

MEMORANDUM OF UNDERSTANDING

BETWEEN

**The Ministry of Community Safety
and Correctional Services**

(hereinafter called the "Ministry ")

AND

The Ontario Police Arbitration Commission

as represented by the Chair of the Ontario Police Arbitration Commission

(hereinafter called the "Commission")

1.0 INTRODUCTION

1.1 Purpose of Memorandum of Understanding

The purpose of this Memorandum of Understanding (MOU) is to clarify the operational, administrative and reporting relationships between the Ministry and the Commission.

1.2 Status of Commission

The Commission is a Crown Agency pursuant to the *Crown Agency Act*. Management Board of Cabinet (“MBC”) classifies the Commission as an Adjudicative Agency.

1.3 Mandate

The mandate of the Commission is to:

- promote harmonious labour relations in the police community;
- administer the mediation-arbitration process for police contract bargaining disputes and rights grievances;
- provide conciliation services prior to arbitration;
- assist parties negotiating a voluntary collective agreement;
- sponsor research with respect to police arbitration processes and awards.

1.4 Legal Authority

The legal authority of the Commission is set out in subsection 131 (1) of the *Police Services Act*, R.S.O. 1990, c. P. 15 as amended (the “PSA”). The statutory responsibilities of the Commission are set out specifically in subsection 131(5) of the PSA.

The Commission is subject to the *Accessibility for Ontarians with Disability Act, 2005*; *Freedom of Information and Protection of Privacy Act*; *Public Service of Ontario Act, 2006*; the *Human Rights Code* and all other applicable laws.

This MOU is subject to the *Public Service of Ontario Act, 2006*, and regulations thereunder (collectively “PSOA”). The PSOA and its provisions respecting conflict of interest, political activity and wrongdoing govern all public servants of the Commission.

In the event of a conflict between this MOU and the PSOA, the PSOA prevails.

1.5 Processes for Review and Amendment

This MOU will be reviewed by the parties upon the request of either the Minister or the Chair or in circumstances where the PSA or the *Public Service*

Act, R.S.O. 1990, c.P.47, as amended, are revised and amended and alter the Commission's mandate. In any event, it shall be reviewed at the end of five years.

This MOU must be affirmed by the Minister and the Commission Chair for continuance (or, alternately, may be revised) on a change in either the Minister or the Chair.

2.0 ROLES AND RESPONSIBILITIES

2.1 Role of the Minister

The Minister is responsible for:

- (a) recommending to MBC the elimination or consolidation of the Commission and any change to the Commission's mandate that needs corresponding change to the Commission's constituting instrument;
- (b) recommending to MBC the powers to be given to the Commission when a change in the mandate of the Commission is being proposed;
- (c) reporting to Cabinet on the Commission's performance and compliance with the government's operational policies and broad policy directions;
- (e) reporting to the Legislative Assembly on the affairs of the Commission and tabling the annual report of the Commission in the Legislative Assembly in accordance with the AAD
- (f) reviewing and approving the Commission's annual business plan;
- (g) assessing and evaluating the Commission's risk management strategy on a quarterly basis;
- (h) providing such affirmation letter as required under the AAD;
- (i) consulting with the Chair when significant new directions for the Commission are contemplated or when initiatives are taken to amend any legislation or regulations which may affect the mandate of the Commission;
- (j) meeting with the Chair of the Commission at regular intervals and informing the Chair of the government's priorities and broad policy directions for the Commission;
- (k) recommending to MBC the provincial funding to be given the Commission;
- (l) directing that a periodic review of the Commission be conducted and making the subsequent recommendations to MBC;
- (m) developing with the Commission's Chair an MOU for the Commission;

- (n) approving and signing the MOU for the Commission; and
- (o) recommending to the Lieutenant Governor in Council, persons to be appointed or re-appointed to the Commission.

2.2 Role of the Deputy Minister

The Deputy Minister (the “Deputy Minister”) is responsible for:

- (a) advising the Minister of the requirements of the MBC Directives that may affect the Commission;
- (b) advising the Minister on the elimination, consolidation and operation of the Commission;
- (c) establishing a framework for reviewing and assessing the Commission’s business plan and other reports and advising the Minister on the Commission’s documents submitted to the Minister for review and/or approval;
- (d) advising the Minister on meeting assigned ministerial responsibilities with respect to the Commission;
- (e) undertaking reviews as directed by the Minister;
- (f) co-operating with any periodic review directed by the Minister or MBC;
- (g) establishing a system for the retention of formal Commission documents and for appropriately making such documents publicly available;
- (h) monitoring the Commission on behalf of the Minister while respecting its authority, and where warranted, to identify the need for corrective action and recommending to the Minister ways of resolving issues;
- (i) negotiating with the Chair of the Commission a draft MOU for the Commission as directed by the Minister;
- (j) meeting with the Chair as needed or directed;
- (k) providing administrative, financial and other support to the Commission as specified in Schedule “A” and “B” of this MOU;
- (l) provide such documentation as is required to attest that the Agency is in compliance with the mandatory requirements of the AAD;
- (m) establishing and applying a financial management framework to support decision-making;

