

ONTARIO
SUPERIOR COURT OF JUSTICE
(Divisional Court)

BETWEEN:

B.W (Brad) Blair

*In his capacity as the current Commissioner of the Ontario Provincial Police
and his personal capacity*

Moving Party

- and -

THE OMBUDSMAN OF ONTARIO

Responding Party

MOTION RECORD
(Motion to Expedite)
Returnable: Monday January 14, 2019

January 8, 2019

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Lawyers for the Responding Party, The Ombudsman of Ontario

AND TO: This Honorable Court

ONTARIO
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Court File No. 781/18

ONTARIO
SUPERIOR COURT OF JUSTICE
(Divisional Court)

BETWEEN:

B.W (Brad) Blair

*In his capacity as the current Commissioner of the Ontario Provincial Police
and his personal capacity*

Applicant

- and -

THE OMBUDSMAN OF ONTARIO

Respondent

NOTICE OF MOTION

The Applicant will make a motion to a Judge of the Divisional Court on January 14, 2019 at 10:00 a.m., or as soon after that time as the motion can be heard by the Court at Osgoode Hall, 130 Queen Street West, Toronto, Ontario, M5H 2N5.

PROPOSED METHOD OF HEARING: The motion is to be heard orally

THE MOTION IS FOR:

1. An order expediting the hearing of the herein application before a 3-judge panel of the Divisional Court, or, in the alternative, before a single judge of the Superior Court;

2. An order that the application is to be case managed and setting a timetable for the delivery of materials between the parties and the cross-examinations on any affidavits filed in the matter; and
3. Such further and other relief as counsel may advise and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION are as follows:

1. On December 11, 2018, the then Interim Commissioner of the Ontario Provincial Police (“OPP”), B.W (Brad) Blair, filed a request with the Ombudsman of Ontario to review the hiring process for the next Commissioner of the OPP, out of substantial concern that the hiring process had been subject to potential political interference. Deputy Commissioner Blair (as he now is) filed this request both in his professional capacity as the current head of the OPP (as he was at the time) and in his personal capacity as a candidate in the hiring process. He filed the request because of serious concern of the nefarious effect that perceived political interference would have on the perceived impartiality and integrity of the OPP, a matter of great public importance;
2. On December 12 and 13, 2018, the Ombudsman of Ontario declined to investigate the complaint filed by Commissioner Blair, first stating that the request fell outside the Ombudsman’s jurisdiction, as laid out in the *Ombudsman Act*, RSO 1990, c O.6, and then citing that the Ombudsman has discretion on whether to investigate a complaint;
3. The Applicant seeks a declaration of the Ombudsman’s jurisdiction under section 14(5) of the *Ombudsman Act* and an order in the nature of *mandamus* to compel the Respondent

Ombudsman to exercise his jurisdiction under section 14(1) of the *Ombudsman Act* to investigate the hiring process for the OPP Commissioner;

4. The perceived political interference in the OPP Commissioner hiring process has been the subject of a great deal of public attention and concern since the November 29, 2018, public announcement of Superintendent Taverner's appointment as the next OPP Commissioner;
5. Superintendent Taverner was to assume command of the OPP on Monday December 17, 2018; however, his appointment has been delayed, at Superintendent Taverner's request, pending a review of Premier Ford's conduct by the Integrity Commissioner;
6. The Integrity Commissioner complaint was filed by the Member of Provincial Parliament ("MPP") for Brampton North, Kevin Yarde. The Integrity Commissioner acknowledged receipt of the complaint on December 18, 2018 and confirmed that he would be conducting an inquiry; however, no timeframe for this investigation has been publicly stated;
7. The Applicant's request of the Ombudsman is to review whether there was any political interference in the OPP Commissioner hiring process, such that the OPP's independence and integrity has been compromised. It is not limited to the conduct of Premier Ford, nor to the question of Premier Ford's or Superintendent Taverner's personal interests;
8. The existence of the complaint before the Integrity Commissioner has facilitated a narrow window wherein Superintendent Taverner's appointment has been indefinitely delayed; however, Premier Ford made public remarks on December 18, 2018, that Superintendent Taverner will become OPP Commissioner after the Integrity Commissioner concludes his investigation;

9. The Applicant submits that the underlying matters require an expedited resolution in order to address the perceived political interference in the OPP and to enable a timely return to the normal administration of the OPP;
10. Section 21 (3) of the *Courts of Justice Act*, RSO 1990, c C.43;
11. Section 6(2) of the *Judicial Review Procedure Act*, RSO 1990, c J.1;
12. Rule 37, 39 of the *Rules of Civil Procedure*, RRO 1990, Reg 194;
13. The Consolidated Practice Direction for Divisional Court Proceedings, para 4; and
14. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of this motion:

1. The affidavit of Amanda LaBorde, sworn January 8, 2019;
2. The herein Notice of Motion; and
3. Such further and other evidence as counsel may advise and this Honourable Court may permit.

DATE: January 8, 2019

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Lawyers for the Applicant

B.W (Brad) Blair Commissioner,

*In his capacity as the current Commissioner of the Ontario
Provincial Police and his personal capacity*

-and-

THE OMBUDSMAN OF ONTARIO

Responding Party

Moving Party

Divisional Court File No.: 781/18

**ONTARIO SUPERIOR COURT OF JUSTICE
(Divisional Court)**

Proceedings commenced in TORONTO

NOTICE OF MOTION

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Lawyers for the Moving Party, Brad Blair

ONTARIO
SUPERIOR COURT OF JUSTICE
(Divisional Court)

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B.W (Brad) Blair

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and his personal capacity*

Applicant

- and -

THE OMBUDSMAN OF ONTARIO

Respondent

AFFIDAVIT OF AMANDA LABORDE

I, Amanda LaBorde, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am a legal assistant at the firm Falconers LLP, counsel of record for the Applicant Brad Blair, and as such have knowledge of the matters to which I herein depose. Unless otherwise stated, all information is based on information provided by Asha James, a lawyer at Falconers LLP, who has carriage of this file and whose advice I do verily believe to be true.
2. On November 29, 2018, the provincial government made an announcement that Superintendent Ron Taverner of the Toronto Police Service would be appointed as the next OPP Commissioner effective December 17, 2018.
3. A number of media articles sighted concern over the selection of Superintendent Taverner due to his close personal relationship with Premier Ford.

4. On December 11, 2018, Commissioner Blair (as he then was) wrote to the Ontario Ombudsman seeking to have the Ombudsman review the hiring process for the next Commissioner of the OPP. He sought this review out of substantial concern that the hiring process had been subject to potential political interference, and out of substantial concern about the negative impact this would have on a matter of great public importance: the perceived independence and integrity of the OPP. Attached as Exhibit "A" to my affidavit is a copy of the December 11, 2018, letter from Commissioner Blair (as he then was) to the Ontario Ombudsman.
5. On December 12, 2018, the Ombudsman wrote a letter advising that his mandate did not allow him to review "deliberations and decisions of the Executive Committee" and as such he would not be commencing an investigation. Attached as Exhibit "B" to my affidavit is a copy of the Ombudsman's December 12, 2018, correspondence.
6. On December 12, 2018, counsel for Commissioner Blair, Mr. Julian Falconer, wrote to the Ombudsman, clarifying the request of Commissioner Blair and indicating that what was sought was a review of the hiring process and not any decision of the Executive Committee. Attached as Exhibit "C" to my affidavit is a copy of Mr. Falconer's December 12, 2018, correspondence to the Ombudsman.
7. On December 13, 2018, the Ombudsman wrote to Mr. Falconer and advised that he maintained his position as set out in his December 12, 2018, letter and further advised of his discretion under the *Ombudsman Act*, to address complaints relating to administration of a public-sector body. Attached as Exhibit "D" to my affidavit is a copy of the Ombudsman's letter dated December 13, 2018.
8. On December 14, 2018, Commissioner Blair (as he then was) commenced the herein application pursuant to section 14(5) of the *Ombudsman Act*, to have this Honourable Court determine if the request made by Deputy Commissioner Blair falls within the jurisdiction of the Ombudsman. Attached as Exhibit "E" to my affidavit is a copy of the issued application.
9. On December 14, 2018, when the application was served on the Ombudsman, the covering letter requested that the Office of the Ombudsman consent to the matter being heard on an expedited basis. Attached as Exhibit "F" to my affidavit is a copy of the December 14, 2018, letter serving the application on the Ombudsman.


10. On December 17, 2018, counsel for the Ombudsman, Mr. Frank Cesario, filed a notice of appearance in respect of the application. Following receipt of that notice of appearance, Mr. Falconer wrote to Mr. Cesario seeking to have the application heard on an expedited basis. Attached as Exhibit "G" to my affidavit is a copy of Mr. Falconer's December 17, 2018 correspondence to Mr. Cesario.
11. On December 19, 2018, Mr. Cesario wrote to Mr. Falconer advising that the Ombudsman does not consent to an expedited hearing. Attached as Exhibit "H" to my affidavit is a copy of Mr. Cesario's December 19, 2018, correspondence.
12. On December 19, 2018, Mr. Falconer wrote to the Registrar of the Divisional Court setting out the Applicant's request for an expedited hearing and seeking to have the application case managed. Attached as Exhibit "I" to my affidavit is a copy of Mr. Falconer's December 19, 2018, correspondence.
13. On December 20, 2018, Mr. Falconer wrote to Ms. Karalus of the Divisional Court, seeking to have a date set for a motion to be heard orally to address the request of now-Deputy Commissioner Blair for an expedited hearing and case management of the application. Attached as Exhibit "J" to my affidavit is a copy of Mr. Falconer's December 20th, 2018, correspondence.
14. I make this affidavit in support of the Applicant's request to expedite the hearing and for case management and for no other or improper purpose.

SWORN BEFORE ME this)

8th day of January 2019,)

in the City of Toronto,)

in the Province of Ontario.)


 Mary (Molly) M.D. Churchill)
 LSO # 72510P)
 A Commissioner etc.)


 Amanda LaBorde

B.W (Brad) Blair Commissioner,

*In his capacity as the current Commissioner of the Ontario
Provincial Police and his personal capacity*

-and-

THE OMBUDSMAN OF ONTARIO

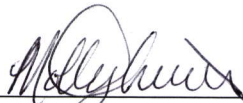
Responding Party

Moving Party

Divisional Court File No.: 781/18

ONTARIO SUPERIOR COURT OF JUSTICE (Divisional Court)	
Proceedings commenced in TORONTO	
AFFIDAVIT OF AMANDA LABORDE	
FALCONERS LLP Barristers-at-Law 10 Alcorn Avenue, Suite 204 Toronto, Ontario M5R 1A9 Julian N. Falconer (L.S.O. No. 29465 R) Asha James (L.S.O. No. 56817K) Akosua Matthews (L.S.O. No. 65621V) Molly Churchill (L.S.O. No. 72510P) Ph: (416) 964-0495 Fax: (416) 929-8179 Lawyers for the Moving Party, Brad Blair	

This is Exhibit "A" referred to in the Affidavit of Amanda LaBorde, sworn before me, on this 8th day of January, 2019.



