

ONTARIO CIVILIAN COMMISSION ON POLICE SERVICES

IN THE MATTER OF an application for consent to the
abolishment of the Kenora Police Service

Presiding Members:

Murray W. Chitra, Chair
Roy B. Conacher, Member

Appearances:

Len Compton, Q.C., Mayor, City of Kenora
David McCann, Councillor, City of Kenora
John Watkins, President, Consultants on Police Services Inc.
Dan Peters, Sergeant, Contract Policing Section, Ontario Provincial Police
S.R. (Rod) Case, Staff Sergeant, Contract Policing Section, Ontario Provincial Police
Don Denver, Staff Sergeant, Detachment Commander, Ontario Provincial Police
Ian Johnstone, Counsel, Kenora Police Services Board
Colin Wasacase, Chair, Kenora Police Services Board
Dan Jorgensen, Chief, Kenora Police Service
Shane Miles, President, Kenora Police Association
Tom Gervais, Police Services Advisor, Ministry of Community Safety and Correctional Services
Rhonda Kelly, Justice Coordinator, Grand Council Treaty #3
Ken Skead, Chief, Wauzhusk Onigum First Nation
Wayne Smith, Chief, Naichatcewenin First Nation
Joyce Chevrier, Citizen
Shaun Clifford, Citizen
Eleanor Fawcett, Citizen
Nancy Morrison, Citizen
Jim Chicago, Coordinator, Street Patrol
Sharon Smith, Citizen
Hayley Smith, Citizen
Lee-Anne Carver, Citizen

Written Submission:

Robert Marchant, Citizen

Meeting Date: Thursday, September 11, 2008

This is an application by the City of Kenora (the "City") pursuant to section 40 of the Police Services Act R.S.O. 1990, c. P.15 as amended (the "Act") for consent to abolish the Kenora Police Service (the "Service"). This is for the purpose of having all policing in the City provided under contract by the Ontario Provincial Police (the "OPP").

The Law:

Policing in Ontario is governed by the provisions of the Act.

The Act imposes upon municipalities a duty to provide “adequate and effective police services in accordance with its needs”.¹ This may be accomplished in a number of ways. A municipality may establish and maintain its own police force, enter into a joint policing arrangement with another municipality or contract for policing services with the OPP.²

Where a local police force has been established, it can only be abolished by a municipality for the purpose of putting in place one of the other policing options (i.e. OPP contract policing) with the consent of this Commission.³

This consent is subject to two requirements. First, the Commission must be satisfied that what is being proposed to replace the existing arrangement will continue to provide adequate and effective policing for the community in question.⁴

Second, the Commission must also be satisfied that members of the municipal police force that are the subject of the proposed abolition are being dealt with in a fair manner. Specifically, the Commission must determine whether or not any members who would be liable to termination have reached a severance agreement with their board, or agreed to refer any matters in dispute to arbitration.⁵

In cases where there is no agreement either with respect to settlement or arbitration, the Commission may direct the parties to arbitration. This, however, is only in those cases where, in all of the circumstances, the Commission is of the opinion that it would be appropriate to permit the abolition to proceed.⁶

If the Commission is of the view that these requirements have been met, then it may authorize a municipality to enter into a contract with the Minister of Community Safety and Correctional Services for policing to be provided by the OPP.⁷

¹ Section 4(1)

² Sections 5 and 6

³ Section 40

⁴ Section 40(1)

⁵ Section 40(2)

⁶ Section 40(3)

⁷ Section 10

Background to this Application:

The City

On January 1, 2000 the former Town of Kenora and Townships of Keewatin and Jaffray-Melnick were amalgamated to form the City.

The City is located in north western Ontario on Trans Canada Highway 17 along the shores of Lake of the Woods. Geographically, it is 500 kilometres west of Thunder Bay and 210 kilometres east of Winnipeg, Manitoba.

According to the 2006 National Census, the City has a population of 15,177 with 6,845 private dwellings. It occupies 210.91 square kilometres and has 332 kilometres of municipal roads.

The City is the hub of a significant tourism, fishing, hunting and cottage industry. It is a crossing point for both national highways and railways. It is the service centre for neighbouring communities including many First Nations.

