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Ontario Civilian Police Commission 2012 Annual Report

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Graphic: Ontario Civilian Police Commission logo

Serving the Ontario public for 50 years.

Ontario Civilian Police Commission

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The Honourable Madeleine Meilleur

Minister of Community Safety and Correctional Services

18th Floor, 25 Grosvenor Street

Toronto, Ontario

M7A 1Y6

Dear Minister:

I am pleased to forward you the 2012 Annual Report for the Ontario Civilian Police Commission pursuant to our Memorandum of Understanding. The foregoing reflects the Commission's activities for the calendar year ending December 31, 2012.

Please note, the Commission's Annual Reports can be found on our website at www.ocpc.ca in English and French, as well as in an Accessible format in both official languages.

Yours truly,

[Original signed by]

David C. Gavsie, Chair

Chair's Message

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Photo: David C. Gavsie, Chair

The year 2012 marked a special milestone for the Commission as we celebrated our 50th anniversary. Since our creation in 1962, the Commission has issued nearly 1,000 decisions on policing matters in Ontario. Under the *Police Services Act*, the Commission has general oversight responsibilities to ensure that adequate and effective police services are provided to Ontarians. Further, the Commission has general oversight, in addition to police officers, with respect to police services boards and their members, municipal chiefs of police, auxiliary members of a police force, special constables, and municipal law enforcement officers.

We are particularly proud that in 2012, our website – www.ocpc.ca – was upgraded, primarily in response to feedback received from stakeholders. It now has a cleaner, more modern look, and is user friendly. Ontarians are now able to search Commission decisions by date, by name, by section of the *Police Services Act*, and by all decisions under a specific section of the *Act*.

In 2012, the number of cases heard, decisions rendered and investigations undertaken all increased. The latter reflects the Commission's new proactive stance. The trend for increased investigation will continue in 2013 with the Commission engaging stakeholders before finalizing its policy on when to implement our responsibility under section 78 of the *Police Services Act*.

To ensure understanding of the *Police Services Act* as well as the Commission's mandate and its many roles under the *Act*, Commission staff and I conducted 12 presentations in 2012 for stakeholders such as the Ontario Association of Chiefs of Police, the Ontario Association of Police Service Boards, the Ontario Police College, and others.

The Commission recognizes that it is one of three independent civilian police oversight agencies in Ontario together with the Special Investigations Unit and

the Office of the Independent Review Director. Collectively, we work towards building and maintaining the trust of Ontarians in the civilian police oversight system.

I would like to thank Justice Dave Edwards, our Vice-Chair, and long-standing Member Noëlle Caloren for their outstanding service to the Commission. They concluded their formal terms as Members in December and September 2012. We wish them the very best in their future endeavours. In 2012, we were pleased to welcome new Members Jacqueline Castel and Jeffrey King.

In closing, I would like to acknowledge the hard and dedicated work of our staff. I would also like to thank our Members, all of whom are part-time, in ensuring that the work of the Commission is carried out in a fair, reasonable, accountable and timely manner.

Yours truly,

[Original signed by]

David C. Gavsie, Chair

Mandate

The Commission's legislative authority is set out in the *Police Services Act*, R.S.O. 1990, c. P.15, as amended, (the "Act") and the *Interprovincial Policing Act*, R.S.O. 2009, c. 30.

Mission Statement

The Ontario Civilian Police Commission (the "Commission") is an independent oversight agency committed to serving the public by ensuring that adequate and effective policing services are provided to the community in a fair and accountable manner.

Commission Values

Fairness – The provision of service and performance of statutory functions in an impartial, lawful, unbiased and just manner.

Accessibility – The ability to provide information and services that are simple and easy to use.

Timeliness – The performance of tasks within established time frames based on reasonable expectations.

Quality and Consistency – The production of accurate, relevant, dependable, understandable and predictable information and results, with no errors in law or fact.

