

(Disponible en Français)

**Memo to: Sean Weir, Executive Chair, Tribunals Ontario; and Liz Nastasi, Legal Manager, Tribunals Ontario**

**From: Ian Scott, External Counsel**

**Re: Report on S. 25 Investigation Regarding Thunder Bay Police Service investigation**

**Date: September 9, 2022**

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### **Introduction**

On February 10, 2022, Mr. Weir, in his capacity as Executive Chair, Tribunals Ontario and Chair of the Ontario Civilian Police Commission authorized an investigation pursuant to ss. 25(1)(a) and (b) of the *Police Services Act (PSA)* into certain allegations against senior members of the Thunder Bay Police Service (TBPS). That investigation is set out in a two-page document called the 'Terms of Reference: Thunder Bay Police Service Investigation', hereinafter referred to as the ToR. I was delegated the responsibility to carry out the investigation by the Commission.

I have now completed the investigation, and am submitting this report in compliance with *PSA* ss. 25(a). As noted in *PSA* ss. 25(3), the Commission shall communicate its report to the Solicitor General or Board, at its request, and may communicate its report to other persons at its discretion" [emphasis added]". The Thunder Bay Police Services Board (Board) has already made such a request.

For reasons discussed below, I am of the view that the investigations set out in the ToR are either complete or ought to be deferred to a later date. Briefly, the aspect of the investigation referable to a TBPS criminal investigation into Board member Georjann Morriseau for alleged breach of trust has led to Commission charges of discreditable conduct and deceit against TBPS Chief Sylvie Hauth; the allegation of collusion is unsubstantiated; and the requested inquiry into the administration of the TBPS in light of the Chief's and Deputy Chief's conduct and relationship to the Board should be deferred.

### **Background**

The background is set out in the ToR. In essence, both the Board and the Solicitor General requested investigations into senior members of the TBPS as it related to its criminal investigation of Board member Morriseau, and the management of discipline within the TBPS and its administration.

The ToR authorized the following investigations:

Clause 5(a) - Allegations that TBPS Deputy Chief Ryan Hughes:

- Initiated a criminal investigation into Board member Morriseau for alleged breach of trust by a public official, without sufficient grounds and without the Chief's knowledge, despite an apparent conflict of interest in investigating a member of the Board;
- Directed a subordinate to obtain a *Criminal Code* Production Order for information from Board member Morriseau's cell phone on misleading grounds, which was obtained without the Chief's knowledge.

Clause 5(b) - Allegations that TBPS Chief Sylvie Hauth:

- Failed to take appropriate steps to address Deputy Chief Ryan Hughes' aforementioned actions;
- Provided misinformation to the Thunder Bay Police Services Board regarding the aforementioned investigation;
- Failed to take appropriate steps to address the allegations of misconduct relating to certain members of the Thunder Bay Police Service.

Clause 5(c) – Allegations that Chief Hauth, Deputy Chief Hughes, and Ms. Walbourne:

- colluded in their responses to recent inquiries from the Ontario Civilian Police Commission relating to the Board's request for investigation under subsection 25(1) of the PSA.

Clause 7 states that the investigation will inquire into the administration of the TBPS in light of the Chief's and Deputy Chief's conduct and performance of duties, described above, and their relationship to the Board.

These aspects of the ToR are discussed more fully below. Clause 6 is not referenced in this report because it does not mandate an investigation.

### **Clause 5(a) & 5(b)**

Clauses 5(a) & 5(b) focus on the same issue: whether the Chief and/or Deputy Chief engaged in an improper criminal investigation of Board member Georjann Morriseau.

After a review of the information gathered as a result of the investigation, Mr. Weir was of the opinion that the allegations against Chief Hauth were substantiated, and those against Deputy Chief Hughes were not. Accordingly, on June 22, 2022, he signed a Notice of Hearing charging Chief Hauth with discreditable conduct related to her role in condoning a criminal investigation against Board member Morriseau and deceit related to two memoranda she submitted to the Board about the investigation. A Notice of Particulars particularizes those allegations; both of these documents are in the public domain.

Shortly after the laying of these charges, on June 22, 2022, the Commission-appointed Board Administrator, Mr. Malcolm Mercer, suspended Chief Hauth. Former Acting Deputy Chief Dan Taddeo is now the acting Chief of the Service.

The Commission has appointed an adjudicator to hear the matters involving Chief Hauth, and the matter was recently pretried with a tentative date of February 6, 2023 set for a five day hearing. The allegations will be the subject of a hearing with consequences up to dismissal pursuant to *PSA* ss. 25(4) and *PSA* s. 85 if proven on a clear and convincing evidentiary standard. At that hearing, the evidence will be heard before an independent adjudicator in a tribunal setting governed by the *Statutory Powers Procedures Act* and presumptively open to the public under s. 9 of that *Act*. As a result, it would be inappropriate to enlarge on these allegations beyond the information contained in the Notice of Particulars in deference to the upcoming hearing. At that hearing, the public will hear the relevant evidence and an adjudicator will decide whether it meets the threshold of proof required for a finding against the Chief.