A commissioner for taking affidavits
Mary (Molly) M.D. Churchill
LSO # 72510P

Ontario Provincial Police



Police provinciale de l'Ontario

Commissioner Le Commissaire

DELIVERED IN PERSON AND BY EMAIL
 (info@ombudsman.on.ca)

December 11, 2018

Mr. Paul Dubé
 Provincial Ombudsman
 Office of the Ombudsman of Ontario
 Bell Trinity Square
 483 Bay Street, 10th Floor, South Tower
 Toronto, ON M5G 2C9

Dear Mr. Dubé:

Re: Request for Review of Potential Political Interference in the OPP Commissioner hiring process

Overview

I write to you in my capacity as the current Commissioner of the Ontario Provincial Police ("OPP") and in my personal capacity as a candidate in the hiring process for the position of Commissioner. As you are undoubtedly aware, there exists in the Legislative Assembly and now in the Ontario public consciousness, growing concerns about the hiring process of the new OPP Commissioner. I am writing to you with the conviction that these concerns must be addressed by impartial review. If the hiring process remains enveloped in questions of political interference, the result will be irreparable damage to police independence in the third largest deployed police service in North America.

I have been a proud member of the OPP for over 32 years. I have policed in every corner of this province and it has been an honour and a privilege to serve with the dedicated men and women of the OPP. As Commissioner, I have a moral and legal obligation to ensure that the OPP remains independent.

The Supreme Court has ruled that police independence is fundamental to our democracy. In addition to its value as a constitutional principle, the people of Ontario well know the practical need for police independence, fully outlined during the Commission of Inquiry following the events in Ipperwash Park and the death of Dudley George. Police independence protects the men and women who have committed their lives to the Service, and it protects the people of the province of Ontario.

It should come then as no surprise that the perception of political interference in the hiring process has deeply affected the morale of the rank and file. OPP officers have shared with me their

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concerns that the process was unfair and their feeling that the independence of the OPP is now called into question. The officers know the consequences to come: if the police are to command public confidence and active cooperation, they must have the unfettered confidence of the people of Ontario. That is, the concern of political interference runs counter not only to the principles of a democratic society but also to fully effective policing.

Given the mandate of your office, to promote fairness, accountability and transparency in the public sector, as well as the function to investigate "any decision or recommendation made or any act done or omitted in the course of the administration of a public sector body and affecting any person or body of persons in his, her or its personal capacity," I believe that you are uniquely placed to be able to conduct an independent review of the hiring process, to lift the cloud that has been cast over the OPP, and to restore public confidence in the independence of the OPP.

In light of the above, I have made the very difficult decision to seek the assistance of your office, pursuant to s. 14 of the *Ombudsman Act*, to review and determine if there was political interference in the Commissioner hiring process.

Further, I am of the opinion that an interim response is required. Current Toronto Police Service Superintendent Ron Taverner is scheduled to assume command of the OPP on December 17, 2018. To have this new command assumed without addressing this matter will cause dysfunction in the Service and undermine the command of the Service. In the circumstances, I request that there be a delay in the installation of Superintendent Taverner until the completion of your review and that an interim commissioner is appointed or, in the alternative, my OIC remains in effect which permits me to remain in the role up to February 3, 2019.

As stated in the Ipperwash Inquiry Report, "even though there may not be actual interference by politicians in police operations, the public's perception of non-interference by the government is a fundamental principle that the Premier, Ministers, and other politicians must adhere to."¹

The Facts: Concerns Raised by the Interviewing Process

The position of Commissioner of the OPP was posted on October 22, 2018. The posting indicated that the candidate would be a "proven, visionary leader whose dedication will inspire the confidence and respect of the Police and communities across Ontario, to assure and maintain public safety and trust in our Province" and would represent "the OPP with integrity, professionalism and leadership on police and justice issues provincially, locally and Internationally." The facts of the hiring process, detailed below, raise a legitimate question as to whether the OPP's integrity has been compromised and whether the public can have confidence in and respect for the OPP going forward.

To be perfectly transparent on my own position and role, and the means by which I came by the below information, throughout the interviewing process, I was viewed by members of the OPP as a front runner candidate. This was based on my qualifications (which met both the initial and the

¹ *Report of the Ipperwash Inquiry, Vol. 4: Executive Summary* (Toronto: Ipperwash Inquiry, 2007) at p. 48.

amended job posting) including: my over 32 years of service to the OPP; my 5 years as a Deputy Commissioner; the fact that the other two Deputy Commissioners were not vying for the position (however, it should be noted that Provincial Commander Mary Silverthorn did apply and was granted a first- and second-round interview); and ultimately, the fact that the Provincial Government expressed confidence in my leadership, through Cabinet's decision to issue an Order in Council, which granted me the role of Interim Commissioner of the OPP.

The Job Qualifications Changed Without Convincing Justification

As stated, the posting for the position of Commissioner went live on October 22, 2018, with a deadline to submit applications by November 5, 2018. The job posting set out key requirements for the position, including that the successful candidate would be an "experienced executive with a background in policing" with a "track record and demonstrated ability to provide executive leadership in a complex policing organization at the rank of Deputy Police Chief or higher, or Assistant Commissioner or higher in a major police service." These have been the same job qualifications in place for the position of OPP Commissioner since 2006.

Two days later, the job posting was modified. On October 24, 2018, the minimum rank requirement of "Deputy Police Chief or higher, or Assistant Commissioner or higher in a major police service" was removed. The requirement for an "experienced executive with a background in policing" remained.

Media reports indicate that 27 candidates applied and 13 received invitations to the first of two rounds of interviews. Three candidates received second round interviews: OPP Provincial Commander Mary Silverthorn, myself and Toronto Police Service Superintendent Ron Taverner (interviewed in that order). Of the candidates who received interview invitations, I am aware of at least four candidates who did not meet the requirements of either the initial job posting and/or the amended job posting, as detailed below.

Staff Superintendent Randy Carter, of the Toronto Police Service, received a first-round interview. His rank did not meet the minimum rank requirement in the initial job posting.

OPP Superintendent Mike McDonell applied but I am not aware whether he received an interview. His rank did not meet the minimum rank requirement in the initial job posting.

OPP Provincial Commander Mary Silverthorn was granted a first- and second-round interview. Since she is a non-ranking civilian member of the OPP, Provincial Commander Silverthorn did not meet the requirement of the minimum rank of Deputy Police Chief or higher, or Assistant Commissioner or higher in a major police service. She did meet this requirement once the job posting was amended to remove the minimum rank requirement.

Finally, the successful candidate, Toronto Police Service Superintendent Ron Taverner was granted a first- and second-round interview. Due to his rank, Superintendent Taverner did not meet the eligibility requirements listed in the first job posting. He met the eligibility requirements only once the job posting was amended to remove the minimum rank requirement.

The rationale that has been provided publicly for the elimination of the minimum rank requirement was "to broaden the potential pool of applicants." Of the 27 applicants, only four, that I am aware of, did not meet the original threshold requirements.

The Hiring Panel had Questionable Authority and the Interview Panel Members Changed at the Last Minute

First-round interviews were held on November 12, 2018. The interview panel consisted of three people: Paul Boniferno, the Deputy Attorney General of Ontario; Salvatore (Sal) Badali, a Partner at the search firm, Odgers Berndtson; and Mario Di Tommaso, the Deputy Minister of Community Safety. It should be noted that Mr. Di Tommaso served as Superintendent Taverner's direct supervisor with the Toronto Police Service for a number of years.

Second-round interviews were held on November 20, 2018. In advance of the second-round interviews, I was informed that the interview panel would consist of the following people: Dean French, the Premier of Ontario's Chief of Staff; Steve Orsini; the Secretary to Ontario's Provincial Cabinet; Mario Di Tommaso; and Sal Badali.

Prior to my second-round interview, I witnessed Dean French walk out of the building. Approximately ten minutes prior to the beginning of my second-round interview – which was scheduled to commence at 9:45am – I was informed that Dean French would no longer be participating in the second-round interview panel.

Throughout the interview process, Sal Badali informed me on numerous occasions that he had no influence on either the process or the outcome of the interviews for the position of Commissioner.

The Decision Appears to be Made Prior to the Cabinet Meeting

At the end of my second-round interview, I was told by Sal Badali that I would receive a call regarding the outcome of the interview process either on the afternoon of Wednesday November 21, 2018, or on Wednesday November 28, 2018. This was because the Cabinet meets on Wednesdays and the Cabinet would ultimately decide on the appointment of the new Commissioner.

Unexpectedly, I received a call from Sal Badali at approximately 3:17pm on Tuesday November 20, 2018. During this telephone call, Mr. Badali informed me that he could not tell me about the outcome of the interview process but that a name was before the Secretary of Cabinet, Steve Orsini, that this name was being "socialized" and that an announcement would be made within the next two days. I understood this to mean that a candidate's name had been selected and was being considered by the Secretary of Cabinet, Steve Orsini. Around 12:04pm, prior to Mr. Badali's call, OPP Corporate Communications received an email from a Senior Communications Coordinator with the Ministry of Community Safety and Correctional Services indicating that we may learn

the name of the new OPP Commissioner as early as that very same day – i.e. November 20, 2018 – and requesting a review of a draft news release. The contents of this email were shared with me by OPP Corporate Communications. The totality of these events led me to believe that a selection for the new OPP Commissioner had been made on November 20, 2018, prior to Cabinet meeting on either November 21, 2018, or November 28, 2018.

The announcement for the new OPP Commissioner was ultimately not made until approximately 5:30pm on Thursday November 29, 2018. I was informed of Superintendent Taverner's appointment via a telephone call from Deputy Minister Di Tommaso, at approximately 12:34 pm on November 29, 2018. Deputy Minister Di Tommaso asked me to stay with the OPP and support Superintendent Taverner's leadership.

