

**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 March 30, 2022 Appointment**

**ORDER**

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

**Date of Order:** March 9, 2023

**File:** 22-FIL-001

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

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**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 Thunder Bay Police Services Board](#).
4. 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.
5. On October 14, 2022, the Commission extended the Original Order as amended pursuant to its authority under ss. 23(1) and 24(1) of the *PSA*. The October 14, 2022 Order (“October 14, 2022 Order”) may be found at [Order to Extend Appointment of Administrator of TBPSB \(tribunalsontario.ca\)](#).
6. Pursuant to the Original Order, as amended, the Administrator’s appointment is currently in effect until March 30, 2023.
7. Based upon a review of the Original Order, the October 14, 2022 Order, the report of Mr. Mercer dated August 18, 2022, and the interim report of the independent expert panel (“Expert Panel”) appointed by the Board dated September 20, 2022 ([Interim-Report\\_TBPSB\\_Final-V3.pdf \(thunderbaypsb.ca\)](#)), I am of the opinion that that an emergency continues to exist in the Board’s oversight of the Service.
8. 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.
9. Accordingly, Mr. Malcolm Mercer’s appointment as Administrator is being extended by this Order to March 31, 2024. Mr. Mercer’s roles and responsibilities will largely remain the same until June 30, 2023 and his responsibilities will be reduced from July 1, 2023 until March 31, 2024 as set out below.

## **B. Statutory Framework**

10. Ontario municipalities, are required to provide adequate and effective police services in accordance with their needs<sup>1</sup>.
11. 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

12. 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
- c. the factual findings in the Order dated October 14, 2022.
- d. findings in the interim report authored by the Expert Panel.
- e. the memorandum to the Board by the Administrator regarding the interim report of the Expert Panel ([2022-11-25-Memorandum-to-the-Board-re-Expert-Panel.pdf \(thunderbaypsb.ca\)](https://thunderbaypsb.ca/2022-11-25-Memorandum-to-the-Board-re-Expert-Panel.pdf)).
- f. Order in Council 29/2023 appointing Karen Monica Machado as a member of the Board ([Decree 29/2023 | ontario.ca](https://ontario.ca/Decree-29/2023)).
- g. advice from the City of Thunder Bay that Mayor Ken Boshcoff, Councillor Shelby Ch'ng, and Denise Baxter have been appointed as members of the Board.
- h. minutes of meetings of the Board regarding its governance committee (Minutes regarding the formation of the Governance Committee: [Police Services Cover Sheet \(Regular\) \(thunderbaypsb.ca\)](https://thunderbaypsb.ca/Police-Services-Cover-Sheet-Regular) – particularly the approved minutes which are an attachment at paragraph 4 and [November-15-Meeting-Highlights-FINAL.pdf \(thunderbaypsb.ca\)](https://thunderbaypsb.ca/November-15-Meeting-Highlights-FINAL.pdf)).
- i. minutes of meetings regarding its labour relations committee (Minutes regarding formation of the Labour Relations Committee: [Police Services Cover Sheet \(Regular\) \(thunderbaypsb.ca\)](https://thunderbaypsb.ca/Police-Services-Cover-Sheet-Regular) – particularly the approved minutes at paragraph 6(c), and [Microsoft Word - January 17 Board Highlights .docx \(thunderbaypsb.ca\)](https://thunderbaypsb.ca/Microsoft-Word-January-17-Board-Highlights.docx)).
- j. minutes of meetings of the Board regarding the recruitment of a new chief of police (“Police Chief”) (Minutes regarding the recruitment of a new Chief of Police: [Police Services Cover Sheet \(Regular\)](https://thunderbaypsb.ca/Police-Services-Cover-Sheet-Regular)

[thunderbaypsb.ca](http://thunderbaypsb.ca)) at paragraph 6(b), [November-15-Meeting-Highlights-FINAL.pdf](#) ([thunderbaypsb.ca](http://thunderbaypsb.ca)), and [Microsoft Word - February 21 Meeting Highlights.docx](#) ([thunderbaypsb.ca](http://thunderbaypsb.ca))).

13. 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 31, 2024.
14. Specifically, that evidence is:
  1. There are now four new Board members and one provincial vacancy remains.
  2. Orientation and training will be required for new Board members, and it will take time for the Board to become informed and proficient.
  3. Board training is expected to take place by Spring 2023.
  4. The Board is assisted by a governance committee which will assist on policy related matters. The governance committee has focused to date on recruitment of the new Police Chief. The Board will then shift its focus to policy driven initiatives.
  5. A labour relations committee is being established to add expertise in the areas of labour relations, collective bargaining, disability management and return to work, and workplace mental health, and well-being expertise which will help with Board responsibilities in these areas.
  6. The recruitment of the new Police Chief is underway. It is likely that a new Police Chief will soon be in place at which time there will be a new Board in place with four of the five required members.
  7. The Expert Panel which was appointed by the Board is planning to release its report in March 2023, and it will hopefully provide useful strategic guidance for the new Board.
  8. It will then be necessary for the Board to turn to the critical work of implementing the recommendations that were made as a result of the investigation into the Board led by Senator Murray Sinclair ([Commission's 2018 Report](#)) as well as the recommendations made following the Office of the Independent Police Review Director's ("OIPRD") investigation into the Service. ([OIPRD's report: Broken Trust Indigenous People and the Thunder Bay Police Service](#)).