- (n) establishing a system to ensure that the Commission operates within the approved business plan; and,
- (o) attesting to TB/MBC on the Commission's compliance with the mandatory accountability requirements set out in the AAD and other applicable TB/MBC directives, the government's operational policies and policy directions based on the annual letter of compliance from the agency Chair to the Minister.

The Deputy Minister may, in accordance with PSOA, sub- delegate any of the power and duties delegated to him or her under this MOU.

2.3 Role of the Chair

The Commission is an adjudicative decision-making body, and will carry out its adjudicative functions independently of the Minister and the Ministry. It is responsible for carrying out the duties assigned to it by the statute referred to in Clause 1.4 of this MOU.

The Chair is responsible for ensuring that the Commission carries out the adjudicative and other responsibilities assigned to the Chair and the Commission under section 131(5) of the PSA. In addition, the Chair's responsibilities also include:

- (a) providing leadership to the Commission;
- (b) directing the affairs of the Commission so as to fulfil its mandate as defined;
- (c) monitoring the performance of the Commission;
- (d) setting the goals, objectives and strategic directions for the Commission within its mandate as defined by the Commission's constituting instrument and this MOU;
- (e) developing performance measures and targets for the Commission;
- (f) keeping the Minister informed of issues or events that may concern the Minister in the exercise of the Minister's responsibilities;
- (g) co-operating with any periodic review directed by the Minister or MBC;
- (h) developing with the Minister an MOU for the Commission;
- (i) approving and signing the MOU for the Commission;
- (j) reviewing the Commission's budget and financial reports;
- (k) preparing and revising the Commission's business plan;

- (l) approving the Commission's business plan for submission to the Minister;
- (m) reviewing and submitting annually to the Minister the Commission's risk management strategy;
- (n) providing such affirmation letter as required under the AAD;
- (o) ensuring that public funds are used with integrity and honesty;
- (p) directing corrective action be taken if needed;
- (q) making recommendations to the Minister on appointments and re-appointments for members of the Commission;
- (r) meeting with the Deputy Minister to discuss matters of mutual importance to the Commission and the Ministry, such as resource issues, the services provided by the Ministry to the Commission and the implementation of corporate policies;
- (s) evaluating the performance of members;
- (t) ensuring that the Minister is provided with an annual report of the affairs of the Commission within 120 days after the end of its fiscal year;
- (u) ensuring that conflict of interest matters are handled in accordance with MBC Directives;
- (v) establishing and maintaining a roster of interest and rights disputes arbitrators and conciliators in consultation with members of the Commission;
- (w) setting standards and criteria for the appointment of arbitrators to the Commission's register; and establishing criteria for the removal of arbitrators from the register, when necessary;
- (x) appointing arbitrators for contract bargaining disputes for municipal police and the OPP, where the parties are unable to mutually agree on the appointment of an arbitrator or chair of an arbitration board;
- (y) selecting the method of arbitration including mediation-arbitration, mediation-final offer selection and conventional arbitration;
- (z) selecting and recommending arbitrators for appointment by the Minister in rights arbitration;
- (aa) supervising administrative staff in support of the agency's functions;
- (bb) ensuring that the public servants of the Ontario Police Arbitration Commission are informed of the conflict of interest and political activity rules under Parts IV and V of the PSOA; and

- (cc) recording any declared or apparent conflict of interest and promptly advising the Minister of such conflicts.

2.4 Additional Responsibilities

The senior staff person at the Commission is responsible for:

- (a) managing the day-to-day operations of the Commission in accordance with MBC Directives and/or accepted business and financial practices;
- (b) applying policies so that public funds are used with integrity and honesty;
- (c) supporting the Chair in meeting his / her responsibilities;
- (d) carrying out in-year monitoring of the Commission's operational performance and report on it to the Chair;
- (e) advising the Chair on compliance with MBC Directives and Ministry policies and procedures;
- (f) keeping the Chair informed on operational matters;
- (g) preparing and submitting, annually, the 3 year business plan to coincide with the Ministry's business planning process
- (h) preparing annually the Commission's business plan to be approved by the Chair prior to submission to the Minister;
- (i) preparing the Commission's risk management strategy;
- (j) preparing financial reports;
- (k) coordinating with the Ministry the development of a performance measurement system for Commission staff and implementation of said system; and
- (l) preparing the annual report for the Commission for the approval of the Chair prior to submission to the Minister.
- (m) recruiting and training administrative staff in support of the agency's functions

2.5 Accountability Relationship

The Minister is accountable to the Legislature for the Commission's fulfilment of its mandate, compliance with government policies and for reporting to the Legislature on the Commission's affairs.

