and evaluated (p. 33).
- R.10** The Commission recommends the Service do a much better job of communicating with its officers and civilian employees about its decision-making around promotions as part of an ongoing dialogue (p. 33).
- R.11** There is underrepresentation of female sworn officers in the Service. The Commission recommends that the Board and the Service create a new strategic plan, with outside expert assistance, for recruiting women as a high priority. The strategic plan must identify existing barriers to recruitment and new ways to overcome those barriers. For example, the Commission recommends the Service consider waiving the fees for job applicants who take physical tests (pp. 33-34).
- R.12** The Commission recommends that this strategic plan must form part of a larger conversation about the role of women within the Service. The Service has yet to prove that officers are truly made accountable for discriminatory conduct (pp. 34-35).

- R.13** The Commission recommends that the Service should more formally engage the community, perhaps through an advisory group, in developing a partnership to recruit women. Its strategic plan should develop ways in which to engage female Service members in this process, beyond how they are currently involved. Such engagement might take place through committee work, and anonymous surveys. The strategic plan should be made available to the public (p. 34).
- R.14** The Commission recommends that the new Diversity, Inclusion and Equity Coordinator should figure prominently in the development of a new strategic plan for recruiting women. The priority to be given to this work would also support a line of direct reporting to the Chief or Deputy Chief (pp. 34-35).
- R.15** The Commission recommends that the Board and Service be proactive in addressing equity within the Service. For example, exit interviews should be conducted, in confidence, with every departing officer and employee. The Service should employ anonymous surveys, expertly designed, as another tool in that evaluative process. This proactive approach should form part of the Service's strategic plan for recruitment (p. 36).
- R.16** The Commission recommends that the Service be equally proactive in addressing the racial diversity of its workforce. The Commission expects the new Diversity, Inclusion and Equity Coordinator to play an important role in developing a proactive strategy to increase diversity within the Service (pp. 36-37).
- R.17** The Commission recommends that the Service re-evaluate whether physical tests for the TAC Unit can be further modified in a way consistent with provincial adequacy standards to remove unnecessary barriers for women (p. 37)
- R.18** The Commission recommends that more be done to make the TAC Unit truly inclusive. One approach is to create a formal mentoring initiative to encourage and assist members, particularly women, who express interest in joining the TAC Unit. Such a formal mentoring program could also form part of a larger plan to encourage women to apply for promotion and overcome remaining barriers (pp. 37-38).
- R.19** The Commission recommends that consideration should be given to a duty rotation regime that:

- a. lengthens the tenure for certain officers within certain units to reflect the considerations noted in the Report, including the value in cultivating expertise in specialized areas and the time and financial resources needed to cultivate that expertise;
- b. creates certain “anchor” positions within units – that is, recognizes that a certain number of high-performing officers within a unit remain critical to the Service’s success;
- c. recognizes the impact that some late-career rotations may have on officers and morale; and
- d. also recognizes that compelling officers to seek accommodation to address an overly rigid rotation protocol can have a negative impact on morale (p. 39).

### ***The Process in Selecting Chiefs and Deputy Chiefs***

**R.20** The Commission recommends that the selection process for Chief and Deputy Chief be designed to ensure that the Board is fully aware of potential issues. This is true whether the applicant is a candidate from within or outside the Service. This can be done in a variety of ways that remain compatible with the *Police Services Act*. For example, candidates for the Chief or Deputy Chief positions should respond to a standardized series of questions that probe whether there are any issues (outstanding complaints, prior history, disputes with other officers etc.) that might reflect adversely on the Service or its reputation, or the candidate’s character.

**R.21** The Commission recommends that the Board closely question candidates on their answers. The Board should also obtain legal advice from its counsel on how to probe these issues and obtain relevant information about candidates in a way compatible with existing legislation. The process should ensure the Board has an accurate sense of how applicants are regarded within the Service. This can be done in a variety of ways that also, to the extent possible, respect confidentiality. (p. 43).

**R.22** The Commission recommends that the Board’s selection process for Chief and Deputy Chiefs, including the type of due diligence done in relation to each candidate -- as opposed to their identities or personal information-- should be known more broadly. This transparency would assist in dispelling misinformation about these processes (p. 43).

### ***Workplace Harassment and Accommodation Issues***

- R.23** The Commission recommends the Service develop a new Accommodation Directive that should avoid the flaws in the existing Directive identified by the Commission and capture the paradigm shift described in the Report (p. 49).
- R.24** The Commission recommends the Director – Human Resources regularly report in writing to the Chief (and the appropriate senior leadership) on accommodation, workplace harassment and other human resources issues. This report should include the Director’s review of the impact and effectiveness of existing Directives, practices, procedures and policies and include recommendations on change. The Board should receive regular reports in writing on these same topics (p. 49).
- R.25** The Commission recommends the training initiatives must be fully documented and form part of the Director’s reporting obligation. His reports should include detailed descriptions of:
- a. training provided to new members;
  - b. new training or refresher training available for supervisors and other members and whether and to what extent such training is compliant with the existing or a new Accommodation Directive; and
  - c. aggregated data on who has actually received such training, to ensure member compliance.

It is also important that competency questioning related to all promotional levels include case scenarios around accommodation, workplace harassment and related issues (p. 50).

