

# Thunder Bay Police Services Board Investigation

## **FINAL REPORT**

**Senator Murray Sinclair, Lead Investigator**

**Submitted to:**

**Linda Lamoureux**

**Executive Chair**

**Safety, Licensing, Appeals and Standard Tribunals Ontario**

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## Contributions and Acknowledgements

Many people have contributed to this investigation and the findings of this report, but a few bear special mention.

Retired City of Winnipeg Police Sergeant Cecil Sveinson arranged some of the community interviews and provided valuable advice on matters relating to police training, recruitment and general police behavior.

Tom Lockwood QC, acted as an important liaison with the OCPC and also assisted in a liaison role with the OIPRD. He helped conduct witness interviews, and his assistant Dorothy Balazs scheduled most of the witness interviews. His prior experience as OCPC Investigator helped keep this investigation on track.

Professor Andrew Graham responded to my call for assistance and provided valuable insights into police board governance issues generally.

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*Cover Image: The Sleeping Giant (June 2018), photo by NorsheO. Licensed through Wikipedia Creative Commons.*

# Executive Summary

## Introduction

This document is the report of an investigation undertaken between July 21, 2017 and October 31, 2018 by the Honourable Senator Murray Sinclair regarding the Thunder Bay Police Services Board (“Report”). The Investigation was conducted in response to concerns raised by First Nations leaders from Nishnawbe Aski Nation, Grand Council Treaty 3 and the Rainy River First Nations regarding the Thunder Bay Police Services Board’s (“Board” ) oversight of police services following a series of deaths and race-based violence against Indigenous peoples in Thunder Bay (“Investigation”).

The Ontario Civilian Police Commission (“OCPC”), an arms-length agency of the Ontario government, retained Senator Murray Sinclair to lead and direct the Investigation with a particular emphasis on the Board’s monitoring of the relationship between the Thunder Bay Police Service (“TBPS”) and the Indigenous community. The Investigation was mandated to examine:

1. “The Thunder Bay Police Services Board (TBPSB)’s performance in carrying out its responsibilities pursuant to section 31(1) of the *Police Services Act* (“PSA”) to ensure the provision of ‘adequate and effective’ police services in Thunder Bay;
2. The TBPSB’s role in determining ‘objectives and priorities with respect to police services’ in Thunder Bay, pursuant to section 31(1)(b) of the PSA;
3. The TBPSB’s role in establishing policies for the effective management of the Thunder Bay Police Service (TBPS), pursuant to section 31(1)(c) of the PSA; and
4. The TBPSB’s role in ensuring that police services provided in Thunder Bay are provided in accordance with the Declaration of Principles set out in section 1 of the PSA” (Ontario Civilian Police Commission).

This Executive Summary provides an overview of the process followed to undertake this Investigation; of the issues, trends and concerns the Investigation identified; and of the recommendations and remedial measures proposed to address those concerns.

## The Investigation

The Investigation process formally began after Terms of Reference were issued and an Investigation team was assembled. The team was comprised of OCPC internal and external lawyers assigned by the Commission, an Indigenous lawyer and an Indigenous policing consultant chosen by Senator Sinclair (“Investigation Team”). The Investigation Team initiated the Investigation with meetings on September 7, 2017 with the Chair of the Board, Jackie Dojack, accompanied by the Board’s legal counsel, Robert Edwards, and later that day with the full Board and their legal counsel. These meetings clarified the purpose and process of the Investigation, and reviewed the issues under Investigation in a preliminary manner.

Members of the Investigation Team attended a Town Hall meeting organized by the Office of the Independent Police Review Director in relation to their concurrent investigation into the TBPS. This provided important context to the state of police / Indigenous relations in Thunder Bay. The Investigation Team also met with two of the three Indigenous leaders who initiated the complaint to the OCPC, Nishnawbe Aski Nation (“NAN”) Grand Chief Alvin Fiddler and Grand Council of Treaty 3 Grand Chief Francis Kavanagh. The Investigation Team also held discussions with the Ministry of Community Safety and Correctional Services (“MCSCS”) and the Office of the Chief

Coroner.

Following a documentary and literature review of relevant studies, reports, media articles, correspondence and documents available, the Investigation Team prepared and submitted an Interim Report to the OCPC on October 31, 2017. The Interim Report provided an initial identification and review of the issues that would be the subject of the Investigation.

Following submission of the Interim Report, the Investigation Team identified potential individual and organizational witnesses from Indigenous groups and the policing community willing to share their experience and perspectives on the issues under Investigation. Over the next year, the Investigation Team met with over 90 individuals, including a dozen students and representatives of over 22 Indigenous and non-Indigenous organizations, service providers, government departments, and educational institutions.

The Investigation Team received a significant amount of information and much assistance throughout the process from the Board and from the TBPS. We are thankful for their support, and acknowledge their role in ensuring we had the necessary information to inform the analysis in this Report.

## **The Context**

The current state and structure of policing in Thunder Bay is inextricably linked to the city's historical relationship with the First Nations who inhabited the region for millennia.

In the early years of the fur trade, the Thunder Bay area was a meeting place for Indigenous trappers and French traders, with the Kaministiquia River serving as a point of entry and transit for western settlement. British interest in securing lands for settlement and development led to the 1850 Robinson-Superior Treaty, which provided the Crown with access to 43,000 square kilometres of land. The Treaty defined hunting and fishing rights and promised annual payments to First Nation signatories.

Since the signing the Treaty, however, privileges and reserve land have been eroded and rescinded. Land has been expropriated to facilitate settlement and development through a series of "surrenders", depriving First Nations of both land and livelihoods, and leading to their increasing marginalization in the social, political and economic life of the growing urban centre

The rapid expansion in the twentieth century of transportation services and industry led to prosperity and population growth, primarily among European-based demographic groups.

When the present city of Thunder Bay was formed in 1970, its history and structure already embodied many of the elements that give rise to the concerns addressed in this Investigation.

The city's position as a transportation, education, health care and service hub for First Nations across Northern Ontario has attracted a large permanent and transitory Indigenous population. This group, however, has not by and large shared in the prosperity; First Nation residents are under-represented in the governance, economy and institutions of the city, and over-represented in its criminal justice and social support systems.

The circumstances that gave rise to this Investigation – an extreme level of racism, and differential treatment by police towards Indigenous peoples in missing person and death investigations and violence against Indigenous peoples generally in Thunder Bay – are not new phenomena, but long-standing issues, well documented in media articles and various studies on racism in

Thunder Bay.

This is the complex and challenging environment in which the TBPS and its Board are called on to provide service.

## **The Findings**

The Indigenous population of Thunder Bay experiences racism, both overt and systemic, on a daily basis. High-profile cases of murder and violence are only the tip of the iceberg; every Indigenous interviewee had a personal story, ranging from inferior service, verbal insults, and racial profiling to physical assaults, threats of violence, and, in many cases, the death by violence of friends or family members. This general climate of racism was most powerfully described by those who experience it daily; it was also reflected in an analysis of media coverage, statistics on rates of violent and race-based crime and prior studies on these issues.

As a result, the Indigenous community has lost its confidence in the ability and, in many cases, the commitment of the TBPS to protect them. Interviews and past inquiries reflect a relationship between the Indigenous community and police characterized by suspicion and distrust. Several factors have contributed to this.

- A perception that police will minimize, dismiss, or fail to investigate complaints of violence against Indigenous people with diligence, particularly if intoxicants are involved;
- Poor communication with Indigenous victims of crime and their families by the TBPS;
- A fear that formal complaints by Indigenous individuals directed to the TBPS will result in repercussions against the complainant; and
- A general failure by TBPS to address recurring categories of crime against Indigenous people in a comprehensive and systemic way.

Negative perceptions of the TBPS by the Indigenous community have been exacerbated over the years by incidents in which unmistakable racism is displayed by individuals within the TBPS. These have ranged from well-documented public mockery and the dissemination of racist stereotypes, to use of excessive force against and humiliation of Indigenous individuals, to disturbing deaths in custody.

Apart from its contribution to the climate of fear and suspicion, a further consequence of this distrust is a strong reluctance on the part of Indigenous victims or witnesses to report crimes, or to avail themselves of the police protection that non-Indigenous people take for granted.

In a community with a high level of violence directed against a specific segment of the population, it is reasonable to expect that special efforts would be made to ensure the safety and security of that population, and to put resources, plans and policies in place to protect them. Several such initiatives have been taken in the past, and some provided evidence of a measure of success. However, the climate of mistrust persists. This suggests that the failure of the TBPS to adequately protect the Indigenous community goes beyond actions and attitudes displayed by a few racist “bad apples” on the TBPS; it is the manifestation of a deeper and more systemic problem.

In examining the policy and planning framework that gives shape to policing in the Thunder Bay, a number of systemic issues were noted:

- There are no formal channels for input by Indigenous people or their organizations into the planning and policy development functions that shape policing;
- Indigenous people are under-represented on the TBPS, both in direct enforcement and in administrative and management positions, and there is no formal plan or policy in place to address that imbalance;
- There are no mandatory training or orientation programs in place that speak to the obvious and critical need for cultural awareness training to familiarize police with the history, culture, and issues of the Indigenous community and
- Programs intended to foster rapport with communities and organizations are funded year to year, without long term commitment of resources.

These problems can be traced back to an absence of leadership from the Board. Under the authority of the PSA, police service boards are mandated to provide civilian oversight and to develop policies and plans reflecting the entire community's best interests. While no board has a mandate to engage in operational matters, it is clearly the responsibility of the TBPSB to identify critical issues and trends, and to address them through direction, proactive policy development, and planning.

A review of the degree to which the Board exercised its mandated planning and policy functions indicated the following:

- The Board did not demonstrate meaningful engagement in its own strategic or operational planning, relying for the most part on input from the Chief of Police and staff. There are no Board-developed, Board-driven planning policies or formal instruments to support long-term strategic or annual operational planning in place.
- The Board did not demonstrate meaningful engagement in the development of governance and oversight policies. There is a heavy reliance on standard templates developed by MCSCS , and a lack of Board-level policies developed to address the obvious and critical needs relating to the policing to protect the Indigenous community. There is no schedule or procedure for initiating reviews of existing policies or for developing new policies in response to emerging needs.
- The Board has not shown leadership in proactive, committed outreach to key Indigenous community organizations, other Indigenous communities or organizations in the region, or Indigenous policing agencies active in Northern Ontario.
- The Board has made no apparent effort to make its policies, plans and activities visible and transparent to the public at large or to the First Nation community.

The Board is directed under the PSA to show leadership to ensure success of the service they oversee – as defined in the law as “adequate and effective policing” – and address this duty through the planning and policy tools available to them. The Board has failed to do so.

## **The Key Issue**

The issues identified with Thunder Bay policing through this Investigation are not the result of behaviours by individual racists, which could be addressed through disciplinary, staffing and training measures. Nor do they arise from the absence of planning and policy development by the Board, which would simply require that policy gaps be filled. They are indicative of a broader, deeper and more systemic level of discrimination in which an unacceptable status quo is viewed as the normal state of affairs, maintained and perpetuated by the structure and operations of organizations and agencies mandated to oversee them. Despite the goodwill and best intentions of individual members of the TBPS and of the Board, dealing with the symptoms of systemic racism will do little to address the fundamental challenge.

The Board has failed to recognize and address the clear and indisputable pattern of violence and systemic racism against Indigenous people in Thunder Bay. Moreover, the Board's failure to act on these issues in the face of overwhelming documentary and media exposure is indicative of willful blindness.

The results of this failure are clear: 1) the absence of plans and policies to address the crisis in violent crime; 2) an oversight body disengaged from its basic functions of planning, policy development and community engagement; and 3) a major municipal institution lacking many of the basic instruments of good governance and oversight.

## **Recommendations**

Given the long standing and troubling circumstances in Thunder Bay and the Board's dismissive attitudes towards taking positive steps to address them, the Investigation determined that bold measures are required. Police services boards need to be cognizant and capable of carrying out all of their statutory responsibilities. The Board has demonstrably shown that it cannot.

It is therefore recommended that the OCPC exercise its authority under sections 23(1) and 24 (1) of the PSA to appoint an Administrator for a period of time on an emergency basis. As outlined in Part IV of this Report, the Administrator will temporarily exercise all of the powers of the Board while the majority of the Board is reconstituted in the interim period. The Administrator will carry out all of the functions and responsibilities of the Board until new members, along with Ms. Reitberger, are appointed and have received appropriate and relevant training. The Administrator shall continue to carry out all Board responsibilities and functions including the creation of an appropriate policy framework, as recommended elsewhere in this Report. As soon as the newly appointed Board members successfully complete such training, they can assume the powers of Board members. At that time, the Administrator will remain in an advisory capacity until the end of his or her term. Further, the Administrator will work with MCSCS and the City to ensure that an appropriate level of administrative support will be made available to the Administrator and the Board. The details of the recommended powers and duties of the Administrator are set out in greater detail in Part IV of this Report.

This Report sets out 32 additional recommendations with respect to specific functions of the Board and MCSCS to address the systemic discrimination that exists in policing of Indigenous peoples in Thunder Bay.



### ***Regarding Board Governance Policy***

To optimize police governance in Thunder Bay and reduce real or perceived conflicts of interest, it is crucial that the roles of the various bodies involved in policing, such as the Board, Secretary to the Board, TBPS and the City of Thunder Bay, be clearly understood and articulated. This Report recommends that the Board develop a policy regarding relations between the Board and the Chief that clearly delegates operational responsibility to the Chief, but also outlines the Chief's duties at a high level to include:

1. The duty to manage the TBPS effectively and efficiently;
2. The duty to implement the policy direction of the Board;
3. The duty to ensure a service that reflects the community it serves;
4. The duty to provide information to the Board on the TBPS' performance; its compliance with policies, community relations, developing trends or significant incidents that would affect plans or changes to police services; and annual training and reports on performance in delivering services free of bias, racism, discrimination and harassment; and
5. The duty to brief the Board on serious incidents that can affect the community, either past or anticipated.

It is further recommended that the Board undertake the development of a Board Policy Manual to address governance and other matters that are general to all police forces, as well as those that are unique to the circumstances of the Thunder Bay Police Service. All policies of the Board whose publication would not jeopardize public safety should be made accessible.

The Report also recommends the creation of a Governance Committee to review and propose revisions where necessary to all existing policies, specifically including policies affecting Indigenous peoples such as the Missing Person Policy, and to oversee the development and regular maintenance of Board policies.

### ***Regarding Board Planning***

The Board's existing planning process for developing its statutorily-required business plan is not consistent or thorough. It is recommended that the Board develop policies on Business Planning, and on Trend Analysis and Risk Management.

### ***Regarding Recruitment, Retention and Promotion***

The TBPS is not representative of the community it serves. It is incumbent upon the Board to direct the Chief to submit, for its approval, a multi-year plan for the diversification of the TBPS, specifically aimed at increasing the number of Indigenous officers and civilian members of the TBPS. It is further recommended that the Board develop, in conjunction with the Chief, a plan to build partnerships with First Nations, educational facilities and others to encourage Indigenous recruitment into the TBPS.

### ***Regarding Oversight of the Chief and Deputy Chief***

One of the key roles of the Board is to oversee the performance of the Chief of Police and to ensure that he or she is operationalizing the Board policy directives. It is recommended that the

Board adopt a policy on Relations with the Chief that specifies the Chief's responsibility to report to the Board on operational matters of concern to the Board, including:

1. The TBPS service's performance, and specifically the delivery of services free of bias, racism, discrimination and harassment;
2. TBPS compliance with policies;
3. The state of community relations;
4. Developing trends or significant incidents that would affect plans or changes to police services;
5. Implementation of operational and training plans; and
6. Board input or decisions required.

### ***Regarding Communication and Transparency***

The Board currently has an extremely limited online presence, linked to the TBPS. The public thus has little awareness of the Board's distinct role, their mandate, their activities or their priorities. This lack of openness and transparency contributes to the distance between the Board and the community it serves.

It is recommended that the Board establish an independent internet presence and provide meaningful information on Board activities such as the budget, performance reports, annual outreach and consultation plans, meeting notices, agendas and minutes, and other information to promote greater public awareness and understanding of the Board.

It is also recommended that the Board develop a policy and protocol for representation of the Board, crisis communication, Board confidentiality, and other internal and external communication needs.

### ***Regarding Relationships with Indigenous Groups***

The Board's relationship with Indigenous groups is far from optimal, and this contributes to the crisis in Indigenous policing in Thunder Bay. While some of the issues shaping that relationship run deep and require remedial action in Board membership, a more solid policy foundation can also support improved linkages over the long term. It is therefore recommended that the Board establish a policy to define and strengthen both the Board's and the TBPS' link with First Nations communities, people, governments, organizations and service providers, setting out the Board's goals, objectives, strategies, communication and consultation protocols, and other measures to facilitate more effective long-term relationships. Establishing such a policy will create a framework for ongoing partnership building and planning; ensure the Board is held to account; and provide an explicit opportunity for each Board member and Indigenous group to make or renew a clear commitment to relationship building. A starting point could be establishing formal agreements with First Nations governance bodies to share information, raise cultural awareness, and collaborate in the development of formal Terms of Reference for the Aboriginal Liaison Unit of the TBPS.

### ***Regarding Board and Police Training***

Comprehensive, structured orientation and training are required by any police services board. In Thunder Bay, the usual suite of board governance content must be augmented to include

specific training on the Indigenous people of the region to familiarize members with the historical, social and cultural context that shapes policing in the city.

The Board must also be properly trained to govern the TBPS. To this end, it is recommended that the Board, in co-operation with Ontario Association of Police Services Boards and funded by the Province, develop a compulsory and standard orientation package for new Board members that addresses the critical skills and knowledge areas detailed in Part IV of this report. To lend force to this approach, it is recommended that newly-appointed Board members not be mandated to vote until they have completed this training, including the proposed cultural awareness sessions.

### ***Regarding Support to Police Boards from the MCSCS***

The MCSCS has a significant obligation to ensure that adequate and effective police services are provided in Thunder Bay. It is therefore recommended that the MCSCS create a Police Board Governance Standard which would mandate the roles and define the governance tools required of each police service board; create a New Board Member Orientation Standard requiring that all new board members receive training before participating in board meetings as voting members; and develop a Performance Evaluation Protocol to provide boards and the MCSCS with tools to assess board performance.

It is also recommended that the MCSCS designate the following as crimes for which the TBPS Chief of Police must develop and maintain procedures and processes for criminal and general investigations:

1. Criminal Organization;
2. Human Trafficking;
3. Missing and Murdered Indigenous Women and Girls; and
4. Hate Crimes and Violence against Indigenous Peoples.

Finally, it is recommended that the MCSCS create, or make more accessible, the trend analysis that the MCSCS is required to undertake under the PSA, and ensure that such analysis emphasizes marginalized communities, most notably First Nations.

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## **PART I: Introduction and Background**

### **1 Introduction**

There have been a number of studies conducted over the years into the relationship between Indigenous people in Canada and various elements of Canada's Justice System. I was a co-Commissioner of one such Inquiry in Manitoba (The Public Inquiry into the Administration of Justice and Aboriginal People of Manitoba—commonly referred to as the Aboriginal Justice Inquiry). Similar inquiries have been conducted in Saskatchewan, Alberta, British Columbia, Ontario, and Quebec. In addition, the Royal Commission on Aboriginal Peoples issued a separate report on the same issue as part of its Final Report in 1996, and the Truth and Reconciliation Commission of Canada Report of 2015 (the "TRC"), which looked into the history of Indian Residential Schools (and which I chaired) also commented on the negative relationship between Indigenous people and Canada's Justice System.

In all of these reports, the over-incarceration of Indigenous peoples was a common theme, as was the consistent finding that the incarceration rates of that population of people was a direct reflection of the Canadian history of colonialism, social oppression, racism, imposed poverty, governmental mistreatment, civil rights denial, and cultural genocide.

One finding of the TRC relevant to this Investigation is that for several generations Indigenous and non-Indigenous children have been raised and educated in a society in the belief that Indigenous people were (and are) inferior, and that European people were (and are) superior, as a way to justify European colonialism and Indigenous social circumstances.

People raised and educated in such an environment develop a system of beliefs and actions that are based on those twin myths, and much of how Canada has governed itself over several generations stems from those myths.

This Investigation is not about trying to replicate those other studies. It is important, however, for this Investigation, and for any other review of the circumstances of Indigenous people in this country, to bear in mind that people's behaviour towards Indigenous people are influenced by what they have been raised to believe. And the attitudes and behaviours they carry forward into adulthood can manifest as inaction, as well as action.

This report examines the role of one institution in Canada—the Thunder Bay Police Services Board—to determine whether it performed its responsibilities in a manner consistent with its legal obligations and fairness to the citizens of Thunder Bay, its police service, and those Indigenous people within the City from time to time.

As will be seen, this Investigation has discovered much that needs comment and calls for change. My hope is that this report and its recommendations will mark the beginning of that change.

## 2 Mandate

The Ontario Civilian Police Commission (OCPC) developed Terms of Reference for this Investigation in July 2017 (included as Appendix 2 in this report). The Commission retained Senator Murray Sinclair to lead and direct the Investigation. The Terms of Reference outlines the scope of the Investigation and defines the issues to be addressed.

This Investigation was mandated to probe:

1. “The Thunder Bay Police Services Board (TBPSB)’s performance in carrying out its responsibilities pursuant to section 31(1) of the Police Services Act (PSA) to ensure the provision of ‘adequate and effective’ police services in Thunder Bay;
2. The TBPSB’s role in determining ‘objectives and priorities with respect to police services’ in Thunder Bay, pursuant to section 31(1)(b) of the PSA;
3. The TBPSB’s role in establishing policies for the effective management of the Thunder Bay Police Service (TBPS), pursuant to section 31(1)(c) of the PSA; and
4. The TBPSB’s role in ensuring that police services provided in Thunder Bay are provided in accordance with the Declaration of Principles set out in section 1 of the PSA” (Ontario Civilian Police Commission).

The Terms of Reference state that the Investigation, report and recommendations may address the following issues:

1. “The practices, statements and policies of the Board in respect of its ability to reflect the concerns of the whole community when it comes to the delivery of police services in Thunder Bay;
2. Areas where the Board could improve and where it has demonstrated strengths in respect of providing civilian oversight to policing including, but not limited to, indigenous issues;
3. Any further action by the OCPC under section 23, 24 or 25 of the PSA if necessary; and
4. Any recommendations, proposals or best practices that should be considered or adopted by the TBPSB or by the OCPC or the Ministry of Community Safety and Correctional Services in respect of their roles in providing oversight to the TBPSB” (Ontario Civilian Police Commission).

## 3 Background of Investigation

Between 2000 and 2017, Thunder Bay was the site of several events that raised serious questions about the way in which the city and its institutions were addressing violent crime committed against members of the Indigenous community. While these events were not the first to occur in Thunder Bay, nor are they the only events, they were a tipping point that highlighted the systemic issues of racism and discrimination against Indigenous peoples in Thunder Bay. These events included, but were not limited to the following:



- The suspicious deaths of a number of Indigenous youth whose bodies were found in the McIntyre River, including Tammy Keeash, Josiah Begg, and the seven young people whose deaths prompted the Ontario Coroner's Inquest in 2016;
- The death of Stacy DeBungee, whose body was also found in the McIntyre River in 2015, leading to the Office of the Independent Police Review Director (OIPRD) report on the police investigation into his death; and
- The assault on Barbara Kentner, who died after being struck by a trailer hitch thrown from a passing car in January 2017.

The OCPC is an arms-length agency of the Ontario government, exercising a range of functions relating to civilian oversight of policing. In a letter to the Commission, dated May 29, 2017 (included as Appendix 1 to this report), First Nations leaders from Grand Council Treaty #3 and Nishnawbe Aski Nation expressed their "lack of confidence in the Thunder Bay Police Services Board, a civilian body established to oversee police services in the city of Thunder Bay" (Nishnawbe Aski Nation, Grand Council Treaty #3, Rainy River First Nations).

The letter expressed concern over the response of the TBPS and the Board to the deaths of Indigenous peoples in Thunder Bay and in particular those of Tammy Keeash, Josiah Begg and Stacy DeBungee. The leaders indicated that the Board had "failed to provide any leadership" during a series of investigations into these murders and during an OIPRD systemic review. They requested that the Commission "exercise its powers to investigate and inquire into the shocking administrative failures of the Thunder Bay Police Services Board" to address what they characterized as the "denial of the concerns of Indigenous communities" (Nishnawbe Aski Nation, Grand Council Treaty #3, Rainy River First Nations).

In response, the OCPC advised that, pursuant to section 25 of the PSA, an inquiry into Board oversight of the TBPS would be initiated, with a particular emphasis on the Board's monitoring of the relationship between the TBPS and the Indigenous community as well as consideration of racially-motivated crimes and violence against Indigenous people in Thunder Bay.

## 4 History

### 4.1 Thunder Bay and the Indigenous Peoples

#### 4.1.1 Introduction

For millennia, the Anishinaabeg<sup>1</sup> have lived and moved within the territory now known as Thunder Bay. While archeological evidence suggests at least 9,000 years of human occupancy, Anishinaabeg speak of living here since "giants roamed on earth". One giant, Nanabijou, was a friend and ally of the Anishinaabeg, offering protection in exchange for a promise to keep a secret

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<sup>1</sup> The term Anishinaabeg is the term for the group of culturally-related Indigenous peoples that lived around the Great Lakes including Odawa, Ojibwe, Mississaugas, Potawatomi and Algonquin. Anishinaabeg is plural for Anishinaabe. Other variations of the singular term include Anishinaabe, Anishnabe and Anishnawbe. The Fort William First Nation is part of the Anishinabek Nation, represented by its secretariat, the Union of Ontario Indians.

that was embedded in the rocks. That secret was a “shiny metal that twinkled like the starry sky” (Talaga), a rich mineral deposit that came to be known as Silver Islet. For many years, the secret was kept; but on the day it was revealed, Nanabijou laid down and slowly turned to stone, resting close to the shore of Gichigami (Lake Superior). Today, Sleeping Giant Provincial Park is considered one of the region’s prime tourism attractions, and was recently designated as one of the Seven Wonders of Canada (CBC); but it still retains its spiritual and cultural significance for Thunder Bay’s Anishinaabeg.

The story of Nanabijou underlines the enduring Anishinaabeg connection to the land. These narratives are both a foundation and a frame for understanding the Indigenous experience of the fur trade and settlement, of displacement, of racism and exclusion, and of Indigenous-settler relations in and around Thunder Bay. Nanabijou is more than a myth; it is where this story begins.

## 4.1.2 The Fur Trade, Settlement and Treaty Era

### 4.1.2.1 *Early Economic Relations and European Nation-Building*

Indigenous peoples have navigated and portaged the rivers and waterways around Thunder Bay for centuries, establishing thriving societies along the “hundreds of rivers and streams that pour into her [Gichigami]...including the Kaministiquia, the McIntyre, the Nipigon, the Pigeon, and the St. Louis” (Talaga).

In the early years of the fur trade, the Thunder Bay area was a meeting place for Indigenous trappers and French traders. When the English-owned Hudson’s Bay Company began operating in the huge drainage basins of Hudson’s Bay in northeastern Ontario, French traders and explorers searched Lake Superior’s western shoreline for a route beyond the “Height of the Land” (Morrison). The Kaministiquia River became their point of entry and a transit point for western settlement.

The Great Peace of Montreal in 1701 ushered in a period of stability among the French, English and First Nations. Trade intensified, and the Thunder Bay Anishinaabeg were at a strategic hub that facilitated colonial economic advancement into western Canada (Lytwyn).

By 1717, Fort Kaministiquia was established, and from 1727 to 1743 served as a trading post and base of operations for French explorer Pierre Gauthier de la Vérendrye. The Fort was abandoned in 1760 following the conquest of New France.

In 1803, the North West Company (NWC) established the first permanent European settlement in the area set up at the Kaministiquia River (Lytwyn). Named Fort William in 1807, the community became the most important settlement in the North American interior.

British interest in securing lands for settlement and development led to the 1850 Robinson-Superior Treaty, which provided the Crown with access to 43,000 square kilometres of land along Lake Superior to the height of land dividing the waters draining into the Great Lakes and Hudson Bay. The Treaty defined hunting and fishing rights, and promised annual payments to First Nation signatories, calculated on the basis of an *escalator* clause that would trigger an increase in yearly payments based on the value of lands in the treaty area.

Issues in dispute with the Robinson Treaties (Surtees) are well known:

- The Crown relied upon information from HBC to determine how many First Nations lived in the surrounding areas. Commissioner Robinson conceded that some population figures were “not so perfect” (Morrison). There was no clear census in 1850; a census in 1856 showed substantially more people than had originally been included in treaty annuities.
- Not all Lake Superior Anishinaabeg were adequately advised of the treaty-making process, and of the meeting at Sault Ste. Marie where the Treaty was ultimately signed. Commissioner Robinson (the MP from Simcoe after whom the Treaty is named) “had to depend on fur traders and missionaries to pass the word up the lake” (Morrison).
- Anishinaabeg saw the treaty as a way to achieve certainty about the rights and responsibilities of the Crown and Anishinaabeg, and to share the land. The Crown saw the treaty very differently; it was to provide certainty and blanket extinguishments of Anishinaabeg land and rights so that European settlement and industry could continue.

The 1850 treaty also set aside reserve lands for the Anishinaabeg of the Northern Shore of Lake Superior, including the Fort William band, whose location was selected so as “not to interfere with the acquired rights of the Honourable Hudson’s Bay Company” (Morrison). The Anishinaabeg were assured that they would have continued use and rights to all the lands described as “the same privilege as ever of hunting and fishing over the whole territory” (Fort William First Nation). These privileges and the reserve land have been consistently eroded and rescinded.

As reported by the Fort William First Nation (FWFN), the first surrender, referred to as the Neebing Surrender, wherein the Crown confiscated 6,400 acres of the FWFN reserve, deprived the members of their only arable lands along the Kaministiquia River.

The FWFN report a second surrender in 1905, in which the entire FWFN community and more than 1,600 acres of land were expropriated for the building of the Grand Trunk Pacific Railway terminus. All individuals and buildings were evacuated. They indicate the relocation was traumatic: the Anishinaabeg who had been using the land for farming could no longer continue on their new allotments. The relocation divided the community: about half the members relocated to Squaw Bay and the others to Mountain Village. Some families had to exhume and move the bodies of their loved ones. Local historian Travis Hay suggests that the 1905 relocation was, “a planned economic developmentalist schema that was designed to secure for the settlers of Thunder Bay a viable position in the emergent national economy” (Hay). This surrender was “the single largest railway expropriation in the history of Canada” (Fort William First Nation); and even though the Grand Trunk Pacific Railway went bankrupt and the terminus was never completed, the displaced community members were not allowed to return.

FWFN reports that in 1907, a further 100 acres of land were surrendered to the Department of Militia and Defence for a rifle range. In addition, in 1917, the First Nation surrendered 270 acres to the city of Fort William for Chippewa Park.

#### *4.1.2.2 Nation-Building, Transportation and Extraction*

Port Arthur was named by Colonel Garnet Wolseley, who passed through the settlement on his way to quelling Louis Riel’s provisional government (Talaga). Talaga asserts that Port Arthur is where “the nation building of Canada began”, noting its importance as a hub for westward railroad development. Her account shows that while British society in Port Arthur flourished, Indigenous

peoples were forced by the decline in the fur trade to move to the outskirts of town, often living in abject poverty and dependence. As settlers began to outnumber the Indigenous population, a shift in power, influence and authority became evident. The Anishinaabeg were no longer perceived to “fit into what was fast becoming the dominant British society in Port Arthur” (Talaga).

After a centuries-long rivalry between Fort William and Port Arthur, the present city of Thunder Bay was formed in 1970 through the merger of the towns, and the adjacent townships of Neebing and McIntyre.

A primary goal of European colonization was the establishment of colonies structured to extract wealth and send it back to Europe; this relationship characterizes the early French and British colonization of Canada. As nations seceded from their respective empires, these nations kept the wealth for themselves. Anthropologist Patrick Wolfe describes this as *settler colonialism* (Wolfe), in which a settler society stakes claim to lands as the rightful owners and inhabitants. According to Wolfe, the displacement of, and discrimination against, Anishinaabeg was necessary and logical because settler colonialism “destroys to replace”; Anishinaabeg lives and lifeways had to be destroyed in order to allow new colonial societies to emerge on Indigenous homelands.

One key instrument of settler colonialism was transportation. Thunder Bay’s waterways had been central to the fur trade and early settlement. The late 19<sup>th</sup> century saw the completion of the Canadian Pacific Railway, enabling the transport of grain from the west to the major cities of the east. In 1902, the Manitoba to Port Arthur section of the Canadian Northern Railway was completed, establishing Thunder Bay as the largest grain port in the world. The 1905 expropriation of the FWFN was undertaken to allow the Grand Trunk Pacific Railway to transfer grain through an enormous terminus (Hay).

The presence of rail and seaways attracted settlers, and as the movement of goods out and through Thunder Bay increased and the region prospered, they arrived with their “families, their churches and their own creed” (Hay). Settlers were predominantly Anglo-Saxon until World War II. In the mid to late twentieth century, Fort William saw an influx of Italian and Ukrainian settlers, while Port Arthur experienced growth in its Finnish population. Immigrants from other Scandinavian countries, Poland, Slovakia, Greece, Germany and Holland added to the ethnic diversity of Thunder Bay. These European influences and lifeways would have serious and detrimental effects on Indigenous peoples in the city.

### 4.1.3 Making Way for Settlement

Following the decline of the fur trade, the regional economy shifted towards other modes of natural resource extraction. The forestry industry is now the area’s largest employer. Paper and grain remain the dominant products moved through the Thunder Bay port; and despite the closure of several elevators in the 1990s, the port remains one of the biggest grain-handling facilities in the world.

As a centre for marine and rail shipping, at the junction of east-west traffic along the TransCanada Highway, the city remains a hub for moving goods effectively, economically and rapidly across the country. Viewed through an Indigenous lens, however, these transportation systems obstruct Indigenous movement and distance Anishinaabeg from their homelands and sacred spaces.

Over the past 150 years, a number of key projects and structures have intensified the dispossession, relocation and displacement of Indigenous peoples in Thunder Bay.

*St. Joseph's Indian Residential School (1870–1966)*

In 1870, the sisters of the Sacred Heart of Mary established the Immaculate Conception Orphan Asylum to educate young First Nations children and then other “destitute non-Native children” (National Centre for Truth and Reconciliation). By 1885, a building was added to establish an Indian Residential School, which came under the charge of the Sisters of St. Joseph. Referred to as the Fort William Residential School or St. Joseph's Indian Residential School, it was located on the Fort William First Nation.

When the reserve land was expropriated in 1905, St. Joseph's was moved to the corner of Arthur and Franklin streets, where it remained until it was closed in 1966. From 1895 to 1905, the number of students in the school ranged between 34 and 40. The numbers jumped to 108 in 1932 as a result of the Depression.

Initially most students were from Fort William Indian Band, Port Arthur and Fort William and other villages. In later years, students came from reserves in the Robinson Superior and Huron areas, Treaty No. 3, Treaty No. 9 and urban areas from Sault Ste. Marie to Kenora, Sudbury to Timmins, and other parts of Canada and the northern USA (Shingwauk Project). During its near-century of operation, the school took in thousands of students from poverty-stricken families, as well as children removed by the RCMP from surrounding reserves and communities (Talaga).

*Fort William Indian Hospital School (1935–1971)*

The Fort William Indian Sanitarium Hospital was opened in 1935 in Fort William. First Nations children in need of treatment for tuberculosis were transferred from residential schools in Vermillion Bay, Sioux Lookout, Fort William and other communities. In 1941, Indian Affairs funded 20 beds for Treaty Indians, and in 1950, with 40 children as patients, the federal government created a day school at the hospital. As of 1953, the school-sanitarium had 160 “student-patients” (Barrera). The building was demolished in 1999.

In 2014, a survivor of the sanatorium filed a request for direction to include “Fort William Indian Hospital Sanatorium School” on the residential school settlement agreement. Survivors of the Fort William sanitarium likened the experience there to residential schools. In 2018, the Ontario Superior Court dismissed the application in a ruling that concluded that the sanitarium did not meet the criteria for the residential school agreement (Prokopchuk, Ontario family 'disheartened' by ruling that Ft. William sanatorium not a residential school).

*Port Arthur Jail*

The Port Arthur courthouse was erected in 1871 and the neighbouring jail in 1876. Many Indigenous peoples were fined and incarcerated in these two judicial establishments, often for exercising the rights to hunt and fish provided them by their treaty. In 1916, Pierre Hunter, an Anishinaabe of Lac Seul, was convicted in Sioux Lookout for possession of moose meat: despite the right to hunt and fish in the 1850 treaty, various courts ruled that Indians were “subject to the Game Laws of the Province like anyone else” (Morrison). After 30 days imprisonment at Port Arthur jail, Hunter was released. Without money to travel 200 miles back to Lac Seul, he attempted to walk home. After four weeks of travel, Hunter died, too afraid to kill game along the way

(Waisberg, Lovisek and Holzkamm). Waisberg et al. reported that Game Warden George Fanning applauded the event as doing “the Indians around here considerable good” and denied that imprisonment did Hunter any harm. Fanning was later dismissed following an investigation into the unjust imprisonment of another man from Lac Seul.