The Chair is accountable to the Minister for the performance of the Commission in fulfilling its mandate and for carrying out the roles and responsibilities assigned to the Chair by the PSA, MBC Directives, and this MOU.

The Deputy Minister is accountable to the Minister for the performance of the Ministry in providing administrative support (including staffing and funding) to the Commission and for carrying out the responsibilities assigned to him / her by the Minister, by MBC Directives, and this MOU.

3.0 FINANCIAL ARRANGEMENTS

- 3.1 The Commission is funded out of the Consolidated Revenue Fund pursuant to an appropriation authorized by the Legislature.
- 3.2 Recovered costs and other revenues, if any, shall be paid, as received, to the Consolidated Revenue Fund and may not be applied to administrative expenditures of the Commission.

This arrangement may be subject to amendment pursuant to such revenue policy directives as MBC may approve.

- 3.3 Financial procedures of the Commission shall be in accordance with MBC Directives and Guidelines, and the Corporate Financial and Administrative Policies and Procedures Manual and other directives of the Ministry.
- 3.4 Responsibility for the maintenance and retention of documentation and information to support expenditures lies with the Commission and is assigned to the Executive Officer of the Commission.

4.0 ADMINISTRATIVE ARRANGEMENTS

- 4.1 The Chair will develop procedures and will operate the Commission in accordance with all administrative policies established and specified in MBC Directives and Guidelines and the Ministry's Corporate Financial and Administrative Policies and Procedures Manual.
- 4.2 The full range of financial and administrative support services to be provided by the Ministry to the Commission is outlined in Schedules "A" and "B" to this MOU. In the event of any conflict between the Chair and staff of the Commission and Ministry staff in respect of the provision of the services, the Deputy Minister will determine the matter after consultation with the Chair.
- 4.3 The Chair will, upon the request of the Minister or the Deputy Minister, supply specific data and other information, which may be required from time to time for the purposes of Ministry administration.
- 4.4 Legal services to the Commission will be provided by the Ministry of the Attorney General through the Legal Service Branch of the Ministry of Community Safety and Correctional Services. The Commission may request outside legal

assistance when it requires expertise not available within the Ministry of the Attorney General or when the use of a law officer of the Crown would place the government and the Commission in a conflict of interest position. It is understood that the Ministry of the Attorney General must approve the retention of outside legal counsel.

4.5 The Commission and the Ministry will avoid duplication of services.

5.0 STAFFING

5.1 The Chair is appointed as Chair of the Commission by the Lieutenant Governor in Council pursuant to subsection 131 (2) of the PSA and is the Chief Executive Officer of the Commission. Subsection 131 (6.1) of the PSA provides that no person shall be appointed as Chair of the Commission unless the Minister, or his delegate, has first consulted with, or attempted to consult with, bargaining agents representing members of police forces, and employers or employers' organizations representative of the employers of members of police forces.

5.2 The members of the Commission are appointed by the Lieutenant Governor in Council pursuant to section 131 (2) of the PSA.

5.3 Staff of the Commission are appointed under the *PSOA* pursuant to section 131 (4) of the PSA.

5.4 The Commission, in its personnel policies affecting staff appointed under the *PSOA*, will be subject to:

- the policies of the Public Service Commission;
- the Management Board of Cabinet Directives and Guidelines;
- the Human Resources Manual of the Ministry;
- the Corporate Financial and Administrative Policies and Procedures Manual;
- applicable collective agreement provisions; and
- all applicable legislation.
- for greater certainty, the Commission shall ensure that salary information is submitted, as required, to the Ministry of Finance in accordance with the *Public Sector Salary Disclosure Act*, and the specified filing directions and schedule of the Ministry of Finance.

6.0 REPORTING REQUIREMENTS

6.1 Subject to maintaining the independence of the adjudicative functions of the Commission as set out in Clauses 1.2 and 1.3, the Commission is responsible through the Chair for preparing and submitting such reports as are required under the PSA or by the Minister, in accordance with approved practices of the Ministry or pursuant to this MOU.

6.2 The Commission will prepare and submit a 3-year business plan each year to coincide with the Ministry's Business Planning Process.

