



Dear Michael Mitchell and former Justice John Murray,

### **Re Changing Workplaces Review and the Ontario Provincial Police Association**

Thank you for the opportunity of allowing the Ontario Provincial Police Association (the "OPPA") to provide input into the Changing Workplaces Review.

#### **About the OPPA**

The OPPA represents all civilian and non-commissioned uniform Members of the Ontario Provincial Police (the "OPP"). There are over 6,200 uniform and approximately 3,600 civilian members who belong to the OPPA. The OPPA has bargained two separate collective agreements with Her Majesty the Queen in Right of Ontario; one for uniform members and one for civilian members.

Members of the OPP are Ontario Public Service (the "OPS") employees appointed under the Public Service of Ontario Act. The OPP itself is a division of the Ministry of Community Safety and Correctional Services.

#### **Collective Bargaining**

Unlike other members of the OPS and other police forces in the province, the right to collective bargaining for the OPPA is governed by the *Ontario Provincial Police Collective Bargaining Act* (the "OPPCBA"). The OPP is expressly excluded from both the *Crown Employees Collective Bargaining Act* (s. 1.1(3) para 1. of CECBA) and the *Labour Relations Act* (s. 3 (d) of the LRA), and that part of the Police Services Act which governs labour relations (s.115 of the PSA).

Until recent amendments to the OPPCBA, the right to bargain and grieve certain terms and conditions were severely restricted.

Until December 20, 2015 the OPPCBA read:

2(3) Except in relation to matters governed by or under the Police Services Act, every collective agreement is deemed to provide that it is the exclusive function of the employer to manage, which function, without limiting the generality of the foregoing, includes the right to determine employment, appointment, complement, organization, work methods and procedures, kinds and location of equipment, discipline and

termination of employment, assignment, classification, job evaluation system, merit system, training and development, appraisal and the principles and standards governing promotion, demotion, transfer, lay-off and reappointment, and that such matters will not be the subject of collective bargaining nor come within the jurisdiction of the Negotiating Committee or an arbitration board.

As a result of this provision, the OPP developed the colloquialism of the "Commissioner's Prerogative" to describe the Commissioner's absolute authority to manage the OPP.

On December 20, 2015 this OPPCBA was amended to remove this section and a Management's Rights clause was introduced.

While the legal foundation of the Commissioner's Prerogative no longer exists its legacy on the culture of the organization remains entrenched.

The OPP continues to have a narrow perspective on what decisions can be agreed to through collective bargaining or contested through arbitration. This was recently addressed/clarified by the decision of *Ontario v. OPA (Webb)* (<http://canlii.ca/t/gtmmj>) which confirmed adherence to the Collective Agreement is not optional and management's actions must be reasonable and, if they are not, they can be grieved.

## **Employment Standards**

While the terms and conditions of civilian members of the OPP are also governed by the *Employment Standards Act, 2000* (the "ESA, 2000"), Police Officers are expressly excluded from its application (s. 3 (5) para 10 of the ESA, 2000). Unlike other members of the OPS for whom the ESA, 2000 has limited application the exclusion of Police Officers is total.

The exclusion of Police Officers from the ESA, 2000 has some significant consequences for our members including protections related to:

- leave provisions (pregnancy, parental, family emergency etc...)
- pay equity.

The exclusion of these protections has a disproportionate effect on the female members of the OPP who often bear the responsibility of family care obligations.

While OPA members can request leaves to manage family care responsibilities through the compassionate leave provisions of the Collective Agreements, these leaves are discretionary and contingent on "operational requirements". When these leaves are denied by the employer the employee's only recourse is to grieve. For reasons discussed below this is a very frustrating if not useless process.

## **Labour Relations Act**

Under the LRA unions and associations have access to expedited arbitration processes (s. 49 of the LRA). These expedited processes are available where disputes require quick resolution for example accommodation of limitations flowing from family care obligations or disability, or terminations.

The exclusion of the OPP from these expedited arbitration provisions has placed OPPA members in dire straits. For example, the employer has initiated changes to schedules/hours of work that are impossible for some members to manage due to their childcare arrangements. (Often OPPA members are located in smaller communities where childcare facilities are few and far between.) While the OPPA has grieved such decisions (and in other circumstances members have made Applications to the Human Rights Tribunal on their own) the delays in having an arbitrator hear these disputes can take several months or years. This is in stark contrast to the expedited process in the LRA which allows an urgent matter to be heard within a much shorter period.

### **Key Asks**

The most significant change that the Changing Workplace Review initiative could provide is to enable the OPPA to access the expedited proceedings in the LRA.

While the availability of the leaves in the ESA, 2000 for pPolice Officers would also be helpful, these leaves could be replicated through the Compassionate Leave provisions and/or bargaining between the parties.

Please let me know if the OPPA can provide you with any additional information.

President Rob Jamieson & the Board of Directors  
Ontario Provincial Police Association

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