The state of policing and of community/Indigenous relations in Thunder Bay today cannot be understood without reference to the community’s past, and its legacy of colonial institutions and structures (Talaga).

#### 4.1.4 Indigenous Students in and around Thunder Bay

Northern Ontario teens leave their communities and travel to Thunder Bay, often alone, because there are no high schools in their First Nation communities (Alphonso) Students come from various Sioux Lookout District First Nations and other remote locations, many of which are fly-in communities. These include Sachigo Lake (approximately 640 kilometres from Thunder Bay); Bearskin Lake (approximately 630 kilometres); and Wapekeka (approximately 610 kilometres).

The Northern Nishnawbe Education Council (NNEC) serves secondary school aged students from twenty-three northern and remote First Nations communities. The NNEC oversees Dennis Franklin Cromarty High School (DFCHS), which was established in 2000, in Thunder Bay. Parents and students from the NNEC communities can choose whether students attend high school in Thunder Bay or at the Pelican Falls First Nations High School in Sioux Lookout.

DFCHS offers a trade school, health and nutrition programs, various sport teams, and leadership programs. In 2017, enrollment fell by 50 per cent from 130 of the previous fall because parents were waiting for implementation of safety plans recommended in the 2011-2012 inquiry into the deaths of the seven students (Chronicle Journal). This year, DFCHS had 24 graduates, which was fewer than in past years but, according to the School Principal Sharon Angecone, still a “healthy number with the lower enrollment” (Prokopchuk).

Most Sioux Lookout District First Nations high school students reside in NNEC-approved boarding homes or with relatives while attending school in Thunder Bay because there are no residential accommodations specifically established for DFCHS students. For many Indigenous students, moving to Thunder Bay to attend school represents their first exposure to a large urban centre, and their first experience of separation from families and home communities (many of which prohibit the sale and use of alcohol).

Under the best of circumstances, this first experience of culture shock, loneliness, isolation, and learning to socialize in a new environment away from parental control would represent a difficult transition for any young person. The challenge is compounded by the climate of racism in Thunder Bay. Staff at DFCHS and the NNEC are deeply committed to the safety and well-being of their students; however, their ability to address these issues, especially after school hours, is limited since students reside in homes and locations throughout the city. DFCHS and NNEC are therefore seeking to establish a residential program to accommodate all DFCHS students under the care of the NNEC.

That and other measures could increase the safety and security of this population. It remains essential, however, that the TBPS and the Board understand the special character, needs and environment of First Nation students in Thunder Bay, and take all necessary measures to serve

and protect this vulnerable group by providing effective, compassionate and culturally appropriate policing.

## 4.2 History of Policing and the Police Services Board in Thunder Bay

For the first half of the nineteenth century, police boards in Ontario did not exist. Municipal councils were in charge of establishing and governing municipal police forces (Stenning). This approach, however, left the oversight of police vulnerable to political interference, patronage appointments, (Stenning), and other weaknesses.

Since 1858, Ontario has attempted to ensure non-partisan oversight of municipal police forces. A consistent factor in legislation<sup>2</sup> since 1858 has been the mandatory requirement to diversify the police boards beyond municipal councillors in order to provide differing points of view to board oversight and prevent partisan abuse. Legislation relating to boards has also sought to balance competing political interests between municipal and provincial governments. Historically, however, it appears that legislation has failed to address the need for local representation beyond municipal councillors.

### 4.2.1 Municipal Institutions of Upper Canada Act, 1858, c. 99

Upper Canada (now Ontario) was the first Canadian jurisdiction to enact legislation with respect to the “concept of local boards of police commissioners as governing authorities for municipal police forces”. The *Municipal Institutions of Upper Canada Act, 1858* (MIA) mandated local municipal boards for the first time, although the requirement for a board was limited to cities, not all municipalities. (Stenning)

Section 374 of the Act provided:

“In every City there is hereby constituted a Board of Commissioners of Police, and such Board shall consist of the Mayor, Recorder and Police Magistrate,<sup>3</sup> or if there is no Recorder or Police Magistrate, or if the offices of Recorder and Police Magistrate are filled by the same person, the Council of the City shall appoint a person resident therein to be a member of the Board, or two persons so resident to be members thereof, as the case may require. (Stenning)”

The MIA has been described as providing “the kind of flexibility which has been built into so many of its successors in other jurisdictions in order to strike some kind of compromise between municipal and provincial interests in the governance of municipal police forces.” Under this board composition, the Mayor was elected by the municipality; the Recorder was appointed by and received a salary from the province; and the Police Magistrate was appointed by the province but paid by the municipality. This structure provided representation of both municipal and provincial interests. (Stenning)

The MIA also allowed city councils to form a board without a Recorder or Police Magistrate. Municipal councils decided at a local level what board composition best suited the needs of the

<sup>2</sup> The legislation discussed in this section only applies to municipalities who maintain their own police forces rather than municipalities served by other police forces such as the Ontario Provincial Police.

<sup>3</sup> Both the Recorder and the Police Magistrate were judicial positions similar to the position of a Justice of the Peace (Stenning); see also (Ontario. Royal Commission to Inquire into).

community. It appears, however, that most, if not all, boards under the *Municipal Institutions Act* were composed of Mayor, Recorder, and Police Magistrate. (Stenning)

The goal of the MIA was similar to that of the modern day *Police Services Act*: to create autonomous and independent police services boards with statutory powers and functions conferred directly on the Board. However, because the early legislation applied only to city police forces, smaller municipal police forces were governed directly by municipal councils. (Stenning)

Under the Act, the early boards in larger cities in Ontario had responsibilities and powers that included:

- Appointing members of the police force;
- Determining the minimum amount of officers required to maintain an adequate police force;
- Creating “regulations for the government of the force, and for preventing neglect or abuse, and for rendering the Force efficient in the discharge of all its duties”; and
- Determining when “offices, watch-houses, watch-boxes, arms, accoutrements, clothing and other necessities” were required for the police force. Municipal councils would then be required to pay for these necessities. (Stenning)

#### 4.2.2 Law Reform Act, 1868

The *Law Reform Act, 1868* made a minor change to the composition of municipal police boards, eliminating the office of Recorder. The new composition of the board included the Mayor, the local County Court Judge (appointed by the federal government), and the Police Magistrate. Municipal council’s options for the composition of the board were also altered; it became mandatory that a board include an appointee of the County Court Judge, except when the office of County Court Judge was vacant. (Stenning)

#### 4.2.3 Municipal Institutions Amendment Act 1874; Various Legislation

Through the *Municipal Institutions Amendment Act, 1874* and other legislation, smaller municipal councils were provided the option of establishing police boards. This option was open to towns with a population greater than 5,000 and a police magistrate. (Stenning)

In 1938, the option was granted to counties and certain townships, and in 1947, to villages of 5,000 or more. By 1960, even smaller villages and townships could form police boards with the consent of the Attorney General. (Stenning).

#### 4.2.4 Magistrates Act, 1936; Municipal Amendment Act, 1938

The *Magistrates Act, 1936* and the *Municipal Amendment Act, 1938* further altered the composition of municipal police boards. The *Magistrates Act* abolished the office of Police Magistrates, and Magistrates replaced Police Magistrates on police boards (Stenning).

The *Municipal Amendment Act, 1938* stipulated that in a police board jurisdiction with more than one county court judge, the Lieutenant Governor in Council had the sole ability to decide which county court judge would be appointed to sit on the police board. This meant that “[a]lthough the



appointment of county court judges remained a Federal responsibility, this amendment effectively returned to the Province control over the appointment of a majority of the membership of police boards in many larger urban areas in which there were a number of county court judges.” (Stenning)

While the *Municipal Amendment Act* kept the requirement that one member of the board had to be a county court judge, it removed the option that allowed municipalities to appoint local residents when the office of County Court Judge was vacant. Instead, the Lieutenant Governor in Council was granted the power to appoint another judicial officer of similar rank. This amendment allowed the Provincial government, rather than municipal council, to appoint the majority of board members. (Stenning)

#### 4.2.5 Police Act, 1946

The *Police Act, 1946* marked a major shift with respect to police governance, introducing a comprehensive provincial structure that address all aspects of policing in Ontario (Stenning).

Board composition was now legislated to include the head of the municipal council; a judge of any county or district court (not just the local county or district court) designated by the Lieutenant Governor in Council; and any magistrate or Crown Attorney designated by the Lieutenant Governor in Council. It appears that the amendment from the appointment of a local judge was intended to prevent a potential conflict of interest “which could arise as a result of a judge sitting as a member of a police board in the same jurisdiction in which he acted as a sitting member of the bench.” (Stenning)

The *Police Act* was amended in 1947 to allow any village or township with a population over 5000 to have a police board, and the 1949 amended Act allowed any county or town to pass a by-law establishing a police board (Stenning).

#### 4.2.6 Police Amendment Act, 1958

The municipality of Metropolitan Toronto created a requirement for a five-member board in 1956 with the *Municipality of Metropolitan Toronto Amendment Act*; all other municipalities maintained a three-person board.

The *Police Amendment Act, 1958* altered police board composition to include the head of council, a county or district court judge, and one other member appointed by the Province (Stenning). This appears to be the first time that a person from the local community, not linked to municipal council or the judiciary, could be appointed to a municipal police board.

#### 4.2.7 Police Amendment Acts, 1965, 1967

With the *Police Amendment Acts* of 1965 and 1967, all cities and towns with a population of more than 15,000, and any village or township with a population of more than 5000, but less than 15,000, were required to have a police board (Stenning).

#### 4.2.8 Thunder Bay Municipal Police Board, 1970

The City of Thunder Bay was formed on January 1, 1970, through the amalgamation of the cities of Fort William and Port Arthur and the geographic townships of McIntyre and Neebing. When the cities of Fort William and Port Arthur merged in 1970, so did the cities' two separate police forces (Thunder Bay Police Service). Prior to the amalgamation, both Fort William and Port Arthur had maintained a municipal police board since the late 1800s.<sup>4</sup>

The newly-created Thunder Bay Police Force had 143 officers, and was headquartered in the former Fort William police station. The Prince Arthur station was used as a precinct office. (Thunder Bay Police Service)

Throughout the 1970s, legislation similar to the *Municipality of Metropolitan Toronto Amendment Act* was passed, affecting the composition of police boards in specific municipalities (Stenning). However, the newly formed Thunder Bay Police Services Board, like most municipal police boards, was governed by a three-member board as specified by the *Police Act*. The Thunder Bay Police Services Board was thus originally comprised of the head of council, a county or district court judge, and another person designated by the Lieutenant Governor in Council.

The *Police Amendment Act* of 1979 altered board composition again by removing the requirement of a judicial member of the board. The composition of the Thunder Bay Police Services Board in 1979 would have consisted of the head of the municipal council, and two persons appointed by the Lieutenant Governor in Council. (Stenning)

The first phase of the current Balmoral Police Headquarters was completed on January 19 1987. In 1993, the Balmoral Police Headquarters was completed, and the Thunder Bay Police Force, later renamed the Thunder Bay Police Service, was stationed in one location. (Thunder Bay Police Service)

The *Police Act* was replaced with the *Police Services Act, 1990* (PSA). The PSA was the first legislation to link the number of board members to the size of a municipality. Municipalities with a population of 25,000 or less and that maintained their own police force were required to have three members on the board: the head of municipal council or another council member appointed by council, and two persons appointed by the Lieutenant Governor in Council. (PSA 1990)

Municipalities with a population of more than 25,000 and that maintain their own police force were required to have five board members: the head of municipal council or another council member appointed by council, one person appointed by council, and three persons appointed by the Lieutenant Governor in Council (PSA 1990).

With the *Police Services Amendment Act, 1997*, the composition of boards changed once again and has remained the same to the present day. The current composition of municipal boards with a population of 25,000 or less that maintain their own police force is three members: the head of the municipal council or, if the head chooses not to be a member of the board, another member of the council appointed by council; one person appointed by council who is neither a member of council nor an employee of the municipality; and one person appointed by the Lieutenant Governor in Council. For municipalities with a population of over 25,000 that maintain their own

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<sup>4</sup> Statement of John Hannam, Secretary to the Thunder Bay Police Services Board

police force, the board is to consist of the head of the municipal council or, if the head chooses not to be a member of the board, another member of the council appointed by council; one member of the council appointed by council; one person appointed by council who is neither a member of council nor an employee of the municipality; and two persons appointed by the Lieutenant-Governor in Council. (PSAA 1997)<sup>5</sup>

The amendments to the *Police Services Act* came into force in 1997, and the Thunder Bay Police Services Board held its first meeting with five members on December 17, 1997.<sup>6</sup>

## 5 Policing Framework under the Police Services Act

The PSA defines the mandate, powers, functions and authorities of organizations and agencies charged with implementation of the Act (Government of Ontario).

A critical element of the Act, and one from which all subsequent sections and regulations flow, is a Declaration of Principles. This states that policing shall be provided throughout Ontario in accordance with the following principles<sup>7</sup>:

1. The need to ensure the safety and security of all persons and property in Ontario.
2. The importance of safeguarding the fundamental rights and freedoms guaranteed by the *Canadian Charter of Rights and Freedoms* and the *Human Rights Code*.
3. The need for co-operation between the providers of police services and the communities they serve.
4. The importance of respect for victims of crime and understanding of their needs.
5. The need for sensitivity to the pluralistic, multiracial and multicultural character of Ontario society.
6. The need to ensure that police forces are representative of the communities they serve.

The following sections briefly summarize the roles of the OCPC, of Police Services boards and of the Ministry of Community Safety and Correctional Services (“MCSCS”).

### 5.1 The Ontario Civilian Police Commission

The OCPC was established under Part II of the PSA. It is an arm’s length agency of the Ontario Government, charged with a variety of responsibilities in relation to civilian oversight of policing.

The OCPC exists concurrent with two other provincial civilian oversight bodies established under the PSA: the OIPRD handles public complaints against police officers pursuant to Part V of the PSA, and the Special Investigations Unit (SIU) conducts criminal investigations in relation to

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<sup>5</sup> The *Police Services Act* also allows for the council of a municipality with a population that exceeds 300,000 to apply to the Lieutenant Governor in Council for an increase in the size of its board to seven members. *Police Services Act*, R.S.O. 1990, c.P.15, section 27(9)

<sup>6</sup> Statement of John Hannam, Secretary to the Thunder Bay Police Services Board

<sup>7</sup> Bill 175, *Safer Ontario Act, 2018* received royal assent on March 8, 2018 but is not yet proclaimed. The declaration of principles remains similar to the current *Police Services Act*, with the addition of the need to be responsive to the unique histories and cultures of First Nation, Inuit and Métis communities and the need to ensure that all parts of Ontario, including First Nation reserves, receive equitable levels of policing.

deaths or serious injuries that have resulted from police action pursuant to Part VII.

The Commission's main function is to hold adjudicative hearings, specifically appeals from police disciplinary hearings. In addition to these court-like tribunal functions, the Commission also has various investigative and regulatory roles. Under section 25(1)(a) of the PSA, the OCPC has the ability to investigate alleged misconduct of individual police services board members, police officers, and other law enforcement officials.

Section 23 of the PSA mandates the OCPC to take extraordinary measures in relation to police services and police services boards ("PSBs" or "PSB" for singular use). Section 23(1) sets out a list of measures available to the OCPC if it is of the opinion "...after holding a hearing, that a board or municipal police force has flagrantly or repeatedly failed to comply with prescribed standards of police services." The measures set out under subsection 23(1) include powers to suspend chiefs of police and board members, remove chiefs of police, and appoint administrators for boards.

Section 25(1)(b)–(d) of the PSA allows the OCPC to investigate, inquire into, and report on the following:

- (b) The administration of a municipal police force;
- (c) The manner in which police services are provided for a municipality; and
- (d) The police needs of a municipality.

The present Investigation in Thunder Bay is not an investigation into the conduct of any particular Board member or any other individual. It is undertaken under section 25 to address issues raised by First Nation leaders regarding the way in which the Board has been providing oversight of the TBPS.

## **5.2 Police Services Boards**

Police services boards in Ontario are established pursuant to section 27 of the PSA. Under section 31(1), PSBs are responsible for "...the provision of adequate and effective police services in the municipality". Their functions include establishing priorities, objectives, and policies for policing in their communities, as well as monitoring police performance and leadership.

Larger municipalities such as Thunder Bay have five-member boards. These consist of two municipal council members, two provincial appointees and a community representative appointed by municipal council.

Section 31(1) of the PSA sets out 10 specific responsibilities to achieve that goal. These include working with the chief of police to determine objectives and priorities with respect to local policing, establishing management policies, recruiting a chief, and monitoring the handling of public complaints.

The Act distinguishes between the operational and governance functions of a PSB:

- Section 31(3) indicates that a board as a whole can give orders and directions to police chiefs, but not to other members of police services.
- Section 31(4) specifies that boards are not to give chiefs of police direction "...with respect to specific operational decisions or with respect to the day-to-day operation of the police force."
- Section 39(1) of the PSA requires a board to submit operating and capital estimates to their municipal council. However, per section 39(2), it is council that determines the format and timing of the estimates, decides the time period covered by the estimates, and per section 39(3) establishes an overall budget.

Individual members of PSBs are bound by a Code of Conduct set out in O. Reg. 421/97, *Members of Police Services Boards—Code of Conduct* (Ontario). The Code of Conduct defines duties and responsibilities of board members as individuals in such areas as the confidentiality of information discussed at closed meetings, authority for speaking on behalf of the board unless authorized to do so, expressing disagreement with Board decisions, and other matters.

### **5.3 Ministry of Community Safety and Correctional Services**

The MCSCS has general responsibility for policing in Ontario (Ontario). The PSA defines the MCSCS's mandate and authorities as they relate to police services and their boards.

The PSA assigns the MCSCS the responsibility for inspecting Ontario's police services to ensure that communities in Ontario receive a consistently high standard of policing. Section 3(2) of the PSA outlines their role as follows:

"The Solicitor General shall,

- (a) monitor police forces to ensure that adequate and effective police services are provided at the municipal and provincial levels;
- (b) monitor boards and police forces to ensure that they comply with prescribed standards of service;
- (d) develop and promote programs to enhance professional police practices, standards and training;
- (e) conduct a system of inspection and review of police forces across Ontario;
- (f) assist in the co-ordination of police services;
- (g) consult with and advise boards, community policing advisory committees, municipal chiefs of police, employers of special constables and associations on matters relating to police and police services;
- (h) develop, maintain and manage programs and statistical records and conduct research studies in respect of police services and related matters;
- (i) provide to boards, community policing advisory committees and municipal chiefs of police information and advice respecting the management and operation of police forces, techniques in handling special problems and other information calculated to

assist;

(j) issue directives and guidelines respecting policy matters;

(k) develop and promote programs for community-oriented police services;

(l) operate the Ontario Police College.”

According to their website (Ontario), the MCSCS:

- “Writes and updates the Policing Standards Manual which explains in detail the standards Ontario’s police must follow. The manual also provides guidelines on how to follow the standards.
- Inspects police services to make sure they comply with the Police Services Act.
- Is responsible for the Ontario Police College, which trains police recruits and offers advanced training for experienced police officers and civilian employees of police services.
- Is responsible for Ontario Provincial Police, which provides police services in some municipalities plus police service on the province’s highways, trails and waterways.
- Researches criminal justice trends that affect policing.
- Oversees the Ontario operations of the Canadian Police Information Centre (CPIC). This is a national database of information on wanted and missing persons, stolen vehicles, and other crime-related issues.
- Helps local police boards, community policing advisory committees, municipal chiefs of police, employers of special constables and police associations to resolve questions or issues about policing and police services”.

The MCSCS is responsible for training and monitoring of PSBs. Boards are provided with standard training materials that set out the statutory and regulatory requirements with which PSBs must comply. Key principles explored in the material include “providing accountability to the public”, “promoting independence in policing”, and “translating community-defined needs into effective policing.”

The MCSCS’ training materials also provide guidance and commentary on the governance role of the PSBs. The MCSCS indicates that “Governance in policing refers to the authority and responsibility for the development of policies that become the framework within which decisions will be made and actions will be taken by police services.” (PSB).

## **6 Previous Studies of Police Governance in Ontario**

Issues related to policing and the governance of police services and Indigenous communities, in Thunder Bay and elsewhere in Ontario, have been the subject of several prior investigations and inquiries. This section presents a summary of findings from some relevant studies conducted in other communities that have application to the current Investigation.

## **6.1 Report of The Race Relations and Policing Task Force (1989) (Lewis)**

The Task Force on Race Relations was established in 1988 by the Solicitor General of Ontario who appointed the Honourable Justice Clare Lewis as the Chairperson. It was designed to address the "...very serious concerns of visible minorities respecting the interaction of the police community with their own." The Task Force received both written and oral submissions from various stakeholders in Ontario, including the TBPS, the Thunder Bay Multicultural Association, the Equay Wuk Women's Group, the Ontario Native Women's Association, and the Thunder Bay Race Relations Committee. The Task Force's report reviewed racism in policing and made recommendations directed at both police services and police service boards [then referred to as boards of commissioners of police].

The Report yielded 57 recommendations relating to police training, policies, practices, and attitudes. The Task Force recommended the creation of an Ontario Race Relations and Policing Review Board and suggested that this proposed agency develop an employment equity policy, equitable recruitment and promotion plans for visible minorities, and institute continuous education and race relations training.

The Task Force made a number of pragmatic recommendations with respect to police services boards: proposing that that members reflect the diversity of the community being served; that there be "adequate visible minority representation"; that the *Police Act* be amended to define the roles of police services boards (#56); that the Chair of the police board be appointed by the Lieutenant Governor in Council on the recommendation of the Solicitor General; that Boards be housed in non-police facilities; and that Boards should have sufficient non-police staff and equipment to fulfil their statutory obligations (#57). None of these recommendations have been addressed in the *Police Services Act*.

## **6.2 OCPC's Investigation of the Cornwall Police Services Board (1995) (OCCPS)**

In 1995, the OCPC conducted an investigation of the Cornwall Police Services Board (CPSB) to assess its ability to adequately perform its governance function, to identify any Board misconduct, and to establish whether any member of the board was in a conflict of interest.

In conducting the investigation, the OCPC deemed the role of a police services board to be "central to our concept of civilian governance or police services in Ontario" and that "in a very real way they act as public stewards in ensuring that police forces are representative of and accountable to the communities they serve."

The OCPC did not find any instances of wrongdoing by the CPSB. However, they noted a lack of clarity in the definition of the roles of and expectations of individual board members:

"Further we noted that police officers are subject to a detailed Code of Conduct and that nothing similar exists for Board members. This puts the Commission in the unfortunate position of not having clear standards against which to measure a Board member's conduct. It also puts Board members in the unfortunate position of not knowing precisely, what conduct is expected of them" (OCCPS).

The report's recommendation appears to be the impetus for Ontario's creation of its 1997 Code of Conduct for police services board members, which continues to be in effect. (Ontario)

### **6.3 Report of the Commission on Systemic Racism in the Ontario Criminal Justice System (1995)**

In 1992, the Government of Ontario established a six person Commission on Systemic Racism in the Ontario Criminal Justice System that issued its report in December 1995 (Commission on Systemic Racism in the Ontario Criminal Justice System). The Commissioners were granted a broad mandate to examine whether and how systemic racism plays a part in the practices, procedures, and policies of the criminal justice system in policing, courts, and correctional services.

Chapter 10 of the Report of the Commission on Systemic Racism in the Ontario Criminal Justice System addresses community policing and included recommendations relevant to the current Report.

- Recommendation 10.1 proposed that Ontario police services review their commitment to racial equality, publicize its action plans on equality, and communicate the progress of implementing those plans to their respective police service boards.
- Recommendation 10.2 proposed that police services boards establish local community policing committees. They suggested that members be drawn from community organizations, be gender-balanced, and include young persons and members of local racialized communities. It was also recommended that a criminal record should not prevent membership to the committee.
- Recommendation 10.7 suggested that police services boards, in concert with local community policing committees, ensure that policing policies regarding schools reflect the goals and standards of the community, that they initiate consultations with school authorities in the development of policies regarding police calls to schools, and inform parents and youth about school policing issues and convey concerns about relevant policies to school authorities.

The report noted that police services boards lacked the capacity to provide effective civilian governance: boards "...were said to be too weak to regulate effectively, too distant from the concerns of ordinary people, and too close to police leadership to provide necessary oversight." For example, the report cited the Toronto Board's failure to take decisive action when it was revealed that the Toronto Police intelligence unit conducted secret, unauthorized surveillance on prominent leaders in the black community.

### **6.4 Report on the Police Complaints System in Ontario (2005)**

In 2005, the Honourable Justice Patrick LeSage reviewed the police complaints system in Ontario (LeSage). He recommended that the Ontario Government establish an independent police complaints body responsible for screening complaints and supervising police investigations. The report led to amendments to the PSA in 2007 and to the creation of the OIPRD.



Section 6 of the report addressed the role of police board members in relation to complaints:

“Board members also provided me with comments regarding their role and responsibilities over the complaints system. Many board members emphasized that it would be unwise to burden the board with a significant role in the handling of complaints as most board members are essentially volunteers. Board members also noted that the composition of boards across the Province is not uniform. There are many smaller boards across the Province and resources vary significantly from board to board. This has to be kept in mind when considering whether boards should have additional responsibilities dealing with complaints. However, I did hear from some board members who asked for an expanded role. Some felt frustrated by the lack of information regarding specific complaints coming to the attention of the board and felt that this information was necessary for them to carry out their general responsibilities related to the complaints system.

Many board members noted that they would like to see better training made available to them so that they are able to effectively carry out their mandate. Many told me that they are often faced with difficult issues that they feel ill-equipped to handle. One such issue was the often-difficult distinction between policy matters, which fall within the responsibility of the board, and operational matters, which fall within the responsibility of the chief of police.” (LeSage)

The report recommended (#9) that police services continue to handle policy and service complaints, but that final reports on disposition of such complaints should be submitted by the chief to the appropriate board and to the OIPRD.

The report also recommended (#24) that police services boards order bi-annual independent audits of complaints handling within their respective police services and make those audits available to the public.

## **6.5 Independent Civilian Review Into Matters Relating to the G20 Summit (2012)**

In response to Toronto Police’s handling of the 2010 G20 Summit in Toronto and to the Toronto PSB’s supervision of the police and police response, the Honourable Justice John W. Morden addressed the roles and responsibilities of boards, public awareness of boards, and appointments to PSBs. In the Morden Report (Morden), there is discussion about the difference between operational involvement and policy roles.

While the Morden Report focused specifically on Toronto, several of its recommendations are instructive for other police services boards in Ontario:

- “Recommendation No. 1: The Board, the Chief of Police, and the Ministry of Community Safety and Correctional Services should engage in consultation with a view to devising a method of improving the general nature and quality of Board polices.
- Recommendation No. 2: All service procedures and processes should be filed with the Board as a necessary step to strengthen the exercise of the Board’s monitoring and oversight responsibilities.

- Recommendation No. 3: The Board should have its own counsel whose legal services are not available to either the TBPS or the municipality.
- Recommendation No. 4: The Board and the TBPS should ensure that an open exchange of information on all matters of operations and policy is established and maintained.
- Recommendation No. 5: The Board should create a policy that defines “critical points”: a policing operation, event, or organizationally-significant issue for which advance planning and approval at the TBPS’ command level is required. This type of policy is meant to assist in identifying situations where the Board must receive information, including operational information, from the TBPS.
- Recommendation No. 6: The Board should determine appropriate objectives, priorities and policies for major events, operations and operationally-significant issues in which the TBPS will be involved.
- Recommendation No. 15: The Board should audio record all confidential meetings to ensure an accurate record is created. ” (Morden)

## **6.6 Report of the Independent Police Oversight Review (2017)**

In 2017, the Honourable Justice Michael Tulloch reviewed Ontario’s three civilian police oversight bodies; the Special Investigations Unit (SIU), the OIPRD, and the OCPC. His “Report of the Independent Police Oversight Review” focused on recommendations to improve the transparency, accountability, and effectiveness of those three civilian police oversight bodies (Tulloch). The Report included observations and recommendations about PSBs.

In relation to police services boards, the report states at 12.100(3): “First, police services boards are a vital component of the civilian police oversight system in Ontario. As I explain below, the system would be strengthened by establishing consistent selection criteria for board members and providing them with mandatory training on their roles and responsibilities.”

The report recommends at 12.200(10) that the MCSCS “...establish selection criteria through legislation or regulation for board appointees. These selection criteria should not be overly prescriptive, to ensure that individuals from diverse professional and personal backgrounds are attracted to apply. But they should take into consideration core competencies of board members, such as strategic planning and analysis, critical thinking, performance evaluation, and financial literacy. Efforts also should be made to recruit applicants who reflect the diversity of the communities they serve.”

Finally, Justice Tulloch noted the lack of training for Board members and recommended in Recommendation 12.2 “...a mandatory training for police services board members. This training should be developed in partnership with the Ontario Association of Police Services Boards (OAPSB) and post-secondary institutions with expertise in the areas of public sector and not-for-profit governance.”

## PART II: Current Environment

### 1 Racial Tension in Thunder Bay

#### 1.1 Statistical Overview

According to the 2016 census, there were more than 15,000 people who identified as Aboriginal in Thunder Bay. That represented 12.7% of the city's population, the highest Indigenous population of any major Canadian city (the next closest city was Winnipeg at 12.12%). (Statistics Canada)

Thunder Bay is a violent city, according to Statistics Canada. Using a Violent Crime Severity Index (VCSI), Statistics Canada measures both the volume and severity of police-reported crime in Canada and has a base index value of 100 for 2006. In 2017, Thunder Bay was the city with the second highest VCSI at 140.7, after Winnipeg. Statistics show that there were several violations that contributed to this high rate including an "increase in forcible confinement or kidnapping, trafficking, production or import/export of cocaine, aggravated assault (level 3), robbery." (Allen)

Thunder Bay also has the highest murder rate among Canadian municipalities, with a total of 5.80 homicides per 100,000 population (Allen).

When a criminal act in Canada is motivated by hate, it is considered a hate crime. Statistics Canada collects data from police services on police-reported hate crimes. Statistics Canada also collects data on self-reported victimization through the General Social Survey every five years. In 5% of all self-reported victimization incidents, victims believed the incident was motivated by hate. In 2016, across Canada, police reported 1,409 crimes motivated by hate that was a 3% increase from 2015. The number of hate crimes in Canada has increased every year since 2013. (Gaudet)

While there were decreases in the number of hate crimes in Thunder Bay between 2015 and 2016, and while police in Thunder Bay reported a relatively low number of hate crimes in 2016, Thunder Bay still ranked third in Canadian cities where hate crimes were most prevalent (after Hamilton and Ottawa). This amounted to 8.3 hate crimes per 100,000 population. (Gaudet)

Those statistics illustrate the rate of crime and hate crime in Thunder Bay in 2016. Numbers alone, however, cannot convey the range and scale of the violence that informs the environment of many First Nation residents. The following chronology lists a small sample of events over the last five decades that have shaped that environment and defined the Indigenous perception of the institutions responsible for ensuring First Nations safety and well-being:

Year	Description
1963	<i>July 14:</i> Marie Kishigweb was murdered by her common law partner, Martti Palonen, in their apartment. Hewas given a lighter sentence of manslaughter after expressing remorse to the judge.
1966	Jane Bernard and Doreen Hardy were murdered. No one has been convicted.
	Lorraine Rivers was found deceased.
1976	<i>June 10:</i> Alice Quoquat from the Lac Seul First Nation is found murdered.

<b>Year</b>	<b>Description</b>
<b>1978</b>	<i>February 4:</i> Edith Yellowhead is found murdered in the back lane of Machar Avenue.
<b>1985</b>	Carol Lou Viau was reported missing from the Thunder Bay area; despite several unconfirmed sightings during the year following her disappearance, police say she has never been found.
<b>1987</b>	Donna Tebbenham and Bernadette Leclair were sexually assaulted and killed about three months apart. No arrest was made until July 2000, when Larry Runholm was charged with first-degree murder
<b>1988</b>	Margaret Perreault (nee Bluebird) was found deceased
<b>1989</b>	Barbara Shapwaykeesic from Eabametoong First Nation was murdered in a motel, having died from a brain hemorrhage. The death was deemed suspicious by police and her alleged killer was arrested, but later released. It is unclear whether the case is open or closed.
<b>1990</b>	<i>July 5:</i> Stephan Banning's body was found in the Kaministiquia River. Thunder Bay police first declared his death to be a suicide, then an accident. However, a witness reported having seen Banning being beaten and thrown off the James Street Bridge.
<b>1992</b>	<i>February 13:</i> Sandra Johnson was found frozen on the Neebing-McIntyre floodway in Thunder Bay's east end; she had been raped and murdered. Two witnesses reported seeing a police cruiser near the site of her death. In Feb. 1994, after a review of evidence by the OPP, it was announced that no police officer was involved in her death. To date, her murder remains unsolved. Her murder led to the creation Grassroots Committee on Native Unsolved Murders.
	<i>December 1:</i> Laura Pilon, 22, was murdered.
<b>1993</b>	<i>February 14:</i> Sarah Mason was found stabbed to death. Her common-law spouse, Jean-Claude Gagne, was charged with first-degree murder; however, the plea accepted was manslaughter. The transcript of the sentencing hearing characterized the killing as little more than a regrettable, unremarkable accident.
<b>1994</b>	<i>January 29:</i> Stephanie Edwards' body was found in the East end, less than 1000 metres from where Sandra Johnson was murdered two years prior. The police stated that physical evidence gathered at the crime scenes showed no connection between their murders.
<b>1995</b>	Sarah Skunk from Mishkeegogamang First Nation was reported missing. The last place she was reportedly last sighted was in Thunder Bay. No search was officially started until 2001. In 2017, her sisters told the MMIWG Inquiry hearings that they had to pressure local police to start searching.
<b>2000</b>	<i>November 11:</i> Jethro Anderson was found dead in the Kaministiquia River nearly two weeks after he was last seen along the boardwalk in the Kam River Lookout area. Police issued a media release declaring that foul play was not suspected despite the lack of a post-mortem examination. The verdict in the death was "accidental".
<b>2003</b>	<i>February 28:</i> Rena Fox was found dead; to date, the coroner has not been able to determine the manner of her death, and OPP have not revealed its circumstances.
<b>2005</b>	<i>September 26:</i> Curran Strang was found dead in the McIntyre River after disappearing a few days earlier.
<b>2006</b>	<i>November 11:</i> Paul Panacheese died after collapsing at his mother's house; the verdict was "accidental" death. According to the coroner, he had alcohol and drugs in his system, but not enough to kill him. His death remains unexplained.

Year	Description
2007	<i>January 12:</i> Robyn Harper was found dead in her boarding home after a night of binge drinking; her death was deemed “accidental”. Her family seeks to have her death ruled a homicide because the people entrusted with her care failed in their duty; they allege no serious consideration was given to taking the 18-year-old to a hospital.
	<i>January 20:</i> Karla Desrosiers was murdered in her apartment. Thunder Bay police charged a 43-year-old man with second-degree murder in her death.
	<i>November 1:</i> Reggie Bushie’s body was found in the McIntyre River.
	During a school field trip to the local police station, Abraham Miles was ordered to remove his t-shirt, which was incorrectly thought to be associated with native gangs. His legal rights were infringed during the dispute.
2008	<i>April 15:</i> The body of Adrian Spade, Mishkeegogamang, was found by workers in the area of the old Jackknife Bridge near Syndicate Avenue, near Riverside Grain Terminal. He had been missing since April 1, when he was last seen at the West Hotel.
	<i>September 5:</i> Sgt. Jim Mauro was given a four-day suspension for prank phone calls to a 911 operator of a sexual and racial nature while on duty on Christmas Day in 2006.
	<i>October 28:</i> Darryl Kakekayash, a student at the First Nations high school, reported being attacked by three strangers and thrown into the Neebing-McIntyre River. As they were beating him, they yelled racial slurs. No charges have been laid.
	A First Nation woman was picked up on Simpson Street, driven to a rural area, then beaten and raped. Her attacker was sentenced to one year in jail.
2009	<i>November 10:</i> Kyle Morriveau, reported missing for 15 days, was found dead in the McIntyre River. Verdict in death was “undetermined”. The case remains open, but is not being actively investigated.
2010	<i>September 10:</i> Verna Sturgeon of Kitchenuhmaykoosib Inninuwug First Nation was found beaten to death in a room inside the Travelodge Airlane hotel on Arthur Street. Thunder Bay Police charged Michelle Morris and Joanne Vivier with first-degree murder.
	Thunder Bay police received the name of the alleged perpetrator from the Anishinabek Police Service in relation to the death of Stephan Banning, but nothing came of the investigation. According to the Anishinabek police report, no investigation has ever been opened into Banning’s death.
2011	<i>May 10:</i> Jordan Wabasse’s body was found in the Kaministiquia River three months after he disappeared near his boarding home. Police quickly ruled out foul play in his death; the verdict was death “undetermined”. The case remains open, but is not being actively investigated.
	Police investigations faced scrutiny after the verdicts of “accidental” and “undetermined” in the deaths of First Nation students Curran Strang, Robyn Harper, Reggie Bushie, Jethro Anderson, Paul Panacheese, Kyle Morriveau and Jordan Wabasse (2000 to 2011).
2012	<i>September 1:</i> A Thunder Bay Police official mistakenly issued a mock news release after an arrest was made in the murder of Adam Yellowhead. The release stated that the “fresh breath killer” was captured. Thunder Bay Mayor Keith Hobbs called it a “coping mechanism” for police, and maintained the release was a joke, a mistake, and not racist.
2013	<i>November 3:</i> Nicole Munroe, a second year student at Confederation College in the Native Child and Family Services Program, died under suspicious circumstances.