9. The [Commission's 2018 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.
10. The [OIPRD's report](#) made recommendations regarding operational areas and for the need to establish certain policies.
11. In his [interim report to the Commission](#), Mr. Mercer, as Administrator, found that there have been failures of governance as well as unacceptable delay in advancing the Commission's recommendations and insufficient attention to policy implications of the OIPRD recommendations some three and one-half years later.
12. In his interim report, Mr. Mercer reiterated that the Board had an important role in monitoring the performance of the Police Chief to ensure the effective implementation of the OIPRD recommendations, and it also had an integral role in determining the policy implications to be addressed by the Board.
13. Although the governance committee will help to facilitate this work, Commission oversight is necessary to ensure that the work is completed.
14. It is reasonable to conclude that since many of the recommendations made by Senator Sinclair remain unfulfilled, the trust of the Indigenous communities in the Board to properly oversee the Service and the Service's ability to protect them has not been established to the extent that it should have been. The emergency declared by the Commission in 2018 regarding the Board's failures to effectively address the concerns of the Indigenous community has not yet come to an end.
15. A new Police Chief will only just have begun his or her position and will need time to transition.
16. The current acting Police Chief and other senior members of the Service will be retiring in the near future. On February 27, 2023, the Deputy Chief returned from a year of suspension with his term

ending in late 2024. These personnel changes will present both a challenge and an opportunity for the new Police Chief.

17. It will be important that the perspective and historic information that Mr. Mercer gathered in his role as Administrator remain available as both the new Board and Police Chief develop insight and experience.
18. The newly constituted Board will benefit from the guidance that Mr. Mercer would provide regarding the recommendations emanating from the Expert Panel's final report.
19. 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**

15. I am of the opinion that there is evidence to support a conclusion that a state of emergency continues to exist in the Board. There will be ongoing uncertainty until such time when a new fully constituted Board is in place and appropriately trained and until the new Police Chief has had a transitional period as well as time to address the personnel changes mentioned above. The Board will require additional time to build the community's trust in its ability to provide proper oversight of the Service.
16. The length of time the Administrator's appointment will be extended reflects the need for the Administrator to oversee the transition to the new leadership on the Board and the Service, and to ensure governance at both the Board and Service level.

### **Public Interest**

17. There is evidence to support a conclusion that a state of emergency continues to exist in the Board that requires immediate action.
18. 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**

19. Pursuant to ss. 23(1) and 24(1) of the *PSA*, the Commission is extending the appointment of the Administrator until March 31, 2024. The Commission also reserves to itself the power to extend or cancel the term of appointment, if necessary.

## **F. Order**

20. 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**

21. I hereby extend the appointment of Mr. Malcolm Mercer, as the Administrator until March 31, 2024. Since his appointment, he has proven himself to exceed the minimum attributes required for an Administrator.
22. From March 31, 2023 until June 30, 2023, Mr. Malcolm Mercer will have all the powers and responsibilities listed in paragraph 22. Mr. Malcolm Mercer's role will reduce from July 1, 2023 until March 31, 2024 with his powers and responsibilities being limited to those set out in paragraph 23.

### **Powers and Responsibilities**

23. Pursuant to s. 23(5) of the *PSA* and to permit the Administrator to oversee the transition to the new leadership on the Board and the Service, the Administrator will have the following powers and/or responsibilities from March 31, 2023 until June 30, 2023:
1. The Administrator shall preside over all regularly scheduled and special meetings of the 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.

2. The Administrator has all the powers necessary to make binding decisions on behalf of the Board at all regularly scheduled and special meetings of the Board, including all in-camera portions, and at all sub-committee meetings regardless of whether or not a quorum exists.
3. The Administrator has all the powers necessary to make binding decisions on behalf of the Board by way of resolution in the time period between Board meetings.
4. The Administrator shall have unrestricted access to any and all of the Board's past and current records as the Administrator may specify for the purposes of this Order on request, without delay.
5. 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 Service or Board in order to secure them.
6. On his own initiative or upon request from any member of the Board, the Administrator shall provide advice to the Board and/or individual members, where appropriate, about inter alia: 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.
7. The Administrator will have full power and authority to make any changes to the Board processes which he, in his discretion, deems necessary or advisable to enhance governance of the Service.
8. The Administrator may make recommendations to the Executive Chair of the Commission on the Board's composition, including the power to suspend any or all of its members.
9. 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 Board.



10. 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.

24. Pursuant to s. 23(5) of the *PSA* and to ensure the policy work of the Board is effectively advanced, including implementation of the recommendations made Senator Sinclair, the Administrator will have the following powers and/or responsibilities from July 1, 2023 until March 31, 2024:

1. The Administrator may at the Administrator's sole discretion continue to attend, either in person or by conference call or video conference, and fully participate at all regularly scheduled and special meetings of the Board, including all in-camera portions. The Administrator may, in the same manner, attend all sub-committee meetings. The Administrator shall have one vote at such meetings so long as there are less than five members of the Board, in which event the Administrator will not have a vote.
2. On his own initiative or upon request from any member of the Board or the Police Chief, consult with and provide advice to the Board, its members and the Police Chief regarding matters within the responsibility and authority of the Board under the *PSA*.
3. The Administrator may make recommendations to the Executive Chair of the Commission on the Board's composition, including the power to suspend any or all of its members.
4. 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 Board.
5. 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 9<sup>th</sup> day of March, 2023.

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

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<sup>1</sup> *PSA* ss. 4(1).