For almost a hundred years, the City was the heart of a vibrant forestry industry. This included a number of mills producing pulp, paper and a range of wood products. However, starting in 2001 that industry experienced a decline. Since that time, there have been layoffs and a number of closures.

The impact of the decline of the forestry industry on the City has been significant. There has been a reduction in municipal revenues and a loss of residents. According to Census Canada between 2001 and 2006 the population of the City declined 4.2%.

Policing in the City

Since the late 1900's, the former Town of Kenora has had a municipal police service. The former Townships of Keewatin and Jaffray-Melnick were policed by the OPP. Upon amalgamation that situation was left in place. This is known as a "hybrid" policing arrangement.

Policing was the only municipal service in the City that was not amalgamated.

Currently, a total of 47.12 uniform officers from both the Service and OPP police the City. This includes 36 uniform officers from the Service (1 chief, 1 deputy chief, 5 sergeants and 29 constables)⁸ and 11.12 officers under contract from the OPP (.14 staff sergeant, .84 sergeant and 10.14 constables).⁹ This represents an officer to citizen ratio for the City of 1:322 (47.12 officers to 15,177 residents).

⁸ Page 4 of Submission of Ian Johnstone, Counsel, Kenora Police Services Board

⁹ From Schedule C of Policing Contract between the City and Minister of Public Safety and Security Services dated August 2, 2003

These officers are supported by a number of civilian staff, both full and part time. The Service employs 2 special constables, 12 guards, 2 office workers, 9 dispatchers and 4 by-law enforcement officers.¹⁰ The OPP provides .7 contract civilian positions (.42 clerical support staff and .28 caretaker).¹¹

The Service operates from a police station located at 1125 Highway 17 East. It is approximately 10,000 square feet. In brief, it consists of a general office, a supervisor's office, male and female locker and change rooms, interview rooms, property and evidence storage, lunchroom, prisoner cells and a single attached garage with sally port.

The OPP contract officers are deployed from Detachment Headquarters located at 350 Highway 17A. It is approximately 10,500 square feet. In summary it has general and administrative offices, male and female locker and change rooms, three prisoner cells, one young offender cell, a bullpen and a triple attached garage with sally port.

The OPP also has a building at 222 Water Street. It was the location of the former communications centre. It presently houses a number of specialized units (i.e. Forensic Identification, In Service Training etc...)

These three facilities are in the City.¹²

Both forces are well equipped. This includes various vehicles (marked, unmarked, vans, snow, all terrain), vessels, breathalyzers, radar detectors, spike belts, tasers, and long guns.

Both forces provide their own dispatching. The Service does so locally and the OPP from the Provincial Communications Centre in Thunder Bay (the "Centre"). Both forces use the services of the Kenora Jail at 1430 River Drive and the Court House at 216 Water Street.

The Service and OPP keep their own statistics on "calls for service" and "reported crimes" for the portions of the City that they police. For the purpose of this application we have accepted the statistics presented by the two forces for their current respective areas of responsibility.¹³

For the three year period ending in 2007 the Service reported an annual average of 13,377 calls for service and the OPP 2,574. This represents a total annual average number of calls for service for the City of 15,951.

¹⁰ Page 5 of Submission of Ian Johnstone, Counsel, Kenora Police Services Board

¹¹ From Schedule C of Policing Contract between the City and Minister of Public Safety and Security dated August 2, 2003

¹² The OPP also has two small satellite offices in Sioux Narrows and Minaki.

¹³ Taken from Table 1 and 2 found at pages 3 and 4 of Submission of Chief Dan Jorgensen, Kenora Police Service and chart entitled "Crime vs. Calls for Service-Three Year Average) from Presentation of Dan Peters, Sergeant, OPP

For the same timeframe the Service reported an annual average of 2,032 crimes and the OPP 292. For the City this means a total annual average number of reported crimes of 2,324. This represents an officer to crime ratio of 1:49 (47.12 officers to an annual average of 2,324 crimes).