Year	Description
	<p>The Ontario Native Women's Association (ONWA) said it had anecdotal reports of First Nations women being trafficked across borders, or provincial boundaries, into the sex trade, suggesting that Thunder Bay was an active trafficking site because of its international port and proximity to the border.</p> <p>Thunder Bay police officers were accused of stranding a First Nation student in the cold weather on the outskirts of town.</p> <p><i>December 27:</i> A 36-year-old First Nation woman reported that she was abducted and sexually assaulted by two men who dragged her into their vehicle. "Racially motivated" remarks by the alleged assailants led police to pursue the investigation as a possible hate crime.</p>
2014	<p><i>September:</i> William Darryl Wapoose's body was discovered by a passerby off the bike path in Chapples Park. No arrests have been made, and no cause of death has been released.</p>
2015	<p><i>June 15:</i> Larissa Charlie-Stillaway was assaulted at Totem Trailer Court on Chippewa Road, taken to hospital in critical condition, and subsequently died. Police charged Cruz Nicholas Pelletier with second-degree murder.</p> <p><i>October 7:</i> During the inquest into the seven First Nation student deaths, a motion to undertake a broad, comprehensive inquiry into the quality and competence of the Thunder Bay police was denied. The inquest was completed in June 2016.</p> <p><i>October 29:</i> Stacy DeBungee's body was found in the McIntyre River. His brother filed a complaint, suggesting that police mishandled the death investigation, ruled out foul play too quickly, and failed to follow leads that included evidence DeBungee's debit card was used after his death.</p> <p>Thunder Bay Police launched an investigation of Facebook pages characterized as demonstrating "extreme racism" against First Nation people.</p>
2016	<p><i>March 29:</i> Christina Gliddy was found unconscious near the McIntyre River and later died in hospital. Police indicated she died of exposure; but her family seeks to have the case reopened. They noted that "Some of her clothes were missing and one of her shoes, we tried asking why there were marks on her body, bruise-like marks and her head had two big bumps."</p> <p><i>May 3:</i> Marie Spence's body was found in a wooded area near Brant Street; she had been dead for several days prior to the discovery of her body. Police stated that her death does not appear to be criminal in nature.</p> <p><i>August 9:</i> A Thunder Bay constable punched a 17-year-old First Nation teenager three times in the back of the head. He pleaded guilty at a Police Services hearing in July 2018 to unnecessary exercise of authority and using unnecessary force.</p> <p><i>July:</i> Police were accused of verbally assaulting a facilitator who was delivering cross-cultural training on First Nations issues; a city official said it was only a misunderstanding, claiming the trainer "misinterpreted" police response.</p> <p><i>September 17 and 18:</i> Police took issue with an editorial in local media regarding the training incident. The Grand Chief of Nishnawbe Aski Nation ("NAN") responded. Subsequently racist Facebook comments were posted, and an anonymous letter attacking the Grand Chief was published. Cst. Rob Steudle was later suspended with pay, and another four officers were reassigned to administrative duties as a result of the Facebook postings.</p>

Year	Description
	<p><i>October:</i> Ontario's Human Rights Commissioner found Adam Capay of Lac Seul First Nation had been held in solitary confinement for more than four years in Thunder Bay District Jail. Capay indicated that his speech and memory were being impacted by the constant isolation, and he showed signs of self-harm.</p> <p>A First Nation woman was found naked, crying for help in the street. No charges were laid by police.</p> <p>An investigation was launched into alleged police misconduct in the DeBungee case. This was expanded to a broader systemic review following allegations of “systemic” racism within TBPS for the way deaths and disappearances of First Nation people are investigated.</p>
2017	<p><i>January 21:</i> After being arrested for trespassing, Samuel Pervais filed a complaint for wrongful arrest. The OIPRD substantiated his complaint on May 24, and questioned why Pervais was arrested when one of the officers knew the Ojibway man did not fit the suspect's description.</p> <p><i>February 13:</i> First Nation artist Moses Amik Beaver was found dead in the Thunder Bay Jail under unexplained circumstances.</p> <p><i>March 21:</i> TBPS officers responded to a call from a man who found Sarah Moonias lying on the ground, cold and unresponsive. She was later pronounced dead.</p> <p><i>May 7:</i> Tammy Keeash's body was found in the Neebing McIntyre Floodway. Police determined the cause of death was “consistent with drowning”, and indicated there was no evidence of foul play, despite her body being found partially nude. The case remains open.</p> <p><i>May 18:</i> Josiah Begg went missing the same night as Tammy Keeash, and was found dead in the McIntyre River system - the second First Nation teen in less than two weeks. The TBPS had initially stated there was “no evidence” the missing teen went into the river and discouraged First Nation volunteers from searching there.</p> <p><i>June 3:</i> Jayden Matthews, age 16, reported that two white men in an SUV tried to abduct him. He saved himself by throwing a rock at them and biting them. His aunt reported police never called them to tell them what happened and Matthews walked home alone after being discharged from the hospital.</p> <p><i>June 13:</i> Jennifer McKenzie was accosted by three Caucasian men as she left her courthouse office: they crossed the street toward her, and one said, “What a perfect place for a murder, right in front of the [...] courthouse.” She called the police; a cruiser circled the block a couple of times, then gave up the search.</p> <p><i>July 4:</i> Barbara Kentner died as a result of her injuries after being hit by a trailer hitch thrown by a passenger in a speeding car late January. The man accused has been charged with second-degree murder (upgraded from aggravated assault).</p> <p><i>July 5:</i> Kevin Roundhead was murdered; his body was found near the city's north side waterfront.</p> <p><i>September:</i> Dylan Moonias, age 21, was found deceased in the Neebing-McIntyre Floodway; investigators deemed the death “suspicious”.</p> <p>Thunder Bay city council refused to call for Senator Lynn Beyak's resignation, following a series of public “racist” and “ill-informed” remarks concerning the residential school experience.</p> <p>Amidst racial tensions in the city, Shelby Ch'ng was the only Thunder Bay city councillor to show up at a barbeque hosted by NAN to raise money for Shelter House.</p>

Year	Description
2018	<i>August 22: Amelia Corrie Sainnawap was found deceased in the 100 block of Cumming Street. A suspicious death investigation was shifted to a homicide investigation.</i>
	Two separate incidents of eggs being thrown from moving vehicles and hitting pedestrians are reported to the Thunder Bay police. Several First Nation youth reported having eggs, food containers, garbage and racial slurs hurled at them from passing vehicles.
	And independent review determined that the decision by police officers to rule out foul play in case of Stacy DeBungee was the result of a grossly inadequate investigation tainted by racism.
	Board chair Jackie Dojack confirmed that the Board will not ask Police Chief J.P. Levesque to step down despite calls for his resignation in the wake of the DeBungee report.

These, and many other unreported events chronicled in this Investigation and in media reports (see Appendix 4), have created a climate in which many First Nations residents of Thunder Bay feel threatened, marginalized from the mainstream, and poorly served by the institutions mandated to serve and protect them. This is particularly true of the most vulnerable members of the Indigenous community.

## 1.2 Missing and Murdered Indigenous Women and Girls Inquiry

The prevalence of violence against Indigenous women and girls in Canada is “a national human rights crisis” (Amnesty International). Despite many calls for a coordinated and comprehensive national response to this issue, and the development of multiple strategies, studies and assessments<sup>8</sup>, the level of violence that Indigenous women and girls experience in Canada remains unacceptably high. While existing data is incomplete and inconsistent, the statistics are alarming. According to the most recent Statistics Canada findings:

- Indigenous women are nearly three times more likely to face violence than non-Indigenous women (Boyce);
- 24% of all homicide victims in Canada were Indigenous, despite the fact that Indigenous peoples account for only 5% of the population (David); and
- The homicide rate for Indigenous peoples in 2016 was six times higher than for non-Indigenous peoples (Hotton Mahony, Jacob and Hobson).

Other relevant indicators of violence against Indigenous women include:

- Indigenous women are five times more likely to die of violence than other Canadian women (Amnesty International).

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<sup>8</sup> For example, international reports such as the Amnesty International *Legal Strategy Coalition on Violence against Indigenous Women*; national reports such as Assembly of First Nations’ *A National Action Plan to End Violence Against Indigenous Girls and Women*; provincial reports such as *Walking Together: Ontario’s Long-Term Strategy to End Violence against Indigenous Women*; and Indigenous-specific reports such as *A Strategic Framework to End Violence Against Aboriginal Women* from Ontario Federation of Indigenous Friendship Centres and the Ontario Native Women’s Association.



- Indigenous women are three times more likely than non-Indigenous women to report being a victim of a violent crime (Amnesty International).

There are complex reasons underlying this level of violence. The Native Women's Association of Canada (NWAC) found that "intergenerational impact and resulting vulnerabilities of colonization and state policies—such as residential schools, the Sixties Scoop, and the child welfare system—are underlying factors in the outcomes of violence experienced by Aboriginal women and girls" (Native Women's Association of Canada). Other factors include poverty, intergenerational trauma, inadequate police and justice system response (Aboriginal Healing Foundation); lack of housing, failing systems and services (Special Committee on Violence against Indigenous Women); and mental health issues, substance abuse and a large youth population (Boyce).

The impact of these factors is manifest in the level of violence against Indigenous women and girls, in the high number of missing and murdered Indigenous women and girls, and in the prevalence of human and sex trafficking of Indigenous peoples, particularly women and girls. Consideration of these factors is therefore relevant to the Investigation of the Board.

The Truth and Reconciliation Commission reported that many of the root causes of violence against Indigenous women also lead to the disproportionate number of missing and murdered Indigenous women and girls: "overrepresentation of Aboriginal children in child-welfare care; domestic and sexual violence; racism, poverty, and poor educational and health opportunities in Aboriginal communities; discriminatory practices against women related to band membership and Indian status; and inadequate supports for Aboriginal people in cities" (Truth and Reconciliation Commission).

Indigenous groups and individuals in Thunder Bay have publicly criticized police inaction regarding missing and murdered Indigenous women for several decades. In 2010, several community organizations created the web site *It Starts with Us*, to honour missing and murdered Indigenous women. The Thunder Bay community list includes nine women murdered in the city since 1987 and numerous others prior to that time (*It Starts With Us*). In addition to these nine, there are records of nearly 30 missing or murdered Indigenous women since the 1960s.

The national MMIWG Inquiry was established in the summer of 2016, with a two-year mandate<sup>9</sup> to examine and report on the "systemic causes behind the violence that Indigenous women and girls experience".

The MMIWG Inquiry held three days of hearings in Thunder Bay in December 2017. More than 50 family members and survivors initially registered to participate. Many others arrived over the course of the event to share their stories through public and private hearings, sharing circle testimonies and artistic expression panels, or through the submission of prepared statements.

Several witnesses described incidents of apparent indifference on the part of police in Thunder Bay. One mother reported to police that her daughter, Delaine Copenace, was missing, and was told she was "probably just drunk somewhere" (Perkel). Copenace's body was found several weeks later in Lake of the Woods. The coroner decided there was no evidence of foul play, and no inquest was held.

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<sup>9</sup> In June 2018, Carolyn Bennett, Minister of Crown-Indigenous Relations announced a six-month extension until April 30, 2019.

Prior to the Thunder Bay hearings, the Inquiry released its interim report, *Our Women and Girls are Sacred*. In pre-hearing meetings with Indigenous organizations, the Inquiry heard that police forces and the criminal justice system play a role in perpetrating violence against Indigenous women and girls.

“There is an overall lack of trust in the justice system—including the police, courts, coroners, and corrections—and a belief that women and families are not receiving the justice they deserve. People are afraid of retribution and bullying when reporting police complaints in small communities. There is ongoing concern about the lack of communication between police and families. We have heard that existing mechanisms for making complaints against the police, investigating police misconduct, and addressing the overall lack of transparency, are inadequate. Many believe that the cause of death is ruled as from “natural causes” far too often in cases where there are suspicious circumstances” (National Inquiry into Missing and Murdered Indigenous Women).

The report emphasized the need for better policing, noting that “many of the families recommendations for law enforcement centred on the need for designated investigators, police units, advocates, protocols or regional offices to address violence against Indigenous women”. The report also included specific recommendations “for a simpler and clearer process for Indigenous women to launch complaints of misconduct against police officers without fear of retaliation...for more civilian oversight of police, and for Indigenous people to be part of these police oversight bodies”. (National Inquiry into Missing and Murdered Indigenous Women)

### **1.3 Human Trafficking, Prostitution and Gang Violence**

The UN Human Rights Rapporteur pointed out that trafficking is a matter of grave concern in Canada “particularly with regard to indigenous women and girls, who are overrepresented as victims of human trafficking in Canada” (Šimonović).

This concern is particularly acute in Thunder Bay. As the major transportation hub in northwestern Ontario and a port city on Lake Superior, Thunder Bay is linked to extensive networks for human and sex trafficking. Because of its proximity to the US and Manitoba, “it is a perfect breeding ground for gang activity and the recruitment of girls for human trafficking.” (Boyer and Kamouris)

“A subject matter expert who delivers front-line services reported that in Thunder Bay, there is an active sex trade on the ships that dock there, and that many Aboriginal women are involved. The ships go to Duluth and to other points in the U.S. or other port cities on the Great Lakes. This subject matter expert had been trafficked by a pimp from the ages of 12 to 22. They believe police services look the other way because there are police officers who are, themselves, consumers of the sexual services of trafficked women. It was reported by this subject matter expert that at any given time, there were three to six women that a ship’s crew would pick up in the local bar and take to the ships that were docked at Thunder Bay.” (Boyer and Kamouris)

In a report on human trafficking and prostitution among native women in Minnesota, women described their prostitution on ships out of the port of Duluth “which has been a site for the trafficking of Native women for decades” (Farley, Matthews and Deer). Although much of Lake

Superior's commercial traffic is routed through Thunder Bay, police in Thunder Bay and Duluth have said they did not believe there was sex traffic on ships between the two cities (Porter).

A major trial in the 1990s exposed the scope and scale of prostitution and sex-trafficking in the city. Agnew Johnston practiced private law in Thunder Bay in the 1970s, and then joined the regional Crown Attorney's office. In 1994, he was charged with paying to have sex with a 15-year-old prostitute and trying to obtain the services of another juvenile. He was later charged with assault and served five months in jail. He was fired as an assistant Crown attorney and is now disbarred.

Testimony provided during the Johnston trial pointed to others who bought sex from underage girls. "A Thunder Bay constable named Andre Lichtenfeld testified that he witnessed several prominent Thunder Bay citizens pick up sex trade workers downtown. He testified that the sex workers included underage girls" (Barrera).

Bridgett Perrier was one of the teenage girls forced to provide sexual services to Agnew Johnston in the early 1990s. Perrier is now an activist against prostitution, and in 2007 she created *Sextrade 101*, an organization that helps victims escape from prostitution and human trafficking. "[Agnew] lost his job and five months of freedom", she said to the media in 2012, "While I lost my childhood and my teenage years" (Pazzano).

Perrier told the media in 2016 that she believes Thunder Bay has a high sex trade population.

"Thunder Bay and Winnipeg have the same norm [that it's OK to abuse an Aboriginal child]. I just think it is due to hierarchy and colonialism. Thunder Bay has never stood up for [itself]. People haven't really said anything. Thunder Bay has an active kiddie stroll" (Labine). The term refers to a street where minors can be hired for sex.

Thunder Bay is also experiencing a growing level of gang and gang-related activity. Indigenous and non-Indigenous gangs, particularly the Native Syndicate and the Hells Angels, have long established themselves in the city. In recent years, outside gangs, particularly from Ottawa and Toronto, are now competing for control of the sex and drug trafficking trade. These gangs target vulnerable people in low-income areas; many of their victims are First Nations people, and in particular, women (Lundmark). Recently, tensions amongst gangs has increased; the Hell's Angels have expanded their presence in the city with enough members to run a chapter, despite years of Thunder Bay police raids on their clubhouses (Jackson, Fiddler and Robinson).

Staff Sgt. Ryan Gibson heads the Intelligence unit of the Thunder Bay police. He told the Aboriginal Peoples Television Network that "the allure of Thunder Bay to outside gangs is they know they can make more money in the northern Ontario city and it also gives them connections to northern First Nation reserves where the price jumps even more" (Jackson, Fiddler and Robinson).

A federal government report into sex trafficking concurred with this assessment, and also linked gang activity to Thunder Bay's location. "...Because of the proximity of the U.S. and Manitoba, it could be a draw for Aboriginal specific gangs to traffic women across wider geographic areas from those points" (Boyer and Kamouris).

Along with the growth of gang activity, police have seen an increase in the number of guns on Thunder Bay streets. During the arrest of an Ottawa gang member involved in the kidnapping of

a 17-year old in late 2016, police found a .357 calibre Magnum handgun (a weapon previously un common in Thunder Bay) (Walters). Between January and August 2018, police seized seven loaded guns; in the past such seizures would have been limited to one or two (Ketonen).

## **2 Divergent Realities: Perspectives on Policing in Thunder Bay**

### **2.1 TBPS and Indigenous Peoples**

#### **2.1.1 The Indigenous Perspective**

In 2017, the death of Barbara Kentner, killed by a trailer hitch thrown from a moving car, attracted national attention. It was a shocking act of senseless, racist brutality. But as the chronology above illustrates, from the Indigenous perspective, Barbary Kentner's death was part of an all-too familiar pattern of violence the City.

Every Indigenous person interviewed shared stories of racially motivated incidents that involved either themselves or someone they knew. Some of these include transit drivers deliberately not picking up First Nations people at bus stops; security guards prohibiting First Nations families from seeking shelter in local shopping malls in freezing temperatures while waiting for city transit; First Nations people receiving inferior service in coffee shops and hotels; racial profiling in stores; Caucasian people yelling "Dirty Indians" and other racial epithets from moving vehicles; objects thrown from cars at First Nations pedestrians; physical assaults; and threats of violence or death.

Most First Nation interviewees described a personal experience or incident, involving a family member or a friend, in which objects were thrown at them on the streets of Thunder Bay by people in moving vehicles, shouting racial epithets. These objects included water bottles, soda cans, beer bottles, coffee cups, cigarette butts, eggs and other food items, coins, and a trailer hitch. Similar incidents were described in testimony throughout the Seven Youth inquest. These acts are not targeted at any particular First Nation demographic; victims have included young people, elderly people, off-duty police officers, sex workers, and homeless people. One incident occurred during a peaceful march, accompanied by on-duty police officers, to support the Missing and Murdered Indigenous Women and Girls. This form of assault appears to be a widespread, long-standing and recurrent problem in Thunder Bay. However, to date, the TBPS has not assigned a specific category or code for this type of incident.

Interviewees articulated a number of concerns regarding treatment of the families of Indigenous victims by the TBPS during a missing person or death investigation. Many of these concerns focused on a perceived disparity in the treatment of Indigenous and non-Indigenous families. It was suggested that TBPS does not respond to reports of missing or murdered Indigenous people with the urgency or diligence they would bring to a comparable report on a non-Indigenous person. Some interviewees described a lack of sensitivity and accountability in dealing with the families of the victims. It was also suggested that if alcohol was assumed or suspected to be a factor in an incident, police officers treated the matter with less urgency.

Although communication with families is a component of the TBPS' investigation policy, the First Nations people interviewed repeatedly stated that such communication does not occur with families of Indigenous victims. In response, TBPS described challenges associated with locating family members and obtaining contact information. However, all agreed that First Nations families must receive clear, timely and accurate communication, and must be afforded respect at every stage of the investigation process.

Several instances were described in which officers failed to take violence against Indigenous people seriously, or minimized its severity, including multiple incidents in which objects and racial epithets were hurled at First Nations people by non-Indigenous teenagers. Some respondents expressed the view that the TBPS was working to disprove hate crimes, protect the perpetrators and downplay the racial undertones of such violence, rather than seeking to investigate hate crimes.

Trust in the police has eroded by series of incidents demonstrating the presence, if not the prevalence, of racist attitudes within the TBPS.

- On December 25, 2006 Sergeant Jim Mauro, former president of the Police Association, placed a prank 911 call while on duty, imitating a First Nation's woman. He was disciplined with a four-day suspension and was required to issue an apology.
- During a school field trip to the TBPS in November of 2007, Abraham Miles, a 17-year-old student from Fort Severn First Nation, was accused of wearing a t-shirt associated with First Nation gangs. An officer ordered him to remove it in front of his peers. Two officers, one uniformed and one in plain clothes, pulled Abraham into an interrogation room where he was questioned and photographed in the absence of an adult or lawyer. The plain clothes officer was given a written reprimand, required to attend training and to offer an apology to Abraham. No discipline was issued for the officer in uniform.
- In 2012, a Thunder Bay Police officer inadvertently released to media outlets a "joke" internal memorandum tagging the man suspected of murdering Adam Yellowhead, an Indigenous man, as the "Fresh Breath Killer." The racist undertones of this memorandum were denied by the TBPS, and Mayor Keith Hobbs spoke out in public support of the police. When the family of Mr. Yellowhead and three First Nations filed a human rights complaint against the TBPS in relation to this incident, the TBPS reacted dismissively, stating, "...It does feel insulting too, to a lot of the hard work that is done by our members on behalf of every member of this community" (Porter). The implicated officer was disciplined, and the TBPS made a financial contribution for Mr. Yellowhead's headstone.
- On September 16 and 17, 2016, Constable Rob Steudle made three posts to his Facebook account while off duty. His actions were incited by a letter in the Chronical Journal by NAN Grand Chief Alvin Fiddler regarding racial tensions and police conduct. Constable Steudle wrote:

"Natives are killing natives and it's the white mans [sp.] fault natives are drunk on the street and its [sp.] white mans [sp.] fault natives are homeless and its [sp.]

white mans [sp.] fault and now natives are lying about how they are being treated by white men an explanation is given and it's the white men who are lying. Well let's stop giving the natives money and see how that goes" (Office of the Independent Police Review Director).

- Constable Steudle was charged with Discreditable Conduct and faced a disciplinary proceeding. He pleaded guilty and during his hearing apologized to the TBPS, the community and Grand Chief Alvin Fiddler.
- In 2016, Constables Kyle Kehler and Kyla Rutherford were charged with Discreditable Conduct after striking a mentally ill Indigenous person on the head outside a homeless shelter. The officers admitted to their actions, received a penalty of eight hours, and were required to attend an approved mental health course.

Conversation with racialized overtones is often dismissed as “locker room talk,” as ignorance, as harmless jokes, or as unintentional banter; however, such casual but continuous deprecation of Indigenous people is indicative of disturbing attitudes and contributes to the wide-spread mistrust of police.

This distrust has several negative consequences. Indigenous victims are less likely to report crimes, or to avail themselves of the police protection that non-Indigenous people take for granted. Many Indigenous people believe that the police will minimize, dismiss, or fail to investigate their complaint with diligence, particularly if alcohol is involved. Many also fear that reporting incidents of police brutality will make them a target. These feelings are real, pervasive and dangerous.

Most respondents emphasized that officers should exercise equal professionalism and diligence in policing the entire community of Thunder Bay, including First Nations. Personal views and biases must be set aside and work must be performed with humanity, regardless of ethnicity of the victim, or the involvement of alcohol or other illicit substances.

### 2.1.2 The Police Perspective

In the course of this inquiry, many police officers of various ranks, both active and retired, shared their perspective on the perception of racism within the TBPS. Most conceded that there may be some “bad apples” with racist attitudes amongst the rank and file; they maintain, however, that the vast majority of officers are capable, dedicated service people who “do not police by colour.”

The policing community steadfastly defends their service and clearly believe they are doing the best job possible under the circumstances. There is no reason to doubt the sincerity of their views; and there is a need to acknowledge the many challenges and constraints they face in a difficult environment.

One of these challenges frequently raised by TBPS respondents is the lack of resources to investigate major crimes. TBPS senior officers indicate that Thunder Bay receives the lowest funding for municipal policing in Ontario (7.9%); and despite the high levels of violence in the city, TBPS does not have a dedicated homicide unit.

Even in the face of these funding constraints, TBPS is proud that their “clearance rate” (i.e., the number of crimes for which a charge is laid, relative to the total number of crimes recorded) was one of the highest in Canada in 2016, at 69% for violent crimes (Thunder Bay Police Service).

The clearance rate for violent crimes involving Indigenous peoples, however, is unknown; but TBPS was able to inform the inquiry that the highest number of people charged with intoxication are Indigenous people. Some officers speculated that First Nation students develop bad drinking habits when they come to Thunder Bay, and that they “ought to be taught responsible habits”.

Respondents acknowledge a negative community perception regarding TBPS response to crimes reported by Indigenous people. They note, however, that frequently victims or witnesses are unwilling to file formal police reports. Without evidence, witnesses or video footage to investigate the incidents and lay charges, the likelihood of productive investigation is limited. Some officers noted that First Nations people occasionally give false or inconsistent information to police, which constrains their ability to investigate. They indicate that until a climate of greater trust is established, pointless acts of racial violence will continue without investigation or redress.

The senior command of the TBPS recognize the TBPS’ poor rapport with Indigenous groups in Thunder Bay, and they have been making concerted efforts in recent months to improve that relationship, particularly with NAN and the Grand Council of Treaty 3. They acknowledged that a high percentage of calls relate to Indigenous peoples struggling with socio-economic, mental health and substance abuse issues, and do not necessarily involve criminal behaviour. However, because the city lacks sufficient social infrastructure and resources to address such issues appropriately, the only tool available to police is the criminal justice system.

Currently, the senior command appears to be committed to addressing racism and systemic racism in the police service. They point to the Chief’s Advisory Committee on Diversity and Indigenous Issues, the Organizational Change Project launched in 2017, and their swift action to implement the Seven Youth Inquest recommendations, as recent and demonstrable signs of their commitment.

### 2.1.3 The Board Perspective

The Board expressed support for the TBPS in all major areas of policing. Nevertheless, they acknowledge that systemic racism and, to some degree, racist attitudes may be present in the TBPS, the Board itself, and the City administration as a whole. Board members believe, however, that for the most part police officers are sincere, dedicated, diligent and hard working. On numerous occasions, the Board has publicly expressed strong support for the TBPS and its Chief of Police in news articles and press conferences, denying there is a crisis in Thunder Bay with respect to Indigenous policing (see Appendix 4 for Chronicle Journal items) and criticizing media for focusing on negative stories such as failed investigations of Indigenous deaths. This approach led some respondents to characterize the Board as a “cheerleader” for the TBPS, rather than a governing body providing objective oversight, a perspective not shared by the Board.

The Board relies on the TBPS to provide community-based policing to all segments of the community and to draw the Board’s attention to any issues that cause concern or require Board action. The Board is careful to avoid overstepping their interpretation of the limits of their authority; they will not become involved in the operational aspect of delivering police services, or in directing the Chief of Police or the Deputy Chief of Police in any area of its operations. The Board Chair values a positive and open relationship with the Chief of Police, and maintains it through regular, informal meetings with the Chief to discuss operational plans, emerging issues, various initiatives,

and resourcing matters. The senior command of the Police Service also attend monthly Board meetings to provide updates on operational matters.

### **3 The Public Record**

In past years, interviewees report that coverage of indigenous issues and events was relatively rare in Thunder Bay. Today, with the growth of Indigenous media and with increasing attention paid to Indigenous themes in mainstream media, stories with an Indigenous focus are common in Thunder Bay print, broadcast and social media. Indigenous respondents view this development positively and felt generally that coverage is fair and balanced.

Some members of the policing community voiced concern about what they view as unbalanced reporting and coverage that emphasizes negative events to the exclusion of positive stories. Some felt that many media outlets exaggerate the level of racism in Thunder Bay and unfairly portray the TBPS and the Board in a negative light. Others expressed frustration at what they see as a failure by police leadership to defend TBPS against media criticism of the handling of Indigenous issues.

The question of what constitutes “balance” in media coverage is a complex and subjective one, and beyond the scope of this Investigation. However, the volume and nature of media coverage around the issues raised in this Investigation is a relevant consideration; it speaks directly to the level of awareness a reasonably well-informed resident of Thunder Bay could be expected to have of the nature, extent and causes of violence against Indigenous people in the city, and of the TBPS response.

A media scan of stories related to issues relevant to this Investigation was undertaken as part of this report. A sampling of the stories identified is included as Appendix 4.

The media scan focuses primarily from the period between 2000 to summer 2018, with earlier coverage included where relevant. It does not represent a comprehensive listing, since the TBPS does not maintain an organized media file on crimes against Indigenous people. The stories include coverage by international, national, local, and Indigenous journalists, published in media available in Thunder Bay.

The scope, scale and reach of this coverage confirm that the issues and events giving rise to this Investigation were clearly matters of public record, widely reported, and presumably familiar to the general public and, in particular, to those in leadership positions within the city.

The scan is organized around the following six topics:

#### **3.1 Seven Youth Inquest**

The events leading up to and following the “Seven Youth Inquest” were among the most widely covered stories in Thunder Bay’s recent history. Beginning in 2010, seven Indigenous youth, most of them students who had come to Thunder Bay from northern reserves, went missing. The bodies of six were found in or around Thunder Bay’s waterways.

In 2009, in consultation with NAN, the Office of the Chief Coroner called an inquest into the death of Reggie Bushie (2007). In 2015, the inquest was expanded to include six other youths: Jethro



Anderson (2000), Curran Strang (2005), Paul Panacheese (2006), Robyn Harper (2007), Kyle Morisseau (2009) and Jordan Wabasse (2011).

It was widely reported that the deaths of the youths were often not taken seriously by Thunder Bay police officers. A retired police officer testified at the inquest that Thunder Bay police did not launch a criminal investigation into the death of Jethro Anderson until six days after he was reported missing in October 2000. Coverage indicated that Anderson's mother's pleas for help went unanswered because Thunder Bay police believed Anderson was partying "like any other native kid."

According to the Ontario Advocate for Children and Youth, the Inquest highlighted many other inadequacies in the treatment of cases involving Indigenous youth. These included failure to follow up on missing children reports and failure to protect the safety of students in light of other attacks against Indigenous peoples.

In June 2016, the jury released 145 recommendations to improve safety for First Nations students. These were directed at the federal, provincial and Thunder Bay governments, highlighting failures of the system and calling for immediate changes. In particular, jurors called for development of policies on dealing with missing students, including the timely filing of missing-person reports, the use of social media in subsequent searches, and training for Thunder Bay police in investigating such cases.

A partial media scan lists more than 45 print and broadcast stories covering the Inquest and the events leading up to it. This does NOT include additional articles related to other river deaths.

### **3.2 Other Indigenous Deaths (Homicides, River Deaths, MMIWG, and Deaths in Custody)**

The Seven Youth Inquest held in Thunder Bay in 2015-2016 marked a turning point in public awareness of violence against Indigenous people. While the inquest looked specifically at the alarming number of young Indigenous people dead in the McIntyre and Kaministiquia rivers, it drew public and media attention to the disproportionate number of other Indigenous river deaths and murders in the city, going back for decades.

Other cases that drew considerable media attention were the discovery of 41-year old Stacy DeBungee's body in the McIntyre River in 2015. Although the Police quickly ruled out foul play, an investigation by the OIPRD concluded that "police were not justified in adopting an approach which too readily assumed that intoxication explained a sudden death." More recently, the death of Josiah Begg in 2017 led to a request for the Ontario Commission of Police Complaints to initiate an investigation into the TBPS.

While river deaths have dominated the news and sparked investigations, Indigenous people are disproportionately victims of homicide and suspicious death in Thunder Bay. In 2017, respected Indigenous artist Moses Amik Beaver was found dead in the Thunder Bay Jail in what Indigenous leaders said were "unexplained circumstances."

The National Inquiry into Missing and Murdered Indigenous Women and Girls is bringing to light stories of families and communities devastated when loved ones go missing or are murdered.

While this Investigation focuses on events since 2000, media stories of missing and murdered Indigenous women in the Thunder Bay area date back to the 1960s.

A partial media scan lists nearly 50 print and broadcast stories dealing with violent or unexplained Indigenous deaths over the last three years. This does NOT include additional articles related to the Seven Youths Inquiry.

### **3.3 Hate Crimes, Attempted Abductions and Assaults**

Statistics Canada reported that, in 2016, Thunder Bay had the highest number of hate crimes reported by police in a metropolitan area across the country, with 29% of hate crimes directed towards Indigenous peoples. Not all of these incidents were reported to or by the media, but the stories listed under this heading provide ample evidence of a chronic problem.

The 2017 killing of Barbara Kentner is the best-known and most tragic example of the brutal and common throwing of projectiles, such as eggs, food containers, garbage and racial slurs at First Nations pedestrians from passing vehicles.

Attempted abductions and other forms of assault on Indigenous people are disturbingly frequent in Thunder Bay. In 2017, a woman told police that she witnessed a First Nations man soaking wet and bleeding from his head. The man said two “white” men beat him and threw him in the river. Later that same year, a First Nations student was attacked and thrown into the river in Thunder Bay. He escaped by swimming to the opposite shore.

Jayden Matthews, age 16, survived a kidnapping attempt in early June 2017. Matthews stated two white men in their thirties jumped out of a black SUV and tried to force him inside. He said he grabbed a nearby rock and threw it at one of his assailants, at the same time biting the other. When they let go of him momentarily, Matthews ran away and ultimately was taken to a hospital after the Thunder Bay Police were alerted. The *APTN* reported the police were investigating three kidnappings that occurred in May 2017 at the time.

In 2017, a 20-year-old unconscious man was removed from the McIntyre River on September 27, 2018. Near drowning, the man was rushed to the hospital. This incident sparked calls for more safety measures near the waterways.

A partial media scan lists thirty print and broadcast stories dealing with hate crimes, attempted abductions and assaults. This does NOT include additional articles related to the Seven Youths Inquiry.

### **3.4 Sexual Assaults, Exploitation, Gangs and Human Trafficking**

Media reports chronicle a history of racially-motivated sexual assaults in Thunder Bay. In a highly publicized incident in 2013, a First Nations woman reported to police that she was sexually assaulted and during the assault the assailants made several racist remarks to her. At that time, Thunder Bay police characterized the crime as racially-motivated, leading them to pursue the investigation as a possible hate crime. During the investigation, a teenager told CBC News that he witnessed the abduction and racial slurs but did not feel safe telling the police what he saw and heard.

In another incident, a First Nations woman was found naked and screaming for help on a street in Thunder Bay. A witness heard the woman tell police that a man “tried to kill her and drown her in the lake.” The assailant was identified by the victim; however, a police spokesperson indicated there were no grounds for a criminal charge. The woman’s mother told CBC News that she believes police did not pursue a criminal case because her daughter is a First Nations person who uses drugs.

The Toronto Star reported in 2013 that a disproportionate number of women exploited by Thunder Bay’s sex traffickers are Indigenous teenage girls. Their average age is fourteen, but some are as young as ten years old.

The increase in gang-related activity in Thunder Bay, and particularly competition for control of the sex and drug trafficking trade, is receiving growing media attention, and was recently the focus of several investigative reports broadcast on APTN.

A partial media scan found 20 print and broadcast stories dealing with sexual exploitation and gang activity.

### **3.5 Racism and Systemic Racism**

In a widely-reported 2017 study conducted by the United Way of Thunder Bay, 71% of respondents agreed that Indigenous people are the group most likely to experience racism and discrimination in the city. Most of the 1,641 respondents were long-time residents of Thunder Bay.

For decades, the TBPS has faced media scrutiny and criticism for their unjustified harsh treatment of Indigenous people, including Indigenous victims of crimes and homicides. Media reports dating back to 1993 record a call by Indigenous groups for a federal inquiry into the unsolved murders of Indigenous women in Thunder Bay.

A media scan of the period records wide coverage of incidents pointing to racism in the city and within the TBPS. More well-known cases include coverage in 2007 of Abraham Miles, a 17-year-old student, interrogated and separated from his group touring the police station because of his t-shirt; the hasty finding of “accidental death” in the demise of Stacy DeBungee; the verbal abuse of a female facilitator delivering anti-racism training to police officers; and the mocking press release inadvertently circulated in 2012 following the death of Adam Yellowhead.

