

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

Extension of April 19, 2022 Appointment

ORDER

(Disponible en français)

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

Date of Order: October 14, 2022

File: 22-FIL-001

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

A. Overview

1. On April 19, 2022, the Ontario Civilian Police Commission (“Commission”) issued an order (“Original Order”) appointing an Administrator pursuant to its authority under ss. 23(1) and 24(1) of the *Police Services Act (PSA)*, the parameters of which were set out in the Terms of Reference of the same date. On April 26, 2022, the Commission issued a subsequent Order (“Amended Order”) to clarify the powers of the Administrator. The Administrator was to restore proper governance, to ensure that the Thunder Bay Police Services Board (“Board”) is providing sufficient oversight of police services in Thunder Bay, and to re-establish public confidence in the Board and Thunder Bay Police Services’ (“Service”) ability to deliver adequate and effective policing services in the community.
2. The Original Order to appoint Mr. Malcolm Mercer as Administrator of the Board may be found at [Order to Appoint Mr. Malcolm Mercer as Administrator](#).
3. The Original Order to appoint the Administrator was amended on April 26, 2022. The Amended Order may be found at [Order - Administrator to the](#)

4. Pursuant to the Original Order, as amended, the Administrator's appointment is currently in effect until October 16, 2022.
5. By the Original Order, as amended, the Commission appointed Mr. Malcolm Mercer, as its Administrator to perform the functions set out in paragraph 4 of the Amended Order.
6. Based upon a review of the Original Order, the report of Mr. Mercer dated August 18, 2022, and the report of the Independent Expert Panel dated September 20, 2022, I am of the opinion that an emergency continues to exist in the Board oversight of the Service.
7. I am of the opinion that the extension of the appointment of an Administrator, pursuant to ss. 23(1) and 24 (1) of the *PSA* is necessary.
8. Accordingly, Mr. Malcolm Mercer's appointment as Administrator is being extended by this Order to March 30, 2023.

B. Statutory Framework

9. Ontario municipalities, are required to provide adequate and effective police services in accordance with their needs.¹
10. Under ss. 24(1), the Commission may make certain interim orders under ss. 23(1) without notice and without holding a hearing if it is of the opinion that an emergency exists, and such an order is necessary in the public interest. Pursuant to this authority, the Commission made the Original Order and appointed an Administrator to perform certain tasks set out therein.

C. Findings

11. I have reviewed the following material:
 - a) report by Administrator Mr. Mercer dated August 18, 2022
 - b) the factual findings in the Original Order dated April 19, 2022

¹ *PSA* ss. 4(1).

- c) findings in the report, 'Turning the Page: An Urgent Memo to the Thunder Bay Police Services Board' dated September 20, 2022 which was published by the Expert Panel which was appointed by the Board.
12. After a review of that material, I conclude there is evidence upon which I can find that the Original Order to appoint Mr. Malcolm Mercer ought to be extended until March 30, 2023.
13. Specifically, that evidence is:
- a. Since Mr. Mercer's appointment, four of the five Board members have resigned. Three members resigned in April, 2022. The Mayor resigned effective October 4, 2022.
 - b. Only one of the four Board members who have resigned has been replaced. There are currently only two board members.
 - c. There are no provincial appointees currently sitting on the Board.
 - d. There is no prospect of the Board being reconstituted prior to early December 2022. By then, the Fall municipal election will have occurred and three new municipal members should be in place. Ideally, the two provincial members will also be in place at that time.
 - e. The Chief of Police and the Deputy Chief are both currently suspended.
 - f. The Board must now recruit and appoint a new chief of police of the Thunder Bay Police Service given Chief Sylvie Hauth's announced retirement.
 - g. There was a prior investigation into the Board in 2017 led by the Honourable Murray Sinclair who at the time was an investigator for the Commission as well as a prior investigation into the Service led by the Office of the Independent Police Review Director ("OIPRD").
 - h. The Commission's 2018 Report [[Thunder Bay Police Services Board Investigation - FINAL REPORT \(tribunalsontario.ca\)](https://www.tribunalsontario.ca/Investigation-FINAL-REPORT)] found among other things, that the Board did not demonstrate meaningful engagement in the development of governance and oversight policies and that the Board has not shown leadership in proactive, committed outreach to key Indigenous community organizations or Indigenous policing agencies active in Northern Ontario. As a result of his findings, Senator Sinclair made 45 recommendations the majority of which proposed significant actions to be undertaken by the Board.
 - i. In the OIPRD's report, [[Broken Trust Indigenous People and the Thunder Bay Police Service \(oiprd.on.ca\)](https://www.oiprd.on.ca/Broken-Trust-Indigenous-People-and-the-Thunder-Bay-Police-Service)] recommendations were made regarding operational areas and for the need to establish certain policies.