Superintendent Taverner Accused by Media of Leaving the Premier's Office

On Sunday December 2, 2018, I met with Superintendent Taverner at a Swiss Chalet to discuss his plans for his new role as Commissioner of the OPP. Our conversation mostly focused on his transition into the organization and the current challenges we were facing. We also had a brief discussion about the selection process we had just been through. During that part of our conversation he conveyed to me that on Tuesday November 20, 2018, after his interview, he ran into a reporter. The reporter accused Superintendent Taverner of having just left the Premier's office. Superintendent Taverner did not confirm whether or not he was in the Premier's Office on November 20, 2018. As already stated, Superintendent Taverner was the last candidate to be interviewed on November 20, 2018. Superintendent Taverner informed me that he asked the reporter to hold off on any story in exchange for providing this reporter with a first interview in the near future. I am not aware of the reporter's name; however, on December 8, 2018, Superintendent Taverner was interviewed by an unidentified CTV Global reporter.² From reviewing other media links,³ I believe that the reporter in the video is Nick Dixon, a weekend Anchor and Reporter with CTV news.

A Concerning History Already Exists Between Premier Ford's Office and the OPP

Recent interactions between Premier Ford's Office and the OPP add to the concern about maintaining the independence and integrity of the OPP, free from undue political interference.

Prior to my appointment as Commissioner of the OPP, I was aware of requests from Premier Ford for a specific security detail, staffed with specific officers that Premier Ford would feel comfortable with. The OPP has the responsibility to provide dignitary protection to the Premier. A dedicated unit with a command structure provides this protection and reports within the OPP via the chain of Command to the Superintendent in charge of our Security Bureau. Security Bureau

² [video link: <https://www.cp24.com/video?clipId=1559654&binId=1.1127680&playlistPageNum=1>]

³ See also: <https://toronto.ctvnews.ca/video?clipId=1559731&binId=1.3378530&playlistPageNum=1>

reports to the Deputy Commissioner of Traffic Safety and Operational Support which is my command.

Typically, the security detail for the Premier is shared, and there is a rotating team that is responsible for both the security of the Premier and the Lieutenant Governor. Premier Ford expressed displeasure that this request was not being acted on by the OPP. Premier Ford requested that he have a face to face meeting with former Commissioner J.V.N. "Vince" Hawkes and stated that if former Commissioner Hawkes would not address the issue, perhaps a new Commissioner would. Ultimately, the Premier's request was approved and implemented by the OPP.

In addition, as part of the protection package for the Premier vehicles are provided. The direct relationship with the Premier on operational matters in this arrangement are done via an OPP S/Sgt and the Premier's Chief of Staff, Mr. Dean French. Mr. French requested that we the OPP purchase a large camper type vehicle and have it modified to specifications the Premier's office would provide us. Mr. French then provided specifications and costs via a document from a company to our OPP S/Sgt and asked that costs associated with the vehicle be kept off the books. Approaching an individual company as a sole source and asking for the monies spent to be hidden from the public record is at minimum a violation of the Ontario Government's financial policies.

These incidents add to my concerns about maintaining the integrity and independence of the OPP from undue political interference.

The Remedy: A Review by the Ombudsman

Protecting the Public Interest

It is paramount that we do not forget the lessons learned from the Ipperwash Inquiry. The Ipperwash Report implores that "[t]ransparency is important in order to promote accountability and public confidence in police-government relations."⁴ I would submit that failure to ensure such transparency and accountability creates a dysfunctional service.

This matter has been addressed in a number of publications which have continuously raised the need to ensure the independence of the OPP from perceived political interference.

On December 3, 2018, the Toronto Star Editorial Board⁵ stated:

The men and women who lead our police forces should be free of any suspicion that they're likely to be swayed by political influence.

That much is obvious, and in Ontario it's especially true for the biggest force in the province, the one that's the first to be called in when there's wrongdoing by politicians or government officials.

⁴ *Ibid* note 1 at 48.

⁵ <https://www.thestar.com/opinion/editorials/2018/12/03/opp-leadership-must-be-free-of-political-suspicion.html>

On December 5, 2018, the Globe and Mail's columnist Marcus Gee stated:⁶

Democratic countries put a wall between leaders of the government and leaders of the police for a reason. If the police are beholden to those in power, it opens the door to political arrests. Police become guard dogs for the rulers instead of guardians of the public. People stop believing that the police will enforce the law without favour.

Even in a fortunate country like Canada where a descent into authoritarianism is remote, it is unwise to have a top cop who is the chum of a premier. Police sometimes have to investigate government leaders accused of lining their pockets or playing loose with election rules. How is the public going to trust the police to probe potential crimes or misdemeanours of the Ford government with Mr. Taverner in charge?

On December 8, 2018, Stephen Maher wrote an opinion for the Macleans stating:

The public must have confidence in the impartiality of the OPP but can't have confidence in Taverner. This is not how Ontario ought to be governed.

Taverner can either refuse the job or accept that he will always be viewed with deep suspicion.

On December 10, 2018, Law Professor Kent Roach (who advised the Ipperwash inquiry), wrote an opinion for the Globe and Mail, stating:⁷

... the fundamental concern should centre around the threat of populism on police independence and the rule of law.

...

A premier who directs how the OPP enforces the law will create a police state. An OPP that can do whatever it wants, however, equally will be a police state.

...

Ipperwash or worse could happen again. The Premier's enemies could be targeted and his friends sheltered if there is not better protection of police independence. This is the way that a democracy committed to the rule of law dies.

The Ipperwash Inquiry was not a one-off examination of the issue of political interference but rather, the fifth major Canadian public inquiry in the space of 25 years to consider

⁶http://v1.theglobeandmail.com/servlet/story/RTGAM.20181205.ellipsis_DRVWOWVXB5B2ZKTVKFSBORHTX4/BNStory/National/marcusGee

⁷https://www.theglobeandmail.com/opinion/article-is-police-independence-at-risk-in-ontario/?cmpid=rss&utm_source=dlvr.it&utm_medium=twitter

police/government relations.⁸ This issue demands repeated and careful attention, and should it ever be threatened, as it is in the current circumstances, the public interest demands inquiry and review. Canadian democracy depends on it, as it depends on the police to fulfill their responsibilities equally, fairly, professionally, and without partisan or inappropriate political influence.

Complaint to the Integrity Commissioner

As you are likely aware, a complaint has been made to the Integrity Commissioner pursuant to section 2 of the *Members Integrity Act*. That section of the *Act* bans MPPs from making a decision, or participating in making a decision, "in the execution of his or her office if the member knows, or reasonably should know, that in the making of the decision, there is an opportunity to further the member's private interest or improperly to further another person's private interest." Under the *Act*, if a finding of misconduct is found, the Commissioner can make a report and make a recommendation regarding penalties. However, once the Commissioner provides his report, the Assembly has 30 days to consider the report recommendations and may approve the recommendations and impose the penalty recommended.

In a sworn affidavit sent to the Integrity Commissioner, Kevin Yarde, an NDP MPP, focuses mainly on the fact that Premier Ford did not recuse himself from the final cabinet decision to appoint his family friend, Ronald Taverner to the position of OPP Commissioner, in addition to the fact that the job qualifications for the position were lowered such that Mr. Taverner became eligible to apply.

My concern is broader than the thrust of MPP Kevin Yarde's complaint to the Integrity Commissioner. Mr. Yarde's complaint is about the concern that Premier Ford acted on a personal interest for private gain. My request for your involvement as Ombudsman is about how this process has impacted me personally, the perceived independence and integrity of the OPP, and the public confidence in the OPP as an independent policing agency.

It is my opinion, as MPP Yarde's complaint was made to Ontario's Office of the Integrity Commissioner, that you are not barred from conducting a review of the matters set out above. Pursuant to s. 14 (4.4) of the *Ombudsman Act*, you are only barred from reviewing a matter within the jurisdiction of the Integrity Commissioner appointed pursuant to either the *Municipal Act*, or the *City of Toronto Act*, neither of which is applicable in these circumstances.

Conclusion

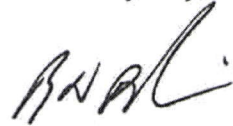
I have accepted that I will not be the Commissioner of the OPP going forward, and this request for a review of the circumstances of the appointment of Superintendent Taverner has nothing to do with my desire to remain in this position. Rather, this request for a review is to ensure the independence and confidence of the command of the OPP. Given the circumstances outlined

⁸ In addition to the Ipperwash Inquiry, this issue was discussed at the APEC Inquiry, the Donald Marshall Inquiry, and the McDonald Commission.

above, it is clear to me that as the current Commissioner I must put my service to the OPP ahead of personal ambition in order to repair the apprehension of bias over this process and the potential damage to the reputation of the OPP.

Please be advised that I am represented in this matter by Julian N. Falconer and Falconers LLP and I would appreciate your office contacting my counsel if you require to speak to me further. Mr. Falconer can be reached at julianf@falconers.ca.

Yours very truly,

A handwritten signature in black ink, appearing to read 'BNAL', with a stylized flourish at the end.

Brad Blair
Commissioner of the Ontario Provincial Police

This is Exhibit "B" referred to in the Affidavit of Amanda LaBorde, sworn before me, on this 8th day of January, 2019.



A commissioner for taking affidavits

Mary (Molly) M.D. Churchill
LSO # 72510P

By mail and email

Commissioner Brad Blair
Ontario Provincial Police
c/o Julian N. Falconer, Falconers LLP
10 Alcorn Avenue, Suite 204
Toronto ON M4V 3A9

December 12, 2018

Dear Commissioner Blair,

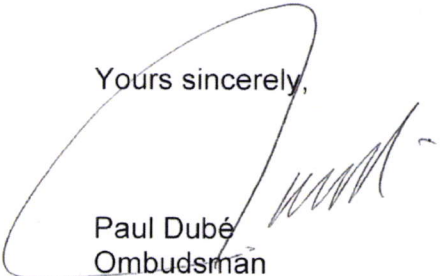
**RE: Request for review of potential political interference in the OPP
Commissioner Selection Process**

Thank you for your letter of December 11, 2018 with respect to the above-referenced matter, which I received this morning.

Section 13(1)(b) of the *Ombudsman Act* provides that my mandate does not extend to the "deliberations and proceedings of the Executive Council or any committee thereof". While your complaint references issues relating to the OPP Commissioner hiring process, ultimately the appointment of the OPP Commissioner is a function and decision of the Executive Council, which is not reviewable by my Office.

For this reason, I am prohibited from launching an investigation into the allegations which you have brought forward.

Yours sincerely,



Paul Dubé
Ombudsman

Bell Trinity Square
483 Bay Street, 10th Floor, South Tower, Toronto, ON M5G 2C9
483, rue Bay, 10^e étage, Tour sud, Toronto (Ontario) M5G 2C9
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Facebook facebook.com/OntarioOmbudsman Twitter twitter.com/Ont_Ombudsman YouTube youtube.com/OntarioOmbudsman

This is Exhibit "C" referred to in the Affidavit of Amanda LaBorde, sworn before me, on this 8th day of January, 2019.