Social media has been particularly charged with racist messaging directed at Indigenous peoples in Thunder Bay. Earlier this year, Thunder Bay Police launched an investigation of Facebook pages that they characterized as “extreme racism” against First Nations people; one such page, “Thunder Bay Dirty”, had 4,000 followers.

Print media have also provided a channel for racism. Former Judge Brian Giesbrecht promulgated a number of stereotypical, false and offensive statements about Indigenous peoples in a 2017 article in Thunder Bay’s *Chronical Journal*. Mr. Giesbrecht subsequently claimed his article was “satire.”

A partial media scan found nearly 50 print and broadcast stories dealing with either specific incidents or general exploration of racism and systemic racism in Thunder Bay.

### **3.6 Police Investigations**

Media coverage from 1990s to the present captures Indigenous leaders' and community concerns about the quality of TBPS investigations with respect to the deaths of Indigenous people. The Grassroots Committee on Native Unsolved Murders was formed in response to the murder of Sandra Johnson on February 13, 1992. The Committee identified over 30 suspicious deaths of Indigenous people. It was alleged that the TBPS did not conduct a sufficiently thorough investigation of these deaths. The Committee circulated a petition calling on the federal government to hold a public inquiry "to investigate why the murders of native people were treated differently by the Thunder Bay Police Department." Board Chair Dick Waddington stated at the time that he had "yet to find anything concrete" in the allegations and that "I've certainly looked at it and I cannot find any negligence on our force's behalf."

Concern about police investigations of death and violent crime has received ongoing coverage to the present day. In 2017, the OIPRD launched an investigation into the police service's handling of cases of murdered and missing Indigenous people in Thunder Bay. As part of its investigation, the OIPRD conducted case reviews involving 30 deaths and nine cases of murdered and missing Indigenous women and girls that date to the 1990s.

In 2017, the OCPC appointed Senator Murray Sinclair to act as an independent investigator tasked with reviewing the Board.

In March 2018, the OIPRD released a report that upheld allegations of neglect of duty and discreditable conduct regarding a number of members of the TBPS.

A partial media scan found nearly 30 print and broadcast stories indicative of problematic leadership over various police inquiries into the quality of policing, by the TBPS.

## **4 Initiatives to Address Racism**

Racism and discrimination, whether personal or systemic, have been persistent and overt in Thunder Bay for a long time. A number of studies and initiatives have sought to address this issue within the community, including several focusing on the TBPS. Since the TBPS is a key institution in Thunder Bay, and one that is governed by community members representing a range of stakeholder groups, the findings and recommendations of these various reports provide both insights and potential lessons for addressing racism involving Indigenous people in Thunder Bay.

### **4.1 Report of the Race Relations and Policing Task Force (1989)**

In 1988, the Honourable Clare Lewis produced a report for Ontario's Race Relations and Policing Task Force that described racial profiling and the problematic relationship between Indigenous peoples and the TBPS. His recommendations established the need for city-wide anti-racism initiatives, with a particular focus on policing (Desmoulins). In 2000, the TBPS created a Race Relations Committee that confirmed the existence of racial tensions between Indigenous people and the police.

## 4.2 Diversity Thunder Bay (2000)

In 2000, a coalition of local businesses, organizations and individuals committed to addressing racism and discrimination formed a group called “Diversity Thunder Bay.” Their objective was, and continues to be, the celebration of difference and the cessation of racism and discrimination in Thunder Bay. Their website shows a membership of 36 organizations, including the Board as represented by a First Nation police officer and 19 individuals.

## 4.3 A Community of Acceptance – Respect for Thunder Bay’s Diversity (March 21, 2002)

Shortly after their establishment, Diversity Thunder Bay published *A Community of Acceptance – Respect for Thunder Bay’s Diversity* (Haluza-DeLay).

The research study documented “racialized action” was attributed to police more frequently than to any other institution in Thunder Bay. It noted that Indigenous people and people of colour in Thunder Bay were frustrated with police services, citing the prevalence of individual, structural and systemic racism.

The study confirmed that racism was evident in police activities and suggested that the TBPS address racism occurring within its operations and informing its institutional culture. The recommendations included that models of inclusiveness and awareness of best social practices be introduced and promoted through strong, courageous leadership, diversity training be implemented, more Aboriginal officers be hired, Aboriginal officers be promoted, and the practice of racial profiling be stopped.

## 4.4 Diversity in Policing Project (March 31, 2008)

In response to the findings of *A Community of Acceptance* and other reports on police relationships with racialized peoples, Diversity Thunder Bay and two member-organizations the Thunder Bay Multicultural Association and the Thunder Bay Indian Friendship Centre, along with then Chief of Police of the TBPS, Robert Herman, developed a “Diversity in Policing proposal” to address systemic racism in local policing. The “DiP Project” proposal was endorsed by the Board, accepted by the Thunder Bay City Council, and funded by Heritage Canada from January 2004 until March 2008, after which funding was neither requested nor renewed. (Desmoulins)

The DiP Project was undertaken in three phases. Phase I, guided by advisory groups, gathered input through community consultations with over 155 community members, and included an employment-systems review and a study of police/community relations. The Phase I report listed 82 comprehensive and pragmatic recommendations for institutional change based on an anti-racism theoretical foundation. These included the introduction of cultural sensitivity and anti-racism training, an increase in community in policing, a strengthened Aboriginal Liaison Unit (ALU), and the establishment of advisory groups to enhance TBPSB accountability.

The DiP Phase I report discussed the 2005 Employment Systems Review of the TBPS that examined under-representation of Indigenous people and other racialized people in the police service. That review recommended measures to improve external recruitment and selection,

training, professional development, performance measurement, working conditions/accommodation, and corporate culture.

The report received significant positive feedback. For example, the project was listed in a UNESCO (United Nations Educational, Scientific and Cultural Organization) document setting out best practices for dealing with racism and discrimination (UNESCO).

Phase II involved a review and enhancement of policing policies, the development and delivery of bias-free training to all sworn members, creation of a Chief's Advisory Committee, and the inclusion of Indigenous issues in the Board's Business Plan. Phase III, which was intended to continue the implementation of the objectives of the DiP project, was not pursued due to lack of funding.

Robert Herman served as Chief of Police of the TBPS from October 2000 to July 2010. He was a champion of the DiP Project, and he strongly believed that it was incumbent upon the TBPS to confront systemic racism and to make the institutional changes necessary to promote bias-free policing:

“Herman said, ‘We have embarked on a project of institutional change for the Thunder Bay Police Service. The first step is to acknowledge that systemic racism exists in policing as it exists in many forms throughout our society’ (Desmoulins)”.

As President of the Ontario Association of Chiefs of Police (“OACP”), Chief Herman encouraged his colleagues to take proactive steps to combat systemic racism. At their 2010 Annual General Meeting, the OACP passed a resolution that committed police leaders to implement positive measures to prevent bias in policing, and to promote harmonious relationships with the diverse communities they serve. Chief Herman stated to media that:

“This resolution affirms our belief that police must continuously combat the pernicious influence of bias in policing. As police leaders, we need to ‘lead from the front’ when it comes to combating racial profiling. (Canada NewsWire)”

Chief Herman's retirement from the TBPS in 2010 left a void in leadership of the DiP Project. It was only in the fall of 2017 that the Board, on the advice of the Ontario Human Rights Commission, undertook the Organizational Change Project described below.

#### **4.5 Coroner's Inquest into the Seven Youth Deaths**

From October 5, 2015 to June 28, 2016, Dr. David Eden of the Chief Coroner's Office presided over an inquest, held in Thunder Bay, into the deaths of seven First Nation students from remote northern communities who died under similar circumstances while attending school in Thunder Bay.

The proceedings became known as the “Seven Youth Inquest”. On the advice of its legal counsel, the Board did not attend any hearings of the Inquest; however, Board members indicated that their legal counsel observed the entirety of the proceedings.

The five-person Coroner's Jury found that the deaths of Curran Strang, Robyn Harper and Reggie Bushie were by “Accident,” and that the deaths of Jethro Anderson, Paul Panacheese, Kyle

Morrisseau and Jordan Wabasse were “Undetermined.” The jury directed 145 recommendations to the federal, provincial, municipal governments, First Nation organizations and Police Service to address a variety of issues relating to student safety in Thunder Bay (“Jury’s Verdict”). (Eden)

During the Inquest hearings, the TBPS apparently rejected all of the 206 proposed recommendations offered by the Provincial Advocate for Children and Youth (Porter) . However, since then the TBPS has been diligent in addressing the recommendations of the Jury’s Verdict.

The Jury’s Verdict directed a number of recommendations to the TBPS and they responded with a series of action steps. In accordance with Recommendation No. 143, the implementation of these action steps was recorded and reported in Implementation Status Reports for 2017 and 2018, the latest of which is dated June 20, 2018 (2018 Implementation Status Report) (Thunder Bay Police Service). The following is a summary of action taken to implement the relevant recommendations in the Jury’s Verdict:

**Recommendation No. 7** called on all of parties, including the TBPS, to interpret the Jury’s Verdict and address the recommendations in accordance with principles of reconciliation that recognize treaty relationships, acknowledging the oppressive history and current circumstances of First Nations and First Nations’ desire to exercise control over their constitutional rights. The 2018 Implementation Status Report states that Police Service has accepted this recommendation. However, no formal expression of the reconciliation principles, or evidence of their actual incorporation in the Police Services policies, procedures or other guiding document, was provided. It is recommended that the Board explore options to formally and explicitly adopt principles of reconciliation and recognition of Indigenous peoples in their governance and service delivery models.

**Recommendation No. 48** called upon the TBPS to continue and expand the “Grade 8 Visit Program” (Visit Program). This Program brings Thunder Bay police officers to remote northern First Nation communities to provide an orientation to urban life and safety for grade 8 students who plan to attend school in Thunder Bay. The Visit Program has been enhanced with other elements:

- In 2017, the Aboriginal Liaison Unit (ALU) developed a Safety Video/Presentation to be delivered during the Visit Program;
- The ALU also began a First Nation “Student Ambassador” initiative and selected two such Ambassadors who reviewed and contributed to the Safety Video/Presentation and served as role models for incoming students. Given the lack of availability of one of the Student Ambassadors, the number was reduced to one person in 2018.
- TBPS delivered the Safety Video/Presentation to the Nishnawbe-Aski Police Service (NAPS);
- TBPS partnered with the Matawa Learning Centre for an Indigenous Youth Engagement Project that provide activities designed to improve trust, wellness and safety outcomes for Indigenous students in Thunder Bay; and
- TBPS and Matawa Learning Centre intend to partner with the Prevent Alcohol and Risk-Related Trauma for Youth (P.A.R.T.Y.) program that brings in service providers to raise awareness of risks associated with alcohol and substance abuse.

From June 20, 2017 to June 20, 2018, ALU officers travelled to seven First Nation communities, sometimes accompanied by representatives of a First Nation Education Authority. Five other visits were scheduled but had not occurred as of the date of the 2018 Implementation Status Report.

The Visit Program began as a series of ad hoc initiatives during the hearings of the Inquest and has evolved into a more structured and formal effort. However, the sustainability of this program is contingent upon available resources; the 2018 Implementation Status Report, for example, notes the Program's reliance on finding available space on NAPS Court plane. The Visit Program's maintenance and success will depend on assurance of adequate, consistent and sustainable funding. It is recommended that the Board seek the necessary resources and partnerships to ensure the Visit Program is firmly rooted in the TBPS service delivery structure, through the annual budgetary process and relationship building with NAPS.

**Recommendation No. 91** addresses several aspects of missing person investigations and searches. Thunder Bay has one of the highest rates of missing persons in Canada, with youth making up a majority of cases. In 2016, there were a total of 852 missing person cases.

The 2018 Implementation Status Report indicates that a working group of representatives of the parties named in Recommendation No. 91 began developing measures to address the recommendation in 2017 and completed or made substantial progress on most. Outputs included an approved Student Orientation Package (also known as Missing Person Protocol Guide) that will contain a Student Information Form, TBPS Media Release and Information Consent Form, Missing Person Bulletin, and Missing Persons Questionnaire.

Prior to the completion of the Seven Youth Inquest, the Board had already revised its Missing Persons Policy to reflect best practices. Because of that recent revision, the Policy does not specifically reflect the subsequent recommendations of the Jury's Verdict. For example:

- The Policy does not incorporate risk factors specific to visiting students from remote First Nation communities, though section 1.1 of the Board's Missing Persons Policy acknowledges that the "[e]valuation of risk factors is an integral component in order to ensure effective management and response to occurrences involving missing persons" (Thunder Bay Police Services Board). The identification of risk factors is significant because they are used to determine the search urgency and scope of investigation for the particular missing person occurrence.
- The missing person questionnaire used by the TBPS to assess the risk factors and determine the search urgency does not appear to have been revised in response to the Jury Verdict Recommendation No. 91(x), which recommends that the police service draw upon the expertise of education authorities gained during their previous search efforts, and that they review information contained in search forms used by other police services that may be beneficial.

While a questionnaire was developed for use by the educational organizations, it has not been confirmed that the questionnaire used by the TBPS was revised. The 2018 Implementation Status Report, in responding to Recommendation 145 on revisions to policies and procedures, states only that any changes required to such policies or procedures or both will be made during "normal operational reviews."



The TBPS is also collaborating with First Nation organizations to develop missing person protocols and descriptors for all Northern First Nation students attending school in Thunder Bay. This initiative has faced challenges arising from the TBPS request for a list of students from remote communities attending school in Thunder Bay, a request which triggered concerns related to privacy, confidentiality, and general distrust of police services. A compromise approach that respects the rights and interests of the students while developing the descriptors referenced in the recommendation to aid police in identifying and searching for missing students will be required.

It is recommended that the Board engage with First Nation organizations, including the Bear Clan and education authorities and local schools, to conduct a formal and focused review of the Missing Persons Policy to determine whether it adequately addresses their concerns and best practices related to missing First Nation students and other Indigenous individuals. This will ensure that the TBPS Missing Person policy is fully compliant with the Jury Verdict.

**Recommendation 94** requires that named parties develop a multilingual joint search protocol, translated into the applicable Indigenous languages. The 2018 Implementation Status Report indicates that this recommendation has been completed.

**Recommendation 96** requires that the TBPS form a joint task force with the Liquor Control Board of Ontario (LCBO) to examine the issue of second person purchasers of alcohol for underage people, known as “runners.” The 2018 Implementation Status Report indicates that this recommendation has been completed and resulted in the development of a protocol for reporting runners and the development and implementation of a Runners Project Plan. This began as a pilot project in September 2017 and continues “when staffing complement permits” (Thunder Bay Police Services).

While the TBPS has checked off this recommendation as completed, it is vulnerable in times of budgetary constraints or when attention has shifted from the Jury’s Verdict. It is recommended that the Board ensure that financial resources are available to continue implementation of the Runners Project Plan through the annual budgetary process to achieve the objective of the Jury’s Verdict.

**Recommendation 97** called for a public campaign to deter second party purchasers of alcohol. The 2018 Implementation Status Report indicates that a two-phase public awareness campaign was launched in June 2017, including a proposed video for social media circulation.

**Recommendation 115** proposed the development of terms of reference and implementation of a safety audit of river areas where First Nations students were known to frequent. In 2016 and 2017 TBPS, along with partnering community groups including the Bear Clan, conducted daily foot patrols in areas identified as high risk. In 2017, in consultation with community organizations, TBPS created and implemented the River/Floodway Monitoring Project, conducting foot patrols three times per day at high risk sites identified through consultation and analysis of police records. The purpose of the River/Floodway Monitoring Project is to deter the use of alcohol along and near the rivers and waterways, and to provide education on public safety. In 2017, police responded to 451 incidents at the river, and an estimated 100 lives were saved through police intervention. The Police Service and the City of Thunder Bay also created an information brochure that was distributed to residents and businesses along the rivers and waterway.

The Safety Audit was conducted in May 2017 by a safety and security specialist retained by the City and Police Force in collaboration with the City of Thunder Bay's Safety Audit Committee. The auditor delivered his report in August 2017. The *Crime Prevention Through Environmental Design Assessment: Selected Watercourse & River Areas* included the following ten recommendations:

1. "Formal Recognition of the Significance of Land & Water Resources by Indigenous Community Members
2. Construct & Install Creatively Designed Barriers to Prevent Unlawful Access underneath Bridge & Tunnel Structures
3. Formal Educational Partnership with All Local Institutions
4. Safety Improvements for Roadway Pedestrian Crossings
5. Working Protocol with LCBO to Minimize "Runners"
6. Lighting Enhancements to Promote Visibility & Safety
7. "Celebrated" Pedestrian Connection to the Mouth of McVicar Creek at Lake Superior
8. Immediately Eradicate All Visible Occurrences of Graffiti
9. Direct Linkage to the Northwest Community Mobilization Network
10. Maintenance/Removal of Overgrown Vegetation in All Study Areas." (Thunder Bay)

The Safety Audit Committee also commissioned a crime prevention environmental design study to assess options for improving surveillance in the area.

While data on high risk areas was collected through the safety audit and the Floodway Project, the parties acknowledged that more must be done to address the root causes of contributing factors such as mental illness, homelessness, poverty and addiction (Diaczuk).

It is not clear to what extent the recommendations of the safety audit have been actioned by the City or the TBPS. The Board may wish in future to develop, adopt, and seek funding for specific measures to support implementation of the recommendations of the 2017 Safety Audit.

For its work to implement the recommendations in the Jury's Verdict on the Seven First Nation Youths Inquest, the Police Service received a grade of B+ in the Toronto Aboriginal Legal Service scoring of each of the parties (Hadley).

#### **4.6 Walk-A-Mile Film and Training (2016)**

The Walk-A-Mile Film series was first conceived at a community safety conference hosted by NAN as a measure to enhance cross-cultural understanding and counter racism in the City. A collaboration between the Thunder Bay's ALU and Thunderstone Pictures, the films were directed and produced by award-winning Indigenous film maker Michelle Derosier. The project received support from several sponsors, including the Board.

The five-part documentary touches on the history and contemporary experiences of Indigenous peoples, addressing issues such as treaties, racism, violence against Indigenous women, and the way forward. The films foster greater understanding of Indigenous issues, with the goal of

strengthening relationships among citizens, service providers, law enforcement, city officials and Indigenous people in Thunder Bay.

Walk-A-Mile premiered on February 6, 2017 to a packed auditorium in Thunder Bay, with over 1000 people in attendance. It has been praised as an effective tool to dispel myths and stereotypes about Indigenous peoples and to illustrate humanity in the path to reconciliation. Other municipalities, including North Bay and Kingston, have held screenings in their communities.

The Walk-A-Mile film series led to an adjunct training program developed by TBPS' ALU. Facilitation guides were developed, and volunteer facilitators were trained to deliver the workshops. The Thunder Bay City Council decided that this training would be mandatory for all employees; it has been delivered to various sectors of the City's bureaucracy, including executives, summer students, first responders, service providers, the TBPS, and to other organizations in the City.

The Walk-A-Mile training was not universally well-received. During one workshop with a group from the TBPS, some officers were "disruptive and dismissive", overtly disinterested, uncooperative and disrespectful towards the facilitators, and made comments described as "offensive" and "racist". The incident became public when two facilitators contacted CBC journalist, Jody Porter, who published an article on September 13, 2016 describing the event (Porter). This sparked a new flurry of racial tension in the City. No disciplinary action was taken against the officers involved in the alleged incident; however, the officers were required to attend the training a second time.

Challenges reported in delivery of the training to other sectors included occasional hostility, adversarial attitudes, and comments that echoed stereotypes of Indigenous peoples—the very attitudes the training was intended to address.

The 2018 Implementation Status Report of the TBPS in relation to the Seven Youth Inquest notes that 85% of the members of the TBPS have taken the training, with additional training sessions planned. Members of the Board viewed the Walk-A-Mile film series but did not take the facilitated training.

#### **4.7 Human Rights Organizational Change Project (2016)**

In 2016, First Nation allegations of systemic racism were brought to the attention of the Ontario Human Rights Commission (OHRC) by "members of the Indigenous community" (Mandhane). Chief Commissioner Renu Mandhane, OHRC Commissioners Maurice Switzer and Karen Drake, and Director Dr. Shaheen Azmi met with (then) Chief of Police J.P. Levesque and (then) Deputy Chiefs Andrew Hay and Sylvie Hauth, and separately with Mayor Keith Hobbs on October 6, 2016 to discuss the concerns of Indigenous groups.

The TBPS and the Board were receptive to a proposal by Chief Commissioner Mandhane to "undertake proactive efforts to develop and sustain organizational capacity to address human rights concerns" (Change Project) (Mandhane). The parties committed to the Change Project despite a number of challenges facing the organizations. These included an OCPC Investigation announced in 2017; criminal charges against J.P. Levesque (which were ultimately dismissed by

the Court); and the OHRC's lack of capacity to engage in a formal institutional partnership with the TBPS and its Board to implement the Change Project.

On June 2, 2017, these challenges led Chief Commissioner Mandhane to question whether the timing was appropriate for the Change Project. However, Sylvie Hauth, who became Acting Chief of Police, recognized the need for the TBPS to respond to Indigenous concerns, and confirmed commitment to the Change Project to the OHRC on June 9, 2017.

By this time, the TBPS and the Board had already taken preliminary steps on the path to institutional change. The Police Service attended meetings with the OHRC to learn about the project; in February 2017 some members of the Board and the senior command of the police service undertook a one-day human rights training session on creating and sustaining organizational change in policing; and the TBPS hired a consultant, Dr. Leisa Desmoulins of Lakehead University, to advise, coordinate and help advance the initial stages of the Change Project.

According to the Police Service, the Change Project is intended to “respond to calls of systemic discrimination within the TBPS through four elements,” including:

- “Restructuring the Aboriginal Liaison Unit;
- Recruitment of Indigenous and under-represented groups to the police service;
- Continuous training opportunities in diversity and cultural competency; and
- Enhancing communications, both internally and externally and to foster accountability through evaluations (Thunder Bay Police Service).”

In December 2017, the TBPS obtained Board approval for measures to advance these four elements of the Change Project. These were developed with input from a seven-person working group comprised of members of the police service and community representatives; an internal workforce survey to gauge racial composition; an external survey to measure public trust in the police force and identification of service priorities; and integration of diversity objectives into the Board's 2019-2021 Business Plan.

The working group held its first meeting on April 12, 2018. The group's role is to frame the vision and develop terms of reference, objectives and timelines for the Change Project, which they named “Shaping Our Future.” The working group set as its first priority the development of a cultural model for the ALU of the TBPS.

To further the goal of creating a police service more representative of the community being served, the TBPS conducted a voluntary *TBPS Workforce Census – Count Me In*, gathering baseline data to gauge the socio-democratic composition of the current police force and assess its diversity. The survey revealed that while the Police Service was making strides in diversifying its service, the number of self-identified Indigenous officers (7.9%) was well below the percentage of Indigenous population in Thunder Bay, which has been reported as 13% (but potentially as high as 25% at any given time, given the high transient population). There were no Indigenous civilian members of the Police Service (Diaczuk).

The Police Service and Board acknowledged that more work is required to increase Indigenous representation in Thunder Bay policing and expressed their intention to take measures to increase racial diversity. The working group will next conduct an external survey in the City to assess

community trust in the police service and policing priorities that will inform the type of measures necessary to address systemic racism (Diaczuk).

The TBPS and Board have also hired a communication consultant to support creation of an independent internet presence for the Board and to enhance their overall communication activities.

#### **4.8 Incident Reporting and Referral Service Pilot Program**

As referenced earlier, a unique one-year pilot project was launched in June 2017 to provide a reporting and tracking mechanism for incidents of racism in the city (211 Incident Reporting). It was developed by Thunder Bay's Anti-Racism and Respect Advisory Committee, in collaboration with Diversity Thunder Bay, the Lakehead Social Planning Council, and a working committee with representation from the TBPS. The 211 Incident Reporting is intended to send a clear message that racism is not acceptable, to assess the scope of racism in Thunder Bay, and to provide the data necessary to inform options for addressing racism (Demasi).

Citizens of Thunder Bay, whether victims or witnesses, were encouraged through a marketing campaign to report incidents of racism on-line, in person, or by dialing 211 on the telephone. The 211 Incident Report also incorporated a voluntary survey for individuals who personally experienced, or knew of a person who experienced, racism. The survey was available on-line, in person or via telephone.

The service was evaluated during its initial year of delivery, and a "Final Report of the Incident Reporting and Referral Service", was released on July 23, 2018. A total of 193 responses were received, and 60% of reported incidents were targeted at Indigenous peoples across the city. Incidents included racial profiling, being followed in a store, being asked to leave a location and racist comments.

The majority of respondents were Caucasian (53%) women (54%) between the ages of 30-39 (35%). The number of Indigenous respondents to the survey was low at 27%.

Author Dr. Siciliano concluded:

"The results of this pilot reinforce the reality of racism and discrimination in Thunder Bay. They support local research findings, police reported hate crime data, and media coverage that indicate Indigenous people are more likely to experience racial discrimination, and perceive racist incidents as part of a broader system discriminating against them (Siciliano)".

The Thunder Bay City Council has agreed to extend the pilot project for another year to June 2019.

#### **4.9 Statement of Commitment to First Nation Youth and Families (August 2, 2017)**

In 2017, Thunder Bay experienced at least nine unresolved deaths (mostly violent), a reported assault and attempted drowning, several attempted abductions and two reported egg throwing incidents, all involving Indigenous victims. The tragic deaths of teenagers Tammy Keeash and

Josiah Begg reignited concerns for student safety for the 2017-2018 school year, prompting emergency discussions among the Chiefs of NAN at a two-day meeting in Thunder Bay in July 2017, resulting in an action plan. NAN, the City of Thunder Bay, Fort William First Nation subsequently signed a Statement of Commitment that set out six specific commitments intended to enhance student safety and address racism in the city.

#### **4.10 Friendship Agreement (September 8, 2017)**

Seventeen-year-old Tammy Keeash from North Caribou Lake First Nation was attending Dennis Franklin Cromarty School in Thunder Bay when she died in May 2017. Chief Dinah Kanate of North Caribou Lake First Nation organized a prayer walk and vigil that took place on June 1, 2017 to honour Tammy. Approximately 300 people attended the prayer walk, which ended with a vigil at the site where Tammy was found. Among those who attended were 48 community members of North Caribou Lake First Nation, who chartered into Thunder Bay to participate. Also in attendance were Chief Peter Collins from Fort William First Nation, Mayor Keith Hobbs, officers of the TBPS led by (then) Acting Chief Sylvie Hauth, and members of the Board. It was during this walk that a Friendship Agreement was conceived, and on September 8, 2017 the Friendship Agreement between Fort William First Nation, the City of Thunder Bay, TBPS, TPSB, and North Caribou Lake First Nation was established.

The Agreement was heralded as the first of its kind in Thunder Bay. Its objective is to encourage cooperation in a number of areas, including public safety, anti-racism, education, social and cultural awareness and community development. Subsequently, Mamow-Wetun Keem Towin, a website dedicated to promoting and documenting the Friendship Agreement and its initiatives, was launched (Mamow-Wetun Keem Towin - Working Together).

Signatories to the Agreement have been active in implementing activities to achieve its objectives. In the fall and winter of 2017, the signatories hosted Halloween and Christmas feasts, and on January 27, 2018 they held “Together We Are Stronger,” a community feast in downtown Fort William to promote stronger, safer neighborhoods. The parties collaborated on the development of a Mentoring Pilot Program, launched on July 3, 2018 in North Caribou Lake First Nation at an event attended by representatives of the parties to the Friendship Agreement, including Board members. The goals of the Mentoring Pilot Program are to improve the academic achievements of students from North Caribou Lake attending school in Thunder Bay, and to increase employment opportunities, leadership and community participation. It was described as “one of many Friendship Agreement grassroots initiatives to address and close the Indigenous relations gap between Indigenous communities, the City and TBPS” (NetNewsLedger).

This initiative signals that the parties are working together to deepen cultural understanding, improve relations and enhance public safety for North Caribou Lake First Nation students and the community. This and similar initiatives may serve as a catalyst for a broader outreach to the Indigenous peoples in Thunder Bay.

#### **4.11 Executive Committee on Aboriginal and Diversity Issues**

The TBPS has established an Executive Committee on Aboriginal and Diversity Issues to advise the Chief of Police on emerging issues, to engage in proactive dialogue on such matters, and to develop trust, share information and generally foster a positive relationship. The Executive

Committee includes representation from the Thunder Bay Multicultural Association, NAN, Indigenous Friendship Centre, the OPP, DFCHS, City of Thunder Bay, Matawa Learning Centre, and the Thunder Bay Anti-Racism Committee.

In conclusion, it is acknowledged that many of the initiatives intended to enhance police services are promising and provide both evidence of good will and models for ongoing strengthening of relationships. It is clear, however, that in order to seriously and sincerely address the prevalence of racism and systemic racism in Thunder Bay, all those in positions of authority must begin by acknowledging the true scope of the problem, and commit themselves, and the institutions they serve, to making the changes necessary to eradicate all forms of racism.

## PART III: Systemic Review

### 1 Overview of Systemic Discrimination

This Investigation was initiated in response to concerns about the Board's governance of policing in Thunder Bay raised by the NAN, Grand Council of Treaty 3 and Rainy River First Nations. The events leading to this Investigation have been detailed elsewhere in this Report.

To summarize, the Indigenous leaders of NAN, Grand Council of Treaty 3, and Rainy River asserted that the Board had abdicated its duties under the PSA to provide adequate and effective police services by failing to respond to their concerns regarding racialized policing. They cited as evidence a long history of unresolved death investigations and violence against Indigenous peoples in Thunder Bay. They spoke about the at times violent treatment experienced by Indigenous people at the hands of non-Indigenous people on the streets of Thunder Bay, and the unwillingness of Thunder Bay police to take their concerns about such treatment seriously. A number of those instances are documented elsewhere in this Report.

To begin with, it must be kept in mind that Thunder Bay is acknowledged as the hub of Northwest Ontario, to and through which large numbers of people travel, especially Indigenous people. The member First Nations of NAN and Grand Council of Treaty 3 see it as the community where they must send their sick for medical treatment, their children in need of high school education, and their families when issues around overcrowded housing or family emergencies arise. It is where their people go when in need of government services not available through their Band governments, or when seeking employment. It is where they go to shop, attend court, go to university or flee when in danger from floods or fires. The First Nations and Metis people of Northwest Ontario are extremely dependent on the community of Thunder Bay, largely because there are few other affordable choices available to them for such services. While little in the way of data was provided to me as to what numbers of Indigenous people attend or travel through Thunder Bay from other communities, the witnesses generally agreed that the numbers are significant. For the community and organizational leaders who represent such a large segment of the population of Northwest Ontario to express such distrust and lack of confidence in the Board is a serious matter.

In response to concerns of Indigenous leaders, the OCPC initiated this Investigation into the performance of the Board's statutory duties as defined in section 31 of the PSA. In addition to those duties, the Board is also obliged to ensure that police services in Thunder Bay are delivered in accordance with the Declaration of Principles set out in section 1 of the PSA. One of those principles emphasizes "The importance of safeguarding the fundamental rights guaranteed by the *Canadian Charter of Rights and Freedoms* and the *Human Rights Code*." This principle raises a number of important issues:

1. Is racism an issue among police officers in Thunder Bay? While this matter is being investigated by the OIPRD, the outcome of the OIPRD investigation will have relevance to the Board and the concomitant actions it takes to address any findings of racism or systemic racism through its governance of the TBPS.
2. If racism is an acknowledged issue, was the Board aware of it and if so, what did they do about it?



3. Is system discrimination resulting in unfair treatment of Indigenous people at play in the policing of Thunder Bay?
4. If so, what are the policies, procedures, climate and decision-making processes that guide the Board's governance of police services in Thunder Bay that may contribute to unfair treatment of the Indigenous population?

## 1.1 Development of Human Rights Law in Canada

Canada's history of human rights violations began with the large scale immigration of European settlers in the 17<sup>th</sup> and 18<sup>th</sup> centuries. As the newcomer population expanded and spread, increasingly occupying Indigenous homelands, Canada's colonial strategy emerged; the taking of Indigenous lands, through force if necessary, the relocation of Indigenous people to areas distant from immigrant settlements, the termination of their land rights and the eventual assimilation of Indigenous peoples into the developing Euro-Canadian society, and the elimination of their independent nationhood and human rights. The right of Indigenous people to vote was denied, the right to own property was circumscribed by federal legislation, the right to go to court required government permission, the right to travel freely was limited by the infamous "Pass System" and the right to engage in political action and protest was denied. Traditional governments were displaced by government approved Band councils and their powers to govern were severely limited. The right of Band councils to meet depended on notice to the local Indian Agent who had the right to attend and preside over all discussions.

As immigration continued and settler governments were established and expanded, Canada's general disregard for human rights was further manifested in its treatment of people of colour and women.

Following World War II, protection of the fundamental rights and freedoms of human beings became an issue of concern in Canada and globally. Saskatchewan was the first province to pass legislation enshrining a Bill of Rights in 1946, and Ontario was the first province to enact a Human Rights Code and Human Rights Commission to enforce the Code in 1961. Federally, Canada passed its first Bill of Rights in 1960.

The fundamental tenet of human rights laws, domestic and international, is that all people have basic, inalienable rights by virtue of being human. These include a right to equal treatment under the law, and freedom from discrimination on grounds of race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability.

Jurisprudence and legal discourse regarding the nature and scope of equality and discrimination have developed significantly since 1960 in response to evolving societal attitudes and ideologies, shaping the progress of human rights law in Canada.

## 1.2 Key Concepts Related to Systemic Discrimination

In October of 1992, the Ontario government established, by Order in Council, a six-member Commission to undertake a study on systemic racism in all aspects of Ontario's criminal justice system (Commission). The *Report of the Commission on Systemic Racism in the Ontario Criminal Justice System* (Commission on Systemic Racism in the Ontario Criminal Justice System) was released in December 1995 and represents an important and comprehensive assessment of the

justice system within a framework of systemic racism. In its 482-page Systemic Racism Report, the Commission provided a definitive explanation of the concepts that underlie systemic racism. The report set out the key concepts that will frame my current analysis of systemic discrimination and the Board.

### 1.2.1 Racialization and Racism

Race-related discrimination is characterized by the act of racialization. Racialization occurs where people are classified by reference to indications of their origin, and broad judgments are made based upon that origin with respect to their assumed character, skill, talents and capabilities (Commission on Systemic Racism in the Ontario Criminal Justice System). Put another way, racialization is the act of stereo-typing based on an individual or group of individuals' appearance and assumed ethnic origins, and treating them differently, unfavourably or disparagingly, on this basis. The net result is racism.

Racism is a familiar term to most people. Merriam-Webster's dictionary defines it as "a belief that race is the primary determinant of human traits and capacities, and that racial differences produce an inherent superiority of a particular race" (Merriam-Webster.com)

Racism manifests in many ways. It can be overt, when a person publicly or privately expresses generalized negative views about a person or group of people based on their ethnic origin. It can be sub-conscious, when a person harbours generalized negative views or attitudes about people of a certain ethnic origin, and covertly or unwittingly perpetuates those views in their daily professional and personal lives. And finally, racialization can find expression at various levels within established institutions. (*R. v. Parks*)

Racial prejudice is an unfortunate reality in Canada, as evidenced by the many reports, court cases and human rights tribunal decisions over the years that have studied and addressed discrimination in various contexts. The Supreme Court of Canada, speaking of potential jurors, defines racial prejudice as:

"...making distinctions on the basis of race or class or category without regard to individual merit. It rests on preconceptions and unchallenged assumptions that unconsciously shape the daily behaviour of individuals. Buried deep in the human psyche, the preconceptions cannot be easily and effectively identified and set aside, even if one wishes to do so." (*R. v. Williams*)

### 1.2.2 Discrimination

The Merriam-Webster Dictionary defines discrimination as "prejudiced or prejudicial outlook, action, or treatment." (Merriam-Webster.com)

Since 1960, when the first Canadian Bill of Rights was passed, it has been unlawful in Canada to discriminate on grounds of race, national origin, colour, religion and sex. Discrimination in various circumstances has been the subject of many cases before the courts, including the Supreme Court of Canada.

In 1985, the Supreme Court considered the issue of discrimination on the ground of religion in the context of employment. Writing for a unanimous Court, the Honourable Justice McIntyre stated

that if the effect of the impugned action “is to impose on one person or group of persons obligations, penalties, or restrictive conditions not imposed on other members of the community, it is discrimination” (*Ontario Human Rights Commission v. Simpson-Sears*).