7.0 AUDITING ARRANGEMENTS

- 7.1 The affairs of the Commission shall be subject to audit by the Ontario Internal Audit, Justice Audit Service Team of the Ministry and by the Provincial Auditor. In the normal course, the Ministry may review the records of the Commission upon 24 hours' notice and during normal business hours.
- 7.2 The Chair shall direct to the Minister through the Ministry a copy of every report from an audit, a copy of the Commission's response to the audit report and any recommendations therein, and all correspondence of the Commission with the Provincial Auditor in response to the findings, conclusions and recommendations of the Provincial Auditor's report. The Chair shall consult with the Director of the Ministry's Audit Services Branch throughout the audit process and will advise the Minister annually on any outstanding audit recommendations.
- 7.3 The results of any audit conducted by Ministry/government staff will be shared with the Chair. The Chair will be accorded an opportunity to enter his or her comments into the audit record.
- 7.4 The Chair may request an external audit of the financial transactions or management controls of the Commission at the Commission's expense.

8.0 RECORDS

The Commission shall create, collect, use, maintain and dispose of records in accordance with the *Freedom of Information and Protection of Privacy Act* and MBC Directives.

DATED AT TORONTO THE 18 DAY OF August, 2016.

(original signed)

The Honourable David Oraziotti
Minister

(original signed)

Paul G. Gardner
Chair

SCHEDULE A

The full range of financial and administrative support services to be provided by the Ministry to the Commission is outlined below:

- (a) Financial and administration services including pay and benefits administration, accounts payable and technical advice, purchasing, central mail and printing services and records and forms advisory services, will be provided by the Corporate Services Division;
- (b) Human resources services including classification; advice and consultation regarding recruitment procedures and staff relations; job description writing; counselling regarding career planning and staff development; and advice and consultation regarding corporate initiatives such as Occupational Health and Safety, etc. will be provided by the Human Resources Branch. Corporate educational opportunities are provided by the Ministry of Government Services and coordinated and processed by the Human Resources Branch;
- (c) Advice and consultation on information technology and telecommunications services will be provided by Justice Technology Services;
- (d) Internal audit services including financial compliance, management, human resources and information systems audits, operational reviews and special investigations as required will be provided by Ontario Internal Audit, Justice Audit Services Team;
- (e) Accommodation planning and relocation services, including lease renewals, will be provided by the Facilities, Emergency Management and Security Branch;
- (f) Services of the Freedom of Information program will be provided by the Freedom of Information and Protection of Privacy Office;
- (g) French language services will be provided by the French Language Services; French Language Services, in accordance with the translation policy of the Ministry, will provide translation and interpretation services;
- (h) Research services and statistical analysis will be provided by the Corporate Evaluation and Analysis unit of the Strategic Planning and Research Branch; and
- (i) Communication services will be provided by the Communications Branch;

These services will be provided to a standard of service acceptable to the Commission and the Ministry, will be of the same level and quality as provided to the line divisions and branches within the Ministry, and will be provided without cost unless alternate arrangements with respect to cost are agreed upon.

SCHEDULE B

The following personnel will be responsible for services provided by the Ministry to the Commission:

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| (a) ADM/CAO, Corporate Services Division | <ul style="list-style-type: none">● act as a liaison between the Ministry and the Commission to communicate policy and other administrative changes driven by central agencies |
| (b) Director, Procurement & Business Improvement Branch | <ul style="list-style-type: none">● provide procurement and business improvement support |
| (c) Director, Business & Financial Planning Branch | <ul style="list-style-type: none">● for advice and assistance in business and financial planning, including Commission Business Plans |
| (d) Director, Human Resources Branch | <ul style="list-style-type: none">● for the delivery of human resources services, advice and consultation transactional human resources services (i.e. CORPAY) to be provided by the Ontario Shared Services |
| (e) ADM, Integrated Justice Information Technology Division | <ul style="list-style-type: none">● for computer and telecommunications services |
| (f) Director, Audit Services Branch | <ul style="list-style-type: none">● for audit services |
| (g) Director, Facilities Management Branch | <ul style="list-style-type: none">for accommodation services |
| (h) Coordinator, Freedom of Information and Protection of Privacy Office | <ul style="list-style-type: none">● for freedom of information services |
| (i) Coordinator, French Language Services | <ul style="list-style-type: none">● for French language advisory, monitoring and translation services |
| (j) Manager, Measurement & Evaluation Unit | <ul style="list-style-type: none">● for research services and statistical analysis |
| (k) Director, Communications | <ul style="list-style-type: none">● for communications services |