A commissioner for taking affidavits

Mary (Molly) M.D. Churchill
LSO #72510P

JULIAN N. FALCONER, B.A., LL.B., LL.D. (Hon.)
 ASHA JAMES, B.A., LL.B., J.D.
 MEAGHAN T. DANIEL, B.A., LL.B.
 KRYSYNN ORDYNIEC, H.BHSc., LL.B., J.D.



AKOSUA MATTHEWS, B.A., MPIL (OXON), J.D.
 ELYSIA PETRONE-REITBERGER, H.B.A., M.E.S., J.D.
 MOLLY CHURCHILL, B.A., M.S.W., B.C.L., LL.B.

December 12, 2018

via email (lpettigrew@ombudsman.on.ca)

Mr. Paul Dubé

Provincial Ombudsman
 c/o Ms. Laura Pettigrew, General Council
 Office of the Ombudsman of Ontario
 Bell Trinity Square
 483 Bay Street, 10th Floor, South Tower
 Toronto, ON
 M5G 2C9

**Re. Request for Review by OPP Commissioner Blair and
 Response to Ombudsman Correspondence of December 12, 2018**

Dear Mr. Dubé

Please accept this letter as clarification of (and in addition to) the package of correspondence from OPP Commissioner Brad Blair, dated December 11, 2018.

We are in receipt of your correspondence of earlier today, wherein you state that Section 13(1)(b) of the *Ombudsman Act* [“the *Act*”] limits your mandate from reviewing decisions of the Executive Council. In this correspondence, you further stated that “...ultimately the appointment of the OPP Commissioner is a function and decision of the Executive Council, which is not reviewable by my office.”

With respect, your letter appears to be based on a misapprehension of the request filed by Commissioner Blair and of the public comments made by the Government of Ontario about the hiring process. We would like to take this opportunity to clarify.

The Government has made repeated assertions that the selection of Superintendent Ron Taverner was done at arms-length from Cabinet. As stated by Minister Jones, the decision was made by an “independent commission”. Far from being a decision of Cabinet, Premier Ford stated in the house, on Wednesday December 5, 2018, “...There was no better choice—a transparent choice, by the way, that **I wasn’t involved in whatsoever**. There were three individual people on a panel who made that decision. I didn’t know the decision until the day it was made.” [emphasis added]



It would create an unfortunate public perception of the Office of the Ombudsman if your office were to decline to review this hiring process, on the basis that the decision was not made independent of Cabinet, when the Premier has stated that the hiring process was conducted independent of Cabinet.

OPP Commissioner Blair is not requesting that you extend your mandate to the "deliberations and proceedings of the Executive Council or any committee thereof", as barred by Section 13(1)(b) of the *Act*. OPP Commissioner Blair's request is about: (1) the hiring *process* that occurred *prior* to the deliberations of Cabinet and, (2) the *effect* of the Order-In-Council on the public or administration at large. Both are squarely within your mandate.

As explained below, there is caselaw concerning the mandate of the Ombudsman vis-à-vis the decisions of the Executive Council. This case law states that the limitation on the Ombudsman's jurisdiction must be given a "restrictive interpretation". In any event, the below cited case law stands for the proposition that the Ombudsman is not precluded from reviewing "the effect of the Orders in Council on the administration at large and on the public affected."¹

(1) The Process That Occurred Prior To Cabinet Deliberations

In OPP Commissioner Blair's request, he was careful to focus on the process leading up to Cabinet's decision. We have highlighted some key excerpts from his request below [bold for emphasis only]:

"As you are undoubtedly aware, there exists in the Legislative Assembly and now in the Ontario public consciousness, growing concerns about the **hiring process** of the new OPP Commissioner. I am writing to you with the conviction that these concerns must be addressed by impartial review. If the **hiring process** remains enveloped in questions of political interference, the result will be irreparable damage to police independence in the third largest deployed police service in North America."

...

"OPP officers have shared with me their concerns that the **process** was unfair and their feeling that the independence of the OPP is now called into question."

...

"Given the mandate of your office, to promote fairness, accountability and transparency in the public sector, as well as the function to investigate "any decision or recommendation made or any act done or omitted in the course of the administration of a public sector body and affecting any person or body of persons in his, her or its personal capacity," I believe that you are uniquely placed to be able to conduct an **independent review of the hiring process**, to lift the cloud that has been cast over the OPP, and to restore public confidence in the independence of the OPP."

...

¹ *Ontario (Ombudsman) v. Ontario (Ministry of Financial Institutions)* (Ont. Div. Ct.), 1989 CanLII 4069 (ON SC).



“The position of Commissioner of the OPP was posted on October 22, 2018. The posting indicated that the candidate would be a “proven, visionary leader whose dedication will inspire the confidence and respect of the Police and communities across Ontario, to assure and maintain public safety and trust in our Province” and would represent “the OPP with integrity, professionalism and leadership on police and justice issues provincially, locally and Internationally.” **The facts of the hiring process**, detailed below, raise a legitimate question as to whether the OPP’s integrity has been compromised and whether the public can have confidence in and respect for the OPP going forward.”

Additionally, we point you to the remarks of the Government, made during recent Questions Periods, where the Government makes the claim that the hiring process for the next OPP Commissioner was made by a panel, independent of Cabinet:

December 3, 2018

Hon. Sylvia Jones: “The choice was made by an independent commissioner, and it was approved by cabinet on Thursday. I’m proud of the OPP commissioner, and I look forward to working with him in the coming years.”

December 4, 2018

Hon. Silvia Jones: “The independent hiring committee unanimously supported the appointment of Ron Taverner. I was happy to endorse that at cabinet last Thursday.”

December 5, 2018

Hon. Doug Ford: “There was no better choice — a transparent choice, by the way, that I wasn’t involved in whatsoever. There were three individual people on a panel who made that decision. I didn’t know the decision until the day it was made.”

...

Hon. Sylvia Jones: “The opposition should be ashamed of taking a five-decade candidate and suggesting that there was anything inappropriate about him applying and ultimately receiving an endorsement with 100% support — and 100% support from me and our cabinet on Thursday when we endorsed that independent hiring.”

...

Hon. Sylvia Jones: “Speaker, allow me to share some of the facts of this story: First, an independent hiring commission 100% endorsed Ron Taverner. Then we moved from there to cabinet — a 100% endorsement of Ron Taverner as the OPP commissioner.”

Further the independent panel which conducted the interview process, was not comprised of Cabinet Ministers. As stated in OPP Commissioner Blair’s December 11, 2018 correspondence, the interview panels consisted of the following members:



“First-round interviews were held on November 12, 2018. The interview panel consisted of three people: Paul Boniferno, the Deputy Attorney General of Ontario; Salvatore (Sal) Badali, a Partner at the search firm, Odgers Berndtson; and Mario Di Tommaso, the Deputy Minister of Community Safety.

Second-round interviews were held on November 20, 2018. In advance of the second-round interviews, I was informed that the interview panel would consist of the following people: Dean French, the Premier of Ontario’s Chief of Staff; Steve Orsini; the Secretary to Ontario’s Provincial Cabinet; Mario Di Tommaso; and Sal Badali.

Prior to my second-round interview, I witnessed Dean French walk out of the building. Approximately ten minutes prior to the beginning of my second-round interview – which was scheduled to commence at 9:45am – I was informed that Dean French would no longer be participating in the second-round interview panel.”

None of the identified interview panel-members are Cabinet Ministers.

(2) The Effect Of The Order-In-Council On The Public Or Administration At Large

Regarding the effect of the Order-In-Council, the Divisional Court has made it clear that section 13(1)(b) of the *Ombudsman Act*, RSO 1990, c O.6 must be given a restrictive interpretation.² Where there is any uncertainty of where the administration of a public sector body blends into the deliberations and proceedings of the Executive Council, this case law suggests a restrictive interpretation of the limitations of the Ombudsman’s mandate, rather than an expansive one. Section 13(1)(b) “protects only the processes of deliberation, and, the deliberations, of the Executive Council. Beyond that, the Ombudsman has jurisdiction to inquire into the effect of the Orders in Council on the administration at large and on the public affected.”³

Conclusion

Commissioner Blair has not raised concerns about the deliberations of Cabinet. Commissioner Blair is concerned with the inappropriate political interference in the hiring process for Commissioner of the OPP, prior to Cabinet beginning its deliberations. Additionally, OPP Commissioner Blair’s request makes it clear that he is concerned with the *effect* of the Order-in-Council appointing a new Commissioner, in the context of concerns about inappropriate political interference in the hiring process. He raises serious concerns regarding the effect of the Order-in-Council on the integrity and reputation of the OPP and the public’s confidence in the OPP.

Neither the hiring process nor “the effect of Orders in Council on the public or administration at large” are precluded from your mandate as Ombudsman. OPP Commissioner Blair’s request for a review focuses on his concerns relating to both of these matters.

² *Ibid.* NB: section 13(1)(b) of the Act currently in force appeared as section 14(b) in earlier versions of the same Act.

³ *ibid*



The people of Ontario cannot be told by their Premier, that the process was independent of Cabinet and then have the Office of the Ombudsman decline to review the hiring process on the basis that this was decision of Cabinet.

We reiterate our request in our correspondence of earlier today to have Commissioner Blair speak with you directly either today or tomorrow to discuss his request for a review and the process moving forward. Our office can assist in facilitating a telephone call. Please advise when you may be available to speak, and you may reach either myself at 416-420-4202, or my business partner Asha James at 416-220-3156.

Yours very truly,



Julian N. Falconer



This is Exhibit "D" referred to in the
Affidavit of Amanda LaBorde, sworn
before me, on this 8th day of January,
2019.



A commissioner for taking affidavits

Mary (Molly) M.D. Churchill
LSO #72510P

December 13, 2018

Julian N. Falconer
Falconers LLP
10 Alcorn Ave., Suite 204
Toronto, ON M4V 3A9

Dear Mr. Falconer:

I am responding to your December 12, 2018 correspondence providing clarification of the complaint from OPP Commissioner Brad Blair, dated December 11, 2018. In your most recent correspondence, you renewed your request that our Office speak with Commissioner Blair to discuss his request for a review of potential political interference in the OPP Commissioner hiring process.

As indicated in the Ombudsman's December 12, 2018 response to the package you forwarded, s. 13(1)(b) of the *Ombudsman Act* provides that the Ombudsman's mandate does not extend to the deliberations and proceedings of the Executive Council or any of its committees. While you have quoted certain remarks made by the Minister of Community Safety and Correctional Services and the Premier from Hansard about the independence of the hiring process, under the *Police Services Act*, the ultimate decision on the appointment of the OPP Commissioner rests with the Lieutenant Governor in Council.