Transparency – The use of policies and procedures that are clear and understandable to everyone involved.

Expertise – The possession and use of the skill, knowledge and technical competence required to discharge all statutory responsibilities and maintain public confidence.

Optimum Cost – The provision of services at a cost that is based on best practices and is cost effective for everyone involved.

Courtesy – The demonstration of respect to everyone who works in and/or comes into contact with the agency.

Role of the Commission

Mandate

The Commission is an independent oversight agency at arm's length from the Ministry of Community Safety and Correctional Services. The Commission reports to the Minister.

The Commission is responsible for ensuring that adequate and effective police services are provided throughout Ontario. Its oversight powers are an important element of the civilian governance structure set out in the *Act*. To ensure compliance with the *Act*, the Commission has the authority to investigate policing-related matters, hold different types of hearings and make recommendations with regard to the delivery of police services in a community.

Police services and police services boards are ultimately accountable to the public through the Commission.

A. Appeals

The Commission hears appeals of decisions at police disciplinary hearings concerning complaints about police conduct made by members of the public or initiated by chiefs of police. The hearings are initiated by a chief of police and are presided over by a hearing officer who is a police officer, a former police officer, a judge or a former judge.

A public complainant (where the officer is acquitted) and a police officer each have the right of appeal to the Commission in writing within 30 days of receiving notice of the decision at a disciplinary hearing. If a public complainant wishes to appeal penalty alone, they must first obtain leave to appeal. After hearing the appeal, the Commission may:

- confirm, vary or revoke the decision of the hearing officer;
- substitute its own decision; or
- where the complaint is related to events occurring after October 19, 2009, it may also order a new hearing.

In fulfilling its appellate role, the Commission ensures that the decision of the hearing officer is based on facts established by the evidence at the hearing, and reflects the proper application of the law.

B. Investigations and Inquiries

The Commission may investigate and inquire into the administration of a municipal police service, the manner in which policing services are being provided, and the policing needs of a municipality. The Commission may be directed by the Lieutenant Governor in Council to hold an inquiry into any matter relating to crime or law enforcement. As well, the Commission may independently investigate and inquire into

the conduct or work performance of police officers, chiefs of police, members of local police services boards, auxiliary members of a police service, special constables, and municipal law enforcement officers.

C. Hearings

As a quasi-judicial body, the Commission has specific authority to hold different types of first instance hearings to ensure compliance with the *Act*. The Commission:

- decides disputes between local police services boards and municipal councils about annual police budgets;
- approves the restructuring or disbandment of municipal police services where an employee termination is involved;
- determines whether or not a disabled member of a police service has been accommodated;
- adjudicates disputes about membership in municipal police bargaining units; and
- determines whether or not prescribed standards of police services are being met.

D. Approvals

The Commission approves the appointment of First Nations Constables to perform specified duties in designated geographical areas.

E. Public Complaints

The Commission has responsibility for overseeing public complaints about police conduct, policies and services provided by a police service where the complaints are related to events which occurred prior to October 19, 2009. The Commission continues to complete outstanding public complaint review files.

The process for dealing with such matters is as follows. Members of the public, who are not satisfied with a local police decision about their complaints, may ask the Commission to review the matter.

When conducting a review, the Commission receives the complaint file from the police service as well as submissions from the complainant. A Commission case manager will analyze the file and prepare a case summary to present to a review panel of Commission members.

The panel may:

- confirm the decision of the Chief of Police / OPP Commissioner;
- refer the matter back to the police service involved or another police service for further investigation;
- find misconduct of a less serious nature; or order a disciplinary hearing.

Commission: The Organization

The Commission is made up of a full-time Chair, a part-time Vice-Chair and seven part-time members.

Members are appointed by Order-in-Council for terms of 2, 3 and 5 years but not to exceed 10 years in total. Members represent a diverse cross-section of professions and communities in Ontario. They have extensive backgrounds in law, education, community advocacy, human rights, corrections, victims' rights, politics, and criminal and Aboriginal justice. Members are supported in their role by advisory, legal, investigative, communications, and administrative Commission staff.