In 1989, the Supreme Court addressed a case of discrimination on the ground of national origin. The Honourable Justice McIntyre, writing for the majority, reviewed past decisions considering discrimination and provided the following definition:

“[D]iscrimination may be described as a distinction, whether intentional or not but based on grounds relating to personal characteristics of the individual or group, which has the effect of imposing burden, obligations or disadvantages on such individual or group not imposed upon other, or which withhold or limits access to opportunities, benefits, and advantages available to other members of society.”  
(*Andrews v. Law Society of British Columbia*)

In its simplest form, discrimination is the denial of equality, in this case equal access to justice, based on a characteristic that is innate or physically unchangeable. Generally, section 15 of the *Canadian Charter of Rights and Freedoms* protects against discriminatory laws and state action, while human rights and employment legislation protects employees against discriminatory treatment in the private sector. The challenge, however, lies in understanding, identifying and preventing discrimination that is not explicit or is covertly practiced by an organization.

### 1.2.3 Systemic Discrimination and Systemic Racism

Systemic discrimination and systemic racism are essentially two sides of the same coin. The terms are often used interchangeably, along with 'institutional racism' or 'structural racism. All these terms describe a situation where a system's functioning, whether deliberate or not, produces an unfair or unequal impact on an individual because of an innate characteristic.

Systemic discrimination is only beginning to be understood, largely due to the complex nature of evidence required for legal proof and the difficulties associated with obtaining it (Beck, Reitz and Weiner).

Individual acts of discrimination are well known to the general population. When a person takes action against another consciously because of that person's race, religion or gender, discrimination is easily recognized. But what if the person working within the system applies a rule equally to everyone and the result is that a person is treated unfairly because he or she is a member of a group that largely cannot meet the rule? A useful example is where a police force requires all candidates to be a minimum of six feet tall and weigh at least 185 pounds in order to qualify as a police officer. People from a racial or gender group with shortness as a characteristic could never qualify regardless of their other, perhaps more significant, skills and abilities.

Discrimination is believed to become systemic when rules, practices, attitudes or behaviours that produce adverse distinctions become embedded into normal organizational life and operate as “part of the system.” (Beck, Reitz and Weiner)

Unlike racism, which is generally espoused at a personal level, systemic discrimination becomes exacerbated where individuals in positions of authority possess conscious or unconscious racist attitudes and beliefs that are fostered and legitimized through policies, procedures and decision-

making, which results in systemic racism. The Commission on Systemic Racism in Ontario's Criminal Justice System explained the nature of systemic practices succinctly:

“Systems consist of people, their attitudes and beliefs (personnel); values, procedures, policies and informal rules (operating norms); ways of making decisions; and methods of delivering services. These elements continually affect one another over time and together comprise a perceived whole. The totality of a system's norms and processes and the actions of its personnel comprises its systemic practices.” (Commission on Systemic Racism in the Ontario Criminal Justice System)

The Ontario Human Rights Commission (OHRC) defines systemic discrimination for racialized groups as “patterns of behaviour, policies or practices that are part of the structures of an organization and which create or perpetuate disadvantage for racialized persons.” The key distinction between discrimination and systemic discrimination is found in the word “systemic”, which means that discrimination is perpetuated by a system, organization or culture, rather than the product of isolated actions (Ontario Human Rights Commission).

Systemic discrimination is deeply rooted in historical and societal attitudes acquired over time, which can manifest in different ways, including; discriminatory policies, covert practices or attitudes, or poisonous conditions within an organization (McKinnon and Ontario Human Rights Commission v. Ontario (Ministry of Correctional Services)). Systemic discrimination cannot be isolated to a single action or statement, and by its very nature, extends over time (*Public Service Alliance of Canada v Department of National Defence*).

Systemic discrimination may represent the subtlest form of discrimination, “recognizing that long-standing social and cultural mores carry within them value assumptions that contribute to discrimination in ways that are substantially or entirely hidden and unconscious (*Public Service Alliance of Canada v Department of National Defence*)”. In short, discrimination becomes systemic when it becomes embedded within and perpetuated by an organization, culture, or social system, either intentionally or as an accidental bi-product of innocently motivated practices that adversely affect a defined group because of undeniable attributes (R. Abella).

Systemic racism has been found to exist in correctional institutions with respect to both inmates and correctional workers, in policing with respect to racial profiling, and in the employment context within government and private sector organizations.

The complex nature of systemic racism and discrimination make them extremely difficult to remedy. To begin with, it can be challenging to confirm their existence in an environment where assumptions about racial inferiority or difference are not consciously held. Such assumptions are often maintained by individuals who have never questioned the ideas, beliefs and subtle messages they have absorbed and internalized through society, friends or various sub-cultures (Williams, *Racism Behind Bars: Interim Report of the Commission on Systemic Racism in the Ontario Criminal Justice System*).

Even when its impacts are apparent, this form of discrimination remains difficult to uncover because its sources are likely to be hidden (Beck, Reitz and Weiner). An organization's standards may appear neutral or value-free, while embodying an inherent bias manifest in operating norms and informal criteria that have a negative impact on certain individuals. To draw on the earlier

example, requiring that police officers be of a certain height can be rationalized and defended by those responsible for recruiting new officers, but such criteria are subtly and unfairly discriminatory against certain ethnic persons and women.

The definitive identification of systemic discrimination requires gathering, quantifying and studying the statistical trends that reveal a disproportionate effect on a disadvantaged group. This type of information is difficult to obtain and is generally not available from the organizations in question; it requires a formal, structured process of research and analysis.

Those who work within a system may unwittingly tolerate racism in practice. This may be through passive toleration, when decision-makers lack awareness and fail to recognize or monitor the negative impacts of policies or biases on certain individuals. Racism may also be tolerated through disregard, when people in the institution are aware of racism or incidents of racism within the system but ignore or fail to address it. This is often simply because the problem is perceived as low priority or potentially controversial. This type of toleration can lead to institutional paralysis, in which those responsible for governing lack the motivation or the knowledge to address the issue.

A final form of toleration is collusive, which occurs where operational norms encourage or promote biased standards (Commission on Systemic Racism in the Ontario Criminal Justice System). This latter form of toleration is relatively rare.

All three forms of racism toleration can be very difficult to identify; they require a willingness on the part of investigators and people within the system to probe beyond the surface of policies and stated intentions, and to engage in honest examination of beliefs and attitudes that can be deeply personal. However, insights and solutions can be gained by focusing on the visible, measurable impacts of these practices.

The Supreme Court of Canada first recognized the consequences of systemic discrimination in the employment sector in *CN v. Canada (Human Rights Commission) (CN v Canada (Human Rights Commission))*. The Court found that systemic discrimination is often unintentional and results from established practices and policies. Such discrimination can be compounded by the attitude of managers and co-workers who accept stereotyped versions of the skill and proper role of certain groups, entrenching objectively false convictions about these groups' abilities.

In 1997, the Canadian Human Rights Tribunal established the first successful case of systemic discrimination in Canada in *National Capital Alliance on Race Relations v. Canada (Department of Health and Welfare) (National Capital Alliance on Race Relations v. Canada (Department of Health and Welfare))*. The Tribunal found certain practices at Health Canada had disproportionately negative effects on visible minorities, creating barriers to their promotion to top management positions, referred to as the "glass ceiling" phenomenon.

#### 1.2.4 Guiding Principles

An important distinction must be made between this Investigation and a case of systemic discrimination brought before the courts or provincial or federal human rights tribunals. This Investigation is not concerned with the strict evidentiary proof of systemic discrimination at the Board level, nor with satisfying the legal tests established by the courts. Rather, this Investigation has gathered and analyzed available information as a means to assess systemic discrimination,

with the goal of providing pragmatic and useful recommendations aimed at addressing the concerns expressed by Indigenous groups.

Certain principles have emerged from the jurisprudence that have been helpful in guiding this Investigation. These may be summarized as follows:

- Rules and regulations may not be discriminatory on their face but may have a discriminatory effect (*Simpson-Sears*);
- Intention or motivation to discriminate is not a relevant factor in the analysis (*Andrews, Smith, Abella, Simpson-Sears; Shaw v. Phipps*);
- Systemic discrimination must focus on the impact on a disadvantaged group, given all surrounding circumstances;
- Perception of systemic discrimination must be supported by established circumstantial evidence (*Shaw v. Phipps*);
- Where discrimination is not overt or direct, circumstantial evidence may be used to draw reasonable inferences from proven facts (*Shaw v. Phipps, Brown, Pert, Smith*);
- The burden to prove discrimination is not meant to be onerous (*Simpson Sears*);
- Underlying attitudes that contribute to systemic racism may be held consciously or unconsciously (*Williams, Brown*);
- Systemic racism is not isolated to a single action but rather occurs over time (*PSAC v. Canada*).

### 1.2.5 Board Obligations to Address Systemic Discrimination

Pursuant to section 31(2) of the PSA, police service boards hold the ultimate responsibility for the manner in which policing is carried out and for the action of members of a police service (*Shaw v. Phipps*). The Board gives orders and directions to the Chief of Police, who in turn, gives orders and direction to his or her officers. This means that police service boards have a positive obligation to address allegations of systemic discrimination within the police force.

As representatives of the community, the Board also has a responsibility to assess the presence of systemic discrimination and racism within its own operations and governance practices, particularly where allegations have been made against them. The Supreme Court of Canada has clearly stated that,

“Absent evidence to the contrary, where widespread prejudice against people of the accused’s race is demonstrated at a national or provincial level, it will often be reasonable to infer that such prejudice is replicated at the community level.” (*R. v. Williams*).

The circumstances that give rise to a positive duty of a police services board were confirmed by the Supreme Court of Canada in *Odhavji Estate v. Woodhouse* where, writing on behalf of a unanimous Court, the Honourable Justice Frank Iacobucci stated,

“It is possible, I concede, that circumstances might arise in which the Board is required to address a particular problem in order to discharge its statutory obligation to provide adequate and effective police services. If there was

evidence, for example, of a widespread problem in respect of the excessive use of force in the detention of visible minorities, the Board arguably is under a positive obligation to combat racism and the resultant excessive use of force.” (*Odhavji Estate v. Woodhouse*)

### 1.2.6 Wilful Blindness

The concept of “wilful blindness” suggests that a police services board cannot avoid their positive obligation to address systemic discrimination or racism by denying knowledge of its existence simply because they haven’t looked for it.

In criminal and civil cases where knowledge is a requisite element of criminal activity or civil wrongdoing, the persons charged with an offence will be deemed to have knowledge where they are willfully blind to the circumstances giving rise to the impugned act.

The concept of wilful blindness initially arose in the criminal law context where the Crown held the burden to prove, beyond a reasonable doubt, that an accused had knowledge of the mental element of an alleged crime. In circumstances where the accused chooses to be deliberately ignorant, the law will permit the substitution of actual knowledge with wilful blindness. The Supreme Court of Canada summarized the jurisprudence on wilful blindness in *R. v. Briscoe* where the Honourable Madam Justice Charron stated:

“The doctrine of wilful blindness imputes knowledge to an accused whose suspicion is aroused to the point where he or she sees the need for further inquiries, but deliberately choose not to make those inquiries.” (*R. v. Briscoe*)

The underlying principle of wilful blindness cases is that a person should not be absolved of knowledge where they are deliberately ignorant (*R. v. Hinchey*). A determination of whether a person was wilfully blind to certain facts must be made in the context of all relevant circumstances, which may include past events (*R. v. Jorgensen*).

The concept of wilful blindness has been extended to civil actions where knowledge of key facts must be established on the lesser standard of a balance of probabilities (*Wescom v. Minetto*). The definition established in the leading criminal jurisprudence remains unchanged in the civil context. (*Cora v. Adwokat*). Instances where wilful blindness has been applied in a non-criminal context include:

- Tax (*Guindon v. Canada*) (*Wynter v. Canada*);
- Copyright infringement (*R. v. Borge*);
- Investment fraud (*169822 Ontario Limited v. The Toronto-Dominion Bank*);
- Breach of trust (*Air Canada v. M & L Travel Ltd*) (*Bullock v. Key Property Management Inc.*); and
- Misappropriation of funds (*Treaty Group Inc. v. Simpson* [2001] O.J. No. 725).

The concept, rather than the application of a strict legal test to determine culpability, is of relevance in the current context in assessing the Board’s response to systemic discrimination. It appears clear that the Board was aware of concerns regarding policing and Indigenous peoples in Thunder Bay but chose to passively tolerate, refute or ignore these issues rather than obtain

proper information about them; that action can be characterized as wilful blindness in the discharge of their duties.

### 1.2.7 Remedies

Remedies to address systemic discrimination are not intended to penalize those who act or make decisions in a system infected with systemic discrimination. Unlike criminal matters where the goal is to penalize and deter criminal behaviour, human rights law is focused on the elimination of discrimination; it seeks to correct elements of the system that present barriers or produce disadvantageous outcomes for targeted individuals.

Because systemic discrimination often involves racist attitudes or beliefs that may be held subconsciously or through ignorance, the remedies seek to improve the situation of those affected and to prevent future occurrence. These remedies, emerging from various commissions and cases over the years, have included such measures as anti-discrimination and anti-harassment policies, staff training, internal complaints processes, education of senior management, and strategies to foster cultural awareness.

Notwithstanding the remedies adopted, it is up to each individual in the system, particularly those in decision-making positions, to commit themselves to the vigilant eradication of systemic discrimination and to being transparent, open, honest and accountable to those affected by systemic discrimination. In an early case before the Supreme Court of Canada, the Honourable Chief Justice Brian Dickson highlighted this point:

“To combat racial discrimination, it is essential to create a climate in which both negative practices and negative attitudes can be challenged and discouraged (*CN v Canada (Human Rights Commission)*).”

This message was carried forward by the Commission on Systemic Racism in the Ontario Criminal Justice System. In their Report, the Commissioners stated:

“While the staff and officials of a system cannot be expected to succeed on their own, they have to be committed to making racialization intolerable if they want to bring about real, effective and permanent change (*Commission on Systemic Racism in the Ontario Criminal Justice System*).”

## 2 Systemic Discrimination and the Thunder Bay Police Services Board

The Indigenous experience of systemic discrimination and systemic racism in Thunder Bay is complex and its manifestation, while pervasive, is not always easy to identify. Invited to describe systemic racism in their own words, interviewees offered the following:

“[Systemic racism] is when racism is inherent in the structure of an organization or an entity. Systemic racism is built in, so that people are not necessarily conscious of it, and they maintain the systemic racism because they uphold the institution and its practices. Therefore, it is perpetuated and exists and morphs and becomes more entrenched and more part of a culture, part of organizational behaviour.”



“It’s institutionalized norms that don’t recognize diversity, don’t support anyone that’s non-normative, and is largely experienced in contemporary times from the British Colonial Model.”

Systemic discrimination and systemic racism can be perpetuated by those in positions of institutional power who do not understand or appreciate the historic oppression of Indigenous peoples, the history of Indigenous and Canadian relations, colonialism, self-determination or sovereignty principles; it is often linked to the concept of ‘white privilege’—a socio-political system that distributes power, privilege and benefits to Caucasian people, who in turn do not recognize or are not exposed to the challenges associated with racism.

Many interviewees felt that the TBPS and the Board do not understand or acknowledge the ways in which systemic racism manifests in the structure and practice of policing. I largely agree with that view. That gap in understanding then deepens the extent and the impact of systemic racism in policing. This phenomenon is not unique to the TBPS and the Board; some ascribed the problem to a larger, general reluctance on the part of the leadership in Thunder Bay to critically examine their institutions, a refusal perceived by some Indigenous respondents as a choice to remain unaware of and/or wilfully blind to systemic discrimination.

Most respondents from the policing community were reluctant to acknowledge or understand the nature and scope of systemic discrimination and systemic racism in the Thunder Bay policing system. Some denied or downplayed its existence in the TBPS, characterizing the issue as a “trust crisis”; others dismissed it as a normalized element of most institutions, or as an inherent aspect of the criminal justice system. Some characterized systemic discrimination as the inability of people to respond to racism. Several suggested that the issue has been exaggerated by Indigenous leadership and further exacerbated by local media acting as advocates for Indigenous issues.

Thunder Bay suffers from a lack of adequate resources for mental health, addictions, poverty, social supports and housing. The police, under stress and ill equipped, are forced to deal daily with the consequences of those shortages. The absence of appropriate social infrastructure for Indigenous people – the “social safety net” – leads to higher levels of petty crimes and nuisance incidents; and those same gaps force police to deal with offenders through the justice system rather than through a relevant social service agency. Housing, counselling and medical services may be strained beyond capacity, but the courthouse does not turn anyone away.

It is difficult to hold a productive dialogue about systemic discrimination and systemic racism because they are such loaded terms that are poorly understood. At both personal and institutional levels, the topic almost inevitably tends to trigger anger, denial and resistance. It is, however, a subject that must be brought to the fore and discussed openly, without rancor. Most respondents emphasized the need to acknowledge and address this crucial aspect of corporate and community culture. Respondents called on the TBPS and Board to “stop personalizing allegations of systemic racism”, “stop being defensive”, “stop being a tourist in someone else’s culture, and to “start to challenge the norms and the structures” that underlie systemic racism. Indeed, as the case law has pointed out, the underlying attitudes that contribute to systemic racism may be held unconsciously by those within the TBPS and Board.

On May 25, 2017, the Vice Chair of the Board, responding to the OIPRD investigation into systemic racism in the TBPS, told reporters: “There are no facts that there is systemic racism in

the Thunder Bay Police Service. These people work hard at their jobs. If they are going to be attacked and attacked, well, where's the evidence? We don't see it." In a recent interview, the Vice Chair indicated that he had been speaking personally, and not on behalf of the Board. He acknowledged having misspoken and recanted this statement, although not publicly.

In early interviews, Board members initially expressed similar views – that the current Investigation was motivated by politics, a lack of trust and understanding of the Board's role, rather than a reflection of any substantive problems in the Board's governance of the police service. More recent Board interviews, however, suggest a shift in opinion. All Board members generally acknowledged the existence of systemic racism within their own organization to a degree they view as typical of many Canadian institutions. However, there was significantly less recognition or understanding of the ways in which systemic discrimination or systemic racism appear in their own policies and practices.

The plethora of reported incidents and studies regarding policing of the Indigenous population in Thunder Bay, some of which were documented earlier in this Report, represent circumstantial evidence that systemic discrimination exists in policing in Thunder Bay. It is difficult to comprehend how the Board could not have been aware of the extent of this troublesome situation. In the systemic discrimination analysis, the law directs us to focus on the impact of systemic discrimination and systemic racism on the Indigenous population in Thunder Bay rather than the intention or motivation by those acting in the system that may contribute to the problem. In these circumstances, the Board is imputed with knowledge of systemic discrimination and systemic racism where it is wilfully blind and avoided inquiring into the issues surrounding Indigenous policing. Since the waning of the original Diversity in Policing initiative in 2010 until very recently after this Investigation was commenced, the Board failed to take any affirmative, corrective or meaningful steps, either through policy development, directives to the TBPS or its business or annual operational plans, to inquire into and address these issues when it had an obligation to do so. This failure has perpetuated the circumstances of systemic discrimination and systemic racism, directly impacting Indigenous victims of crime in Thunder Bay.

The ability to understand and address systemic discrimination and systemic racism in Thunder Bay policing must begin with both honest, open discussion, and with training and learning opportunities. Until the recent involvement of the Ontario Human Rights Commission, neither the TBPS nor the Board had received training on anti-racism initiatives or strategies specific to the issue of policing of Indigenous peoples. Comprehensive and sustained cultural education, formally structured and expanded beyond a series of ad-hoc workshops, should be mandatory for those in leadership positions on the Board and in the TBPS. Such a program, based on accurate, appropriate and context-specific educational material and approaches, will help foster an environment for productive dialogue and corrective action.

It is important to note that many interviewees recognized the abundance of genuine and sincere individuals in the policing community – the officers, staff and Board members who exercise their duties professionally and impartially, with diligence and care. These people deserve recognition; their skills and attitudes provide a model and a positive foundation for addressing systemic discrimination in institutions.

### 3 Governing Police Services in Thunder Bay

#### 3.1 Governance and Policy

Sections 31(1)(b), 31(1)(c), and 41(1)(a) of the PSA address policy development by the police board and implementation of those policies by the chief of police. Their respective responsibilities are described as follows:

“31(1): A Board is responsible for the provision of adequate and effective police services in the municipality and shall,

- b) generally determine, after consultation with the chief of police, objectives and priorities with respect to the police services in the municipality;
- c) establish policies for the effective management of the police force;

41(1)(a): the duties of a chief of police include,

- a) In the case of a municipal police force, administering the police force and overseeing its operation in accordance with the objectives, priorities and policies established by the Board under subsection 31(1)” (PSA 1990)

The authority of police boards is expansive. The linkage and distinction between the complimentary roles of boards and chiefs of police are frequently misunderstood. Boards and chiefs often express the view that “matters of ‘policy’ are strictly the responsibility of the Board, and matters of ‘operations’ are for the chief of police and that the two must always be kept separate,” (Morden) owing to subsection 31(4) of the PSA that states “The board shall not direct the chief of police with respect to specific operational decisions or with respect to the day-to-day operation of the police force.”

However, section 31(4) does not prevent boards from developing policies to guide the chief of police in those operational decisions or day-to-day operations. Further, the Board, given its far-reaching authority over the overall effective performance of the TBPS, must concern itself with individual operational matters that collectively create a pattern of poor performance or reflect some underlying concerns such as racial profiling and systematic racism. As stated in the *Morden Report*: “Section 31(4)...is intended to prevent direct Board interference in the actual policing function but not to prevent the Board from making decisions governing the structure and environment in which those policing functions occur (Morden).”

Such a clear barrier is both impossible to maintain and flies in the face of any form of strategic governance that a police services board must provide to the agency that it governs. The Morden Report points out that this interpretation is “clearly inconsistent with the provisions of the Police Services Act” as “the duties of the chief of police under section 41(1)(a) dovetail with the board’s responsibilities under section 31(1)(b) and (c) (Morden).”

Sections 31(1)(b), 31(1)(c) and 41(1)(a) imply a relationship that must be iterative and collaborative, demanding a close and cooperative connection between a board and chief of police. Plans and policies should ideally be developed through consultation between the board and the chief. The board then formally sets objectives and priorities for police services in the community;

the chief directs the police force in accordance with the objectives, priorities and policies that were established by the board.

Boards must always be mindful that they are providing *civilian* oversight and develop policies cognizant of the whole of the community's best interests. Boards should consult and take advice from the chief when developing policies; they should not, however, defer to the chief.

Justice Morden described the considerable responsibility of police boards as follows:

“The Police Services Act has empowered police boards, through their policy-making and resource allocation powers, to shape the way in which policing is done. Police boards are the intermediary between the police and the public, acting as a conduit to receive and impart information, providing a forum to ensure public sentiment makes its way to the ears of law enforcers, and, ultimately, arbitrating interests in determining what is incorporated into the policies that guide the actions of the police. Where the police board fulfills these functions, the legitimacy that is so important to policing by consent, rather than coercion, is maintained. **An effective governance structure ensures that decisions made and actions taken by the police are reflective of the community's values** (Morden).” (emphasis added)

There must be a basic understanding that governance in this instance is expansive, not constrained. Therefore, it involves not simply partnering with the service being governed but taking leadership to ensure its success—as defined in the law as adequate policing—through wholesome direction. As pointed out in the New Brunswick Police Services Guide:

“Governance is the exercising of direct authority over an organization or entity. It is the ability to control and direct the making of policy, as well as directing and influencing decisions made by the organization. It includes the capacity to ensure that decisions made by the governing body are carried out in accordance with the governing body's direction (oversight), with recourse to corrective action, should this not occur. (New Brunswick).”<sup>i</sup>

## 3.2 Understanding the Governance Role

### 3.2.1 Issues

The Board undoubtedly plays a leadership role with respect to policing in Thunder Bay. The Board and the TBPS are expected to work collaboratively to ensure that community policing and public safety are provided equitably to all citizens visiting or residing, permanently or temporarily, in Thunder Bay. Under the PSA, the Board as the governance authority holds ultimate responsibility for ensuring that adequate and effective policing is delivered in Thunder Bay. This Investigation identified the following governance issues that arise in the context of policing in Thunder Bay.

#### 3.2.1.1 Role Clarity

Effective police oversight requires that Boards balance their governance duties with a clear understanding of the restraints on their ability to interfere with individual investigations and the need to permit the Chief, as their principal agent, to manage the day-to-day operations of the

police service. For obvious reasons, there are legitimate constraints on the Board as a whole or individual Board members from interfering with individual police matters or seeking either access or advantage. However, by the simple act of establishing policies, the Board should provide a clear framework that directs operations in a specific way.

Monitoring compliance, generally through reporting by the Chief, will involve obtaining operational information to demonstrate that the policy is being carried out effectively. Simple attestation by a Chief that the policy is being carried out is not adequate governance. Boards struggle with this issue across the country. In general, the successful avoidance of confusion or the creation of artificial restraints, such as we see in Thunder Bay, requires that all parties understand and agree on clearly-defined roles, mutual respect at a professional level, and information protocols (some of which are already outlined in provincial standards). These standards already require that the Chief provide a considerable amount of operational information. As noted above in Part III, 3.1 the idea of separating operations completely from policy does not reflect the complexity of the link between those roles in an actual organization.

The absence of a clear understanding of the relationship between the Board and the TBPS was underscored in interviews with Board members. Some feel that they are authorized to make suggestions to the Chief to address specific policing matters, or to direct the Chief to address pressing policing matters; others believe they have little or no role in providing direction at all.

Indigenous respondents and others charged with delivering services to Indigenous peoples, expressed disappointment with the Board's reluctance to direct the TBPS to address, or to develop strategies to deal with, violence and crimes against Indigenous people, and other critical issues. Some of these policy or planning gaps include:

- The lack of Indigenous deaths / hate crime / Indigenous student safety action plan;
- The Chief's failure to identify trends regarding disproportionate crimes against Indigenous peoples;
- The lack of clear goals, policies, or a strategic workplan for the Aboriginal Liaison Unit; and
- Lack of a recruitment / promotion / retention plan for Indigenous officers.

These gaps were attributed in part to the lack clarity about the Board's role and responsibilities. However, it may reflect a measure of indifference, passive tolerance, or lack of familiarity with Indigenous peoples, cultures, and histories, particularly those relating to First Nations in and around Thunder Bay. Many respondents stated that a deeper understanding of the issues confronting Indigenous peoples would promote policing that better reflects the needs of all demographic and racial groups.

### *3.2.1.2 Potential Structural Conflict*

The absence of clear policies defining the respective powers, functions, and authorities of the TBPS and the Chief of Police creates the potential for, and the perception of, the exercise of an inappropriate level of influence and control by the Chief over the Board and its decisions on a range of issues, including those relating to Indigenous peoples.

The Board and the TBPS share the same Mission Statement, developed by the TBPS and endorsed by the Board. Because the overall objective of both entities—the provision of adequate and effective policing in Thunder Bay—are related and complementary, it was felt that a common Mission Statement was appropriate. However, this contributes to the perception that TBPS and the Board are not distinct in their roles and functions.

Since the 1960s, the same person has served as both the City Clerk (a staff position) and Secretary to the Board (a governance position). This dual role creates a potential conflict of interest, particularly given the Board’s strong reliance on the Secretary in the exercise of its critical policy development function. The fact that municipal council approves the annual budget of the TBPS and the Board also creates potential for perceived or actual conflict of interest for the Secretary / City Clerk.

The current Secretary has performed that role since 2004. He noted that he does not hold decision-making authority within either the Board or the city, and since his role is administrative, not political, in his view there is no actual conflict of interest. The Secretary’s role on the Board is to offer advice on rules of procedures, legislation and policy matters, as well as providing administrative support. As City Clerk, he plays a similar role vis-a-vis municipal council; his position as Secretary to the Board was considered part of his function as the City Clerk, paid by the municipality. He emphasized that he does not share or discuss matters with the municipal council that are raised in the closed sessions of the Board, but acknowledges the potential conflict of interest, real or perceived, inherent in those circumstances.

The Chair of the Board does not feel that these dual roles represent a “structural” conflict of interest, because the only intersection between the Board and the City occurs in the budgetary process. However, Board members agreed that a separation of roles of the Secretary and City Clerk had merit.

The potential for conflict is clear in the TBPS budgetary process. A global budget is initially developed by the TBPS and submitted to the Board, which considers it and, once approved, ultimately submits it to the City as an estimate with no details. If the Thunder Bay Council takes issue with the estimate, they may request further information, or ask the Board to reconsider and submit another budget estimate; they cannot unilaterally reduce the budget estimate. In such an instance, the City Clerk is required to formally communicate with himself as Secretary to the Board. If the Board and the Council are unable to reach an agreement, the Board may request the OCPC to exercise its authority pursuant to section 39(5) of the PSA to convene a hearing and settle the matter. This option has never been pursued in Thunder Bay.

Two developing initiatives may impact on the considerations discussed in this section:

- The TBPS is conducting an Organizational Change Project to address some of the issues related to racialized policing, and
- It had been anticipated that the proposed *Safer Ontario Act* would more clearly set out respective roles and responsibilities of the various parties to community policing in Thunder Bay; however, it is yet to be determined whether the new *Act* will receive proclamation and come into force.

### 3.2.1.3 *Systemic Discrimination*

One of the key roles of a Board is to be alert to events, trends and issues within their community and the impact on the effectiveness of policing services. Given the extensive public record summarized in Part II of this Report, the chronology of incidents set out in Part II, section 1.1, the Coroner's Inquest into the Seven Youth Deaths and continuous public concerns raised by Indigenous leaders and groups regarding inadequate policing of Indigenous peoples, it is unlikely that the Board was unaware of the policing challenges related to Indigenous peoples. At best, they passively tolerated or were willfully blind to these issues.

Good governance involves identifying risks and trends in the governed organization. While most Board members eventually conceded that there were issues of systemic racism and discrimination in the TBPS and their Board, they minimized the nature and scope of the problem. Rather than taking a proactive approach through the development of policies to hold the TBPS accountable for addressing a crisis or directing the police service to investigate and take appropriate action on issues of racism, the Board too frequently responded by citing the "operations restraint" as a rationale for their reticence; denied the scope and scale of a problem that clearly required urgent attention; and deflected blame to what they considered a biased media and political motives of Indigenous leaders.

## 3.2.2 Recommendations

The following recommendations address the issue of the Board governance, and the Board's relationship to the Chief and operational aspects of policing in Thunder Bay.

### 3.2.2.1 *Policy on Governance*

**It is recommended that there be a clear statement of the role of the Board in governing the police service, defining the key instruments required to provide governance, and specifying the authorities and constraints on the Board.**

This could resemble, in the Ontario context, the Policies for the Governance and General Supervision of the Calgary Police Service.

### 3.2.2.2 *Establishment of Board Independence:*

The Board must have, and be seen to have, the independence, scope and resources to actually govern, and to carry out its distinct role, separate from both the TBPS and the municipal government. That is the core intent of the legislation. To this end, the Board must function, with a reasonable level of resources, to both exercise and appear to exercise its independence.

**It is recommended that a person who does not carry out any other municipal role, especially one at the executive level, be appointed to provide services to the Board in the capacity of a Secretary.**

Many cities of a similar size will contract with an individual who serves as Executive Director, providing both administrative and policy support. Large boards have fulltime Executive Directors and staff. Given the scope of the recommendations in this Report, consideration should be given to making this a full-time position for a number of years.

**It is recommended that the Board Chair, with support from the Chief, present annual budgets to the municipal government that includes remuneration for an Executive Director.**

### *3.2.2.3 Policy on the Relationship with the Chief*

**It is recommended that the Board develop a policy regarding relations between the Board and the Chief that clearly delegates operational responsibility to the Chief, but also outlines the Chief's duties at a high level to include:**

1. The duty to manage the TBPS effectively and efficiently;
2. The duty to implement the policy direction of the Board;
3. The duty to ensure a service that reflects the community it serves;
4. The duty to provide information to the Board on the TBPS' performance, its compliance with policies, community relations, developing trends or significant incidents that would affect plans or changes to police services and annual training and reports on performance in delivering services free of bias, racism, discrimination and harassment; and
5. The duty to brief the Board on serious incidents that can affect the community, either past or anticipated.

A good example of the outline of the duties of the Chief can be found in the Policy Manual of the Kahnawá:ke Peacekeepers Services Board.

## **3.3 Policy Development for Police Services**

### **3.3.1 Issues**

The preceding section described the Board's responsibility for exercising its leadership function through policy. This creates an obligation on the part of the Board to ensure that all necessary policies for effective governance are in place, up to date, accurate, and consistent with legislation and standards. The Board is also responsible for ensuring that its policies are known to and understood by those responsible for their implementation; that compliance with policy is monitored; that policies are periodically reviewed, and revised as required; and that new policies, are developed to address emerging needs or trends.

This Investigation identified the following policy-related issues in the TBPSB's exercise of its policy development function.

#### *3.3.1.1 The Board's Current Policies*

The Board's current Policy Manual includes 80 separate policies. Most of the Board's policies (59 out of 80) are required under section 29 of *O. Reg. 3/99: Adequacy and Effectiveness of Police Services*, which states:

29. Every board shall establish policies with respect to the matters referred to in section 3, subsections 4 (3) and 6 (3), section 8, subsection 9 (4), sections 10 to 17, 19, 20, 22, subsection 24 (2), and sections 25 to 28. O.Reg. 3/99, s.29.



The majority of the mandatory policies listed in s. 29 require that a board develop policies directing the Chief of Police to establish certain procedures relating to matters of police service in such areas as traffic management, criminal investigations, prisoner transportation, and others. The development of procedures by the Chief of Police must therefore be undertaken following the creation of relevant policies by the Board. If a procedure was developed “before the relevant policy, it may have to be re-made to conform with the policy when it is made. A chief’s procedures and processes must be made in conformity with his or her board’s policies.” (Morden)

The Board has 19 policies currently in place that are not specifically required by legislation but are mandated by the MCSCS. In other words, these are not policies that the Board itself developed but which the Board adopted from direction issued by the Ministry.

Those policies are:

1. False Alarm
2. Recruitment, Selection, and Hiring
3. Procurement; Budget Policy and Procedures
4. Officer Note Taking
5. Framework for Business Planning
6. Skills Development and Learning
7. Communicable Diseases
8. Safe Storage of Firearms
9. Equal Opportunity, Discrimination, and Workplace Harassment
10. Management of Police Records
11. Marked General Patrol Vehicles
12. Police Uniforms
13. Framework for Annual Reporting
14. Speed Detection
15. Secure Holster
16. Underwater Search and Recovery Units
17. Use of Force
18. Police Response to High Risk Individuals
19. Policing Aboriginal Occupations & Protests Guideline

### 3.3.1.2 Policy Gaps

Section 29 of the PSA does not require that a board develop policies related to racism, equitable hiring, relations with Indigenous or other minority populations, or general board governance. However, Boards have the authority to do so; and in a context where these concerns impact on the delivery of policing services, such policies are clearly desirable.

For example, the Board has an obligation to be aware of, *inter alia*, criminal justice trends, in order to inform the development of relevant policies responding to community needs. This would require policy direction to the Chief of Police, whose role would then become to ensure that the required data is collected, and appropriate analysis carried out, and policy, planning and program activities undertaken to provide the required direction. No such policy is in place.

Other police services boards have enacted policies that are not specifically required under any legislation to respond to community needs.

- The Toronto Police Services Board has established policies on board conduct and training, a policy on environmental responsibility, a policy on race and ethno-cultural equity in relation to both the public and the service, and a policy statement of commitment and guiding principles in regard to policing Indigenous people.
- The Peel Regional Police Services Board has developed a policy on accessibility standards for customer service; a policy on community surveys, an anti-racism and ethno-cultural equity policy in relation to both the public and the service, policies on board procedure and conduct, and a policy on media relations.
- The Ottawa Police Services Board has developed policies on governance and administration of the board, a policy on the relationship between the board and the chief, and a policy directing operational policies and procedures to be consistent with the *Canadian Charter of Rights and Freedoms* and the *Ontario Human Rights Code*.

The Board has not implemented similar policies. The Board has established an “Equal Opportunity, Discrimination and Workplace Harassment” policy; however, this primarily addresses internal relations between employees of the Service. The policy does state that the Chief of Police must ensure that “all officers receive training on race relations, diversity and human rights,” but it does not directly address discriminatory conduct towards the public.

In regard to other Board policies currently in place that are required by the Act, one policy is required under *Ontario Regulation 58/16, Collection of Identifying Information in Certain Circumstances – Prohibition and Duties*. Another is required under the *Suspects Apprehension Pursuits Regulations*.

It appears that the Board is missing at least one statutorily required policy. Section 13(2) of the *O. Reg. 3/99* requires that a Board “establish a policy on the sharing of crime, call and public disorder analysis data and information on crime trends with its municipal council and with school boards, community organizations and groups, businesses and members of the public in the municipality it serves.” In the context of the issues currently under investigation, this is a key policy that could have provided the Board with additional data to identify the trend of violence aimed at the Indigenous peoples and the alleged lack of attention by the TBPS.

This need is not addressed in the Board’s policy manual. As noted above, the Board does have a communication protocol regarding sharing certain information with the Municipal Council, but this protocol does not cover all the information stakeholders listed in section 13(2) of the *Adequacy and Effectiveness of Police Services Regulation*, as well as other interested indigenous groups.