- R.26** The Commission recommends that the stigma and policing culture concerning accommodations be recognized, addressed through education and training, and overcome. That culture should also be addressed through measures taken by the Service to acknowledge the value of work being done by accommodated officers, while mindful of their privacy interests (p. 51).
- R.27** The Commission recommends that any lack of confidence in the Service’s processes for handling workplace harassment be addressed through the following measures, some of which have been implemented or are in the process of being implemented:
- a. The creation of a new Workplace Harassment Directive that is fair and transparent, and that gains legitimacy, in part, through the active involvement of a Review Committee (which includes Association representation) in how complaints are dealt with.
  - b. The assignment of workplace harassment investigations to a small cadre of investigators trained in workplace harassment investigations

- c. The assignment of an investigator or investigative team to a particular complaint on a rotating basis, if at all possible, to minimize concerns about how investigators are selected for certain investigations
- d. A process that provides for the possibility of external investigators in appropriate circumstances and for a mechanism for the affected parties to raise conflict of interest issues over the selection of a specific investigator. The draft Directive incorporates both suggestions. Under the draft Directive, the Chief retains the discretion not to direct an external investigation even in the face of a Review Committee's recommendation to the contrary. In the Commission's view, the Review Committee and the Chief should work together to develop some written guidance, with Board oversight and involvement, on when an external investigation is warranted. This recommendation parallels the Commission's earlier recommendation on how sensitive criminal investigations should be dealt with
- e. Education and training of all civilian employees and all sworn officers, regardless of rank on workplace harassment, discrimination, civility and related issues. Such education and training must take place
  - i. initially, when employees join the Service;
  - ii. for all employees when new policies and processes are introduced (as they will be through the new Workplace and Harassment Directive); and
  - iii. at regular intervals after that. Those intervals should be set out in writing in the applicable Directives.
- f. It is equally important that an understanding of these issues form a part of the promotional evaluation process for candidates for supervisory positions (pp. 52-53)

**R.28** The Commission recommends that the Board be provided with detailed information about the Service's education and training programs so it can exercise its oversight responsibilities (p. 53).

**R.29** The Commission recommends a mechanism be created that enables advisors to report, without undermining confidentiality, on the extent to which their services are even being used and challenges in their work (p. 54).

**R.30** The Commission recommends that the Service explicitly address how it reconciles the advisors' duty of confidentiality with the Service's obligation to end workplace harassment when it is ongoing, either in the new Directive or through education and training (p. 55).

**R.31** The Commission recommends that the Board develop some guidelines on the considerations that should inform its decision-making around human rights settlements. There should be a regular review by the Board of ongoing human rights complaints and the lessons learned in individual cases. When a human rights complaint reveals a larger issue to be addressed, the Service and the Board must be transparent in acknowledging the existence of that issue to the Service's members as a whole, and in identifying how the Service and/or Board have addressed the issue (p. 55).

### ***The Role of the Board's Chair and Board Oversight***

**R.32** The Commission recommends that the Board receive governance training and education, designed with Ministry involvement or input as soon as possible (p. 55).

**R.33** The Commission recommends that the Board must play a critical role in asking the hard questions required to ensure that the Service is not merely "checking off the right box" or responding to issues in a less than effective way (p. 56).

### ***Hiring of Relatives***

**R.34** The Commission recommends that senior leaders recognize that they must not only avoid direct involvement in hiring or promotional decisions respecting their relatives, but any indirect involvement. This includes inquiring about how their relatives fared in the process or expressing views about the merits of their relatives' candidacy to those involved in the process (p. 59).

### ***The Service's Morale***

**R.35** The Commission recommends that the Service's senior leadership and the Board need to adopt additional measures to accurately assess the views of the Service's employees and promote morale. They include several measures earlier identified in relation to more specific systemic issues. The recommended measures are:

- a. An anonymous survey of the Service's employees. It should be professionally designed to ascertain their views on the range of issues raised by fellow employees during this Review. Its design should be informed, in part, by the issues set out in this Report
- b. Exit interviews of every departing employee to be conducted by the Chief or if necessary, the Deputy Chiefs
- c. The survey and the exit interviews should inform additional steps to be taken to promote good morale

- d. The development of a robust communications strategy, including greater dialogue between the Chief/ senior leadership and employees about the Service's direction. Misperceptions persist at the Service due to poor communication, at times, between senior leadership and all employees
- e. True training for supervisors on how to be supervisors. Some of the systemic issues identified in this Report could have been mitigated if supervisors had a better understanding of how to supervise those under their command. The Commission supports enhanced training for supervisors, including presentations on how to have difficult conversations with those under their command. It also supports regular meetings between supervisors and those under their command. These will enhance these relationships, increase accountability and avoid some of the concerns expressed by officers who met with the Commission. The challenge is to avoid simply "checking a box" by adopting inadequate training or education of supervisors on how to be supervisors. The inadequacy of this training was identified as an issue by a number of senior officers. The Service must also promote sustainable performance management through policies and procedures on what performance management looks like, along with appropriate Board oversight with defined deliverables and measurements for success.

These measures, together with implementation of the other recommendations in this Report, viewed cumulatively, should assist in addressing the Service's morale. They are all designed to promote a respectful, harassment-free workplace that values equity and diversity, ongoing communication between senior leadership and the Service's members with appropriate supervision and oversight (pp. 60-61).

### ***Miscellaneous***

- R.36** The Commission recommends that the Service reinforce with its supervisors that members are fully entitled to seek employment elsewhere, and that there is no place for pejorative comments about those members based their desire to depart. Such comments or similar harassment or reprisal activity should be appropriately dealt with (pp. 62-63).
- R.37** The Commission recommends that any relevant policy or procedures merely remind anticipated references that they do not speak for the Service and that this should always be reflected when providing a reference. There is no need for any policy, procedure or practice that only permits a Service member to provide a reference with the Chief's approval (p. 63).