In addition to attending regular monthly meetings at the Commission's Toronto office, Members sit on panels to conduct appeals, first instance hearings and public meetings.

Organizational Chart 2012

Ontario Civilian Police Commission

Chair

David C. Gavsie

Vice President

Dave Edwards

Members (Part Time)

Noëlle Caloren, Jacqueline Castel, Roy Conacher, Zahra Dhanani, Jeffrey King, Hyacinthe Miller, John Rodriguez

Commission Counsel

T. Bell

Chief Operating Officer & Registrar

M. Camacho

Senior Advisor

C. Boxer-Byrd

Investigator

F. Irandoust

Investigator

W. Korol

Contract Investigator

M. Boyd

Contract Investigator

K. Rippey

Communications Coordinator

A. Asik

Administrative Coordinator

K. Krause

Financial Analyst

F. Izarali

Bilingual Administrative Assistant

M. Bayaram

Administrative Assistant

Vacant

Legal Assistant
L. Morayniss

Members of the Commission

David C. Gavsie – Chair (Full-time)

David Gavsie practiced corporate/commercial law for more than thirty years in both Ottawa and Toronto with the law firms of Gowling and Henderson and Ogilvy Renault prior to his retirement from the practice of law. In November 2005 he was appointed Chair of the Alcohol and Gaming Commission of Ontario where he served until February 2011 when he became Chair of the Ontario Civilian Police Commission. He has been Chair of the Greater Toronto Marketing Alliance, the Ontario Chamber of Commerce, the Ottawa International Airport Authority, the Institute of Corporate Directors Corporate Governance College, and has served and continues to serve on boards and committees of a number of other corporations. He is also a director of the Canadian Association for Civilian Oversight of Law Enforcement (CACOLE) as well as a member of the selection committee for the Ontario Medal for Firefighters and Police Bravery. David enjoys playing tennis and boating (power).

Dave Edwards – Member (Part-time; not a formal Member as of Dec. 14, 2012)

Dave Edwards has been a partner in a Niagara Region law firm since 1978 practicing primarily in the areas of corporate and commercial law. During his professional career, he served on a number of community organizations and held a number of positions including: Chair of the Board of Trustees of Brock University, President of the United Way of his Municipality and District, Member of the Niagara District Airport Commission, and a Member of the Boards of Directors of The Alzheimer Society of Niagara and the Rotary Club.

Noëlle Caloren – Member (Part-time; not a formal Member as of Sept 16, 2012)

Noëlle Caloren is a lawyer who was called to the Ontario Bar in 1995. She practices law in a large national Canadian law firm. With a background in general litigation, Ms. Caloren has developed an expertise in employment and labour law, human rights and education law matters. Over the last six years, Ms. Caloren has taught Civil Procedure at the Bar Admission Course of the Law Society of Upper Canada. She is also a contributing author to a comprehensive employment law text *Employment Law – Solutions for the Canadian Workplace*. Ms. Caloren is fluently bilingual.

Jacqueline Castel – Member (Part-time)

Jacqueline Castel is a lawyer with experience in regulatory and adjudicative matters in Ontario. She was called to the Ontario Bar in 1993. Ms. Castel began her career with the Ontario government where she was involved in designing, setting up and administering the regulatory framework for casinos. She served as General Counsel and Corporate Secretary for Casino Niagara, and as Vice President of Legal and Administration for Casino Rama. Ms. Castel authored a textbook, *Gaming Control Law in Ontario* which she updates annually. Ms. Castel was a member of the Board of the Alcohol and Gaming Commission of Ontario from 2008 to 2011 and is currently a member of the License Appeal Tribunal.