### 3.3.1.3 Adopted Policies Vs. Adapted Policies

Most policies of the Board appear to have been adopted without significant adaptation from the *Policing Standards Manual (2000)* (Ontario Ministry of the Solicitor General)<sup>10</sup>. This manual sets out the legislated standards police must meet in Ontario, provides a list of the policies that police services boards are expected to have, provides sample board policies, and establishes guidelines for police services.

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<sup>10</sup> The Ministry of Community Safety and Correctional Services is responsible for writing and updating the Policing Standards Manual (Ontario).

For example, the Board’s policy on prisoner transportation is exactly the same as the MCSCS sample policy.

The Morden Report cautions against direct adoption of policies from the Policing Standards Manual, noting:

“...it is clearly the duty of a board, after taking into account the particular policing needs of its jurisdiction and having carefully canvassed all of the relevant possibilities, including those suggested in the Ministry guideline policies, to make the policies that it considers to be the most effective for its municipality and not merely to rubberstamp the guideline policies (Morden).”

The MCSCS sample policies provide a useful template and starting point for the development of community and Board-specific policies. However, the samples do not reflect local needs, circumstances, and realities. The process of adaptation ensures that Board members engage actively with the content and intent of policies, that policies embody community-specific needs and values, and that Board members become familiar with the policies under their purview. The current Board’s unfamiliarity with the list, scope, and status of their current policies may in part reflect the practice of “rubberstamping” the MCSCS samples, rather than a process of thoughtful adaptation or development of policies responsive to the community being served.

It should further be noted that template policies lack the organization-specific performance measurements and reporting requirements that would ensure that they were actually enforced.

#### *3.3.1.4 Board Leadership of the Policy Process*

It is clearly the responsibility of the Board to take a proactive leadership role in ensuring that all necessary policies for effective governance are in place, up to date, accurate, and consistent with legislation and standards. The Board members however, described a passive, reactive approach to policy development. Policies to guide the TBPS are not generally developed proactively in anticipation of needs or problems; they tend to be created in response to specific issues or adopted when required by the MCSCS.<sup>11</sup> Revisions are generally undertaken upon notification by the MCSCS that an update is required.

Members indicated that policies, when needed, were developed by the “administration of the Board” rather than the Board itself. The Board usually accepts a recommendation from the Secretary that a policy is required, then directs the Secretary to draft it. A draft may also be developed by a lawyer rather than the Secretary.<sup>12</sup> Members then review the draft, amending it if necessary. It is reasonable to expect input from police staff in the development of policy, but it is crucial that the Board direct the content and hold the TBPS to account for its execution.

This reactive approach to policy development was attributed by Board members to their concern about intruding in operational matters, or not “stepping over the boundaries”. As discussed above, such boundaries are arbitrarily defined; the Board’s reluctance to carry out its key role represents a failure to meet its responsibilities to the TBPS, and to the community as a whole.

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<sup>11</sup> Interview with Don Smith

<sup>12</sup> Interviews with Joe Virdaramo and Jackie Dojack

### 3.3.1.5 Policy Review

Policies are not static; they require ongoing review and revision to ensure their effectiveness, timeliness and relevance. Leading practice in policy management calls for a periodic review of all policies, usually on a three-year cycle. Of course, policies that are affected by events, changes in legislation, or performance can and should be reviewed more frequently.

Although members agreed that policies should be reviewed yearly,<sup>13</sup> there does not appear to be an established policy or process for annual revision; consensus was that policies are revised only when required, or in response to a directive from the Ministry. One Board member acknowledged he was not sure whether an annual review occurred, while another Board member could not remember when the Board had last passed a new policy.<sup>14</sup>

It was suggested that the Board expects the Secretary of the Board to monitor which policies should be updated. If that is the case, this expectation should be formalized and recorded.

### 3.3.1.6 Familiarity with Current Policies

Not all members of the Board are aware of or familiar with their current policies. One member indicated that the Board does not read the policies on a regular basis<sup>15</sup>; another member replied “I didn’t memorize all the policies”<sup>16</sup> when asked what some of the Board’s policies are. It was noted by one respondent that new members are not given a copy of the Board’s policy manual.<sup>17</sup>

There was also little awareness of Board policies directly related to the key themes of this investigation. One member was unable to describe any specific policy addressing racism or discrimination in the TBPS.<sup>18</sup> Another indicated that the Board does not have a policy for dealing with Indigenous issues or recruitment and expressed concern that some of the current policies “have systemic racism as part of them.”<sup>19</sup> That same member indicated that the Board does not have a policy to evaluate how the Board itself is doing in terms of governance.

In summary, it is clear that the proactive development, monitoring and revision of policies is not a high priority of the Board,<sup>20</sup> and the Board members are neither aware of the scope, scale and status of their current policies nor cognizant of the deficiencies of their existing suite of policies.

### 3.3.1.7 Public Access to the Board’s Policies

The Board acts on behalf of the community of Thunder Bay and policies are a key element of their operation. It is reasonable to expect that the public should have easy access to the majority of the Board’s policies, given the Board’s ultimate accountability to the community. While some

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<sup>13</sup> Interview with Don Smith

<sup>14</sup> Interview with Joe Virdaramo

<sup>15</sup> Interview with Jackie Dojack

<sup>16</sup> Interview with Joe Virdaramo

<sup>17</sup> Interview with Jackie Dojack

<sup>18</sup> Interview of Joe Virdaramo

<sup>19</sup> Interview of Jackie Dojack

<sup>20</sup> Interview with Joe Virdaramo

Board policies may remain confidential for reasons of security or liability, most should be available to the community.

In Thunder Bay, however, the public cannot easily access the Board's policies through the internet; nor is information provided online specifying whether and how members of the public can access or request these policies.

Police services boards across Ontario differ in the level of public access to their policies. Ottawa, Peel Region, and Toronto all provide full online access through their Board website, or through a page on the Police Services website. Hamilton provides a limited number of policies online, while Port Hope posts information on how interested parties can request their policies. Thunder Bay, Windsor, London, Cobourg and Waterloo do not provide online access.

Although there is no statutory requirement that Boards post their policies online, that level of openness by a civilian oversight body would clearly increase transparency, promote public engagement, and encourage confidence in police governance by the Board.

### *3.3.1.8 Systemic Discrimination Issues*

The evidence is overwhelming that Indigenous peoples in Thunder Bay have been subject to differential policing standards for decades. This Investigation has chronicled a list of unsolved disappearances and deaths of Indigenous persons, attempted abductions, inadequate investigations, violence, sexual exploitation and rape, and gang activity. These incidents have been widely reported locally, nationally and internationally, and are well known to the Indigenous community. This has inevitably led to a climate of distrust and fear of police.

This Investigation found no evidence that the Board took proactive steps to address these issues, to allay community fears, to build trust, or to demand answers. Even when directed by the Jury's Verdict to review and revise their Missing Person's Policy in response to the Seven Youth Inquest, there was no evidence that this policy was amended to address unique circumstances of temporary visiting students from northern First Nations. By failing to act to address indisputable racism in the face of overwhelming community awareness and media coverage, the Board has failed to serve the Indigenous community, and indeed the whole community of Thunder Bay, while also undermining the morale of officers who are trying to do their best in a challenging environment.

Policy is the vehicle through which a police services board defines, shapes and directs a police force. The absence of policies defining and addressing actual or potential systemic discrimination is a statement in itself, as is the failure to provide the community with access to the plans and policy instruments defining the service.

Reliance on off-the-shelf templates does not enable the Board to identify or address elements of systemic racism that may be endemic within the organization.

### **3.3.2 Recommendations**

The following recommendations address issues relating to the development, implementation and review of Board-level policies by the Board.

### *3.3.2.1 Creation of a Governance Committee of the Board to Oversee Policies*

**It is recommended that the Board establish a Governance Committee to review and propose revisions where necessary to all existing policies, including its Missing Person Policy, and to oversee the development and regular maintenance of Board policies.**

The work of the Governance Committee should be undertaken under a formal, Board-approved mandate, and reflect terms for reference that include the Committee's mandate, authority, membership, anticipated outputs and outcomes, and reporting requirements.

### *3.3.2.2 Creation of a Board Policy Manual*

**It is recommended that the Board undertake the development of a Board Policy Manual to address governance and other matters that are general to all police forces, as well as those that are unique to the circumstances of the Thunder Bay Police Service.**

A number of excellent examples are available in various jurisdictions across Canada, including those in use by the Police Services Boards of Toronto, Peel, Ottawa, and others.

### *3.3.2.3 Review of the Missing Persons Policy*

**It is recommended that the Board engage with First Nation organizations, including the Bear Clan and education authorities and local schools, to conduct a formal review of the Missing Persons Policy.**

This was a recommendation of the Jury following the Seven Youths Inquiry. The goal is to determine whether the current policy adequately addresses community concerns and reflects best practices related to missing First Nation students and other Indigenous individuals.

### *3.3.2.4 Anti-Racism Policy*

**It is recommended that the Board develop and adopt an anti-racism strategy and policy for itself and the TBPS.**

Other police service boards in Canada have adopted anti-racism policies to curtail the perpetuation of systemic discrimination. Such strategy and policy would send an important signal to Thunder Bay and the Indigenous community that systemic discrimination and systemic racism will no longer be tolerated.

### *3.3.2.5 Making the Policies Accessible*

**It is recommended that all Board policies be publicly and easily accessible.**

A later recommendation calls for the establishment of an online Board presence. Essential to making a worthy presence is the inclusion of the Board's policies. The policies should also be accessible in other media and formats to maximize community awareness and Board transparency.

### 3.3.2.6 *Posting Draft Policy Reviews for Public Input*

**It is recommended that the Governance Committee post all draft policies on the Board's website for public review.**

This measure will increase the visibility and transparency of the Board, heighten community awareness of its policies and role, and strengthen the actual policies under development by opening a dialogue with all sectors of the community. Particular care should be exercised to soliciting input from Indigenous community members and organizations when policies are of direct relevance.

## 3.4 Business Planning for Police Services

### 3.4.1 Issues

The business plan of any police services board is a key document, setting out priorities and strategies for the police force over a three-year period to achieve the goal of adequate and effective policing. The development of the business plan is a core function of the Board: regulations specify what it must contain and how it must be developed. The planning process also provides an important opportunity for the Board to show leadership in building positive relationship with Indigenous groups and the community of Thunder Bay.

This investigation identified the following policy-related issues in the Board's business planning.

#### 3.4.1.1 *The Board's Current Plan*

The current business plan guiding the delivery of police services in Thunder Bay is an extension of the expired "2015-2017 TBPS Board Business Plan." The Board deferred the development of a new business plan for the period 2018-2020 to allow for the review and consideration of the recommendations from this Investigation, the OIPRD Investigation, and the Organizational Change Project.

In 2012, Indigenous issues were identified as a specific priority in the business plan, under the heading, "Engagement of the Aboriginal community to address safety and policing issues". The 2012-2014 plan included the following goals and objectives:

- Maintain and support the Aboriginal Liaison Unit and Aboriginal Advisory Committee.
- Develop and implement strategies to address the safety and well-being of Aboriginal youth.
- Collaborate with Aboriginal leaders and service agencies in establishing priorities and addressing policing and safety issues that are specific to the Aboriginal community.
- Work with all levels of government, Aboriginal leaders, private corporations and policing partners in developing a comprehensive regional strategy to address safety and policing issues associated to northern economic development.

The 2015-2017 business plan appears to have reduced the focus on Indigenous issues, which were subsumed under the broader priority of “Collaboration and partnership through multi-sector engagement”:

- Maintain open communication with the Aboriginal leadership including the Chief’s Executive Committee on Aboriginal and Diversity Issues.
- Engage in partnerships with the Aboriginal community to leverage funding opportunities to provide street level support for marginalized individuals.

Board members suggested this apparent decline in the level of Indigenous content actually reflects the ongoing implementation of operational matters in the 2012 plan by the TBPS, making it unnecessary to repeat these activities in the 2015 plan. The 2015-17 business plan was intended to focus on relationship-building with Indigenous groups, a goal which has proven problematic over the period covered by the current business plan.

#### 3.4.1.2 *The Planning Process*

The 2015-2017 business plan was developed through a workshop-style process that involved the senior command and administration of the TBPS, the Board and the mayor. As described by the Communications Director, the Board developed objectives and priorities during a one-day session in which critical policing issues in the city were identified and discussed and priorities were established. The TBPS administration provided the pertinent data, statistics and an environmental scan; proposed activities to achieve outcomes; and prepared the actual business plans. Drafts were submitted for review to the Deputy Chief and Chief of Police and ultimately for approval by the Board.

The *Adequacy and Effectiveness of Police Services Regulations* specify that the business or strategic plan of the police service is the responsibility of the Board. The Board must lead the critical planning process; solicit and collect community input, develop an environmental scan that addresses key risks, provide staff (its own staff or police service staff) direction, ensuring that planning results are valid through further input, create criteria and indicators to measure results, and link it to the Chief’s appraisal process.

The York Region’s Police Services Board has developed a planning process that provides excellent guidance in the areas that must be addressed in the planning process mandated by the *Adequacy and Effectiveness of Police Services Regulations*. These include:

- a. An environmental scan of the community that highlights crime, calls for service and public disorder trends within the community;
- b. The results achieved by the police service in relation to the business plan currently in effect;
- c. A summary of the workload assessments and service delivery evaluations undertaken during the existing business plan cycle;
- d. The Board's proposals with respect to York Regional Police objectives, core business and functions, and performance objectives and indicators for the eight functions set out in the Adequacy Standards Regulation; and .



- e. The estimated cost of delivering adequate and effective police services to meet the needs identified in the draft Business Plan.

While it is clear that the Board participated in the planning process, there has been a lack of the methodological rigor demonstrated in policy and practice by other jurisdictions, as exemplified in the model above.

### 3.4.1.3 *Planning Gaps*

The informal nature of the Board's business planning has led to gaps in both the process and its outcomes, particularly with respect to the issue prevalent in policing and the Indigenous population.

Planning provides an important opportunity for the Board to show leadership in building positive relationships with Indigenous groups. Input to the business plan was provided by the Chief's Advisory Committee on Indigenous issues and other stakeholders, including the Crime Prevention group (which has Indigenous representation), school boards (including Dennis Franklin Cromarty), Lakehead University, and Confederation College. However, there is no evidence that key community stakeholders were consulted for input on the formulation of goals and objectives, the setting of priorities, or the drafting of the plan itself. Some Board members noted that they had experienced challenges in soliciting Indigenous participation in the planning process; however, it is not clear what concrete efforts were made to engage the Indigenous community more broadly.

Statistics on Indigenous people's deaths and other acts of violence against Indigenous people were not requested or provided during the last business planning cycle; nor did the environmental scans typically incorporate Indigenous-specific data on deaths and other incidents.

The planning process does not incorporate a risk assessment process to gather information on risks to the community at large, and to specific stakeholder groups; analysis of that information; establishment of resulting priorities; and incorporation of risk mitigation measures into the plan.

The results of a Citizen Satisfaction Survey are an additional input to the business planning process, as required by *Adequacy and Effectiveness of Police Services* Regulations. The Communications Department of the TBPS solicits community feedback through this survey to gauge how the police service is performing. However, no public consultation sessions are held; nor does the Board have a consultation plan, policy, strategy or instruments to gather community input beyond the survey. The Board Chair advised us that this lack of community input would be addressed through a recent initiative to develop a communications strategy.

While the Board undertakes an informal review of its business plan every year, there are no specific indices in place to track and measure effectiveness, outcomes, outputs, impact, or efficiency. Nor does the Board appear to track progress towards plans and objectives or adjust their plan periodically to achieve the intended outcomes.

These gaps arise directly from the Board's failure to meet the standards for planning set out in Section 30(1) of the *O. Reg. 3/99: Adequacy and Effectiveness of Police Services*.

Based on its statutory authority (and, hence, responsibility), good police governance requires that the business plan include the following elements:

- a. The objectives, core business and functions of the police force, including how it will provide adequate and effective police services;
- b. Quantitative and qualitative performance objectives and indicators relating to,
  - (i) the police force's provision of community-based crime prevention initiatives, community patrol and criminal investigation services,
  - (ii) community satisfaction with police services,
  - (iii) emergency calls for service,
  - (iv) violent crime and clearance rates for violent crime,
  - (v) property crime and clearance rates for property crime,
  - (vi) youth crime and clearance rates for youth crime,
  - (vii) police assistance to victims of crime and re-victimization rates, and
  - (viii) road safety
- c. Information technology;
- d. Resource planning; and
- e. Police facilities.

To summarize, while the Board has engaged in the business planning process, it has been largely dependent on the Police Service, which has provided both the staff work (which is typical in most boards without full-time staff) and also much of the content. It is also clear that planning has occurred largely without Board-community interaction, and has failed to meet the standards for planning set out in the PSA.

### 3.4.2 Recommendations

The following recommendations address issues relating to the development, implementation and monitoring of Board-level planning by the Board.

#### 3.4.2.1 *Policy on Business Planning*

**It is recommended that the Board develop a Policy on Business Planning.**

The failure to undertake systematic business planning, most notably a comprehensive community

consultation plan and a risk assessment as part of an environment scan has rendered the Board blind to First Nations issues that have preoccupied the community for some time. This may be attributable to the siege mentality that has characterized the Board for the past few years, or inexperience of Board members when it comes to police board governance issues.

However, planning, like policy, is a central tool for and expression of a police services board's vision for their community and its policing. The absence of a comprehensive strategic plan and vision and annual operational plans based on that strategic vision essentially excludes community organizations, including Indigenous groups, from meaningful participation in establishing the goals, priorities, objectives, and structure of this service.

A number of effective and proven planning models are in use by police boards across the country.

#### *3.4.2.2 Policy on Risk Management*

**It is recommended that the Board develop a Policy on Trend Analysis, Critical Points and Risk Management.**

Systematic risk management is key to enhancing public safety. Through the planning process and gathering information on trends, events, incidents and changes in the criminal environment, a police service and its board will increase its ability to achieve their objectives of adequate and effective community policing. When carried out properly, a policy on identifying trends and establishing sound risk management will enable the Board to ensure that risks in the community are effectively identified, avoiding the recurrent issue of ignoring failures in service, inadequate understanding of marginalized groups, and inherent biases. Some jurisdictions, particularly in the United Kingdom, publish a risk register to inform the public of the risks the Board sees as being important, enabling the community to review and challenge Board conclusions and priorities.

### **3.5 Recruitment, Retention, and Promotion**

#### **3.5.1 Issues**

With respect to proper governance of police services, the Board has three responsibilities with respect to the staff of the Service:

- Recruitment and retention of the Chief and Deputy Chief;
- Succession planning within the Service; and
- Representation of marginalized groups, most notably First Nations, within the rank and file.

In discharging these responsibilities, the Board's roles in all three areas should include:

- The recruitment and retention of the Chief and Deputy Chief who are capable of policing the whole of the community of Thunder Bay, with an awareness of the trend of violence and crimes against the Indigenous population and allegations of disparity in policing and taking necessary action to address these important matters;
- Ensuring that the Chief establishes a program of succession planning, with a strong focus on minority group promotion; and
- Ensuring that the Chief's work planning specifies measurable performance targets for achieving a staffing balance representative of the community served, and that

the Chief be assessed in the performance management cycle on his or her achievement of those targets.

### *3.5.1.1 Recruitment of Chief*

The Chief is the key link between the TBPS and the Board, responsible for implementing Board policy directives and strategic goals, for communicating between the Board and the TBPS, and for keeping the Board apprised of developing trends, issues, and community needs. It is a complex and demanding role that requires extensive experience of policing, management and supervisory skills, and the ability to function over the long term, under public scrutiny, in a high pressure environment. In Thunder Bay, those challenges are exacerbated by the complex multicultural environment and by the legacy issues documented in this report that continue to impact policing in the city.

Many boards across the country, including the Winnipeg Police Board, have established effective and proven policies on Chief recruitment. A common theme in these policies is the need to engage the community in planning for the recruitment and consulting on the statement of qualifications specifically.

The Board recently initiated recruitment proceedings for a new Chief of Police, following the retirement of former Chief J.P. Levesque. The recruitment of Chief Levesque's successor shows positive signs of a new approach. The Board sought input from the community of Thunder Bay, posting a confidential on-line survey and meeting with stakeholder groups to identify challenging issues, policing priorities and credentials necessary in a Chief of Police. According to the Board, it will require that the new Chief possess experience with and an understanding of Indigenous peoples and issues particularly those in Thunder Bay.

### *3.5.1.2 Recruitment of Indigenous Officers*

Until recently, no statistics were available on the number of Indigenous officers in the TBPS, nor on the number of officers above the rank of Constable. According to a summary of a recently completed internal workforce survey, 11% of TBPS officers identified as Indigenous (First Nation, Metis, and Inuit). The survey did not report the number of Indigenous officers above the rank of Constable; in contrast, however, it did explore the number of women ranked above Constables. The reasons for exclusion of surveying Indigenous officers in ranks higher than Constable is unknown. The survey also revealed that there are no Indigenous civilian staff of the TBPS.

A significant number of officers will be retiring in the next couple of years, leaving several vacant positions and creating the opportunity to achieve a level of Indigenous employment reflective of the Indigenous population of the community. However, there do not appear to be any quantifiable targets for Indigenous recruitment, employment, retention, or promotion within the TBPS.

Strengthening Indigenous employment in the Service would normally begin with a structured and strategic program of outreach and promotion targeted at First Nation communities, schools and organizations. The development of such a program should be informed by the ALU or input from the Indigenous community. Given the history and current state of First Nation/police relations, however, the promotion of a career in policing to Indigenous youth will be a challenge. Many young respondents said they could not envision themselves as a Thunder Bay Police officer and would not choose policing as a career path. That reluctance is understandable: one officer interviewed stated that Indigenous people do not have the motivation, education or pre-requisites required for recruitment.

While no formal assessment has been conducted regarding the Constable Selection System to identify potential systemic barriers to Indigenous recruitment, these barriers do exist:

- The TBPS currently requires mandatory grade 12 education. This barrier has been addressed in other jurisdictions: Manitoba's Aboriginal Justice Inquiry recommended that the education pre-requisite be lowered to grade 10.
- The requirements of a valid driver's license, physical testing, and interview questions that solicit answers based upon an urban experience also represent barriers, since they are not reflective of the experience or needs of northern applicants.
- The various application and tuition fees also represent barriers for potential applicants with limited financial resources.

The Chief of Police could be granted discretion to waive these conditions based on the merits of individual candidates.

It should be noted that the Board does not direct and is not actively involved in the recruitment of officers to the TBPS. However, in response to the formal letter of complaint by NAN, Grand Council of Treaty 3 and Rainy River First Nations which prompted this OCPC investigation, the Board and the TBPS have undertaken or are contemplating changes to policing in Thunder Bay; and it is anticipated that the Organizational Change Project may modify the TBPS procedure for recruitment of police officers.

### *3.5.1.3 Promotion of Indigenous Officers*

The promotion policy used for the TBPS is developed and implemented by the Thunder Bay Police Association in collaboration with the TBPS, pursuant to a collective bargaining agreement. The TBPS human resources department is not involved in this process.

When candidates are considered for promotion, consideration is given to the training courses they have taken and the number of TBPS departments in which they have served. Assessment of those factors is in part assigned to the Sergeant in command, a point of subjective analysis that creates the potential for bias. An officer who is not well liked may fall victim to the "halo" effect (a cognitive phenomenon whereby a person's overall impression of another impacts their evaluation of that person's traits and abilities). A TBPS Staff Sergeant or other officers may not open training or promotional opportunities to officers who do not fit within the "halo", thus preventing their lateral movement within the TBPS. Suggestions for approaches to create more equitable standards, such as allocating points for ethnicity in the promotion matrix, have not met with approval. It is hoped that the Organizational Change Project will modify the TBPS procedure for promotion of police officers to support the advancement of Indigenous candidates.

Again, it must be noted that the Board does not direct and is not actively involved in the promotion of officers, or any other staffing actions apart from the hiring of the Chief of Police. However, the question of promotion to achieve a more representative TBPS at all levels should be addressed in the development of a broader diversity strategy, as recommended below.

### *3.5.1.4 Systemic discrimination issues*

The absence of representative levels of Indigenous employment in the TBPS speaks directly to the existence of systemic discrimination in the structures that govern recruitment, selection, training, advancement, and retention.

The impact of changing these systems is cumulative—the greater the degree of representation of

Indigenous people in the TBPS, and on the Board, the more rapid the elimination of systemic discrimination will be.

The very process of engaging Indigenous members of the TBPS, the ALU, and the community in the formulation of a plan for achieving representative levels of employment will communicate a strong message of commitment to that goal, both internally and externally.

### 3.5.2 Recommendations

The following recommendations address issues relating to the Board's role in recruitment, retention, and promotions of Indigenous personnel within the TBPS.

#### 3.5.2.1 *Strategic Plan*

**It is recommended that the Board direct the Chief to submit, for its approval, a multi-year plan for the diversification of the TBPS, to include:**

1. Specific targets for recruitment and a timeline for their achievement;
2. Recruitment strategies that focus on marginalized communities not represented or under-represented in the TBPS;
3. An analysis of existing barriers to recruitment, selection, retention, and advancement of under-represented groups, and measures to address those barriers;
4. Creation of a multi-stakeholder advisory group to support initiatives for retention and recruitment;
5. A plan for the training and support of existing and newly recruited staff to explain and promote the value of a representative service;
6. A development and promotion plan for current Service members from First Nations and other under-represented groups;
7. A monitoring and reporting system that enables the Board to receive accurate and timely reviews of progress to measure results; and
8. Formalizing the requirement that the Chief and the Deputy Chief have knowledge or experience with Indigenous peoples, cultures, histories, and policing.

#### 3.5.2.2 *Building Partnerships for Recruitment*

**It is recommended that the Board develop, in conjunction with the Chief, a plan to build partnerships with First Nations, educational facilities and other partners to encourage Indigenous recruitment into the TBPS.**

## 3.6 Oversight of Chief and Deputy Chief

### 3.6.1 Issues

#### 3.6.1.1 *Role Definition*

The Board's relationship with the Chief and, by extension, the Deputy Chief, is the Board's most critical link with the TBPS itself.

Sections 31(3) and 3 (4) of the *PSA* provide:

- s. 31(3) The Board may give orders and directions to the Chief of Police, but not to other members of the police force, and no individual member of the Board shall give orders or directions to any member of the police force.
- s. 31(4) The Board shall not direct the Chief of Police with respect to specific operational decisions or with respect to the day-to-day operation of the police force.

The Chief, like any Chief Executive Officer, is the key agent for implementing the policy directives and strategic goals of the Board, for communicating between the Board and the Service, and for keeping the Board apprised of developing trends, issues, or community needs. It is a relationship that demands clarity; policy and procedural support and instruments; well defined goals, objectives, and expectations; structured oversight, ongoing evaluation; and a very high level of transparency and mutual trust. As the key point of communication, planning and policy, it is obviously essential that any Chief of Police in this environment must be knowledgeable of the nature and consequences of systemic discrimination and systemic racism, within the context of the Service, and be familiar with strategies for recognizing and addressing it through proactive management and engaged support to the Board in its policy-making and planning functions.

A relationship of this complexity and importance must be clearly defined, with the roles, responsibilities, expectations, and limitations understood and agreed upon by all parties. This is best achieved through a formal policy statement.

### *3.6.1.2 Performance Review*

Following selection, the Board is mandated to direct and monitor the performance of the Chief of Police. The Chief's performance is measured on the basis of an annual operational plan developed by the Chief and the Deputy Chief and reviewed and approved by the Board. This operational plan was not provided during the Investigation.

The operational plan is derived from the Board's business plan, but defines specific goals and objectives for the year, and may be updated throughout the year. The Board Chairperson and Vice Chairperson meet with the Chief in February to review the Chief's progress in meeting the plan's goals and objectives, and the annual evaluation is then placed in the Chief's personnel file.

The objectives of this operational plan should provide the benchmarks against which the Chief's performance is measured every year. However, there is no evidence that performance targets for the Chief have been set in such key areas as achieving a more representative TBPS, or in development of long-term strategies to address many of the issues raised in this and other investigations.

While Board members interviewed all agreed that the Chief is evaluated annually, the process and timeline were not clear to most members; the actual oversight of the process appears to be informal. These evaluations are, of course, confidential; it is thus not possible to assess the substantive evaluation, or the rigour and effectiveness of the process. This might be best left to a Human Resources specialist with an understanding of the systemic issues under examination. However, the lack of a documented policy for performance review underlines a gap in the Board's exercise of its oversight role.

A number of police service boards across Ontario have developed useful policies to define, establish and sustain a positive and effective working relationship between Boards and their Chiefs; those in use by the Toronto, Waterloo and Ottawa Police Services Boards serve as good examples.

### 3.6.2 Recommendations

The following recommendations reaffirm, complement and expand upon the recommendation in Part III 3.2 relating to the establishment of a Board policy governing relations with the Chief of TBPS.

#### 3.6.2.1 *Policy on Relations with the Chief*

**It is recommended that the Board develop a policy regarding relations between the Board, the Chair, and the Chief that clearly delegates operational responsibility to the Chief, but also outlines the Chief's duties at a high level to include:**

1. The duty to manage the TBPS effectively and efficiently;
2. The duty to implement the policy direction of the Board;
3. The duty to ensure the TBPS reflects the community it serves;
4. The duty to report to and provide information to the Board; and
5. The duty to brief the Board on serious incidents that can affect the community, either past or anticipated.

This recommendation is also included under the first set of recommendations on governance.

Useful models of such policies include documents developed by the Toronto, Waterloo and Ottawa Police Services Boards. Of particular interest is the detailed policy from Kahnawá: ke First Nation, entitled "Relationship with the Chief Peacekeeper".

#### 3.6.2.2 *Policy on Duty to Report*

**It is recommended that Board policy on Relations with the Chief specify the Chief's responsibility to report to the Board on operational matters that may become matters of concern to the Board, including:**

1. The performance of the TBPS, specifically in delivering services free of bias, racism, discrimination and harassment;
2. TBPS compliance with policies;
3. The state of community relations;
4. Developing trends or significant incidents that would affect plans or changes to police services;
5. Implementation of operational and training plans; and
6. Board input or decisions required.

When required (and not as a general practice), briefings can be held in camera or sections of reports can be flagged as confidential if they involve ongoing investigations or the deployment of resources that could be compromised if made public. Examples of this would include:



- Specific incidents that may attract a great deal of public concern, raise concerns with specific communities, or bring the service into disrepute;
- A series of related incidents for similar reasons, as stated above;
- Matters that will affect key elements of the Board's business (strategic) plan; and
- Major events, as defined in the Morden Report, that involve risk to the community, a major redeployment of service resources, or the possibility of major public controversy.

## 3.7 Good Governance: Communication and Transparency

### 3.7.1 Issues

The Adequacy Regulations, of *O. Reg. 3/99: Adequacy and Effectiveness of Police Services*, provide guidance to the Board on the need to consult with various sectors of the community in its planning. However, the issue of communication with both the Indigenous community and the general public requires a broader approach than just consultation on specific issues and initiatives. In order to foster a climate in which the Board can truly act on behalf of all the people of Thunder Bay, measures will be required to achieve this:

- Greater transparency and improved access to policies, plans, priorities, events, meetings, records, and presentations;
- Deeper community awareness of and support for the role of the TBPSB, its members and its activities; and
- A clear understanding of the distinct role of the Board as the governor of the TBPS.

#### 3.7.1.1 Proactive Communication

The role of the Board is not well understood by the public. It is not intended to be either a cheerleader for or an opponent of the TBPS, but a governing and oversight body designed to provide policy and planning direction to the TBPS; to provide oversight and judgment on the performance of the TBPS and its implementation of the goals the Board has set for it; and to protect the TBPS from undue political interference. In order to exercise these functions effectively, public confidence is essential. However, the lack of ready access to the Board, its extremely limited online presences, and its close alignment with the TBPS have inhibited effective communication and limited public understanding of its role.

Currently, the Board does not have independent media relations staff: media liaison services are provided by the TBPS. The Secretary to the Board serves as the contact person for Board-related media inquiries. The communication with media or the community that does occur appears to be reactive and undertaken in response to external queries or events. There appear to be no formal Board procedures or effective instruments to actively promote transparency or to inform the public of the Board's mandate, activities, meetings and decisions.

Policy-driven communication planning is an integral part of any organization's strategic and operational planning cycle; it is particularly important in an environment where such serious issues of perception and distrust exist.

An excellent example of how a Board has sought to inform the public of its activities and educate the community about what it does is provided by the Saskatoon Board of Police Commissioners.

#### *3.7.1.2 Online Presence*

While the TBPS business plan and annual reports are available on the TBPS website, the Board's only online presence appears to be a tab on the TBPS site, listing media releases. There is no separate Board website, and extremely limited information on the Board's mandate, membership, powers, functions, authorities, or activities. None of the available information is consolidated in a separate Board-specific site, or in an easily accessed, Board-specific section of the TBPS website.

Board members acknowledged the lack of a clear and accessible online presence and have directed their recently-engaged communications consultant to develop a communications strategy, which will presumably consider the establishment of a website, and provide guidelines for the use of other online resources and social media, as appropriate. They will also look to the recommendations of this Investigation to develop communication options, policies and plans.

#### *3.7.1.3 Board Meetings*

Board meetings are usually held at Police headquarters on Balmoral Street in Thunder Bay. While the meetings are open to the public, many interviewees commented that the location is an intimidating environment, and represents a disincentive to public participation. Some Board members also recognized this as a constraint.

New technologies such as livestreaming may provide an alternative to in-person attendance by the public; these, however, embody their own security and technological challenges.

The Chair has also indicated that meetings could in future be held in other, more accessible locations, including the Faculty of Law, Dennis Franklin Cromarty School, or community centers. There is currently no plan to do so.

#### *3.7.1.4 Systemic discrimination issues*

Community awareness, understanding and support for the work of the Board is severely constrained by the lack of Board level communication policy and plans, of an easily accessible online presence, and of proactive efforts to promote and explain the role, authorities, priorities and achievement of the Board. This further exacerbates the gap between the Board and the Indigenous community, much of which lacks the resources or tools to access this information through other means. The result is an even deeper sense of marginalization, indifference and distrust.

### **3.7.2 Recommendations**

The following recommendations suggest approaches to increase community awareness of and support for the role, priorities, and activities of the Board.

### *3.7.2.1 Policy on Communication*

**It is recommended that, consistent with practice of many boards across the country, the following steps be taken by the Board to make itself publicly accessible:**

1. Creation of its own website, with a separate look and feel from the Police Service;
2. Use of social media tools embedded in the site to encourage input;
3. Posting of meaningful information on police activities such as the budget, performance reports, etc.; and
4. Development of Board-specific policies and protocols for representation of the Board, crisis communication, Board confidentiality, and other internal and external communication needs.

Policy-driven communication planning is an integral part of any organization's strategic and operational planning cycle; it is particularly important in an environment where such serious issues of perception and distrust exist.

### *3.7.2.2 Plan for Consultation*

**It is recommended that the Board develop and publish online an annual outreach and consultation plan, identifying:**

1. Groups that it plans to consult on specific issues or general matters;
2. First Nations affected by population flow between them and Thunder Bay; and
3. Indigenous organizations with actual or potential linkages to TBPS programs, services, and operations.

### *3.7.2.3 Policy on Openness*

**It is recommended that the Board create a policy statement committing to the principle of openness and transparency in its communication. Specific measures reflecting this policy should include:**

1. Commitment to open meetings, accessible to the community, with formal notice of the rationale for any closed or in-camera sessions or meetings;
2. Meetings in non-police service facilities, with a minimum of security barriers or clearances necessary to gain access;
3. Publication of meeting notices, meeting agendas, supporting material, and minutes with sufficient detail to clarify the proceedings;
4. Online publication of Board policies, with opportunities for community members to provide input on policies under development;
5. Producing and posting video coverage of all public meetings; and
6. Any other measures consistent with the principle of openness and transparency.

## 3.8 Good Governance: Relationship Building with Indigenous Groups

### 3.8.1 Issues

#### 3.8.1.1 *Building relationships*

Central to the issues this Report addresses are the challenges of building positive relationships with Indigenous groups in Thunder Bay and with the Indigenous communities affected by the past actions of the TBPS. The Board has a long way to go to establish such relationships.

There is an Indigenous perception of the TBPS and the Board as closed, inaccessible, and predominantly mainstream institutions, which both sustain and perpetuate systemic discrimination and systemic racism. First Nations people interviewed described minimal to no formal interaction or communication with the Board, aside from casual or chance conversations with individual Board members at social events. That experience contributes to a spirit of cynicism that breeds a perception that the Board is disinterested in addressing the issues that are the subject of this Report. To combat this, the Board must be, and must be SEEN to be, transparent, proactive, engaged, and accountable in its dealings with the community. This investigation has described several concrete, practical measures to achieve that goal.