- j. In his interim report to the Commission [[Administrator's Report to OCPC dated August 18, 2022 \(tribunalsontario.ca\)](#)], Mr. Mercer, as Administrator, found that there has been unacceptable delay in advancing the OCPC recommendations and insufficient attention to policy implications of the OIPRD recommendations some three and one-half years later.
- k. In his interim report, Mr. Mercer found that there have been failures of governance as well as a failure to advance the recommendations that were made as a result of the 2018 investigation led by Senator Murray Sinclair ("Sinclair recommendations"). Based on the Sinclair recommendations, the new Board members should receive training prior to taking over their responsibilities. This is unlikely to take place before January 2023.
- l. In his interim report, Mr. Mercer reiterated that the Board had an important role in monitoring the performance of the Chief of Police to ensure the effective implementation of the OIPRD recommendations and it had an integral role in determining the policy implications to be addressed by the Board.
- m. There is a pressing need for the new Board to advance the OCPC Recommendations and policies arising out of the OIPRD Recommendations and to put in place policies and procedures to ensure that this work is done, done well and seen to be done well.
- n. The interim report [[Interim-Report_TBPSB_Final-V3.pdf \(thunderbaypsb.ca\)](#)] of the Expert Panel appointed by the Board in was released on September 20, 2022. The expert panel's mandate was to provide advice to the Board on policies as well as the remaining recommendations from the Ontario Independent Police Review Director and Commission reports regarding the Service. The report made several recommendations with respect board governance, the selection of the new Chief of Police in an effort to implement long-term change in governance and the delivery of police services, and recommendations as they relate to labour relations. Among those, the report recommended that the Ontario Civilian Police Commission support and implement Board Governance training as part of the mandate of the Board's Administrator.
- o. The final report of the Expert Panel should be completed by early December 2022.
- p. The newly constituted Board will benefit from the guidance that Mr. Mercer would provide regarding the interim recommendations and the recommendations emanating from the Expert Panel's final report.

- q. As a result, it appears that there cannot be a functioning Board until early 2023. The new Board will benefit from the guidance of Mr. Mercer while he continues his role as Administrator during the transitional period to full Board governance.

D. Analysis

Emergency

14. I am of the opinion that there is evidence to support a conclusion that a state of emergency continues to exist in the Board. As outlined above, the Board as currently constituted cannot achieve a quorum and cannot be effective. There will be ongoing uncertainty among the Board until such time when a new fully constituted Board is in place. It remains reasonable to conclude that the problems with the Board have created significant doubt in the Thunder Bay community of the Board's current ability to provide adequate oversight of the Service.
15. With respect to the length of time the Administrator's appointment ought to be extended, it should take into account a transitional period for the newly constituted Board which is expected to be by Spring 2023.

Public Interest

16. There is evidence to support a conclusion that a state of emergency continues to exist in the Board that requires immediate action.
17. Based on the above, I am of the opinion that there is evidence to support a conclusion that a state of emergency continues to exist in the Board, and the extension of the Administrator's appointment to perform specified functions with respect to police matters, pursuant to ss. 23(1) and 24(1) of the *PSA* continues to be necessary in the public interest.