Roy B. Conacher – Member (Part-time)

Roy B. Conacher is a senior partner with an eastern Ontario law firm. He was called to the Bar in 1971 and after practicing in Toronto for several years, moved to eastern Ontario. He has served on many boards and tribunals during his career including appointments as Co-Chair, Ontario Psychiatric Review Board; Regional Vice-Chair, Ontario Consent and Capacity Board; Independent Chairperson, *Federal Penitentiaries Act*; and Deputy Judge, (Small Claims Court). Mr. Conacher has also served as a municipal councillor; as Chair, Professional Division, Eastern Ontario United Way Campaign; and as a director of a local Rotary Club. His practice now concentrates primarily on real estate development, municipal law and administrative law.

Zahra Dhanani – Member (Part-time)

Zahra Dhanani is a lawyer, trainer, facilitator and independent consultant to the nonprofit sector. She studied at Osgoode Hall Law School where she received her LL.B. and earned her LL.M. in Alternative Dispute Resolution. With more than 20 years experience, Ms. Dhanani has extensive knowledge in the areas of nonprofit organizational development, social justice, diversity, gender violence and immigrant and refugee realities. Ms. Dhanani has served as an expert to service providers and community organizations providing plain language legal training on multiple areas of law. Ms. Dhanani completed her undergraduate degree at the University of Ottawa where she focused her studies on Women's Issues and Political Science.

Jeffrey King – Member (Part-time)

Jeffrey King was a senior partner in the Ottawa law firm of MacDonald Affleck and practiced law in the areas of estate law, real estate development, and administrative law. He was Amicus Curiae to the Federal Court of Canada for immigration matters. Mr. King was a member of City Council and hospital boards. He is presently Pastor of Our Lady of Fatima Parish. He holds an LL.B. from the University of Ottawa and a S.T.B. from the University of St. Thomas Aquinas, Faculty of Theology in Rome, Italy.

Hyacinthe Miller – Member (Part-time)

Following graduation from university, Ms. Miller worked in the private sector and for the federal and provincial governments in Ontario. She has also been active in various community agencies. During her career, Ms. Miller was a senior manager, a technology consultant and general advisor to federal and provincial government ministries and central agency officials, law enforcement agencies and civilian oversight organizations. Currently an organizational development consultant, Ms. Miller is also the former Executive Director of the Canadian Association for Civilian Oversight of Law Enforcement. She is active in various community agencies and is a published author.

John R. Rodriguez – Member (Part-time)

John Rodriguez began his extensive career as a teacher in southern Ontario, later becoming principal of a northern Ontario elementary school. He was elected president of the Ontario English Catholic Teachers' Association where he promoted greater cooperation between teachers and organized labour. In 1972, he began his 18-year service as a Member of Parliament. In 2006, he was elected mayor of a major Ontario city for four years. He has served on numerous boards including the Canadian Mental Association, the Heart and Stroke Association, the Child and Family Centre, and is presently a board member of the Sudbury Symphony Orchestra. Mr. Rodriguez holds a Bachelor of Arts degree from Laurentian University majoring in English and Spanish Literature.

Commission Budget

The annual budget allocated to the Commission for the 2012 calendar year was \$1,678,400.00.

The following is a breakdown of the budget:

Item: Salaries & Wages
Allocation (\$000): 1,457.70

Item: Employee Benefits
Allocation (\$000): 151.90

Item: Transportation & Communications
Allocation (\$000): 37.80

Item: Services
Allocation (\$000): 20.80

Item: Supplies & Equipment
Allocation (\$000): 9.20

Item: Subtotal
Allocation (\$000): 1,677.40

Item: Statutory Appropriations
Allocation (\$000): 1.00

Total: 1,678.40

Outreach

Each year, the Commission actively engages police officers and civilian staff of police services and police services boards in discussions. The ultimate goal is to ensure understanding of the Commission's mandate.