The City's Decision

Given increasing policing costs and diminishing revenue, City Council decided to reconsider this policing arrangement. On May 14, 2007 Council passed a resolution "giving notice of its intent to request a policing costing for the provision of police services from the Kenora Police Service and the Ontario Provincial Police." A consulting firm was retained to assist in this exercise.¹⁴

A Council Police Costing Review Committee (the "Committee") was established. Terms of Reference directed that Committee to "undertake a broad based community consultation approach" and "make a recommendation to the Municipal Council of the City of Kenora as to whether the City should maintain the existing hybrid policing model or opt to be policed by a single police service provider, either by contract from the OPP or by expanding the services of the City of Kenora Municipal Police Service."¹⁵

In July of 2007 the consultant tabled a thirteen page report with the Committee. It recommended: "Given all of the information contained in this report it is a logical conclusion that the Council Police Costing Review Committee direct the remaining efforts of this study be focused on developing the criteria and the Request for Proposal (RFP) that will result in a more sustainable single police model for the City of Kenora."¹⁶

This proposed course of action was subsequently adopted by Council¹⁷ and a detailed RFP completed in October of 2007. The RFP was forwarded to the Service and OPP with a request that any proposal be submitted by November 30, 2007. Both forces responded and made formal presentations before Council on December 18, 2007.

The process briefly described above generated great public debate characterized by strongly expressed views. This in turn resulted in much activity and effort on the part of all those involved.

For example, during the course of their retainer, the municipal consultants conducted more than 120 interviews with community stakeholders, police officials and members of the public. The Committee held ten meetings and received deputations. Well publicized public information sessions took place.

¹⁴ Consultants on Police Services Incorporated

¹⁵ Corporation of the City of Kenora By-law Number 92-2007

¹⁶ Page 13 of Report of Jack Watkins dated July, 2007 entitled "Evaluating the Effectiveness of Hybrid Policing in Kenora".

¹⁷ Resolution #4 of the Corporation of the City of Kenora dated August 13, 2007

The issue of policing was frequently raised at Council meetings. It was the subject of much comment in the local newspaper and other media. A number of public demonstrations were held and petitions initiated.

It is evident that the debate on the future of policing in the City fully engaged many citizens, but consensus was elusive.

Ultimately, on January 10, 2008 the Committee recommended the OPP proposal. On February 1, 2008 Council accepted that same proposal in principle. Four days later Council wrote to the Commission requesting that the process to abolish the Service under section 40 be initiated.

The Commission's Process

Upon receipt of this resolution, the Commission requested detailed background information from the City. It was provided on March 28, 2008.

The Commission also requested information from the Kenora Police Services Board (the "Board"). It was not provided.

On March 6, 2008 the Board passed a resolution stating that it:

... has rejected by a majority vote, the City of Kenora Resolution of February 1, 2008 regarding policing services in the City of Kenora and;

... is not prepared to either abolish or reduce in size the Kenora Police Service and;

... stands against the abolishment or reduction in size of the Kenora Police Service until such time as a resolution is passed by the Kenora Police Services Board stating that they wish to abolish or reduce the size of the Kenora Police Service ...

On March 19, 2008 Counsel for the Board advised the Commission "that any action to disband the Kenora Police Service without due process will, in fact, result in an application to the courts to ensure procedural fairness is ensured throughout the process."

Subsequently, on April 22, 2008 the Chair of the Board wrote the Commission advising that: "If the Kenora Police Services Board decides to abolish the Kenora Police Service, we will contact you."

On May 12, 2008 the Commission, after considering the application of the City and the position of the Board, decided to conduct a public meeting in Kenora to formally receive the City's submission and any public comments on the two legal preconditions to its consent identified earlier in this decision. The date selected for the meeting was September 11, 2008.

The Board, City Council and other parties were advised of this fact in writing on June 2, 2008. Subsequently, notice of this public meeting was posted in local newspapers.

Intervening Litigation

Some two months later, on August 5, 2008 the Commission was served by counsel for the Board with a Notice of Application in the Ontario Superior Court of Justice. Essentially, the Application sought a declaration that City Council did not have the legal authority to request the Commission's consent to abolish the Service in the absence of the consent of the Board.

The Commission determined that the scheduled public meeting would proceed. However, the Commission agreed that it would not release a final decision on the City's abolishment request before October 31, 2008.

The Application was argued in Kenora on September 23, 2008 before Mr. Justice G. P. Smith. In a written decision dated October 9, 2008 he dismissed the Board's Application.

The essence of Mr. Justice Smith's ruling is found at paragraph 56 of his decision. He stated:

A review of the powers and responsibilities of municipal councils and police services boards set out elsewhere in the legislation leads me to conclude that it is only council and not the board that has the authority to decide to disband or dissolve a police service and to select an alternative method of police servicing for the community.