Both the Board and the Indigenous community will have to take a very long view of this process, recognizing that the years of troubled relationship will not be overcome by any single visit, meeting, or consultation. The approach must be long-term, patient, strategic and systemic. The ultimate measures of progress are not in the actions taken by the Board, but in the response of the communities of Indigenous peoples within Thunder Bay and northern Ontario.

It should be acknowledged that some initiatives, such as the Friendship Agreement between the Board, City of Thunder Bay, Fort William First Nation, and North Caribou First Nation (2017), are indicative of commitment and progress.

The Board acknowledges challenges in its relationship with the leadership of such groups as NAN, Grand Council of Treaty 3 and Rainy River First Nations. Board members expressed a desire to foster and establish partnerships with Indigenous leadership. They acknowledged that this cannot be done through policy development alone; it will require willingness and effort by both the Board and Indigenous groups. The Board recognized that continuous efforts will be required to build trust with Indigenous peoples, creating a climate in which the community will feel comfortable and confident enough to report crimes and to engage positively with TBPS.

#### 3.8.1.2 *The Aboriginal Liaison Unit*

One potential vehicle for creating linkages between the Board, the TBPS, and the Indigenous community and organizations is the ALU. Currently, the Unit focuses on education and outreach. Its priorities, programs and activities are determined by the officers in the Unit. Two officers are assigned to the ALU, typically for a three-year term (or longer, if requested). Officers report to the Staff Sergeant of Community Services. Currently, no orientation is provided to officers when they begin their position in the ALU.

General duties of the ALU officers, which take up most of their time, include school visits and attendance at special events.

Some ALU officers create and obtain approval for programs or activities to benefit the community; some take less initiative and perform basic duties. Officers described positive and successful initiatives intended to bridge the gap between police officers and Indigenous students or to provide education on student safety. These have included annual sporting events among TBPS officers and Indigenous students and the production of a safety video and pamphlets for students. Unfortunately, these initiatives have not always been maintained by successive ALU officers.

The ALU also carries out the Visit Program, described in Part II 4.5 of this Report. In 2017, ALU officers travelled to northern First Nation communities approximately seven times, and as of June 2018, ALU officers visited First Nation communities four times, with plans to visit three other First Nations. This is not a permanent program; it is contingent on available financial resources and auxiliary support provided by the NAPS. In 2015, ALU officers attended First Nation communities only twice. The TBPS 2018 Implementation Update on the Seven Youth Inquest does not clarify whether this program will become a permanent feature of the TBPS.

While the ALU provides a valuable potential starting point for building relationship with the Indigenous community, their current work assignments and structure do not reflect a longer-term strategic goal:

- Officers in the ALU are not required to prepare annual work plans, strategic objectives or priorities;
- Officers are not required to submit any formal reporting of activities, unless an issue-specific report is requested;
- Although ALU officers attend quarterly meetings with the Chiefs Advisory Committee on Indigenous Issues, the ALU has not generally been consulted by the Board for input on Indigenous issues;
- The ALU operates between 8:00 a.m. – 4:00 p.m., Monday to Friday. No officers serve the ALU beyond these hours, unless service is specifically requested. These hours limit their availability to the community, and constrain their participation in after-school events, reducing their contact with students;
- As noted, many of the programs supported by ALU officers are funded year to year, not as ongoing initiatives; and
- The activity level of the ALU is contingent on the Chief in command, and on the initiative of the officers assigned to the Unit. Respondents agree that the ALU was more active during the tenure of Chief of Police Robert Herman than it has been in subsequent years.

It should be noted that the committee involved with the Organizational Change Project intends to offer recommendations to restructure the ALU. Because the Board has the authority to develop policies for the proper functioning of the TBPS, this report includes recommendations to enhance the operation of the ALU.

### 3.8.1.3 *Systemic Issues*

This report and its recommendation have identified many areas in which closed systems (e.g., planning and policy development) tend to exclude interested community members and organizations, particularly on issues of relevance to Indigenous groups, thereby perpetuating systemic discrimination. When goals are not set, priorities are not revisited, policies are not

reviewed, and assumptions are not challenged, then established values, including negative and outdated perspectives on policing the Indigenous community, remain unquestioned at the heart of the institution's culture and decision-making. However, this Investigation has also provided recommendations to open the Board to much needed scrutiny and input from the community through the various consultation, planning, and policy development measures proposed.

### 3.8.2 Recommendations

This report has set out a number of recommendations intended to strengthen relationships and communication with Indigenous community members and organizations. These include recommendations on the establishment and publications of an annual cycle of consultation to provide input to the planning and policy development processes; training for Board members to familiarize them with the Indigenous community and organizations; and a commitment to openness and transparency. This section lists recommendations for additional measures.

#### 3.8.2.1 *Recognition and Reconciliation*

**It is recommended that the TBPSB formally and explicitly adopt principles of reconciliation and recognition of Indigenous peoples in their governance and service delivery models.**

#### 3.8.2.2 *Liaison with other Agencies*

**It is recommended the Board establish a specific policy with respect to both the Board and the TBPS' relationship with First Nations communities, people, governments, organizations and service providers setting out the Board's goals, objectives, strategies, communication and consultation protocols, and other measures to facilitate more effective relationships.**

The Board must find ways to listen to the community it serves and reflect on what it hears. The Board is working in a complex environment shaped by different governments, different communities and different levels of resources. It must reach out to Indigenous partners within Thunder Bay and beyond in formal ways to have continuing discussions and engage in problem-solving.

**It is recommended that the Board establish formal agreements with First Nations governance bodies to share information and raise cultural awareness.**

There are many practices and models in communities across Canada with potential application to Thunder Bay. The Board is encouraged to study or, ideally, conduct site visits to communities with large Indigenous populations, such as Winnipeg, Saskatoon, Regina, and Edmonton, to learn about how those police boards or commissions have developed effective relationships with the Indigenous population.

#### 3.8.2.3 *A Stronger Aboriginal Liaison Unit*

**It is recommended that Board direct the TBPS to develop formal Terms of Reference for the Aboriginal Liaison Unit.**

These should include the ALU's mission, powers, authority, structure, accountability, membership, responsibilities of individual members anticipated outputs and outcomes, and reporting requirements.

### **3.9 Good Governance: Board and Police Training**

#### **3.9.1 Issues**

##### *3.9.1.1 Orientation of Board Members*

Orientation for new Board members has been informal. There is no Board orientation manual, package or process for introducing new members to their responsibilities and functions, nor to the exercise of those functions in the context of the TBPS. They are directed to the Ontario Association of Police Services Board's website to review information related to police governance. The MCSCS Board Advisor and other Board members are available as resources to assist informally in their orientation.

However, being a member of a police governance body, be it a Board, commission or committee, is uniquely challenging. One must bring some qualifications to the table, but there are subject areas that will be new. The responsibility of directing and overseeing the policing services in a community, while protecting police service's independence under the law and ensuring that community interests, composition and priorities are reflected in police operations, requires both boldness and balance. Practice and experience are invaluable; however, so is training specific to this unique type of governance. Added to the usual skills and knowledge required of any Board member, the orientation and training of police service board members must reflect the continually changing field of policing itself, and the need to keep abreast of the many developments in policing, in the community being served and in the many administrative, legal and human dimensions that make up this complex field.

These needs require a more rigorous, formal and structured approach to orientation than has hitherto been the case in Thunder Bay. Such an approach, often referred to as "on-boarding," provides the new Board member with a full understanding of the legal and governance framework involved with police governance. Previous experience on other boards or being an elected municipal official does not exempt Board members from having to undergo such training, as this role is unique, distinct from municipal governance and guided by the law with which the member needs to be familiar. A simple reference to the MCSCS training material or material on the OAPSB website is not sufficient.

Recommendations at the end of this section set out the proposed content of a new Board member orientation session. Ideally, materials to support a standard orientation methodology should be developed in co-operation with OAPSB and the MCSCS.

##### *3.9.1.2 Training of Board Members*

Virtually every police board in the country has a policy on board training. Most tend to focus on orientation training, rather than development and sharing of practice training. Many boards rely heavily on the police service to provide the bulk of the training, which is most frequently focused

on familiarizing members with the legislation, the service itself and some elements of police practice.

According to the Board, their meetings frequently include an educational component—often a presentation on a local interest group or issue, such as the Crime Prevention Council, Indigenous justice, or a drug awareness strategy. The Board has also received other ad-hoc training, including basic training from the MCSCS Advisor on the “nuts and bolts” of police board governance; screening of the Walk-A-Mile video series; and a one-day training session hosted by the OHRC.

As noted earlier in this Report, however, ad hoc training is inadequate to address the needs associated with the complex social environment of Thunder Bay.

One of the most significant gaps is the absence of structured, sustained and comprehensive cultural awareness training for the TBPS and Board. Mandatory Walk-A-Mile training and various sessions on cultural awareness during the annual academic training days have been provided but these are sometimes delivered by First Nation trainers unfamiliar with local and northern Ontario customs and traditions. Such events are ad hoc, limited in their scope and scale, and, with the exception of the Walk-A-Mile training, not mandated by the Chief or the Board. When voluntary anti-oppression workshops and training were offered to TBPS, only one officer attended.

There is a clear need to ensure that the TBPS and the Board receive regular, relevant, comprehensive and mandatory cultural awareness training. This training should address First Nations history, Indian Residential Schools, treaties, and colonization topics specific to the Fort Williams First Nation, and the Ojibway, Oji-Cree and Cree people that make up northern Ontario.

### *3.9.1.3 The Need for a Training Strategy*

Cultural awareness, though clearly an essential competency for members of the Board, is only one of multiple areas of skill or knowledge required of board members. That range of training needs can only be met through a formal board training strategy.

The objective of the strategy must be to equip Board members with the knowledge, awareness and skills in governance, police practice, community priorities, business strategy and the law to fulfill their police governance mandate upon appointment and throughout their term of office.

In addition to the process for orientation proposed above, there are three additional elements to a complete strategy that span a Board member’s term of office.

#### **1. On-Going Briefings on Key Issues**

It is common practice for boards to build a training component into their meetings. This training generally focuses on topics such as governance practice and legal changes; police practice and development; and relevant community developments, plans, new practices, and changing profiles.

Training is the responsibility of the Chair to organize and to ensure that records are kept of the training offered and who completed it. While “Show and Tell” presentations by the police service itself can form a valuable part of this training, especially with respect to police practice and



developments, the Board needs, in its annual planning cycle, to articulate its own ongoing training needs.

## 2. Electronic Reference Resources

While the Ministry provides some useful training resources, certain materials require revision and updating. A concerted effort should be made to use existing OAPSB and Canadian Association of Police Governance (CAPG) resources online, and support their improvement.

## 3. Engagement in the Police Governance Community

Police board training must emphasize the importance of systematic engagement with provincial and national police governance organizations by attending conferences with a heavy training element, such as CAPG and OAPSB or relevant provincial organization; the use of the CAPG Webinar series for updates and sharing of information; and attendance at OAPSB regional updates. The Province should fund the development of the proposed training and assist the OAPSB in updating its current online orientation material, especially if it is to be the standard orientation package.

### 3.9.2 Recommendations

#### 3.9.2.1 Board Orientation

**It is recommended that the Board, in co-operation with OAPSB and funded by the Province, develop a compulsory, standard orientation package for new Board members that will include:**

1. Briefing by the Chair on:
  1. Oath of confidentiality;
  2. Conflict of interest statement;
  3. Relevant legislation, especially the governance provisions of the *Police Services Act*;
  4. Strategic (Business) Plan for the Service: process and content;
  5. Overview of current budget, and of the budgeting process;
  6. Board policies and procedures;
  7. Roles, powers, authorities, limitations and expectations of a Board member;
  8. Review of current issues;
  9. Review of confidential issues;
  10. Communication protocols; and
  11. Meeting schedule, planning, agendas, minutes, and protocols.
2. Overview of the Police Service by the Chief of Police:
  1. Outline of the organization, personnel and deployment;
  2. Tour of facilities;
  3. Meeting with senior and frontline officers;
  4. Briefing on Current Challenges and Community Developments; and
  5. "Ride Along" with frontline officers.

### 3.9.2.2 *Requirement to complete orientation*

**It is recommended that newly appointed Board members not be able to vote until they have completed this training.**

Being a municipal councillor does not relieve the duty to take this training. In fact, given the different set of duties a municipal councillor assumes when becoming a member of a police service board, it makes it more vital that they understand the difference and are prepared to act as full members. The police board exists in law independently of the municipal committee structure.

### 3.9.2.3 *Cultural awareness training*

**It is recommended that the Board undertake on-going series of cultural awareness training sessions in which it invites various parts of the community to help it better understand their issues with respect to public safety.**

These sessions should be a planned and formal part of the Board's meeting schedule and not simply one-time events.

### 3.9.2.4 *Use of existing Training and Development Resources*

**It is recommended that the Board use the training and development resources available from the Canadian Association of Police Governance and Ontario Association of Police Service Boards.**

These would include CAPG's program of practice webinars and its members-only Knowledge Central, which contain a wealth of policy and background material. The OAPSB holds regular provincial and zone meetings and keeps its members abreast of policy changes specific to Ontario. These two organizations, each complementing the other, are resources regularly used by most boards in the country.

## **4 Role of Ministry of Community Safety and Correctional Services**

The PSA assigns the MCSCS the responsibility for inspecting Ontario's police services (both the board and police service) to ensure that communities in Ontario receive a consistently high standard of policing. Section 3(2) of the PSA outlines their role as follows:

Section 3(2) The Solicitor General shall,

- (a) monitor police forces to ensure that adequate and effective police services are provided at the municipal and provincial levels;
- (b) monitor boards and police forces to ensure that they comply with prescribed standards of service;
- (c) develop and promote programs to enhance professional police practices, standards and training;
- (d) conduct a system of inspection and review of police forces across Ontario;

- (e) assist in the co-ordination of police services;
- (f) consult with and advise boards, community policing advisory committees, municipal chiefs of police, employers of special constables and associations on matters relating to police and police services;
- (g) develop, maintain and manage programs and statistical records and conduct research studies in respect of police services and related matters;
- (h) provide to boards, community policing advisory committees and municipal chiefs of police information and advice respecting the management and operation of police forces, techniques in handling special problems and other information calculated to assist;
- (i) issue directives and guidelines respecting policy matters;
- (j) develop and promote programs for community-oriented police services;
- (k) operate the Ontario Police College.

The MCSCS is also responsible for the appointment of the provincial representatives to police services boards.

The PSA and regulations assign the Ministry a number of important functions in support of effective police governance. These multiple roles, while they reflect standard responsibilities for any level of government with this range of policy functions, can lead to conflicts and questions of interpretation and priority. The balance of these roles is important. For the purposes of this discussion, the key roles of the MCSCS are:

- Creating the policy framework in law, regulations and standards;
- Managing the appointment process;
- Providing support to boards through training material and advice;
- Monitoring performance, reporting to boards and to the Ministry;
- Monitoring policing trends of relevance to boards; and
- Designating specific occurrences and types of crime that require criminal investigations by municipal police forces.

#### 4.1.1 Performance of Role

Interviews indicate that the MCSCS as whole, with the exception of individual advisors assigned to boards within designated zones throughout the province, has played a relatively passive role in addressing the issues that have emerged in Thunder Bay in relation to violence against Indigenous peoples. Its general approach to monitoring the Board appears limited to offers to educate the Board on the PSA and regulations, providing policy templates, conducting investigations into various policy areas, and attendance at meetings. It did not provide any analysis or information on the trends of criminality in Thunder Bay, particularly in relation to Indigenous peoples, nor did it identify this as an issue that the Board ought to address in its governance function.

It is also clear that the current Board failed to utilize the resources provided by the MCSCS. The Board did not actively engage the MCSCS advisors in either Board training and development, resolving issues involving the Board's role or any other specific issues, despite repeated offers

from MCSCS advisors. It was explained during the interview process that the MCSCS advisors lack enforcement mechanisms with respect to their role with police service boards.

In general, the policy guidance provided by the MCSCS in addressing most aspects of governance and monitoring of the Board's overall role has been nominal to adequate. The MCSCS ensures that the basic policy requirements are met. However, it ought to expand its advice or guidance in other critical areas, particularly with respect to trend analysis, overall governance roles and the important distinction between policy and operations. The training material developed by the MCSCS places considerable emphasis on constraints prohibiting police services boards from directing operational matters, without providing the kind of balance that is intended by other sections of PSA. In essence, it heavily focuses on what a police board cannot do, rather than what it should do.

The nature of the inspection process undertaken by the MCSCS is unclear. There is no pattern of systemic evaluation or effectiveness reports to police boards by the MCSCS. Issues relating to compliance with standards and the adoption of policies are managed on a bilateral basis. The MCSCS publishes no information on its inspection processes so the public remains unaware of how the police boards measure up.

#### 4.1.2 Systemic Discrimination Issues

The unfolding of events in Thunder Bay provide clear warning signs of systemic discrimination, as illustrated in this Report and confirmed in various other investigations and reports. The MCSCS has an important role to play in, *inter alia*, identifying criminal justice trends in Ontario society that affect policing and informing the relevant Boards of the same. This role appears to have been overlooked, contributing to the perpetuation of systemic discrimination within police governance in Thunder Bay.

The *Adequacy and Effectiveness of Police Services Regulations* provide the opportunity and direction to the MCSCS to proactively monitor the circumstances in Thunder Bay. Section 12(1)(v) of these Regulations provides the MCSCS with the authority to identify and designate the types of crime not otherwise enumerated in the *Adequacy and Effectiveness of Police Services Regulations* that warrant investigation management by the Chief of Police (Government of Ontario). This duty can refer to high-level changes in economic, crime, or social trends that affect the provision of adequate police services. However, it can also refer to location-specific trends that require focused police attention, such as unusual patterns of police events; the potential impact of major events or natural disasters; a high level of gang violence, human trafficking, or missing and murdered Indigenous women and girls; and general violence and hate crimes perpetrated against Indigenous peoples.

It is clear that the MCSCS did not identify these unmistakable trends in a formal way; furthermore, there is no evidence that the MCSCS gathers or provides this kind of information to the Board. Nevertheless, s. 12(1)(v) strongly suggests that it is the responsibility of the MCSCS to identify and designate "other types of crime" in the context of violence and crimes against Indigenous peoples in Thunder Bay.

One real challenge for police services boards generally is to determine when a series of events become a pattern of broader concern. Within the context of the operations/policy framework, the question must be asked: when does a single investigation (an obvious operational matter beyond

the scope of board intervention) become a series of investigations or incidents that have an overall impact on the police service, its accountabilities, and the assurance of adequate policing for all its residents? At what point would a series of such incidents suggest profound, systemic discrimination within the service?

These are difficult questions and such incidents could be challenging to monitor and link, if they were not so obvious as in Thunder Bay's circumstances. However, it seems clear that had the MCSCS exercised its authority set out in s. 12(1)(v) of the *Adequacy and Effectiveness of Police Services Regulations* and had the Board expressed concern and sought advice from its MCSCS advisor regarding the obvious level of criminal violence against Indigenous people in Thunder Bay, perhaps the existence of systemic discrimination could have been ameliorated to some extent.

### 4.1.3 Recommendations

The MCSCS plays an important leadership role for police services boards, particularly for those that do not have adequate resources or the capacity to develop, implement and monitor plans and policies, let alone ensure that they are effective.

Because the Terms of Reference mandate this Investigation to provide “[a]ny recommendations, proposals or best practices that should be considered or adopted by the TBPSB or by the OCPC or the Ministry of Community Safety and Correctional Services in respect of their roles in providing oversight to the TBPSB”, the following recommendations are proposed. They are intended to enhance the MCSCS's role in ensuring adequate and effective police services in all Ontario communities, and especially in Thunder Bay.

#### **It is therefore recommended that the MCSCS:**

- **Create a Police Board Governance Standard that would mandate the roles and necessary governance tools of each police service board, to include:**
  1. Roles of the Board to govern the police service;
  2. Obligation to engage community in its deliberations;
  3. Need for Board to be sensitive to First Nations realities;
  4. Duties of the Chair and Vice-Chair;
  5. Governance Processes;
  6. Public Access guidelines, most notably the need to constrain the use of closed meetings; and
  7. Relationship with the Chief, including setting of goals, monitoring of performance and the need for formal performance evaluation processes.
- **Create a New Board Member Orientation Standard that would require all new board members to undertake a specific training process before they can participate in board meetings as voting members;**
- **Develop a Performance Evaluation Protocol to provide boards with the tools to assess their performance and to enable the MCSCS to conduct, through an inspection process not now in place, periodic evaluations of the board's**

- performance. Such evaluations could take place every three years, as they would constitute a resource demand on the MCSCS;**
- **As applicable, designate the following crimes for which the TBPS Chief of Police must develop and maintain procedures and processes for criminal and general investigations:**
    1. Criminal Organization;
    2. Human Trafficking;
    3. Missing and Murdered Indigenous Women and Girls; and
    4. Hate Crimes and Violence against Indigenous Peoples.
  - **Create, or make more accessible, the trend analysis that the MCSCS is required to undertake under the PSA and ensure that such analysis emphasizes marginalized communities, most notably First Nations.**
  - **Clarify in policy that Zone Advisors can attend all board meetings, whether they are open or closed, subject to the same confidentiality rules that apply to board members.**

## **PART IV: Appointment of an Administrator**

### **1 The Need for an Administrator**

Police services boards, such as the Board, are central to ensuring that communities receive adequate and effective police services in accordance with the principles set out in Section 1 of the PSA. As established throughout this Report, much of the Indigenous community in Thunder Bay has not been provided adequate and effective police services. The Board has clearly failed in its obligations both to the police service itself, but, more importantly, in my opinion, to all the citizens of Thunder Bay, as well as those who travel to or through it for various reasons.

In these circumstances what, if anything, can be done? An obvious answer would be to simply replace the members of the Board with individuals who will carry out their duties in an appropriate fashion. This cannot easily be done in Thunder Bay for two reasons.

First, it would appear that, with the exception of the recent appointment of a representative of the province, Celina Reitberger, the terms of all of the current members have either expired or will be expiring in the near future. They have either declined re-appointment, or will not seek re-appointment, or, as outlined below, should not be re-appointed.

Second, the problems with the Board are systemic. Simple replacement of the current Board members will consequently not solve the problem without systemic changes, as recommended herein.

I believe that bold measures are required. Police services boards need to be cognizant and capable of carrying out all of their statutory responsibilities. The Board has demonstrably shown that it cannot. These flaws cannot be remedied by the appointment and training process that the Board historically supports and follows because these constitute part of the systemic problem.

I am, therefore, recommending the appointment of an Administrator for a period of time. As outlined below, the Administrator will temporarily exercise all of the powers of the Board while the Board is reconstituted in the interim period. The Administrator will carry out all of the functions and responsibilities of the Board until new members, along with Ms. Reitberger, are appointed and have received appropriate and relevant training. The Administrator shall continue to carry out all Board responsibilities and functions including the creation of an appropriate policy framework, as recommended elsewhere. As soon as the newly appointed Board members successfully complete such training, they can assume the powers of Board members. At that time, the Administrator will remain in an advisory capacity until the end of his or her term. Further, the Administrator will work with the MCSCS and the City to ensure that an appropriate level of administrative support will be made available to the Administrator and the Board.

Does the OCPC have the power to make such an Appointment? I believe it does.

The PSA provides legislative authority to the OCPC to make certain orders where it is found that the Chief of Police or a board failed to comply with prescribed standards of police service. Section 23(1) of the PSA provides:

**“Sanctions for failure to comply with prescribed standards of police services**

23 (1) If the Commission is of the opinion, after holding a hearing, that a board or municipal police force has flagrantly or repeatedly failed to comply with prescribed standards of police services, the Commission may take any of the following measures or any combination of them:

1. Suspending the chief of police, one or more members of the board, or the whole board, for a specified period.
2. Removing the chief of police, one or more members of the board, or the whole board from office.
3. Disbanding the police force and requiring the Ontario Provincial Police to provide police services for the municipality.
4. Appointing an administrator to perform specified functions with respect to police matters in the municipality for a specified period.” (PSA)

The OCPC may dispense with a hearing where the circumstances constitute an emergency. Section 24 of the PSA provides as follows:

**“Emergency, interim order**

24 (1) The Commission may make an interim order under subsection 23 (1), without notice and without holding a hearing, if it is of the opinion that an emergency exists and that the interim order is necessary in the public interest.

**Restriction**

(2) The Commission shall not remove a person from office or disband a police force by means of an interim order.” (PSA)

In a Judgment, dated December 13, 2016, the OCPC employed this section to appoint an Administrator for the Peterborough Police Services Board (PPSB). In that Judgment, the OCPC found as follows:

“B. Order:

3. Based on evidence obtained during the course of the investigation, as summarized in this Order, the Commission is now of the opinion that the ongoing dysfunction of the PPSB constitutes an emergency and that the appointment of an administrator pursuant to subsection 23(1) of the PSA is necessary in the public interest.”

The key questions are whether the current circumstances in Thunder Bay constitute an “emergency,” and whether the order is necessary and in the public interest such that this section can be properly invoked. In my opinion, all of these conditions are met for, *inter alia*, the following reasons:

- In light of the preponderance of evidence before it, the Board has failed to appreciate the extent of the policing crisis within the Indigenous community. As such, the Board has perpetuated systemic discrimination that has directly impacted First Nation peoples in Thunder Bay, and thus lost the capacity, without the reforms recommended, to function as the governor of the police on behalf of the community;



- The Board has lost considerable credibility in terms of its capacity to make policy, direct the police service, and act in a manner prescribed by law;
- In not setting in place policies and practices associated with good police governance, the Board has failed to adequately direct the police service, and therefore, placed the community as a whole in jeopardy;
- The Indigenous communities of Thunder Bay have repeatedly expressed severe distrust with both the TBPS and the Board. As this Report demonstrates, significant portions of that distrust are justified;
- Identifying the existence of both individual acts of racism and systemic discrimination, as we do in this Report, only highlights the problems. It does not solve them;
- The problems of racism and systemic discrimination are current and because they have been dismissed for so many years they require urgent redress and constitute an “emergency” situation in Thunder Bay;
- The problems are compounded by the unwillingness of both the TBPS and the Board to fully and unreservedly acknowledge the existence of acts of racism and systemic discrimination;
- The Board is, or should be, due for a complete turnover, with one exception;
- It is urgent and essential that the new Board be given the proper training and guidance before the Members take up their duties;
- While this training is taking place, the Board must continue to function;
- It is critical that the process of gaining respect and acceptance of the Board by the Thunder Bay community begin immediately;
- Holding a Hearing of the current Board Members under Section 23 of the PSA is not a viable option. The issues are systemic and have existed for decades, thus, not caused only by the actions or non-actions of the current members;
- The suspension or removal of members under Section 23(1)1-2 is not necessary as the members have either retired or will retire soon. This section could be employed if any of the members are re-appointed by the City of Thunder Bay.

## **1.1 Attributes of the Proposed Administrator**

I will leave the selection of the Administrator to the OCPC. I would, however, call upon the OCPC to consult with leaders of the Indigenous community whose concerns gave rise to this Investigation, prior to making such an appointment.

I would also recommend that the Administrator possess, at a minimum, the following attributes:

- The Administrator should not be a person who has a vested interest in the current situation and can be seen to be free from bias insofar as policing in Thunder Bay is concerned.

There should be no possible suggestion that the Administrator is part of the “history” of the Board;

- The Administrator’s function is to be limited in time and scope and is one of organization, oversight and education;
- The Administrator is to be knowledgeable in police service board matters generally;
- The Administrator should also be knowledgeable in board governance matters generally;
- The Administrator should be legally trained so that he or she can preside over meetings of the TBPSB and the subcommittee thereof and guide the Board with respect to the various legal challenges currently facing it;
- The Administrator should be a person who will either have or who could gain the respect of both the Indigenous and non-Indigenous community; and
- The Administrator should be a consensus builder.

## **1.2 Term of the Administrator**

This is an interim appointment on an emergency basis. I recommend that the appointment be for a period of one year, with the OCPC reserving to itself the power to extend the term, if necessary.

## **1.3 Remuneration of the Administrator**

The circumstances in Thunder Bay are exceptional. I recommend that the City of Thunder Bay pay all of the costs and expenses of the Administrator by means of a one-year specific increase in the budget of the Board. This would ensure that the operations of the police services are not adversely affected by the recommended appointment.

## **1.4 Duties of the Administrator**

It is recommended that the Administrator perform the following functions:

- (a) Until the Board members have completed their training and are eligible to vote, 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.
- (b) Design a suitable training strategy and package for all board members consistent with recommendations made herein, particularly those set out in Part III 3.9. The Administrator will secure resources for its design and delivery. The Administrator will ensure that all Board members receive this training. The Administrator (and, in the future, the Chair) will certify, in writing, that the training is complete.
- (c) When some, but not all, of the members have completed their training and are, consequently, eligible to vote, the Administrator shall continue to preside over all regularly scheduled and special meetings of the Board, including the in-camera portions. The Administrator shall also continue to attend and preside over all sub-committee meetings.

The Administrator shall have one vote, except in the case of a tie when the Administrator shall have an additional deciding vote.

- (d) When all board members have completed their training and are, consequently, eligible to vote the Administrator shall attend, either in person or by conference call or video conference, all regularly scheduled and special meetings of the Board, including all in-camera portions. The Administrator shall, in the same manner, attend all sub-committee meetings. The Administrator shall have a single vote.
- (e) On his or her 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.
- (f) Achieve and maintain compliance with the PSA and any applicable regulations made pursuant to the PSA;
- (g) Establish a suitable policy framework for the ongoing governance of the Board and review and update as necessary a protocol for its relations with the TBPS, Thunder Bay City Council and other organizations;
- (h) Have full power and authority to make any changes he or she sees fit to the Board processes to enhance governance over itself or the TBPS;
- (i) Make recommendations to the Executive Chair of the OCPC on the Board's composition, including the power to suspend any or all of its Members;
- (j) Work with the Board to engage the public in discussion about the Board and its role; and
- (k) 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.

## **1.5 Powers of the Administrator**

It is recommended that the Administrator be given full power and authority to perform any or all of the responsibilities set out under section 31(1) of the PSA, as described earlier in this Report.

## **1.6 Appointments by the City of Thunder Bay**

The City of Thunder Bay will soon be in a position to make appointments to the Board. I would urge them to not reappoint any of the current members as I believe the Board must start afresh with a whole new approach. Systemic discrimination will not be eradicated only by means of recommendations in a Report such as this. It will require years of continuous effort by both Indigenous and non-Indigenous citizens. Should the City of Thunder Bay chose to ignore, or refrain from accepting this recommendation, I recommend that the OCPC use the powers given to it by Section 25 of the PSA. I sincerely hope that this will not be necessary.

As for the competencies and attributes of prospective Board members, both those appointed by the City of Thunder Bay as well as the Province, I strongly recommend that attention be paid to

the range of attributes, characteristics and competencies outlined by the Winnipeg Police Board that it considers important to effectively contribute to its Board. Other examples exist across the country, and are readily available through the Canadian Association of Police Governance and the Ontario Association of Police Service Boards . It is not mandatory that potential members necessarily possess all of these competencies. However, the appointing agencies should strive to ensure that, taken as a whole, all of these competencies are represented in the TBPSB.

As this Report outlines in detail, there is a significant problem in Thunder Bay with both racism and systemic discrimination. Board appointments by themselves will not cure the problems. However, appointments to the TBPSB that recognize the cultural and racial diversity of the area, can be a strong engine for needed change.

An appointee to the TBPSB should be committed to making governance decisions that are informed by the unique environment for policing in Thunder Bay. An appointee should clearly understand that the City's history and socio-economic and cultural trends influence crime and policing priorities.

## **2 Orientation and Training of New Board Members**

In Part III 3.9 of this Report, I have provided several recommendations to ensure that any new Board members are equipped with the knowledge, awareness and skills in governance, police practice, community priorities, business strategy and the law required to carry out their police governance mandate upon appointment and throughout their term of office.

**To supplement those recommendations, I further recommend:**

- **That new Board members appointed to replace the outgoing board members be required to complete the On-Boarding and Orientation portion of the proposed strategy which, as noted above, will be the initial responsibility of the Administrator, as well as the ongoing duty of the Chair, to create and execute;**
- **That the Province fund the development of the proposed training and assist the OAPSB in updating its current online orientation material, especially if it is to be the standard orientation package.**

## **PART V: Summary of Recommendations**

This section provides a summary of the recommendations proposed to address the needs and issues identified through this investigation.

### ***Regarding Board Governance Policy:***

- R.1. It is recommended that there be a clear statement of the role of the Board in governing the police service, defining the key instruments required to provide governance, and specifying the authorities and constraints on the Board.
- R.2. It is recommended that a person who does not carry out any other municipal role, especially one at the executive level, be appointed to provide services to the Board in the capacity of a Secretary.
- R.3. It is recommended that the Board Chair, with support from the Chief, presents the budget to the municipal government that includes remuneration for an Executive Director.
- R.4. It is recommended that the Board develop a policy regarding relations between the Board and the Chief that clearly delegates operational responsibility to the Chief, but also outlines the Chief's duties at a high level to include:
  - 1. The duty to manage the TBPS effectively and efficiently;
  - 2. The duty to implement the policy direction of the Board;
  - 3. The duty to ensure a service that reflects the community it serves;
  - 4. The duty to provide information to the Board on the TBPS' performance, its compliance with policies, community relations, developing trends or significant incidents that would affect plans or changes to police services and annual training and reports on performance in delivering services free of bias, racism, discrimination and harassment; and
  - 5. The duty to brief the Board on serious incidents that can affect the community, either past or anticipated.
- R.5. It is recommended that the Board establish a Governance Committee to review and propose revisions where necessary to all existing policies, including its Missing Person Policy, and to oversee the development and regular maintenance of Board policies.
- R.6. It is recommended that the Board undertake development of a Board Policy Manual to address governance and other matters that are general to all police forces, as well as those that are unique to the circumstances of the Thunder Bay Police Service.
- R.7. It is recommended that the Board engage with First Nation organizations, including the Bear Clan and education authorities and local schools, to conduct a formal review of the Missing Persons Policy.
- R.8. It is recommended that the Board develop and adopt an anti-racism strategy and policy for itself and the TBPS.
- R.9. It is recommended that all Board policies be publicly and easily accessible.
- R.10. It is recommended that the Governance Committee post all draft policies on the Board's website for public review.

***Regarding Board Planning:***

- R.11. It is recommended that the Board develop a Policy on Business Planning.
- R.12. It is recommended that the Board develop a Policy on Trend Analysis, Critical Points and Risk Management.

***Regarding Recruitment, Retention and Promotion***

- R.13. It is recommended that the Board direct the Chief to submit, for its approval, a multi-year plan for the diversification of the TBPS, to include:
1. Specific targets for recruitment and a timeline for their achievement;
  1. Recruitment strategies that focus on marginalized communities not represented or under-represented in the TBPS;
  2. An analysis of existing barriers to recruitment, selection, retention and advancement of under-represented groups, and measures to address those barriers;
  3. Creation of a multi-stakeholder advisory group to support initiatives for retention and recruitment;
  4. A plan for the training and support of existing and newly recruited staff to explain and promote the value of a representative service;
  5. A development and promotion plan for current Service members from First Nations and other under-represented groups;
  6. A monitoring and reporting system that enables the Board to receive accurate and timely reviews of progress to measure results; and
  7. Formalizing the requirement that the Chief and the Deputy Chief have knowledge or experience with Indigenous peoples, cultures, histories, and policing.
- R.14. It is recommended that the Board develop, in conjunction with the Chief, a plan to build partnerships with First Nations, educational facilities and other partners to encourage Indigenous recruitment into the TBPS.

***Regarding Oversight of the Chief and Deputy Chief***

- R.15. It is recommended that the Board develop a policy regarding relations between the Board, the Chair, and the Chief that clearly delegates operational responsibility to the Chief, but also outlines the Chief's duties at a high level to include:
1. The duty to manage the TBPS effectively and efficiently;
  2. The duty to implement the policy direction of the Board;
  3. The duty to ensure the TBPS reflects the community it serves;
  4. The duty to report to and provide information to the Board; and
  5. The duty to brief the Board on serious incidents that can affect the community, either past or anticipated.

R.16. It is recommended that Board policy on Relations with the Chief specify the Chief's responsibility to report to the Board on operational matters that may become matters of concern to the Board, including:

1. The performance of the TBPS, specifically in delivering services free of bias, racism, discrimination and harassment;
2. TBPS compliance with policies;
3. The state of community relations;
4. Developing trends or significant incidents that would affect plans or changes to police services;
5. Implementation of operational and training plans; and
6. Board input or decisions required.

***Regarding Communication and Transparency:***

R.17. It is recommended that, consistent with practice of many boards across the country, the following steps be taken by the TBPSB to make itself publicly accessible:

1. Creation of its own website, with a separate look and feel from the Police Service;
2. Use of social media tools embedded in the site to encourage input;
3. Posting of meaningful information on police activities such as the budget, performance reports, etc.; and
4. Development of Board-specific policy and protocols for representation of the Board, crisis communication, Board confidentiality, and other internal and external communication needs.