Staff lend their time and expertise to promote general awareness of legislative requirements and specific operational responsibilities. Opportunities for open dialogue – both formal and informal – include annual conferences and zone meetings with the Ontario Association of Chiefs of Police, the Ontario Association of Police Service Boards and the Police Association of Ontario, together with meetings with the Ministry as needed.

The Commission is regularly invited to participate in ongoing education and training programs. The Commission conducted the following outreach sessions in 2012:

- Ontario Police College, *Police Services Act* course
- Ontario Association of Chiefs of Police, Board of Directors
- Ontario Association of Chiefs of Police and Ontario Association of Police Service Boards Joint Meeting, Zone 4
- Ontario Provincial Police Detachment Commanders Conference
- Ontario Association of Police Service Boards, Board of Directors
- Ontario Association of Police Service Boards, Conference Panel
- Canadian Association for Civilian Oversight of Law Enforcement Conference
- Ontario Association of Chiefs of Police Annual General Meeting
- Nigerian Delegation's Study Mission to Canada
- Ontario Association of Police Service Boards Conference, Section 10 Boards
- Society of Ontario Adjudicators and Regulators Annual Conference
- Ontario Association of Police Service Boards Conference, Section 31 Boards

Inquiries, Investigations and Fact-Finding Reviews

Section 25 of the *Act* provides that the Commission may, on its own motion or at the request of the Solicitor General, the Independent Police Review Director, a municipal council or a board, investigate, inquire into and report on:

- the conduct or the performance of duties of a police officer, a municipal chief of police, an auxiliary member of a police force, a special constable, a municipal law enforcement officer or a member of a board;
- the performance of duties of an appointing official under the *Interprovincial Policing Act, 2009*;
- the administration of a municipal police force;
- the manner in which police services are provided for a municipality; and
- the police needs of a municipality.

Initiation of a section 25 inquiry is a serious, resource-intensive process with the potential for serious consequences for the member, chiefs of police and police services board involved. The consequences can include demotion, dismissal, suspension or revocation of an appointment.

In 2012, the Commission received 11 requests to invoke its powers under section 25. Of the eleven investigation requests, six alleged misconduct against a member(s) of a municipal police services board. Four requests made allegations against a member(s) of a police service. The remaining request raised issues of adequacy.

Significant time is spent gathering information and analyzing requests to ensure that sufficient information is placed before the Members so that they are able to make an informed decision about whether the request rises to the level of invoking section 25 of the *Act*. It may be determined that a request falls outside the jurisdiction of the Commission or is better dealt with under a different provision of the *Act* or, a different process altogether.

Matters under consideration and investigation are confidential and become public only if the Commission decides to proceed to a hearing. At that point, hearings are posted on our website and are open for the public to attend.

The Commission invoked its powers and conducted two section 25 (1) investigations which proceeded to one public hearing. Hearing dates are scheduled in 2013. Several other matters were investigated but did not proceed to a hearing.

The Commission also concluded three section 25 (1) investigations which were received in 2011, one of which proceeded to a public hearing. The decision for this matter was issued on August 21, 2012. The remaining two matters are scheduled to continue in 2013.

Finally, the Commission rendered two decisions in 2012 from matters commenced in 2011.

Date of Decision: February 10, 2012

Subject of Investigation: Donald MacNeil of the Barrie Police Services Board

Result: Matter dismissed when Member's term expired and the Commission lost jurisdiction

Date of Decision: August 21, 2012

Subject of Investigation: Chief Brian T. Foley of the Stirling-Rawdon Police Service

Result: Guilty of discreditable conduct; penalty of 3 days, being not less than 24 hours

Section 78 Internal Complaints

Section 78 of the *Police Services Act* provides the Commission with oversight of internally generated complaints made by a Chief of Police, under section 76, and a police services board, under section 77. It reads:

“The Commission may, in respect of a complaint made by a chief of police under section 76 or by a board under section 77, at any stage in the complaints process direct the chief of police or board, as the case may be, to deal with the complaint as it specifies or assign the review or investigation of the complaint or the conduct of a hearing in respect of the complaint to a police force other than the police force to which the complaint relates.”