The *Ombudsman Act* provides the Ombudsman with the authority and discretion to investigate decisions, recommendations, acts, and omissions in the course of the administration of a public sector body. The Ombudsman has traditionally exercised his broad discretion under the Act to ensure that investigations are consistent with this role. The allegations of political interference you are raising concerning the Premier and a member of his political staff, do not involve incidents of maladministration on the part of a public sector body, or engage the Ombudsman's mandate. As an independent, impartial and non-partisan Officer of the Legislature, charged with reviewing public administration, the Ombudsman's role does not extend to the investigation of the political actions (or alleged actions) of members of the executive including the Premier or their political staff.

Under the circumstances, we are not in a position to address your client's concerns. As we discussed, the Integrity Commissioner is the Legislative Officer who deals with MPP integrity as well as member's staff ethical conduct issues.

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Téléphone 416-586-3485 1-866-411-4211

www.ombudsman.on.ca

facebook.com/OntarioOmbudsman twitter.com/Ont_Ombudsman youtube.com/OntarioOmbudsman

While the Integrity Commissioner's mandate may not encompass the full extend of the circumstances you are raising on behalf of your client, you may wish to contact his Office to discuss your concerns. The *Ombudsman Act* is not intended to apply to political conduct, which falls outside of the Integrity Commissioner's remit.

Yours truly,



Laura Pettigrew
General Counsel
Office of the Ontario Ombudsman

This is Exhibit "E" referred to in the
Affidavit of Amanda LaBorde, sworn
before me, on this 8th day of January,
2019.



A commissioner for taking affidavits

Mary (Molly) M.D. Churchill

~~MA~~ LSO # 72510P

Court File No. 781/16

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Divisional Court)
NOTICE OF APPLICATION**

BETWEEN:

B.W (Brad) Blair

*In his capacity as the current Commissioner of the Ontario Provincial Police
and his personal capacity*

Applicant

- and -

THE OMBUDSMAN OF ONTARIO

Respondent

NOTICE OF APPLICATION

**APPLICATION UNDER Section 14(5) of the *Ombudsman Act*, RSO 1990, c.O.6 as amended,
Rules 14.05(1), 14.05(3)(g), 38, and 68 of the *Rules of Civil Procedure*; Sections 2, 4, 6, and 7 of the
Judicial Review Procedure Act, RSO 1990, c.J.1. as amended; and,**

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following page.

THIS APPLICATION will come on for a hearing on a date and time to be determined by the Registrar of the Divisional Court, Toronto Region, at Osgoode Hall, 130 Queen Street West, Toronto, Ontario M5H 2N5.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date December 14th 2018

Issued by 

Local registrar

Address of Divisional court
court office 130 Queen Street West
Toronto, ON M5H 2N5

Notice of Application - 3

TO: Mr. Paul Dubé, Provincial Ombudsman
c/o Ms. Laura Pettigrew, General Counsel
Office of the Ombudsman of Ontario
Bell Trinity Square
483 Bay Street, 10th Floor, South Tower
Toronto, ON M5G 2C9

Ph: 1-800-263-1830
Fax: 416-586-3485
Email: lpettigrew@ombudsman.on.ca / info@ombudsman.on.ca

AND TO: Ministry of the Attorney General
Crown Law Office - Civil Law Division
720 Bay Street, 8th Floor
Toronto, Ontario M7A 2S9

Tel: 416-326-4008
Fax: 416-326-4181

1. On December 11, 2018, the Commissioner of the Ontario Provincial Police ("OPP"), B.W (Brad) Blair, filed a request to the Ombudsman of Ontario to review the hiring process for the next Commissioner of the OPP, out of substantial concern that the hiring process had been subject to potential political interference. Commissioner Blair filed this request both in his professional capacity as the current head of the OPP and his personal capacity as a candidate in the hiring process;
2. On December 12 and 13, 2018, the Ombudsman of Ontario declined to investigate the complaint filed by Commissioner Blair, first stating that the request fell outside the Ombudsman's jurisdiction, as laid out in the *Ombudsman Act*, and then citing that the Ombudsman has discretion on whether to investigate a complaint;
3. Under section 17 of the *Ombudsman Act*, the Ombudsman has narrow discretion to decline the exercise of his jurisdiction. In his justification for his denial of Commissioner Blair's request, the Ombudsman did not invoke the circumstances imagined by s. 17, and it is submitted that such circumstances would not apply to the present case. The Ombudsman thus has a public duty to investigate Commissioner Blair's concerns;
4. In declining to exercise his jurisdiction, the Ombudsman inappropriately broadened or misinterpreted his limited discretion to refuse to investigate a matter under section 17 of the *Ombudsman Act*. In so doing, the Ombudsman has left a matter of great public importance – the potential political interference in the hiring process for the next OPP Commissioner and the deleterious impact on the independence of the OPP – without a mechanism for an impartial review. The citizens of Ontario must have confidence in their civil institutions, including confidence in the mandate of the Office of the Ombudsman;

5. Under section 14(5) the *Ombudsman Act*, the mechanism to challenge the jurisdiction of the Ombudsman is to seek an application before the Divisional Court. The application may be made by the Ombudsman or any person who is directly affected. Commissioner Blair is directly affected by the hiring process, both in his professional and personal capacity; and,

6. Section 14(5) of the *Ombudsman Act* is the *only* available avenue to challenge the jurisdiction of the Ombudsman. Since the Ombudsman has declined to engage his jurisdiction on two occasions, Commissioner Blair is left with no other remedy but to pursue an application before the Divisional Court.

THE APPLICANT MAKES APPLICATION FOR:

7. A determination of the jurisdiction of the Ombudsman of Ontario under s. 14(5) of the *Ombudsman Act*, R.S.O. 1900, c.O.6. in respect of the December 11, 2018, request by the Commissioner Blair to the Ombudsman of Ontario, to review the hiring process for the next Commissioner of the OPP;
8. An order in the nature of *mandamus* to compel the Respondent Ombudsman of Ontario to exercise his jurisdiction under section 14(1) of the *Ombudsman Act* to conduct an investigation into the hiring process for the Commissioner of the OPP;
9. An order that the application be case managed to ensure an expedited determination of the matters raised in the application;
10. For the applicant's costs of this application on a partial indemnity basis; and,
11. Such further and other relief as counsel may advise and this Honourable Court may permit.

THE GROUNDS OF THE APPLICATION ARE:**I. Overview**

12. This is an application for a declaration that the Ombudsman has jurisdiction to investigate the facts brought to his attention by the Applicant, Commissioner Blair, and a judicial review in respect of the ongoing failure or refusal of the Ombudsman to perform his statutory duty to investigate;
13. The Applicant is the current Commissioner of the Ontario Provincial Police ("Commissioner Blair"). Commissioner Blair brings this application in his capacity as Commissioner of the OPP and in his personal capacity. Commissioner Blair sought the intervention of the Ontario Ombudsman pursuant to section 14 (1) of the *Ombudsman Act* due to grave concerns regarding the process by which the next Commissioner of the OPP was selected ("the hiring process"). Commissioner Blair's concerns, shared by many residents of Ontario, relate to potential political interference in the hiring process, which in turn raise serious questions about the independence and credibility of the OPP. As a front-runner candidate for the position of Commissioner, Commissioner Blair was personally affected by the hiring process. As Commissioner of the OPP, he is concerned about the legitimate apprehension of inappropriate political interference in the operations of the OPP. As a resident of Ontario, he is affected by the troubling hiring process which has threatened to undermine the credibility of the OPP and thereby threaten the effectiveness of law enforcement and the rule of law;
14. Commissioner Blair made the difficult decision of raising his concerns with the Ombudsman, making a formal request for an investigation of the hiring process on December 11, 2018. Under section 14(1) of the *Ombudsman Act*, the statutorily-defined function of the Ombudsman is "to investigate any decision or recommendation made or any act done or omitted in the course of the administration of a public sector body and affecting any person or body of persons in his, her or its personal capacity";

15. On December 12, 2018, the Ombudsman informed Commissioner Blair, by way of letter, that he would not be investigating Commissioner Blair's complaint, stating it fell outside the investigative jurisdiction of the Ombudsman. In his letter, the Ombudsman erred in mischaracterizing Commissioner Blair's request as relating to "a function and decision of the Executive Council, which is not reviewable by [the Ombudsman's] Office";
16. On December 12, 2018, Commissioner Blair, through counsel, clarified that his request for an investigation was not a request to investigate Cabinet's decision to appoint the next Commissioner of the OPP. Counsel made clear that Commissioner Blair's request for an investigation related to the selection and recommendation process *prior* to the matter being put before Cabinet for deliberation, and that the request also related to the *effect* of Cabinet's decision;
17. By way of letter dated December 13, 2018, the Ombudsman reiterated that he would not investigate the hiring process. The Ombudsman maintained that the issue did not fall within his jurisdiction; and,
18. Faced with the refusal of the Ombudsman, Commissioner Blair seeks a declaration that his request does fall within the jurisdiction of the Ombudsman. Commissioner Blair also seeks an order in the nature of *mandamus* compelling the Ombudsman to exercise his jurisdiction and investigate the concerns raised by Commissioner Blair.