In sum, in relation to ToR clause 5(a) & (b), the allegations against Deputy Chief Hughes are unsubstantiated, and those against Chief Hauth are largely substantiated.

### **Clause 5(c)**

As noted above, clause 5(c) of the ToR alleges that Chief Hauth, Deputy Chief Hughes and TBPS legal counsel Ms. Holly Walbourne colluded in their responses to recent inquiries from the Commission relating to the Board's request for a s. 25 investigation.

As stated in the ToR recitals, the Board requested a s. 25 investigation on April 29, 2021. As part of its preliminary investigation, the Commission requested the TBPS to provide it with certain information. Both Chief Hauth and Ms. Walbourne provided the Commission with written responses to certain questions on November 19, 2021. Deputy Chief Hughes provided a written complaint at a later point which was not requested by the Commission. A review of this correspondence *prima facie* does not suggest any collusion among or between these three named senior members of the TBPS.

Further, Deputy Chief Hughes was interviewed on July 29, 2022, and specifically asked about his knowledge of collusion. He said he had no knowledge of any collusion regarding the responses by Chief Hauth and Ms. Walbourne. Deputy Chief Hughes also said he was not involved in any aspect of collusion with Chief Hauth and Ms. Walbourne, and – given the deteriorating nature of his relationship with the two other named senior members – would not be given that opportunity.

On August 9<sup>th</sup>, 2022, Board member Morriseau was interviewed. She too had no knowledge of any collusion by the named individuals in their responses to the Commission.

In a series of email exchanges with Mr. Scott Hutchinson, counsel for Chief Hauth, and Mr. Tim Gleason, counsel for Ms. Walbourne, it was made clear that questioning of Ms. Walbourne on this central issue of collusion would require a waiver of a claim of solicitor-client privilege from Chief Hauth. Chief Hauth through her lawyer declined to waive privilege. As a result, Ms. Walbourne, even though named as a respondent in clause 5(c) of the ToR was not interviewed.

Chief Hauth through counsel has declined to respond to the allegations contained in clause 5(c).

There is, in my view, no evidence to substantiate an allegation that Chief Hauth, Deputy Chief Hughes and/or TBPS legal counsel Ms. Holly Walbourne colluded in their responses to recent inquiries from the Commission relating to the Board's request for a s. 25 investigation.

### **Clause 7**

Clause 7 states that the Commission will "inquire into the administration of the TBPS in light of the Chief's and Deputy Chief's conduct and performance of duties, described above, and their relationship to the Board.

I am recommending that the Commission defer this aspect of the s. 25 investigation until June 30, 2023 as a check-in date for the following reasons. The Chief is currently suspended from her duties, and has publicly stated she does not intend to apply for an extension of her contract which ends in June 2023. The Board has retained a search committee to advise the Board and Administrator on suitable candidates to be the next Chief.

As mentioned, on April 19, 2022, the Commission appointed Mr. Mercer as Administrator of the Board for a six-month term subject to renewal. It is anticipated that Mr. Mercer's tenure as Administrator will come to end either later this year or next year at which time full governance of the TBPS will return to the Board. However, by that time, the majority of a new five-member Board will inevitably be constituted by new members. Currently, the Board has three members; municipal councillor Shelby Ch'ng, Thunder Bay Mayor Bill Mauro and municipal appointee Georjann Morriseau. Mr. Mauro has announced he will not be running in the upcoming October 24<sup>th</sup>, 2022 municipal election. As well, the two provincial appointee positions are currently vacant. Accordingly, even if both Ms. Ch'ng and Ms. Morriseau are reappointed by the new municipal council, they will be the only incumbent members with three new faces on the Board by later this year.

All of this adds up to a significant overhaul of both personnel at the senior command level within the Service and a reconstituted Board in the foreseeable future. Additionally, the new Board will benefit from the recommendations suggested by Administrator Mercer and his guidance while he continues on with one vote during the transitional period to full Board governance.

With a new Chief and a reconstituted board, it is anticipated that the issues brought to light by this investigation and the ensuing hearing into alleged misconduct of Chief Hauth will be fully addressed. Accordingly, it would be a better allocation of the Commission's resources to defer inquiring into issues raised in ToR clause 7 until both a new Board and Chief are installed and had an opportunity to develop a working relationship.

## **Conclusion**

The investigation into allegations against Deputy Chief Hughes found in ToR clause 5(a) are not substantiated. The investigation into allegations against Chief Hauth found in clause 5(b) are substantiated, and a hearing will ensue. The investigation into allegations of collusion by Chief Hauth, Deputy Hughes and Ms. Walbourne found in ToR clause 5(c) are not substantiated. Finally, an investigation into the issues raised in ToR clause 7 ought to be deferred until June 30, 2023 to ascertain whether a newly appointed Chief and newly constituted Board are effectively addressing these concerns.

Please contact me if you have any questions.