Section 78 does not expressly provide when the Commission’s oversight power is engaged, or a process by which the power is to be exercised. The Commission has intervened on a number of internal matters however, at present, there is no formal mechanism to receive this information. Much of the information comes to the attention of the Commission from media reports. As such, in 2012 the Commission spent significant time gathering and analyzing internal complaint statistics provided by Chiefs and boards across Ontario. The Commission requested the complaint statistics to assist in the development of a procedural policy. The Commission continues its work on this initiative and will embark on a consultative process in 2013.

Section 116 Status Hearings

Municipal police services in Ontario are composed of “members” who are appointed by local police services boards. Section 2 of the *Act* defines “members” to include both police officers and civilian employees.

The *Act* permits members to form associations for the purposes of collective bargaining. Normally, there are two associations: one for officers and civilians, and another for senior officers. Under section 115 (2) of the *Act*, chiefs and deputy chiefs are excluded from this scheme.

From time to time, a dispute arises as to whether or not a particular member should be assigned to the local police association or to the senior officers association. Section 116 of the *Act* sets out a process to resolve such disagreements.

- (1) If there is a dispute as to whether a person is a member of a police force or a senior officer, any affected person may apply to the Commission to hold a hearing and decide the matter.
- (2) The Commission’s decision is final.

There were no section 116 status matters before the Commission during 2012.

The full text of previous section 116 status decisions can be found on the Commission’s web site at www.ocpc.ca.

Section 39 Budget Hearings

Police services boards are required to submit their aggregate operating and capital estimates annually to municipal council that show, separately, the amounts that will be required to maintain the municipal police force and provide it with the equipment and facilities that it needs to operate, as well as the amount of money required to pay the expenses of the board's operation other than the remuneration of board members.

Upon a review of the aggregate estimates, it is the municipal council's responsibility to establish an overall budget for the board.

Section 39 (5) of the *Act* states:

“If the board is not satisfied that the budget established for it by the council is sufficient to maintain an adequate number of police officers or other employees of the police force or to provide the police force with adequate equipment or facilities, the board may request that the Commission determine the question and the Commission, shall, after a hearing, do so.”

There were no section 39 budget matters before the Commission during 2012.

The full text of previous section 39 budget decisions can be found on the Commission's website at www.ocpc.ca.

Police Service Restructuring

Section 40 of the *Act* allows police services boards to terminate the employment of a member of a police force for the purpose of abolishing the force or reducing its size if the Commission consents and if the abolition does not contravene the *Act*.

When a municipality requests the approval of the Commission for the disbandment or downsizing of their police service, they must supply the Commission with a copy of a resolution passed by municipal council. The Commission requests a copy of the proposal for the provision of alternative policing services and also ascertains whether severance arrangements have been made with those members whose employment will be terminated if the proposal is accepted.

It is not the Commission's function to judge whether or not what is being proposed is economical or superior to what may already be in place or any other alternative. The Commission's focus is to determine whether the proposed arrangements meet the requirements of the *Act*. It is not the function of the Commission to determine what constitutes appropriate severance arrangements. That is a matter for bargaining between the parties and, in the absence of agreement, for arbitration under the *Act*.

A public meeting is held to hear presentations and receive submissions about the proposal to reduce or disband a municipal police service. Following the completion of the meeting, the Commission considers all of the information provided and renders a written decision.

During 2012, the Commission held three public meetings regarding section 40 matters. The Services involved were Hanover, Pembroke and Perth. The Hanover and Pembroke Police Services respectively made applications for consent to reduce the size of their police service, while Perth requested consent to disband their municipal police service. The Commission approved all three applications.

The official text of these decisions as well as previous restructuring decisions can be found on the Commission's website at www.ocpc.ca.