II. The Ministry of Community Safety and Correctional Services' Recruitment and Hiring Process ("the hiring process")

19. Commissioner Blair assumed command as Commissioner of the OPP on November 3, 2018. The relevant Order-in-Council, 1213/2018, appoints Commissioner Blair to serve at the pleasure of the Lieutenant Governor in Council for a period not to exceed February 3, 2019;

20. The OPP is a division of the Ministry of Community Safety and Correctional Services ("the Ministry"). Under the *Police Services Act*, the Minister of Community Safety and Correctional Services ("the Minister") is responsible for the OPP;
21. Commissioner Blair responded to a job posting by the Ministry of Community Safety and Correctional Services ("the Ministry"), originally posted on October 22, 2018 ("the original posting"), and subsequently modified on October 24, 2018 ("the modified posting"), for the position of Commissioner of the OPP;
22. The significant difference between the two postings was that the required qualifications were considerably lowered in the modified posting from what they had been in the original posting. Specifically, the minimum rank requirement of "Deputy Police Chief or higher, or Assistant Commissioner or higher in a major police service" which featured in the original posting – and has been a requirement in all postings for the position of Commissioner of the OPP since 2006 – was absent in the modified posting. The modified posting only required candidates to be an "experienced executive with a background in policing." Commissioner Blair has the requisite experience to qualify even under the traditional and more exigent posting and he applied for the position;
23. Both postings explained that "the Ministry of Community Safety and Correctional Services is seeking a proven, visionary leader whose dedication will inspire the confidence and respect of the Police and communities across Ontario, to ensure and maintain public safety and trust in our Province." Both postings also explained that the Commissioner of the OPP reports to the Deputy Minister of Community Safety and Correctional Services ("the Deputy Minister"). While ultimately the appointment of someone to the position of Commissioner of the OPP is made by Cabinet via an order-in-council, the Ministry of

Community Safety and Correctional Services, is the body responsible for the OPP, and it is the Ministry that took steps to select a name to recommend for Cabinet's consideration;

24. The Premier and the Minister's public rationale for the elimination of the minimum rank requirement was that the job posting was modified "to broaden the potential pool of applicants." Media reports indicate that 27 candidates applied and 13 received invitations to the first of two rounds of interviews. Of the 27 candidates, Commissioner Blair is aware of only four who did not meet the original threshold requirements. One of these four candidates is Toronto Police Service Superintendent Ron Taverner ("Superintendent Taverner");

25. Only three candidates received second-round interviews: Commissioner Blair, OPP Provincial Commander Mary Silverthorn, and Superintendent Taverner. The candidates were interviewed in that order;

26. First-round interviews were held on November 12, 2018. The interview panel consisted of three people: Paul Boniferro, the Deputy Attorney General of Ontario; Salvatore (Sal) Badali, a Partner at the search firm, Odgers Berndtson, engaged to assist with the hiring process; and Mario Di Tommaso, the Deputy Minister of Community Safety. Deputy Minister Di Tommaso became the Deputy Minister on October 22, 2018, the same day the job posting went public. Deputy Minister Di Tommaso had previously served as Superintendent Taverner's direct supervisor with the Toronto Police Service for a number of years;

27. Second-round interviews were held on November 20, 2018. In advance of the second-round interviews, Commissioner Blair was informed that the interview panel would consist of the following

people: Dean French, the Premier of Ontario's Chief of Staff; Steve Orsini, the Secretary to Ontario's Provincial Cabinet; Deputy Minister Di Tommaso; and Sal Badali;

28. In advance of his second-round interview, Commissioner Blair saw Dean French leave the building. Approximately ten minutes prior to the beginning of Commissioner Blair's second-round interview, Commissioner Blair was informed that Dean French would no longer be participating in the second-round interview panel; and,

29. Throughout the interview process, Sal Badali informed Commissioner Blair on numerous occasions that he had no input or decision-making power regarding the hiring process for the next OPP Commissioner.

III. Deliberations and Decision of Cabinet *After* Taverner's Name was Recommended to Cabinet

30. At the end of Commissioner Blair's second-round interview, Sal Badali informed Commissioner Blair that he would receive a call regarding the ultimate outcome either on the afternoon of Wednesday November 21, 2018, or on Wednesday November 28, 2018. This was because the Cabinet meets on Wednesdays, and Cabinet would formalize the appointment of the new Commissioner, via an order-in-council;

31. Just after 12:00pm on Tuesday, November 20, 2018 – mere hours after Commissioner Blair's interview – OPP Corporate Communications received an email from a Senior Communications Coordinator with the Ministry indicating that the name of the new OPP Commissioner may be released as early as that very same day – i.e. November 20, 2018 – and requesting a review of a draft news release. At approximately 3:17pm on Tuesday November 20, 2018, Mr. Badali phoned Commissioner Blair and

informed him that a name was before the Secretary of Cabinet, Steve Orsini, and was being "socialized". Commissioner Blair was not expecting to receive a call from Mr. Badali until Wednesday November 21, 2018, at the earliest. The totality of the above facts led Commissioner Blair to believe that a name for the next OPP Commissioner had been selected in advance of Cabinet's Wednesday deliberations;

32. Deputy Minister Di Tommaso phoned Commissioner Blair around 12:34pm on Thursday, November 29, 2018, and informed him that Superintendent Taverner would be appointed as the next Commissioner of the OPP. Deputy Minister Di Tommaso asked Commissioner Blair to stay with the OPP and support Superintendent Taverner's leadership. The public announcement for the new OPP Commissioner was ultimately not made until approximately 5:30pm on Thursday November 29, 2018;

33. Superintendent Taverner is scheduled to assume command of the OPP on Monday December 17, 2018; and,

34. Following the public announcement of Superintendent Taverner as the new OPP Commissioner, public concern mounted regarding the independence of the process. In response to public pressure, Members of the Cabinet made the below public comments (captured in Hansard) maintaining that Cabinet was not involved in the hiring process or hiring decision, rather, that Cabinet had merely endorsed the hiring decision arrived at by an independent hiring panel:

December 3, 2018

Hon. Sylvia Jones: "The choice was made by an independent commissioner, and it was approved by cabinet on Thursday. I'm proud of the OPP commissioner, and I look forward to working with him in the coming years."

December 4, 2018

Hon. Silvia Jones: "The independent hiring committee unanimously supported the appointment of Ron Taverner. I was happy to endorse that at cabinet last Thursday."

December 5, 2018

Hon. Doug Ford: "There was no better choice — a transparent choice, by the way, that I wasn't involved in whatsoever. There were three individual people on a panel who made that decision. I didn't know the decision until the day it was made."

...

Hon. Sylvia Jones: "The opposition should be ashamed of taking a five-decade candidate and suggesting that there was anything inappropriate about him applying and ultimately receiving an endorsement with 100% support — and 100% support from me and our cabinet on Thursday when we endorsed that independent hiring."

...

Hon. Sylvia Jones: "Speaker, allow me to share some of the facts of this story: First, an independent hiring commission 100% endorsed Ron Taverner. Then we moved from there to cabinet — a 100% endorsement of Ron Taverner as the OPP commissioner."

35. Premier Ford conducted a press conference on December 4, 2018. When asked whether he was involved in the hiring process, Premier Ford stated: "So let me be very clear on this. Absolutely not. It was an independent panel, made up of three people, Odgers – the Executive Search Firm – was very reputable across the country. There's Steve Orsini, the principle to the cabinet and the deputy minister of that department. They came up with a panel, they interviewed people and it was unanimous, unanimous decision. And I told them very clearly, I don't want anything to do with this whatsoever."

IV. The Request for Review of the Hiring Process

36. The Applicant sought a review of the 2018 hiring process that led to the appointment of the next OPP Commissioner, current Superintendent Taverner of the Toronto Police Service, by filing a request before the Ombudsman of Ontario on December 11, 2018;

37. In his request to the Ombudsman, Commissioner Blair sought an impartial review of the OPP Commissioner hiring process, due to concerns about potential political interference in the hiring process and the deleterious effect on the independence of the operations of the OPP;

38. Commissioner Blair sought a review of the hiring process, in both his professional capacity as the current Commissioner of the OPP and his personal capacity as a candidate in the hiring process itself. Due to Commissioner Blair's participation as a candidate in the OPP Commissioner hiring process, Commissioner Blair was privy to details of the hiring process, as stated in his December 11, 2018, request to the Ombudsman and his affidavit in support of this application;

39. On both December 12, 2018, and December 13, 2018, the Ombudsman of Ontario declined to investigate the complaint:

- a) On December 12, 2018, the Ombudsman of Ontario declined to investigate the December 11, 2018, complaint on the basis of jurisdiction. The Ombudsman of Ontario stated that the appointment of the OPP Commissioner is ultimately a decision of cabinet and cited section 13(1)(b) of the *Ombudsman Act*, which precludes reviewing "deliberations and proceedings of the Executive Council or any committee thereof";
- b) On December 12, 2018, Counsel for the applicant wrote to the Ombudsman, clarifying that the applicant's December 11, 2018, request was not a request for a review of a decision of the Executive Council. Rather, the request was for an independent review of the hiring process that preceded the deliberation and decision by Cabinet, and of the *effect* of the ensuing order-in-council on the public or administration at large;
- c) On December 13, 2018, the Office of the Ombudsman responded, maintaining and reiterating the Ombudsman's view that he lacks jurisdiction to investigate the December 11, 2018, complaint *and* citing his discretion to decline to investigate Commissioner Blair's request for review:
 - i. The Ombudsman wrote that the *Ombudsman Act* provides him "with the authority and discretion to investigate decisions, recommendations, acts, and omission in the course of the administration of a public sector body. The Ombudsman has

traditionally exercised his broad discretion under the Act to ensure that investigations are consistent with this role”;

- ii. The Ombudsman stated that Commissioner Blair’s request does “not involve incidents of maladministration on the part of a public sector body, or engage the Ombudsman’s mandate”;
- iii. The Ombudsman stated that his role “does not extend to the investigation of the political actions (or alleged actions) of members of the executive including the Premier or their political staff”; and,
- iv. The Ombudsman raised the avenue of a complaint before the Integrity Commissioner which could address the issue of “MPP integrity as well as member’s staff ethical conduct issues”; however, the Ombudsman noted that the “Integrity Commissioner’s mandate may not encompass the full extend [sic] of the circumstances” raised by Commissioner Blair’s complaint.