E. Conclusion:

Appointment of Administrator

18. Pursuant to ss. 23(1) and 24(1) of the *PSA*, the Commission is extending the appointment of the Administrator until March 30, 2023. The Commission also reserves to itself the power to extend or cancel the term of appointment, if necessary.

F. Order:

19. Further to the above and pursuant to ss. 23(1) and 24(1) of the *PSA*, I order that the Administrator is authorized to carry out the terms of this Order.

Administrator

20. I hereby extend the appointment of Mr. Malcolm Mercer, as the Administrator with all the powers and responsibilities listed below, to March 30, 2023. Since his appointment, he has proven himself to exceed the minimum attributes required for an Administrator.

Powers and Responsibilities

21. Pursuant to s. 23(5) of the *PSA*, the Administrator will continue to have the following powers and/or responsibilities:

- i) Until the Administrator is of the opinion that the TB Board will perform its duties pursuant to its statutory obligations under the *PSA* and regulations, the Administrator shall preside over all regularly scheduled and special meetings of the TB Board, including the in-camera portions. The Administrator shall also attend and preside over all sub-committee meetings. The Administrator shall have the sole vote.
- ii) After the Administrator is of the opinion that the aforementioned conditions have been satisfied, has given the Executive Chair five days written notice in advance of forming such an opinion, and has received the approval of the Executive Chair, the Administrator may at the Administrator's sole discretion continue to attend, either in person or by conference call or video conference, all regularly scheduled and special meetings of the TB Board, including all in-camera portions. The Administrator may, in the same manner, attend all sub-committee meetings.
- iii) The Administrator has all the powers necessary to make binding decisions on behalf of the TB Board at all regularly scheduled and special meetings of the TB Board, including all in-camera portions, and at all sub-committee meetings regardless of whether or not a quorum exists.
- iv) The Administrator has all the powers necessary to make binding decisions on behalf of the TB Board by way of resolution in the time period between TB Board meetings.
- v) The Administrator shall review the TB Board's implementation of the recommendations applicable to the TB Board contained within the Sinclair Report. Within the six-month period of his appointment, the Administrator will prepare a report on the status on their implementation

and decide which of the unfulfilled recommendations should be implemented on a priority basis. The Administrator's report will be made publicly available.

- vi) The Administrator shall have unrestricted access to any and all of the TB Board's past and current records as the Administrator may specify for the purposes of this Order on request, without delay.
- vii) The Administrator will liaise with the Commission's investigators to ensure the TB Police Service's compliance with its responsibilities vis-à-vis the s. 25 investigation into the TB Police Service and certain members of the TB Police Service which I ordered on February 10, 2022. The Administrator will also update the Commission's investigators on his activities and/or observations when requested by the investigators.
- viii) The Administrator will have the power and responsibility, upon the direction of the Commission, to secure any documents that are summonsed by the Commission. The Administrator will have the power to request documents from any member of the TB Police Service or TB Police Board in order to secure them.
- ix) On his own initiative or upon request from any member of the TB Board, the Administrator shall provide advice to the TB Board and/or individual members, where appropriate, about inter alia: TB Board processes including, but not limited to issues such as the recording of votes, taking of minutes, scheduling agenda items, delegation of authority and composition of subcommittees.
- x) The Administrator will have full power and authority to make any changes to the TB Board processes which he, in his discretion, deems necessary or advisable to enhance governance of the TB Police Service.
- xi) The Administrator may make recommendations to the Executive Chair of the Commission on the TB Board's composition, including the power to suspend any or all of its members.
- xii) The Administrator will advise the Executive Chair about the need to vary or cancel any Order made in response to changing circumstances and in consultation with the TB Board.
- xiii) The Administrator will report at such times as the Executive Chair directs, and not less than monthly to the Executive Chair, and will advise the Executive Chair about the need to vary or cancel his powers as necessary.

DATED at Toronto, this 14th day of October, 2022.

A handwritten signature in black ink, appearing to read "Sean Weir". The signature is written in a cursive style with a large, sweeping initial 'S'.

Sean Weir

Chair,
Ontario Civilian Police Commission
Executive Chair,
Tribunals Ontario