The Board has appealed this ruling.

The Public Meeting

The Commission's meeting took place as scheduled in Kenora on September 11, 2008. It was attended by nearly three hundred residents and lasted six hours.

The events and process leading up to the City's proposal were described to us by Mayor Len Compton, Councillor David McCann¹⁸ and John Watkins¹⁹. The proposal itself was detailed by Sergeant Dan Peters of the OPP assisted by Staff Sergeants Rod Case and Don Denver.

Ian Johnstone,²⁰ Board Chair Colin Wasacase, Chief Dan Jorgensen and Kenora Police Association President Shane Miles outlined concerns with the City's process and aspects of the proposal. Tom Gervais, the Ministry's Advisor

¹⁸ Chair of the Committee

¹⁹ Consultants on Police Services Incorporated

²⁰ Board Counsel

assigned to the Service, drew to our attention an issue relating to the application of the OPP's Provincial Services Usage Offset to proposed service levels.

We heard from Chiefs Ken Skead, Wayne Smith and Rhonda Kelly who is the Justice Coordinator of Grand Council Treaty #3. They raised concerns about lack of consultation, proposed reductions in service levels and stressed the importance of establishing proper partnerships with First Nations, promoting trust and engendering understanding through training and dialogue.

We then received oral submissions from eight citizens and a written submission from one. They raised a number of concerns focusing on both the City's process and the proposal.

The concerns relating to the process can be briefly summarized as follows:

- Committee Terms of Reference and Council procedural rules were not respected;
- Council's consultant (a retired OPP officer) was biased against the Service;
- Various reports prepared by the consultant and Committee contained errors;
- Estimates of financial savings and future costs were not accurate;
- Public consultations were not transparent, sufficient or fair;
- The RFP did not properly describe the special policing needs of the City; and
- Council's final decision was neither democratic nor supported by the majority of citizens.

The concerns relating to the proposal can be briefly summarized as follows:

- The suggested OPP model does not respond to the unique policing needs of the City particularly as it relates to vulnerable citizens, transients, the homeless, youth, the elderly, summer residents or reflect the large number of persons who do not live in the City but use its services;
- The OPP model would deny the citizens effective control of policing, the benefits of local dispatching and a police station open to the public 24 hours a day;
- Transfer of policing to the OPP would result in the loss of expertise and goodwill held by members of the current Service;
- It would result in job losses, in a community already suffering from high unemployment; and

- The proposed staffing levels are insufficient to permit proactive policing, allow for a manageable officer workload or provide the necessary response to the City's high crime rate.

Presenters made it clear that their concerns were not intended as a criticism of the OPP.

The City's Proposal:

It is proposed that the current policing resources of the City be integrated with those of the local OPP Detachment to form a single police service. Given this change, it is necessary to have an understanding of the current structure and functioning of the Detachment.

In addition to the former Townships of Keewatin and Jaffray-Melnick, the Detachment is responsible for policing in a number of other communities. These include the Township of Sioux Narrows/Nester Falls and several unorganized areas with a combined population of approximately 7,700.

The total land area policed by the Detachment is vast - 400,652 square kilometres. It contains 440 kilometres of provincial and secondary highways,²¹ numerous waterways²² and provincial parks.²³

The total Detachment complement of uniform officers is 47. That includes 1 staff sergeant, 5 sergeants and 41 constables. As noted earlier, of this group 11.12 are under contract to the City. That would mean that presently 35.88 officers perform primarily provincial and some municipal policing for the balance of the Detachment area.

The crime rate in the Detachment's area is low. The total average annual number of reported crimes for the three year period from 2005 to 2007 was 346. The corresponding average annual calls for service was 3913.²⁴ It is difficult to separate from these numbers the municipal and provincial policing components. So in total, the ratio of officer to crime for the Detachment area outside of the City was 1:9.6 (35.88 officers to an annual average of 346 crimes).

The proposed policing arrangement, accepted in principle by the City, calls for an integrated Detachment of 82 officers. Of this total, 42.56 would be allocated to the City and 39.44 to the other responsibilities of the Detachment. As well, the uniformed staff would be supported directly by eleven civilian employees.