V. Commissioner Blair’s Request Engages the Ombudsman’s Mandate and the Ombudsman has a Public Duty to Investigate

40. The Ombudsman is a holder of public office with a statutory function “to investigate any decision or recommendation made or any act done or omitted in the course of the administration of a public sector body and affecting any person or body of persons in his, her or its personal capacity” (emphasis added);

41. The hiring committee was struck, took actions, and made a recommendation to Cabinet in the course of the administration of the Ministry, which is the public sector body responsible for the OPP and to which the Commissioner reports. Under section 1(1) of the *Ombudsman Act*, “public sector body” is defined as including “a governmental organization”, which is in turn defined as “a Ministry, commission, board or other administrative unit of the Government of Ontario and includes any agency thereof”. The recruitment and hiring process was therefore a process undertaken “in the administration of a public sector body”;

42. The recruitment and hiring process that ended in the recommendation of a name to Cabinet was therefore a process, constituted of acts and omissions undertaken in the administration of a public sector body. Similarly, the hiring committee's recommendation to Cabinet was made in the course of the administration of a public sector body. Both the process and the recommendation affected the administration of the OPP and Commissioner Blair in both his professional and personal capacity;
43. Commissioner Blair's request for an investigation therefore falls squarely within the mandate of the Ombudsman. The Ombudsman has erred in stating that the facts set forth in Commissioner Blair's request do "not involve incidents of maladministration on the part of a public sector body, or engage the Ombudsman's mandate" The applicant's position is that the Ombudsman has jurisdiction to investigate the applicant's complaint;
44. In addition to having the jurisdiction to investigate, the Ombudsman lacks the discretion to refuse to investigate the applicant's complaint. The Ombudsman does have broad investigative powers, but this is not equivalent to having broad discretion. The *Ombudsman Act* sets up a presumption that the Ombudsman will investigate any complaint that falls within his mandate. Only in very limited instances may the Ombudsman exercise discretion to refuse to investigate, under section 17 of the *Ombudsman Act*;
45. The broad investigative power and function of the Ombudsman – to investigate *any* decision, recommendation, act, or omission done or made in the course of the administration of a public body – is clearly inclusive of any such decision, recommendation, act, or omission that was made or done as a result of inappropriate political interference or cronyism, including interference by a member of the Executive and/or their staff. It would be contrary to the function and purpose of the Ombudsman to exclude from his review any decisions or actions that are made or done as a result of improper interference or pressure by

a member of the Executive. Furthermore, Commissioner Blair's request for review does not focus narrowly on "political actions...of members of the executive including the Premier or their political staff";

46. An order in the nature of a declaration will provide clarity that the Ombudsman of Ontario has the jurisdiction to review the hiring process for the position of OPP Commissioner;

47. The Ombudsman has narrow discretion to decide to decline the exercise of his jurisdiction, none of which he has invoked, or which apply in the present circumstances. He thus has a public duty to investigate Commissioner Blair's concerns;

48. This duty is owed to Commissioner Blair, who has a clear right to its performance. Commissioner Blair has twice requested performance of the duty, and twice been refused it. The Ombudsman does not have unfettered discretion to refuse to investigate;

49. Commissioner Blair does not have any other adequate remedy available to him. Commissioner Blair does not have a remedy before the Integrity Commissioner under the *Members Integrity Act*, which concerns complaints from Members of Provincial Parliament about the conduct of other Members, in respect of decisions which further a "member's private interest or improperly to further another person's private interests." This remedy is not available to Commissioner Blair as he is not a Member of Provincial Parliament. Further the scope of Commissioner Blair's request is broader than the concern that Members of the Provincial Parliament furthered private interests for personal gain. The Applicant's request for an impartial review extends to the impact of potential political interference in the hiring process on the public confidence in the OPP as an independent policing agency, the perceived independence and integrity of the OPP, and the impact on Commissioner Blair personally, as a candidate in the hiring process;

50. Furthermore, recourse through the *Members Integrity Act* is not an effective vehicle for addressing contraventions by sitting Members of the Provincial Parliament, where the governing party holds a majority. Any recommendations made by the Integrity Commissioner would be put before the MPPs, in assembly, to decide, via a vote on whether to act on the Integrity Commissioner's recommendations. Such a vote is final and conclusive. As the government of the day holds a majority government, it would be unlikely that any findings of wrongdoing would be upheld.

51. An order in *mandamus* will ensure that the Ombudsman exercises his jurisdiction under section 14(1) of the *Ombudsman Act*, and as required;

52. *Mandamus* will have the practical value and effect of shedding light on a concerning process which has shaken the public's confidence in the credibility and independence of the OPP. Transparency and answers to pressing questions will help pave a way forward to restoring public confidence, including the confidence of Commissioner Blair, in the OPP. Should there be no investigation, Commissioner Blair will be affected: the decreased credibility of the OPP caused by widespread suspicions and concerns about the hiring process will affect his decision of whether to stay with the OPP, as invited to do by Deputy Di Tommaso. An order of *mandamus* directing the Ombudsman to conduct an investigation will have the practical value and effect of either quelling Commissioner Blair's reasonable suspicions that the administration of the OPP was subjected to an unfair and inappropriate hiring process, and/or of opening the door to the possibility of a new hiring process and could restore Commissioner Blair's and the wider public's confidence in the credibility and independence of the OPP.

53. If the Ombudsman does not review the complaint, the independence of the OPP will continue to operate under a cloud of suspicion. This is a serious matter as the independence of the OPP – a body that can be called in to investigate provincial politicians – must be seen as legitimate in the eyes of the citizenry.

As stated in the Ipperwash Inquiry Report, “even though there may not be actual interference by politicians in police operations, the public’s perception of non-interference by the government is a fundamental principle that the Premier, Ministers, and other politicians must adhere to.”;

- 54. On the balance of convenience, an order in the nature of a declaration and *mandamus* must lie;
- 55. The combination of a declaration and order in *mandamus* will ensure access to the only available remedy for the scope of Commissioner Blair’s complaint;
- 56. There is no equitable bar to the relief sought by the Commissioner Blair;
- 57. Rules 14.05(1, 14.05(3)(g), and 38 of the *Rules of Civil Procedure*, R.R.O. 1990, Regulation 194;
- 58. Sections 2, 4, 6, and 7 of the *Judicial Review Procedure Act*, RSO 1990, c.J.1, as amended;
- 59. The *Ombudsman Act*, RSO 1990, c.O.6.;
- 60. The *Police Services Act*, RSO 1990, c P.15; and,
- 61. Such further and other grounds as counsel may advise and this Honourable Court permit.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE APPLICATION:

- 62. The Decisions of the Ombudsman, dated December 12 and 13, 2018;
- 63. The Affidavit of Odi Dashsambuu and the exhibits thereto; and,

64. Such further and other evidence as counsel may advise and this Honourable Court permit.

DATE: December 14, 2018

FALCONERS LLP
Barristers-at-Law

10 Alcorn Avenue, Suite 204
Toronto, Ontario M4V 3A9

Tel.: (416) 964-0495
Fax: (416) 929-8179

Julian N. Falconer (L.S.O. No. 29465R)
Asha James (L.S.O. No. 56817K)

Lawyers for the Applicant

B.W (Brad) Blair Commissioner,
*In his capacity as the current Commissioner of the Ontario
 Provincial Police and his personal capacity*
Applicant

-and- THE OMBUDSMAN OF ONTARIO
Respondent

Divisional Court File No.:

ONTARIO SUPERIOR COURT OF JUSTICE

Proceedings commenced in TORONTO

NOTICE OF APPLICATION

FALCONERS LLP
Barristers-at-Law
 10 Alcorn Avenue, Suite 204
 Toronto, Ontario M5R 1A9

Julian N. Falconer (L.S.O. No. 29465 R)
 Asha James (L.S.O. No. 56817K)
 Akosua Matthews (L.S.O. No. 65621V)
 Molly Churchill (L.S.O. No. 72510P)

Ph: (416) 964-0495
Fax: (416) 929-8179

Lawyers for the Applicant, Brad Blair

F

This is Exhibit "F" referred to in the Affidavit of Amanda LaBorde, sworn before me, on this 8th day of January, 2019.



A commissioner for taking affidavits

Mary (Molly) M.D. Churchill

LSO # 72510P

JULIAN N. FALCONER, B.A., LL.B., LL.D. (Hon.)
 ASHA JAMES, B.A., LL.B., J.D.
 MEAGHAN T. DANIEL, B.A., LL.B.
 KRISTYN ORDYNIEC, H.BHSc., LL.B., J.D.



AKOSUA MATTHEWS, B.A., MPHIL (OXON), J.D.
 ELYSIA PETRONE-REITBERGER, H.B.A, M.E.S., J.D.
 MOLLY CHURCHILL, B.A., M.S.W., B.C.L., LL.B.

December 14, 2018

DELIVERED VIA EMAIL & FAX

Mr. Paul Dubé

Provincial Ombudsman
 c/o Ms. Laura Pettigrew, General Counsel
 Office of the Ombudsman of Ontario
 Bell Trinity Square
 483 Bay Street, 10th Floor, South Tower
 Toronto, ON M5G 2C9
lpettigrew@ombudsman.on.ca

Re. Notice of Application: *B.W. (Brad) Blair v. The Ombudsman of Ontario*

Dear Mr. Dubé

Please find enclosed a PDF copy of a Notice of Application issued by the Divisional Court today. A hard-copy will be delivered today and served upon you pursuant to the *Rules of Civil Procedure*.

We ask for the Ombudsman's cooperation in having the application heard by the Divisional Court on an expedited basis.

Yours very truly,


Julian N. Falconer

Encl. (1)



G

This is Exhibit "G" referred to in the Affidavit of Amanda LaBorde, sworn before me, on this 8th day of January, 2019.



A commissioner for taking affidavits

Mary (Molly) M.D. Churchill
LSO # 72510P

JULIAN N. FALCONER, B.A., LL.B., LL.D. (Hon.)
ASHA JAMES, B.A., LL.B., J.D.
MEAGHAN T. DANIEL, B.A., LL.B.
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ELYSIA PETRONE-REITBERGER, H.B.A, M.E.S, J.D
MOLLY CHURCHILL, B.A., M.S.W., B.C.L., LL.B.

18

DELIVERED VIA EMAIL & FAX

December 17, 2018

Mr. Frank Cesario
Hicks Morley Hamilton Stewart Storie LLP
77 King Street West, 39th Floor
Box 371, TD Centre
Toronto, Ontario M5K 1K8
Email: frank-cesario@hicksmorley.com
Fax: 416.362.9680
Counsel for the Respondent
The Ombudsman of Ontario

Dear Mr. Cesario:

Re. Notice of Application: B.W. (Brad) Blair v. The Ombudsman of Ontario

We are in receipt of your December 17, 2018, Notice of Appearance, on behalf of your client, the Ombudsman of Ontario.

Pursuant to our Friday December 14, 2018, filing of a notice of application in respect of the Ombudsman's jurisdiction to review the December 11, 2018, request of now Deputy Commissioner Brad Blair, we are writing to determine your position on seeking case management from the Divisional Court and setting a schedule for an expedited hearing of the application.

We can advise that the applicant is seeking a hearing date in early February. Please indicate whether your client is agreeable to case management and an expedited hearing of the application.

Yours very truly,

Julian N. Falconer

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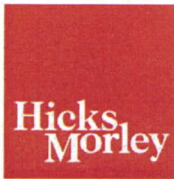
H

This is Exhibit "H" referred to in the Affidavit of Amanda LaBorde, sworn before me, on this 8th day of January, 2019.