Disciplinary Appeals Process

1. Notice of Appeal Received
2. Acknowledgment Sent
3. Appellant's Appeal Materials Filed Within 30 Days of Receiving Transcripts of Disciplinary Hearings
4. Hearing Date Set and Confirmation Sent to Parties
5. Panel Members Assigned
6. Respondent's Appeal Materials Filed Within 30 Days of Receiving Appellant's Materials
7. Hearing Convened Before Panel
8. Hearing Held
9. Written Reasons for Decision Provided

Summary of Disciplinary Appeal Decisions

In previous years, the Commission included all of its decisions in the Annual Report. However, the official text of all of Commission decisions can now be found online at www.ocpc.ca.

During 2012, the Commission rendered decisions in 15 disciplinary appeal cases and on three disciplinary motions.

The following chart identifies the appellant, respondent, police service, date and outcome of the decision.

Date of Decision: January 30, 2012

Complainant and Police Service: Constable Thomas Brown and the Chatham-Kent Police Service

Result: Appeal dismissed

Date of Decision: February 13, 2012

Complainant and Police Service: Constable Jonathan James Leahy and the London Police Service

Result: Appeal against finding dismissed; appeal against penalty withdrawn

Date of Decision: March 22, 2012

Complainant and Police Service: Constable Scott Dwight Ogg and the London Police Service

Result: Appeal dismissed

Date of Decision: March 23, 2012

Complainant and Police Service: Constable Brian Dykman and the London Police Service

Result: Appeal dismissed

Date of Decision: March 23, 2012

Complainant and Police Service: Detective Constable Philip McRae and the Barrie Police Service

Result: Appeal dismissed

Date of Decision: April 3, 2012

Complainant and Police Service: Sergeant Peter Cox and the Ontario Provincial Police

Result: Appeal granted; finding of discreditable conduct revoked and substituted with a finding of not guilty

Date of Decision: May 23, 2012

Complainant and Police Service: Provincial Constable Terry Richardson and the Ontario Provincial Police

Result: Motion granted; direct the OPP Commissioner to hold a hearing under section 76 (9) of the *Act*

Date of Decision: June 5, 2012
Complainant and Police Service: Jeffrey Green and Detective Wayne Lakey and the Toronto Police Service
Result: Appeal dismissed

Date of Decision: July 4, 2012
Complainant and Police Service: Constable Randy Johnson and the City of Kawartha Lakes Police Service
Result: Motion granted; Commission lacks jurisdiction and appeal dismissed

Date of Decision: July 9, 2012
Complainant and Police Service: Constable Desmond Bovell and the Toronto Police Service
Result: Appeal dismissed

Date of Decision: July 20, 2012
Complainant and Police Service: Provincial Constable L.J. Turgeon and the Ontario Provincial Police and G.C.
Result: Appeal dismissed

Date of Decision: August 3, 2012
Complainant and Police Service: Constable Timothy McPhee and the Brantford Police Service
Result: Appeal dismissed

Date of Decision: August 13, 2012
Complainant and Police Service: Provincial Sergeant S.C. (Scott) Burrows and the Ontario Provincial Police
Result: Appeal dismissed

Date of Decision: August 31, 2012
Complainant and Police Service: Constable Nicholas Phoenix and the London Police Service
Result: Motion granted; time extension allowed

Date of Decision: October 12, 2012
Complainant and Police Service: Pat Nisbett and Inspector Art Pluss, Sergeant Joseph Trudeau, Constable Darren Sirie, and Constable William Freeman of the Sault Ste. Marie Police Service and the OIPRD
Result: Appeal granted; confirmed Hearing Officer's decision to dismiss all charges against Inspector Pluss and Sergeant Trudeau; revoked Hearing Officer's decision to dismiss charges against Constables Sirie and Freeman; matter returned to Hearing Officer to continue with hearing