The following chart illustrates the proposed breakdown of uniform and civilian staff:

²¹ Highways 17, 17A, 71, 596, 641,658,659, 671 and 673

²² Lake of the Woods, portions of the Winnipeg River, Black Sturgeon and the English River system

²³ Rushing River Provincial Park, Sioux Narrows Provincial Park and Caliper Lake Provincial Park

²⁴ Page 29 of City Proposal to Ontario Civilian Commission on Police Services for a Disbandment Hearing dated March 2008

Position	Total City of Kenora	Remaining Policing Responsibilities	
Inspector Detachment Commander	0.53	0.47	1.00
Staff Sergeant	0.53	0.47	1.00
Detective Sergeant	1.00	1.00	2.00
Sergeant (Team Leaders)	4.00	4.00	8.00
Detective Constable	5.00	4.00	9.00
Constables	31.50	29.50	61.00
Total Uniform	42.56	39.44	82.00
Special Constables	2.00		2.00
Clerical Support	2.50	3.00	5.50
Caretaker	0.50	1.00	1.50
Civilian Data Entry	2.00		2.00
Total Civilian	7.00	4.00	11.00

The City would be invoiced for the 42.56 uniform officers and seven civilian staff identified above.

Under the proposed arrangement officers would continue to be deployed from the current OPP Detachment facility and Service Police Station. Some renovations to the latter would be required. These include:

- Cell bunks enclosed and cell interiors painted;
- Security counter in reception area to be updated;
- Additional diary slots, and cubical and lockers to be added; and
- Exterior sign to be changed.

We are advised that these renovations would require approximately eight weeks of construction following the completion of the normal tender process.

Both facilities would be open to the public during normal business hours.

As well, we were advised that a portion of the OPP facility at 222 Water Street would be made available to serve as a “store front” office. In essence an office would be provided for officers to meet with members of the public or conduct interviews.

The proposal calls for twenty-four hour proactive and reactive coverage of the City to be achieved through rotating twelve hour shifts on a four platoon roster. The four platoons would each be comprised of seven constables and a sergeant assigned to frontline duties. This would result in a total of four sergeants and twenty-eight constables assigned to the regular policing of the City.

The existing City patrol zones would be maintained.

The Detachment would have a Crime Unit consisting of two detective sergeants and nine detective constables. One detective sergeant and five detective constables would be allocated to the City.

The Service currently does not have auxiliary officers. The OPP does. It is proposed that the City would have access to up to 15 auxiliary officers to assist in traffic and crowd control and support regular members on patrol.

An inspector would be responsible for the overall administration of the Detachment. A staff sergeant would function as a general program manager. More than half of their time would be allocated to the City.

As well, the Detachment would have two court officers, two community/youth officers and two community services officers. Essentially, one of each would be allocated to the City. The Service's two special constables would continue to provide court security functions.

Both the local detention and court facilities would continue to be used.

The Service's four by-law enforcement officers would continue to perform their functions. However, their employment would be transferred to the City.

All dispatching for the integrated Detachment would take place from the Centre in Thunder Bay. The Centre is the regional hub of the OPP Fleetnet Radio communications system. That system is a hybrid microwave one, utilizing several communications towers placed throughout the area to provide overlapping coverage.

The Centre is managed by an inspector and staff sergeant. It has nine sergeants. One is on duty at all times to monitor police activity and provide operational assistance and supervision to officers on patrol.

The Centre also has 31 full time and 13 part time communications operators. It employs 2 technologists. As well, it serves as the regional Canadian Police Information Centre ("CPIC") Unit. It is proposed that upon disbandment all City CPIC files would be transferred to this Unit.

The Centre offers enhanced "911" service, responds to a toll free "888" number, has interactive phone mapping (I/Cad), is TTY equipped and monitors both OPP Simplex and the Provincial Common channel. As well, it has battery and diesel generator backup for emergencies.

Both forces currently use NICHE RMS for record keeping purposes. This will not change.

The OPP proposes to offer employment to:

- All Service uniform officers who meet the requirements of the Act. Any officer at the rank of sergeant or above would enter a Rank Level Determination Process;
- The two special constables; and
- Part-time contract guards would be moved to the OPP call out roster.

We are advised that the OPP would require 75 days to process the applications of Service officers wishing to transfer to the OPP.