A commissioner for taking affidavits

Mary (Molly) M.D. Churchill
LSO # 72510P



Hicks Morley Hamilton Stewart Storie LLP
 77 King St. W., 39th Floor, Box 371, TD Centre
 Toronto, ON M5K 1K8
 Tel: 416.362.1011 Fax: 416.362.9680

FRANK CESARIO
 frank-cesario@hicksmorley.com
 Direct: 416.864.7355

Toronto
 Waterloo
 London
 Kingston
 Ottawa

File No. 1151-90
 December 19, 2018

SENT BY E-MAIL (julianf@falconers.ca)

Julian N. Falconer
 Falconers LLP
 Barristers-at-Law
 10 Alcorn Avenue, Suite 204
 Toronto, Ontario M5R 1A9

Dear Mr. Falconer:

Re: B. W (Brad) Blair v. The Ombudsman of Ontario
Court File # 781/18

In response to your letter of December 17th, my client does not see the necessity or basis to "expedite" this matter or to make an extraordinary request to jump the Divisional Court's normal queue for cases.

Among other things, by all accounts the appointment with which Mr. Blair takes issue has been put on hold (which, it is important to note, the Ombudsman would not be empowered to do in any event) pending the Integrity Commissioner's inquiry. That inquiry could take months.

Moreover, the Ombudsman stands resolutely by his determination of his lack of jurisdiction to investigate your client's complaint.

In short, there is no apparent urgency for the Court to determine the jurisdictional issue that your client is raising in this proceeding, and therefore no need for an expedited hearing or for this case to proceed outside the normal course.

Yours very truly,

Frank Cesario

FJC/ra



This is Exhibit "T" referred to in the
Affidavit of Amanda LaBorde, sworn
before me, on this 8th day of January,
2019.



A commissioner for taking affidavits
Mary (Molly) M.D. Churchill
LSO # 72510P

JULIAN N. FALCONER, B.A., LL.B., LL.D. (Hon.)
ASHA JAMES, B.A., LL.B., J.D.
MEAGHAN T. DANIEL, B.A., LL.B.
KRYSTYN ORDYNIEC, H.BHSc., LL.B., J.D.



AKOSUA MATTHEWS, B.A., MPHIL (OXON), J.D.
ELYSIA PETRONE-REITBERGER, H.B.A., M.E.S., J.D.
MOLLY CHURCHILL, B.A., M.S.W., B.C.L., LL.B.

DELIVERED VIA FAX

December 19, 2018

Registrar, Ontario Divisional Court
130 Queen Street West
Toronto, Ontario M5H 2N5
Fax: 416-327-5549

Dear Registrar:

Re. Expedited Hearing of Application B.W. (Brad) Blair v. The Ombudsman of Ontario (File No. 781-18)

Introduction

We represent the applicant, Brad Blair, in his capacity as Deputy Commissioner of the Ontario Provincial Police ("OPP") and in his personal capacity.

This letter is to respectfully request case management of the herein application, on an expedited basis, to address a formal request that the hearing of this matter be held on an expedited basis before a three-judge panel of the Divisional Court. Counsel for the respondent Ombudsman of Ontario does not support the herein request. It is the position of the applicant that the issues raised are of pressing public importance and, given that they relate directly to the state of command of the OPP, call for an accelerated process.

While it is open to the applicant to seek a section 6(2) remedy under the *Judicial Review Procedure Act* to request that the matter be heard on an urgent basis before a single judge, we are respectfully seeking case management starting in January 2019 to determine availability of a three-judge panel as soon as possible.

There is currently a delay to the assumption of command by the new OPP Commissioner pending a review by the Integrity Commissioner. It is the position of the applicant that this narrow review by the Integrity Commissioner, pursuant to the *Members Integrity Act*, could well be completed before this application can be heard by the Divisional Court in the ordinary course. Deputy Commissioner Blair has in no way received any assurance that a final decision on the appointment and assumption of command of the new OPP Commissioner will await the disposition of this herein court proceeding.

Further, the Integrity Commissioner's mandate in this investigation is to review whether Premier Doug Ford used his office to further his own personal interest or the personal interest of another person. Deputy Commissioner Blair's request to the Ombudsman is broader: it concerns the potential political interference in the hiring process of the next OPP Commissioner; the negative impact on the independence of the OPP; and, the deleterious effect on the public's confidence in the OPP's integrity.



The Proceedings

The applicant seeks a declaration of the Ombudsman's jurisdiction under section 14(5) of the *Ombudsman Act* and an order in the nature of *mandamus* to compel the Respondent Ombudsman to exercise his jurisdiction under section 14(1) of the *Ombudsman Act* to investigate the hiring process for the OPP Commissioner.

We are seeking an expedited hearing of this application before a panel of the Divisional Court. We are also seeking case management of the application. The underlying matters require an expedited resolution in order to address the perceived political interference in the OPP and to enable a timely return to the normal administration of the OPP.

Timeline & Nature of Urgency

The perceived political interference in the OPP Commissioner hiring process has been the subject of a great deal of public attention since the November 29, 2018, public announcement of Superintendent Taverner's appointment as the next OPP Commissioner.

On December 11, 2018, Deputy Commissioner Blair filed a request to the Ontario Ombudsman to review the OPP Commissioner hiring process. The Ombudsman refused this request on December 12, 2018, and again on December 13, 2018, citing lack of jurisdiction to review the matter. Deputy Commissioner Blair (who was Commissioner at the time) filed his application before the Divisional Court on Friday December 14, 2018.

Superintendent Taverner was to assume command of the OPP on Monday December 17, 2018; however, his appointment has been delayed, at Superintendent Taverner's request, pending a review of Premier Ford's conduct by the Integrity Commissioner.

The Integrity Commissioner complaint was filed by the Member of Provincial Parliament ("MPP") for Brampton North, Kevin Yarde. The Integrity Commissioner acknowledged receipt of the complaint on December 18, 2018 and confirmed that he would be conducting an inquiry; however, no timeframe for this investigation has been publicly stated.

As indicated in Deputy Commissioner Blair's Notice of Application, the nature of the complaint before the Integrity Commissioner is far narrower than Deputy Commissioner Blair's request for review by the Ombudsman. Under the *Member's Integrity Act*, the Integrity Commissioner may only hear complaints from elected members of Ontario's Provincial Parliament. The scope of the Integrity Commissioner's investigation is to determine whether Premier Ford furthered his own interest and/or the interest of Superintendent Taverner.

Deputy Commissioner Blair's request of the Ombudsman is to review whether there was any political interference in the OPP Commissioner hiring process, such that the OPP's independence and integrity has been compromised. It is not limited to the conduct of Premier Ford, nor to the question of Premier Ford's or Superintendent Taverner's personal interests.



On December 17, 2018, we canvassed the two other parties (the Respondent Ombudsman and the Attorney General of Ontario), seeking their agreement to an expedited and case managed process. To date, we have not received a response from the Attorney General. Earlier today, we received a response from Counsel for the Ombudsman stating that there is no urgency to this matter since the matter "has been put on hold pending the Integrity Commissioner's inquiry" and reiterating that the Ombudsman "stands resolutely by his determination of his lack of jurisdiction to investigate."

Conclusion and Request

The existence of the MPP complaint before the Integrity Commissioner has facilitated a narrow window wherein Superintendent Taverner's appointment has been indefinitely delayed; however, Premier Ford made public remarks on December 18, 2018,¹ that Superintendent Taverner will become OPP Commissioner after the Integrity Commissioner concludes his investigation.

We do not know when the Integrity Commissioner will conclude his investigation, but we anticipate that it is in the order of weeks, not months.

It is for these reasons that we are respectfully seeking case management and an expedited panel hearing of Deputy Commissioner Blair's application.

Yours very truly,



Julian N. Falconer

cc: Mr. Frank Cesario, Counsel for the Respondent Ombudsman of Ontario, via email: frank-cesario@hicksmorley.com and via fax: 416-362-9680

Hon. Caroline Mulroney, Attorney General for Ontario, via email: attorneygeneral@ontario.ca and via fax: 416-326-4007

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¹ <https://nationalpost.com/news/canada/new-democrats-call-for-public-inquiry-into-opp-commissioner-hiring>



This is Exhibit "J" referred to in the
Affidavit of Amanda LaBorde, sworn
before me, on this 8th day of January,
2019.

A handwritten signature in cursive script, appearing to read "Molly Churchill", written over a horizontal line.

A commissioner for taking affidavits
Mary (Molly) M.D. Churchill

JULIAN N. FALCONER, B.A., LL.B., LL.D. (Hon.)
ASHA JAMES, B.A., LL.B., J.D.
MEAGHAN T. DANIEL, B.A., LL.B.
KRYSTYN ORDYNIEC, H.BSc., LL.B., J.D.



AKOSUA MATTHEWS, B.A., MPIL (OXON), J.D.
ELYSIA PETRONE-REITBERGER, H.B.A, M.E.S, J.D
MOLLY CHURCHILL, B.A., M.S.W., B.C.L., LL.B.

53

DELIVERED VIA EMAIL (victoria.karalus@ontario.ca)

December 20, 2018

Ms. Victoria Karalus
Ontario Divisional Court
130 Queen Street West
Toronto, Ontario M5H 2N5
Email: victoria.karalus@ontario.ca

Dear Ms. Karalus:

Re. Expedited Hearing of Application B.W. (Brad) Blair v. The Ombudsman of Ontario (File No. 781-18)

Thank you for setting aside time for a case management conference call of this matter. Due to the nature of the relief that is being contested – a request to expedite this matter before a three-judge panel – I am respectfully raising whether this type of order can be issued by way of a case management conference call or whether it requires proceedings in open court.

Since the parties do not agree, I am concerned that should it be the case that this matter cannot be addressed via conference call direction, we will potentially lose three weeks in the process of setting a date for a motion in court.

Therefore, I am respectfully requesting guidance at this stage on whether it would be appropriate for the applicant to serve a motion for directions returnable either the week of January 7, 2019 or January 14, 2019. Counsel for the applicant will endeavour to be available on whatever motion date that the court might provide and my colleagues are available.

I trust that the above does not unnecessarily complicate matters and will await your directions in this regard.

Yours very truly,

A handwritten signature in blue ink, appearing to be "J. Falconer", written over a light blue horizontal line.

Julian N. Falconer

cc: Mr. Frank Cesario, Counsel for the Respondent Ombudsman of Ontario, via email: frank-cesario@hicksmorley.com

Hon. Caroline Mulroney, Attorney General for Ontario, via email: attorneygeneral@ontario.ca

Sean Kearney, Director, Crown Law Office – Civil (Attorney General), via email: sean.kearney@ontario.ca

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B.W (Brad) Blair Commissioner,

*In his capacity as the current Commissioner of the Ontario
Provincial Police and his personal capacity*

-and-

THE OMBUDSMAN OF ONTARIO

Responding Party

Moving Party

Divisional Court File No.: 781/18

**ONTARIO SUPERIOR COURT OF JUSTICE
(Divisional Court)**

Proceedings commenced in TORONTO

MOTION RECORD

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