Date of Decision: December 3, 2012
Complainant and Police Service: Constable Jason Bennett and the Ottawa Police Service
Result: Appeal granted; Hearing Officer's decision on penalty varied to forfeiture of three days or 24 hours

Date of Decision: December 12, 2012

Complainant and Police Service: Provincial Constable Appeal granted; Hearing Officer's decision on penalty varied to forfeiture of three days or 24 hours

Result: Appeal dismissed; Commission lost jurisdiction when Mr. Mitchell retired

Date of Decision: December 14, 2012

Complainant and Police Service: Constable Harriet Johnston and the Toronto Police Service

Result: Appeal dismissed

Commission Hearing Activity

In 2012, the Commission had:

- 20 hearings
- 3 public meetings
- 1 abandoned / withdrawn,
- 23 decisions released,
- 3 div court appeals / JR decisions released.

In 2011, the Commission had:

- 14 hearings,
- 2 abandoned / withdrawn,
- 16 decisions released,
- 3 div court appeals / JR decisions released.

In 2010, the Commission had:

- 10 hearings,
- 2 abandoned / withdrawn,
- 11 decisions released,
- 3 div court appeals / JR decisions released.

In 2009, the Commission had:

- 12 hearings,
- 1 abandoned / withdrawn,
- 19 decisions released,
- 4 div court appeals / JR decisions released.

In 2008, the Commission had:

- 15 hearings,
- 2 abandoned / withdrawn,
- 13 decisions released,
- 7 div court appeals / JR decisions released.

In 2007, the Commission had:

- 23 hearings,
- 6 abandoned / withdrawn,
- 23 decisions released,
- 3 div court appeals / JR decisions released.

In 2006, the Commission had:

- 29 hearings,
- 5 abandoned / withdrawn,
- 19 decisions released,
- 7 div court appeals / JR decisions released.

In 2005, the Commission had:

- 9 hearings,
- 5 abandoned / withdrawn,
- 5 decisions released,
- 18 div court appeals / JR decisions released.

Civil Actions and Applications for Judicial Reviews

The following is a list of Commission decisions that were subject to statutory appeals, judicial reviews and applications decided in 2012. The decisions can be found at: www.canlii.org/en/index.html.

Parties: Jason Thibault v. OCCPS, et al.
Court: Divisional Court of Ontario
Date: January 5, 2012
Outcome: Application for judicial review dismissed

Parties: Jeffrey Gulick v. Ottawa Police Service
Court: Divisional Court of Ontario
Date: October 3, 2012
Outcome: Application for judicial review dismissed

Parties: Donald Miller v. OCCPS, et al.
Court: Superior Court of Ontario
Date: July 27, 2012
Outcome: Action for damages dismissed on motion

First Nations Policing

The *Constitution Act*, 1867 assigned responsibility for the administration of justice to the provinces. Constitutionally and legislatively, Ontario is responsible for the delivery of policing services in all parts of the province, including on First Nations reserves and territories.

In 1975, the Task Force on Policing led to the establishment of a tripartite arrangement for funding the Ontario First Nations Policing Agreement. The Ontario Provincial Police administer the program and provide support. There has been a gradual transfer of administrative responsibility from the OPP to First Nations governing authorities. Some of the functions, which previously had been the exclusive responsibility of the OPP, have become jointly administered while others have been assumed completely by First Nations.

Section 54 (1) of the *Act* states:

“With the Commission’s approval, the Commissioner may appoint a First Nations Constable to perform specific duties.”

Section 54 (2) of the *Act* states:

“If the specified duties of a First Nations Constable relate to a reserve as defined in the Indian Act (Canada), the appointment also requires the approval of the reserve’s governing authority or band council.”

First Nations Constables are responsible for enforcing provincial and federal laws and bylaws in First Nations territories.

In 2012, there were 633 First Nations Constables serving. During the year, the Commission approved 28 First Nations Constable appointments.