R.18. It is recommended that the Board develop and publish online an annual outreach and consultation plan, identifying:

1. Groups that it plans to consult on specific issues or general matters;
2. First Nations affected by population flow between them and Thunder Bay; and
3. Indigenous organizations with actual or potential linkages to TBPS programs, services, and operations.

R.19. It is recommended that the TBPSB create a policy statement committing to the principle of openness and transparency in its communication. Specific measures reflecting this policy should include

1. Commitment to open meetings, accessible to the community, with formal notice of the rationale for any closed or in-camera sessions or meetings;
2. Meetings held in non-police service facilities, with a minimum of security barriers or clearances necessary to gain access;
3. Publication of meeting notices, meeting agendas, supporting material, and minutes with sufficient detail to clarify the proceedings;
4. Online publication of Board policies, with opportunities for community members to provide input on policies under development;
5. Producing and posting video coverage of all public meetings; and
6. Any other measures consistent with the principle of openness and transparency.

**Regarding Relationships with Indigenous Groups:**

- R.20. It is recommended that the TBPSB formally and explicitly adopt principles of reconciliation and recognition of Indigenous peoples in their governance and service delivery models.
- R.21. It is recommended the Board establish a specific policy with respect to both the Board and the TBPS' relationship with First Nations communities, people, governments, organizations and service providers setting out the Board's goals, objectives, strategies, communication and consultation protocols, and other measures to facilitate more effective relationships.
- R.22. It is recommended that the Board establish formal agreements with First Nations governance bodies to share information and raise cultural awareness.
- R.23. It is recommended that Board direct the TBPS to develop formal Terms of Reference for the Aboriginal Liaison Unit.

**Regarding Board and Police Training:**

- R.24. It is recommended that the Board, in co-operation with OAPSB and funded by the Province, develop a compulsory, standard orientation package for new Board members that will include:
1. Briefing by the Chair on:
    1. Oath of confidentiality;
    2. Conflict of interest statement;
    3. Relevant legislation, especially the governance provisions of the *Police Services Act*;
    4. Strategic (Business) Plan for the Service: process and content;
    5. Overview of current budget, and of the budgeting process;
    6. Board policies and procedures;
    7. Roles, powers, authorities, limitations and expectations of a Board member;
    8. Review of current issues;
    9. Review of confidential issues;
    10. Communication protocols; and
    11. Meeting schedule, planning, agendas, minutes, and protocols.
  2. Overview of the Police Service by the Chief of Police:
    1. Outline of the organization, personnel and deployment;
    2. Tour of facilities;
    3. Meeting with senior and frontline officers;
    4. Briefing on Current Challenges and Community Developments; and
    5. "Ride Along" with frontline officers.
- R.25. It is recommended that newly appointed Board members not be able to vote until they have completed this training.



- R.26. It is recommended that the TBPSB undertake on-going series of cultural awareness training sessions in which it invites various parts of the community to help it better understand their issues with respect to public safety.
- R.27. It is recommended that TBPSB use the training and development resources available from the Canadian Association of Police Governance and Ontario Association of Police Service Boards.

***Regarding Support to Police Boards from the MCSCS:***

- R.28. It is recommended that the MCSCS create a Police Board Governance Standard that would mandate the roles and necessary governance tools of each police service board, to include:
1. Roles of the Board to govern the police service;
  2. Obligation to engage community in its deliberations;
  3. Need for Board to be sensitive to First Nations realities;
  4. Duties of the Chair and Vice-Chair;
  5. Governance Processes;
  6. Public Access guidelines, most notably the need to constrain the use of closed meetings; and
  7. Relationship with the Chief, including setting of goals, monitoring of performance and the need for formal performance evaluation processes.
- R.29. It is recommended that the MCSCS create a New Board Member Orientation Standard that would require all new board members to undertake a specific training process before they can participate in board meetings as voting members.
- R.30. It is recommended that the MCSCS develop a Performance Evaluation Protocol to provide boards with the tools to assess their performance and to enable the MCSCS to conduct, through an inspection process not now in place, periodic evaluations of the board's performance. Such evaluations could take place every three years, as they would constitute a resource demand on the MCSCS.
- R.31. It is recommended that the MCSCS designate, as applicable, the following crimes for which the TBPS Chief of Police must develop and maintain procedures and processes for criminal and general investigations:
1. Criminal Organization;
  2. Human Trafficking;
  3. Missing and Murdered Indigenous Women and Girls; and
  4. Hate Crimes and Violence against Indigenous Peoples.
- R.32. It is recommended that the MCSCS create, or make more accessible, the trend analysis that the MCSCS is required to undertake under the PSA, and ensure that such analysis emphasizes marginalized communities, most notably First Nations.
- R.33. It is recommended that the MCSCS clarify in policy that Zone Advisors can attend all board meetings, whether they are open or closed, subject to the same confidentiality rules that apply to board members.

***Regarding the Appointment of an Administrator***

- R.34. It is recommended that the OCPC exercise its authority under section 23(1) and 24(1) to appoint an Administrator for a period of time to temporarily exercise all of the powers of the Board while the Board is reconstituted in the interim period.
- R.35. It is recommended that the Administrator carry out all of the functions and responsibilities of the Board, including the creation of an appropriate policy framework until new members, along with Ms. Reitberger, are appointed and have received appropriate and relevant training.
- R.36. It is recommended that the Administrator possess, at a minimum, the following attributes:
1. The Administrator should not be a person who has a vested interest in the current situation and can be seen to be free from bias insofar as policing in Thunder Bay is concerned. There should be no possible suggestion that the Administrator is part of the “history” of the Board;
  2. The Administrator’s function is to be limited in time and scope and is one of organization, oversight and education;
  3. The Administrator is to be knowledgeable in police service board matters generally;
  4. The Administrator should also be knowledgeable in board governance matters generally.
  5. The Administrator should be legally trained so that he or she can preside over meetings of the Board and the subcommittee thereof and guide the Board with respect to the various legal challenges currently facing it; and.
  6. The Administrator should be a person who will either have or who could gain the respect of both the Indigenous and non-Indigenous community.
  7. The Administrator should be a consensus builder.
- R.37. It is recommended that the appointment be for a period of one year, with the OCPC reserving to itself the power to extend the term, if necessary.
- R.38. It is recommended that the City of Thunder Bay pay all of the costs and expenses of the Administrator by means of a one-year specific increase in the budget of the Board.
- R.39. It is recommended that the Administrator perform the following functions:
1. Until the Board members have completed their training and are eligible to vote, 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. Design a suitable training strategy and package for all Board members consistent with recommendations made herein, particularly those set out in Part III, section 3.9. The Administrator will secure resources for its design and delivery. The Administrator will ensure that all Board members receive this training. The Administrator (and, in the future, the Chair) will certify, in writing, that the training is complete.
  3. When some, but not all, of the members have completed their training and are, consequently, eligible to vote, the Administrator shall continue to preside over all

regularly scheduled and special meetings of the TBPSB, including the in-camera portions. The Administrator shall also continue to attend and preside over all sub-committee meetings. The Administrator shall have one vote, except in the case of a tie when the Administrator shall have an additional deciding vote.

4. When all board members have completed their training and are, consequently, eligible to vote the Administrator shall attend, either in person or by conference call or video conference, all regularly scheduled and special meetings of the Board, including all in-camera portions. The Administrator shall, in the same manner, attend all sub-committee meetings. The Administrator shall have a single vote.
  5. On his or her own initiative or upon request from any member of the TBPSB, 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.
  6. Achieve and maintain compliance with the PSA and any applicable regulations made pursuant to the PSA;
  7. Establish a suitable policy framework for the ongoing governance of the Board and review and update as necessary a protocol for its relations with the TBPS, Thunder Bay City Council and other organizations;
  8. Have full power and authority to make any changes he or she sees fit to the Board processes to enhance governance over itself or the TBPS;
  9. Make recommendations to the Executive Chair of the OCPC on the Board's composition, including the power to suspend any or all of its Members;
  10. Work with the Board to engage the public in discussion about the Board and its role; and
  11. 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.
- R.40. It is recommended that the Administrator be given full power and authority to perform any or all of the responsibilities set out under section 31(1) of the PSA, as described earlier in this Report.
- R.41. It is recommended that the City of Thunder Bay not reappoint any of the current members upon expiry of their terms. Should the City of Thunder Bay chose to ignore, or refrain from accepting this recommendation, it is recommended that OCPC use the powers given to it by Section 25 of the PSA. I sincerely hope that this will not be necessary.
- R.42. It is recommended that for the appointment of any future Board member attention be paid to the range of attributes, characteristics and competencies outlined by the Winnipeg Police Board as desirable for effectively contribution to its Board.

***Regarding training for new appointees:***

- R.43. It is recommended that new Board members appointed to replace the outgoing board members be required to complete the On-Boarding and Orientation portion of the proposed strategy which will be the initial responsibility of the Administrator, as well as the ongoing duty of the Chair, to create and execute.

- R.44. It is recommended that the Province fund the development of the proposed training and assist the OAPSB in updating its current online orientation material, especially if it is to be the standard orientation package.
- R.45. It is recommended that the Province fund the development of the proposed training and assist the OAPSB in updating its current online orientation material, especially if it is to be the standard orientation package.

## **PART VI: Appendices**

**1 Letter from Nishnawbe Aski Nation / Grand Council of  
Treaty 3 / Rainy River First Nations**



safety, but a post-mortem examination found that her death was consistent with drowning. The TBPS quickly announced that there was “no evidence to indicate criminality” in her death.<sup>1</sup>

On May 18, 2017, the body of 14-year-old Josiah Begg was found in the McIntyre river. He lived in Kitchenuhmaykoosib Inninuwug First Nation and was in Thunder Bay with his father for medical appointments. He also went missing on May 6, 2017 and volunteer search efforts were organized on May 9 by NAN and the Bear Clan. The TBPS began a ground search on May 10. On May 15, 2017, the TBPS announced that there was “no evidence” that Josiah had gone near the river, and actively discouraged First Nation volunteer searchers who believed differently.<sup>2</sup> Surveillance footage showed that he was near a bridge over the floodway in the hours before his disappearance. Finally, on May 18, the TBPS called in an underwater recovery team and began searching area waterways.

These deaths are strikingly similar to six previous drownings in Thunder Bay rivers. The deaths of five youth who passed away between 2000 and 2011 were the subject of the Seven Youth Inquest in 2016, which found that causes of death in three of the five cases was undetermined, despite their police files being closed.

The subsequent death of Stacy DeBungee triggered the now ongoing systemic review of racism in the TBPS by the Office of the Independent Police Review Director (OIPRD). On October 19, 2015, Mr. DeBungee’s body was found in the McIntyre River. Three hours after the discovery, the TBPS published a press release stating that “[a]n initial investigation does not indicate a suspicious death”. In a second press release, published 25 hours after the discovery, the TBPS released Mr. DeBungee’s name and declared that “Mr. DeBungie’s [sic] death has been deemed as non-criminal”. It remains unknown how Stacy DeBungee came to be in the river, and the TBPS is still in charge of the investigation.

After the investigating officers concluded that Mr. DeBungee’s death was an accident prior to identifying him, conducting a *post mortem*, or taking any meaningful investigative steps, his family and community, Rainy River First Nations (RRFN), hired a private investigator. The investigator provided a report to the family and community leadership. The report concluded that the TBPS made determinations about the death in the absence of information a reasonable police investigation would have obtained from family and witness interviews, amongst other actions.

### **An Absence of Leadership from the Board**

The Thunder Bay Police Services Board has failed to provide any leadership during these investigations and the OIPRD systemic review.

During the time period of the systemic review, the leadership of RRFN sought the both the assistance and an opportunity for discussion with the Board, and on both occasions was stonewalled. On July 21, August 29, and September 1, 2016, correspondence was sent to Chief Levesque seeking the reassignment of the DeBungee file to another police service. Failing to receive any response, including any acknowledgement of the correspondence, a letter was sent to Chairperson Jacqueline Dojack, asking her to follow up with the Chief of Police. While there was eventually a response from Chief Levesque refusing to transfer the investigation, there was no response from Chairperson Dojack. When the leadership of RRFN wrote to then Minister Orazeitti on October 5, 2016, seeking

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<sup>1</sup> Thunder Bay Police, “Tammy Keeash Investigation Update” May 12, 2017, online: [www.thunderbaypolice.ca/news/tammy-keesh-investigation-update](http://www.thunderbaypolice.ca/news/tammy-keesh-investigation-update).

<sup>2</sup> Judy Porter, “‘No evidence’ missing Indigenous teen when into river, Thunder Bay police say” May 15, 2017, online: CBC News, <http://www.cbc.ca/news/canada/thunder-bay/josiah-begg-river-search-1.4116105>



his assistance to transfer the investigation file, Chairperson Dojack was copied on the correspondence. Again, there was no response.

Then, on October 21, 31 and December 19, 2016 correspondence was sent on behalf of the DeBungee family and Rainy River First Nations to John Hannam, Secretary of the Thunder Bay Police Services Board, seeking to make a deputation to the Board regarding the relationship between Indigenous people and the Thunder Bay Police Service. This time, the leadership of RRFN was met with a direct refusal from Chair Dojack, as it would be “inappropriate to engage in dialogue at this time while the [OIPRD] investigation is still ongoing.”

In addition to this complete stonewalling, the Board has previously refused to make any public statements to address the fears of the Indigenous community. Despite a dire need for public leadership, its members simply abandoned their responsibilities by remaining silent.

Tellingly when, on May 25, 2017, the Vice-Chair of the Thunder Bay Police Services Board finally broke the Board’s longstanding silence on the OIPRD systemic review, it was to unequivocally deny any basis for Indigenous concerns. Instead of silence, the Board’s new public position professes nothing but contempt for our interests and the members of the community who raised them.

Demonstrating that the Board has already pre-determined the outcome of the ongoing OIPRD Investigation into systemic racism, Vice Chair McKinnon declared “I don’t anticipate anything like that coming out ... There are no facts that there is systemic racism in the Thunder Bay Police Service.” Notably absent was any consideration of the Indigenous perspective, except to deny its legitimacy.<sup>3</sup>

Both the Vice-Chair and President of the Police Association denied any need for a change in leadership.<sup>4</sup> This statement was made in the context where Chief Levesque has been charged with obstruct justice under s. 139 of the *Criminal Code*, and breach of trust under s. 122 of the *Criminal Code*. Though the facts underlying these charges have not yet reached the public, it is known that one of the conditions of Chief Levesque’s release on a promise to appear (attached) is to abstain from communicating with the Deputy Chief of Police, Sylvie Hauth, Chairperson Jacqueline Dojack, Vice-Chair McKinnon, Donald Smith, Al Laakonen or any other members or staff of the Thunder Bay Police Services Board. Further, at the same time as denying a need for a change in leadership, the Police Services Board placed Chief Levesque on administrative suspension until the final disposition of his charges.

At this point, we view this blanket denial of the concerns of Indigenous communities as a complete abdication of responsibility, and leaves the community without adequate and effective policing.

### **Legal Duties of the Board**

By simply aligning itself with officers after months of silence and closing its collective mind to glaring investigative oversights, it appears the Board has failed to understand or execute its role as a civilian oversight body. The Thunder Bay Police Services Board has now taken a fully adversarial position to the Indigenous people it is supposed to represent and used evidence of systemic failures as an opportunity to show solidarity with police. It has buried its head in the sand and denied any need for

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<sup>3</sup> Doug Diaczuk, “Police board responds to OIPRD review” (TB Newswatch, May 25, 2017), online: <<https://www.tbnewswatch.com/local-news/police-board-responds-to-oiprd-review-623896>>. That same day, Chief Levesque was suspended by the Board.

<sup>4</sup> Doug Diaczuk, “Police board responds to OIPRD review” (TB Newswatch, May 25, 2017), online: <<https://www.tbnewswatch.com/local-news/police-board-responds-to-oiprd-review-623896>>

change while closing its mind to independent review. Under these circumstances, it cannot be said that it is providing adequate and effective services to Thunder Bay's Indigenous community.

As you know, the Board's responsibilities are set out in s. 31 of the *Police Services Act (PSA)*. This section states that the Board has the following responsibilities:

31. (1) A board is responsible for the provision of adequate and effective police services in the municipality and shall,
- (a) appoint the members of the municipal police force;
  - (b) generally determine, after consultation with the chief of police, objectives and priorities with respect to police services in the municipality;
  - (c) establish policies for the effective management of the police force;
  - (d) recruit and appoint the chief of police and any deputy chief of police, and annually determine their remuneration and working conditions, taking their submissions into account;
  - (e) direct the chief of police and monitor his or her performance;

The Board's role and responsibilities have been the subject of much comment by reports and judicial decisions. One oft cited report is that of the Ontario Civilian Commission on Police Services, Report of an Inquiry dated August 1992. That report made it clear that the interests of a Police Services Board differ widely from those of the police force and its individual officers:

The Police Services Board is responsible for providing civilian monitoring of the force and setting policies for its operation. Because of this obligation to monitor and because police investigate allegations against their own members, expectations for scrutiny by the Police Services Board, as representatives of the community, are high. It is imperative that Police Services Boards understand their role and are held accountable to the public. Their function is a crucial one; Boards exist to ensure that the policing services provided meet community standards.<sup>5</sup>

Similarly, in *Booth v Huxter*, the Court cited the same report and stated that:

... the Police Services Board is meant to act as the civilian overseer of the police on behalf of the community. The Board exists to ensure that the policing services provided meet community standards.<sup>6</sup>

The Honourable John Morden elaborated on this role, and fixed police service boards with maintaining the legitimacy of the service:

The *Police Services Act* has empowered police boards, through their policy-making and resource allocation powers, to shape the way in which policing is done. Police boards are the intermediary between the police and the public, acting as a conduit to receive and impart information, providing a forum to ensure public sentiment makes its way to the ears of law enforcers, and, ultimately, arbitrating interests in determining what is incorporated into the policies that guide the actions of the police. Where the police board fulfills these functions, the legitimacy that is so important to policing by consent, rather than coercion, is maintained.<sup>7</sup>

In *Odhavji Estate v Woodhouse*, one of the many issues addressed by the Supreme Court of Canada was whether the Metropolitan Toronto Police Services Board had a duty to take reasonable care to ensure that police officers cooperated with the Special Investigations Unit ("SIU"). In doing so, the

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<sup>5</sup> The Ontario Civilian Commission on Police Services Report of an Inquiry into Administration of Internal Investigations by the Metropolitan Toronto Police Force, (August 1992) at p. 4-5.

<sup>6</sup> *Booth v Huxter*, [1994] OJ No 52.

<sup>7</sup> Honourable John W. Morden, "Independent Civilian Review Into Matters Relating to the G20 Summit" (June, 2012) at 82.

Supreme Court opined on the Board’s responsibilities in a situation where the Board might have a positive obligation to act:

It is possible, I concede, that circumstances might arise in which the Board is required to address a particular problem in order to discharge its statutory obligation to provide adequate and effective police services. If there was evidence, for example, of a widespread problem in respect of the excessive use of force in the detention of visible minorities, the Board arguably is under a positive obligation to combat racism and the resultant use of excessive force.<sup>8</sup>

This is a situation where the Board must have a positive obligation to act. The river deaths are an epidemic that urgently needs to be addressed by law enforcement before further tragedies occur. Alternating silence, denial, and contempt of evidence-based Indigenous concerns about a widespread and racialized policing crisis is not in fulfilment of the statutory obligation to provide adequate and effective police services.

We respectfully request that the Commission exercise its powers to investigate and inquire into the shocking administrative failures of the Thunder Bay Police Services Board. The Indigenous community around Thunder Bay deserves a police board that represents the public interest, including Indigenous members of the community, rather than blindly defending the police at all costs.


We look forward to a prompt response.

Sincerely,




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Grand Chief Alvin Fiddler  
Nishnawbe Aski Nation



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Ogichidaa Francis Kavanaugh  
Grand Council Treaty #3



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Chief Jim Leonard  
Rainy River First Nations

cc *Minister Marie-France Lalonde, Ministry of Community Safety and Correctional Services*  
*Deputy Minister Matthew Torigian, Ministry of Community Safety and Correctional Services*  
*Director Gerry McNeilly, Office of the Independent Police Review Director*  
*Chair Jacqueline Dojack, Thunder Bay Police Service Board*  
*Deputy Chief Sylvie Hauth, Thunder Bay Police Service*  
*Julian N. Falconer, Legal Counsel*

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<sup>8</sup> *Odhavji Estate v Woodhouse* [2003] 3 SCR 263 at para 66.

## **2 Terms of Reference**

# **Final Terms of Reference: Thunder Bay Police Services Board Investigation**

**Finalized: 21 July 2017**

There are serious concerns about the state of civilian oversight of policing in Thunder Bay in the context of both the ability of the Thunder Bay Police Services Board (TBPSB or “the Board”) to address concerns raised by Indigenous leaders and community members and also in respect of the recent criminal charges laid against the Chief of Police.

The Board’s ability to provide civilian oversight in a manner that reflects Indigenous concerns have been particularly focused on a recent series of deaths of Indigenous youth. The deaths have been investigated by the Thunder Bay Police Service (“TBPS”), however Indigenous people and First Nations communities across Ontario have raised concerns about the quality of the TBPS investigations and about systemic racism within the police service. While these police investigations have been conducted, the Office of the Independent Police Review Director (OIPRD) has been conducting a systemic review of policing in the Thunder Bay to consider issues of racism within the police service. As recently as May 2017, Board representatives have stated that concerns about the quality of investigations and about systemic racism are without basis.

On May 23, 2017, the Chief of the Thunder Bay Police Service was charged criminally with breach of trust and obstruction of justice. This is an unprecedented and serious development that raises concerns about the effective delivery of police services in Thunder Bay. Members of the Board have been identified as potential witnesses in the investigation.

In light of all of these events, the Ontario Police Commission (OCPC) is concerned that public confidence in the delivery of police services in Thunder Bay be maintained and, relying on powers granted by s. 25(1)(b)-(d) of the *Police Services Act* (PSA), has initiated an investigation into

1. The TBPSB’s performance in carrying out its responsibilities pursuant to s. 31(1) of the PSA to ensure the provision of “adequate and effective” police services in Thunder Bay;
2. The TBPSB’s role in determining “objectives and priorities with respect to police services” in Thunder Bay, pursuant to s. 31(1)(b) of the PSA;

3. The TBPSB's role in establishing policies for the effective management of the TBPS, pursuant to s. 31(1)(c) of the PSA;
4. The TBPSB's role in ensuring that police services provided in Thunder Bay are provided in accordance with the Declaration of Principles set out in section 1 of the PSA which provides that police services shall be provided throughout Ontario in accordance with the following principles:
  - The need to ensure the safety and security of all persons and property in Ontario.
  - The importance of safeguarding the fundamental rights guaranteed by the *Canadian Charter of Rights and Freedoms* and the *Human Rights Code*.
  - The need for co-operation between the providers of police services and the communities they serve.
  - The importance of respect for victims of crime and understanding of their needs.
  - The need for sensitivity to the pluralistic, multiracial and multicultural character of Ontario society.
  - The need to ensure that police forces are representative of the communities they serve.

The Commission has retained the Hon. Murray Sinclair to lead and direct its investigation. Without limiting its generality, the OCPC's investigation, report, and recommendations may address the following issues:

1. The practices, statements and policies of the Board in respect of its ability to reflect the concerns of the whole community when it comes to the delivery of police services in Thunder Bay.
2. Areas where the Board could improve and where it has demonstrated strengths in respect of providing civilian oversight to policing including, but not limited to, indigenous issues.
3. Any further action by the OCPC under section 23, 24 or 25 of the *Police Services Act* if necessary.
4. Any recommendations, proposals or best practices that should be considered or adopted by the TBPSB or by the OCPC or the Ministry of Community Safety and Correctional Services in respect of their roles in providing oversight to the TBPSB.

Assessment of the above issues shall be conducted with regard to subsection 31(4) of the PSA, which provides that police services boards are not to direct chiefs of police with respect to specific operational decisions or with respect to day-to-day operations and with regard to all other applicable provisions of the PSA and other applicable law.

The investigation shall be carried out with reference to related investigations including the Office of the Independent Police Review Director's systemic investigation into the TBPS and any ongoing Coroner's and police investigations. The Commission shall seek to work cooperatively with other organizations carrying out related investigations where practicable.

In accordance with s. 25(3) of the PSA, the Commission shall prepare an interim and final report which shall be provided to the TBPSB, First Nations communities, the TBPS, the Minister of Community Safety and Correctional Services and the general public. The interim report shall be completed by October 31, 2017.

### **3 List of Thunder Bay Police Services Board Members**



## Board members and terms - 2000-2018

### **CURRENT 2018 BOARD MEMBERS**

Dojack, Jacqueline  
 McKinnon, Brian  
 Virdiramo, Joe  
 Smith, Donald  
 Reitberger, Celina

### **APPOINTED BY**

City of Thunder Bay  
 City of Thunder Bay  
 City of Thunder Bay  
 Province of Ontario  
 Province of Ontario

<u>Year appointment began</u>	<u>Board member</u>	<u>Date joined</u>	<u>Date departed/end of term</u>	<u>Reason for departure</u>	<u>Appointed by</u>
2017	Reitberger, Celina	Nov 29/17	Nov 28/19		Province of Ontario
2017	**Perry, Serenity	Mar 21/17	Dec 19/17		City of Thunder Bay
2016	Councillor Virdiramo, Joe	Sept 13/16	Nov 30/18	To replace Mayor K. Hobbs until end of term	City of Thunder Bay
2015	Smith, Donald	Sept 23/15	Sept 22/18		Province of Ontario
2015	Dojack, Jacqueline	Jan 20/15	Nov 30/18		City of Thunder Bay
2015	Councillor McKinnon, Brian	Jan 20/15	Nov 30/18		City of Thunder Bay
2015	*Councillor Virdiramo, Joe	Jan 20/15	Mar 17/15	To replace Mayor K. Hobbs until Mayor returns to seat	City of Thunder Bay
2014	Laakkonen, Allan	Feb 9/14	Feb 8/17	end of term	Province of Ontario
2013	Smith, Donald	Sep 11/13	Sep 10/15	end of term	Province of Ontario
2012	*Councillor McKinnon, Brian	Oct 23/12	Nov 30/14	end of term	City of Thunder Bay
2012	Johnsen, Debra	Jun 26/12	Apr 19/13	end of term	Province of Ontario
2011	Johnsen, Debra	Dec 20/11	May 29/12	end of term	Province of Ontario
2011	Johnsen, Debra	Apr 20/11	Dec 19/11	end of term	Province of Ontario
2011	Laakkonen, Allan	Feb 9/11	Feb 8/14	end of term	Province of Ontario
2010	Dojack, Jacqueline	Dec 14/10	Nov 30/14	end of term	City of Thunder Bay
2010	(Councillor) Virdiramo, Joe	Dec 14/10	Nov 30/14	end of term	City of Thunder Bay
2010	Mayor Hobbs, Keith	Dec 14/10	Sept 26/12	Stepped down due to conflict of interest	City of Thunder Bay
2010	Johnsen, Debra	Apr 20/10	Apr 19/11	end of term	Province of Ontario
2010	Pauluk, Philomena	Jan 13/10	Dec 14/10	end of term	Province of Ontario
2007	Johnsen, Debra	Apr 20/07	April 19/10	end of term	Province of Ontario
2007	Pauluk, Philomena	Jan 13/07	Jan 12/10	end of term	Province of Ontario
2006	Mayor Peterson, Lynn	Jan 16/07	Nov 30/10	end of term	City of Thunder Bay
2006	Bahlieda, Wayne	Dec 12/06	Nov 30/10	end of term	City of Thunder Bay

2006	Councillor Virdiramo, Joe	Dec 12/06	Nov 30/10	end of term	City of Thunder Bay
2005	Johnsen, Debra	Apr 20/05	April 19/07	end of term	Province of Ontario
2005	Pauluk, Philomena	Feb 13/05	Jan 16/07	end of term	Province of Ontario
2003	Bahlleda, Wayne	Dec 11/03	Nov 30/06	end of term	City of Thunder Bay
2003	Councillor Laakkonen, Allan	Dec 11/03	Nov 30/06	end of term	City of Thunder Bay
2003	Mayor Peterson, Lynn	Dec 11/03	Nov 30/06	end of term	City of Thunder Bay
2003	Pelletier, Marvin	Mar 5/03	Feb 15/05	end of term	Province of Ontario
2002	Councillor Waddington, Richard (Dick)	Oct 16/02	Dec 1/03	resigned	City of Thunder Bay
2001	McDougall, Wallace	Feb 24/01	Feb 13/03	end of term	Province of Ontario
2000	Councillor Timko, Lawrence	Dec 14/00	Nov 30/03	end of term	City of Thunder Bay
2000	Tabor, Wilbert	Dec 14/00	Nov 30/03	end of term	City of Thunder Bay
2000	Mayor Boshcoff, Ken	Dec 14/00	Nov 30/03	end of term	City of Thunder Bay
2000	Riccio, Antonio	Oct 16/00	Oct 16/02	end of term	Province of Ontario
1999	McDougall, Wallace	Feb 24/99	Feb 24/01	end of term	Province of Ontario

\*\*Interim indigenous resource person - not a voting member of the board

\*Interim member until Mayor returns to seat on Board

## 4 The Public Record: A Sample of Media Coverage

This media scan of stories related to issues relevant to this Investigation focuses primarily on the period between 2000 to summer 2018, with earlier coverage included where relevant.

The media scan does not represent a comprehensive listing, since the TBPS does not maintain an organized media file on crimes against Indigenous people. The stories include coverage by international, national, local, and Indigenous journalists, published in media available in Thunder Bay.

The scope, scale and reach of this coverage confirm that the issues and events giving rise to this Investigation were clearly matters of public record, widely reported, and presumably familiar to the general public and, in particular, to those in leadership positions within the city.

### 4.1 Articles/Stories on the Seven Youth Inquest

1. Talaga, Tanya. "Every day we thought they would come back'; As the snow and river ice melt, the search resumes for Jordan Wabasse, one of 7 aboriginal teens to go missing after leaving reserves to attend school in Thunder Bay. The first six were found dead." *Toronto Star*, May 9, 2011.
2. "AFN National Chief Honours Strength of Wabasse Family and Community, Calls for Improved Support for First Nation Youth", *Canada NewsWire*, May12, 2011.
3. Talaga, Tanya. "Native family demands answers; Jordan Wabasse among 7 teens who died in Thunder Bay since 2000", *Toronto Star*, May 12, 2011.
4. "Student's body found in river in Thunder Bay", *Guelph Mercury*, May 13, 2011.
5. Talaga, Tanya. "Family says farewell as questions linger; Growing calls for public inquiry into deaths of aboriginal teens", *Toronto Star*, May 14, 2011.
6. Talaga, Tanya. "Seven teens dead or missing while away at Thunder Bay, Ontario school: First Nations demand investigation", *News from Indian Country*, May 2011.
7. "Chief Coroner Calls Joint Inquest Into The Deaths of Seven Aboriginal Youth in Thunder Bay", *Ministry of Community Safety and Community Services News Release*, May 5, 2012.
8. Windigo, Delaney. "Hearth-wrenching delay for families waiting for inquest into Thunder Bay student deaths." *APTN National News*, July 16 2014.
9. White, Madeleine. "Residential school reboot; More than 150,000 children were forced into a system designed to strip them of their identities. As Madeleine White discovers, a new generation is trying to reimagine indigenous education," *Globe and Mail*, June 27, 2015.
10. Fontaine, Tim. "Ontario chief coroner says 18 inquests involving First Nation deaths stalled by lack of jury representation." *APTN National News*, July 24 2014.
11. Garrick, Rick. "Coroner calls for joint inquest into student deaths." *Wawatay News*, 2015\*.
12. Carpenter, L. "Joint inquest into NAN youth deaths 'atypical,' says chief coroner's office." *Wawatay News*. 2015\*.

13. Garrick, Rick. "Joint inquest requested for student deaths." *Wawatay News*, 2015\*.
14. Garrick, Rick. "NAN calling for commission of inquiry." *Wawatay News*, 2015\*.
15. Garrick, Rick. "Quick action needed on jury roll issue." *Wawatay News*, 2015\*.
16. Garrick, Rick. "Questions, concerns raised over student deaths." *Wawatay News*, 2015\*.
17. Bell, S. "Inquest must examine root causes of youth deaths: Regional Chief." *Wawatay News*, 2015\*.
18. Garrick, Rick. "Student death inquest continues in Thunder Bay." *Wawatay News*, 2015\*.
19. Garrick, Rick. "Student inquest final recommendations." *Wawatay News*, 2015\*.
20. "Ontario coroner sets date for inquest into deaths of 7 First Nation youth in Thunder Bay." *APTN National News*. Sept. 16 2015.
21. Rivers, Wayne. "Thunder Bay courtroom too small to fit families during inquest into student deaths." *APTN National News*. Oct. 5 2015.
22. Rivers, Wayne. "Lawyer at Thunder Bay inquest introduces possibility some students murdered." *APTN National News*. October 6 2015.
23. Rivers, Wayne. "Jury at Thunder Bay inquest visit school where students attended." *APTN National News*. Oct. 7 2015.
24. "Student death inquest begins in Thunder Bay." *Wawatay News*, 2015\*.
25. Rivers, Wayne. "Thunder Bay inquest hears mother recall night she found son face down on kitchen floor." *APTN National News*. Oct. 8 2015.
26. Narine, Shari. "Long-awaited inquest hears first evidence", *Windspeaker*, November 2, 2015.
27. Porter, Jody. "Indigenous cases treated by police as 'less than worthy victims,' lawyer says", *CBC News*, November 7, 2015.
28. Rivers, Wayne. "Racism a common theme at Thunder Bay inquest looking into deaths of 7 students." *APTN National News*, Nov. 23 2015.
29. Porter, Jody. "Brother hopes for 'truth, justice' at First Nations student deaths inquest," *CBC News*, November 29, 2015.
30. "Ontario inquest bears echo of residential school tragedy: First Nation leader." *APTN National News*, Jan. 11 2016.
31. "First Nations student deaths inquest: Police assigned 'homework'," *CBC News*, January 13, 2016.
32. Porter, Jody. "Man accused of murder at First Nations student deaths inquest in Thunder Bay, Ont." *CBC News*. Jan. 21 2016.
33. Porter, Jody. "'Lack of urgency' in response to missing First Nations students, child advocate says," *CBC News*, January 19, 2016.
34. Ward, Dennis. "Thunder Bay inquest into death of students reopening old wounds." *APTN National News*. February 23, 2016.

35. Ward, Dennis. "Children should not have to move away for school child advocate tells Thunder Bay inquest." *APTN National News*, March 30, 2016.
36. Porter, Jody. "Deep Water." *CBC News*, April 4 2016.
37. Talaga, Tanya. "Families of kids found dead hope tragedies bring change; Relatives call for equal educational opportunities for indigenous youth." *Toronto Star*, July 2, 2016.
38. Porter, Jody "First Nations student safety in Thunder Bay: 9 things inquest lawyers agree on", *CBC News*, May 27, 2016.
39. Perkel, Colin. "Jurors: Deaths of four aboriginal youths undetermined; three accidental; 4 native youth deaths undetermined; 3 accident," *Canadian Press*, June 28, 2016.
40. "Jury in First Nations student deaths inquest set to deliver recommendations in Thunder Bay, Ont." *CBC News*, June 28 2016.
41. "Media statement by the Provincial Advocate for Children and Youth on the jury's verdict at the inquest into the deaths of seven First Nations youth," *Canada Newswire*, June 28, 2016.
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## 5 Acronyms

ALU	Aboriginal Liaison Unit (of the TBPS)
CPIC	Canadian Police Information Centre
CPSB	Cornwall Police Services Board
DFCHS	Dennis Franklin Cromarty High School
DiP	Diversity in Policing
FWFN	Fort William First Nation
HBC	Hudson's Bay Company
MCSCS	Ministry of Community Safety and Correctional Services
MIA	Municipal Institutions Act
MMIWG	Missing and Murdered Indigenous Women and Girls Inquiry
NAN	Nishnawbe Aski Nation
NAPS	Nishnawbe-Aski Police Service
NNEC	Northern Nishnawbe Education Council
NWAC	Native Women's Association of Canada
NWC	North West Company
OACP	Ontario Association of Chiefs of Police
OAPSB	Ontario Association of Police Services Boards
OCPC	Ontario Civilian Police Commission
OHRC	Ontario Human Rights Commission
OIPRD	Office of the Independent Police Review Director
OPP	Ontario Provincial Police
PSA	Police Services Act
PSB	Police Services Board
SIU	Special Investigations Unit
TBPS	Thunder Bay Police Service
TRC	Truth and Reconciliation Commission
TBPSB	Thunder Bay Police Services Board
VCSI	Violent Crime Severity Index

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