There would also be two new clerical support and two civilian data entry complements created and allocated to the City. We were advised that these positions would be offered to members currently serving in the Service's civilian ranks.

All uniform members transferring to the OPP would participate in joint orientation patrols. They would attend a two week program at the Provincial Police Academy in Orillia. They would receive training on OPP policies and procedures and be issued with OPP uniforms and equipment. Where possible, existing Service equipment would continue to be used.

Finally, the existing Board would be replaced by a board which would exercise the powers under section 10(3) of the Act. This would include participation in the selection of the Detachment Commander; assisting in the establishment of local policing objectives, priorities and policies; and, monitoring a range of activities.

Decision:

Every municipal council in Ontario has a legal duty to provide adequate and effective police services. The Act permits this to be accomplished in a number of different ways.

Recently, City Council has been confronted with the unfortunate dilemma of significant reductions in municipal revenues caused primarily by layoffs and plant closures in the local forestry industry. As a result, City Council decided to revisit the only City service that was not amalgamated in the most recent municipal restructuring - policing.

Since 2000 the City has had a hybrid policing arrangement. In essence, two police forces. Leaving aside the question of cost, section 5 of the Act permits City Council to question whether such an arrangement was the most effective way to provide an essential service to its 15,000 residents.

To assist in this process, City Council retained a consultant and established the Committee. In short order, it was determined that an RFP should be prepared and tenders solicited for a single police service provider.

In this regard, the City was fortunate. It had two viable options - the Service and the OPP. Both forces had policed the City for many years. Both had knowledge, experience and expertise.

At the end of the day City Council accepted the OPP proposal. We have heard concerns expressed about that choice. We have also heard concerns expressed about the process leading to that choice. It is evident that these opinions were both sincere and strongly felt.

However, as we noted at the beginning of our public meeting, it is not our function to decide between alternative policing proposals or assess which would be most economical or otherwise preferred. Simply put, it is not our role to second guess a municipal council or revisit a decision on a matter clearly within its proper mandate.

The same logic would apply to the process adopted by municipal council leading up to its decision. Clearly, it is important that a municipal council has the benefit of the advice of experts and the views of citizens in making a choice on such an important matter of community concern. In this case, it is evident that City Council had both.

Our role is prescribed by the Act and in particular section 40. As noted earlier in this decision, we are required to focus on two questions. First, will what is being proposed continue to provide adequate and effective policing to the City? Second, if so, are the necessary arrangements in place to deal with the severance of any members of the Service who would be subject to termination?

The nature of this scheme is self-evident. It is to ensure that community safety is not put at risk by any change to a policing arrangement and that provincial standards will continue to be met. As well, it is to ensure that any employees of a police service who are adversely affected by such a change are treated fairly.

We turn to the first question.

The Act does not currently define what constitutes adequate and effective police services. However, certain sections of the Act and prior Commission decisions provide assistance.

Section 4 of the Act states that for a police service to be “adequate and effective” it must have the necessary staff, administration, equipment, infrastructure and facilities to perform certain functions. These include crime prevention, law enforcement, assistance to victims of crime, public order maintenance and emergency response.

Commission decisions in various contexts have articulated different tests to assess adequacy. At page 15 of Municipality of Chatham-Kent (14 August, 1998, O.C.C.P.S.) we stated:

Broadly these tests have been comparative or alternative. The comparative tests may be applied historically or geographically. Where it is applied historically, the current or proposed staffing level is compared to that which the municipality has received in the past. If past staffing levels were considered adequate the proposed or current level is normally presumed to be adequate and effective.

Where the comparative test is applied geographically the proposed or current staffing level is measured against those found in communities of similar size or needs. If the levels are considered adequate in those communities a similar level proposed is generally presumed to be adequate and effective.

How do these tests apply to this application?

Staffing

At the current time the City is policed by 47.12 uniform officers for an officer to citizen ratio of 1:322.

It is proposed that the bulk of these resources be combined with those of the Detachment. This would mean an integrated Detachment of 82 uniform officers providing police services to 22,877 residents. This would mean an overall officer to citizen ratio of 1:279.

This is high. Put in context, in Canada in 2007 there was one police officer for every 512 citizens.²⁵ This larger number in northwest Ontario however, is understandable, given the need to deploy police resources over more than 400,000 square kilometres.

More to the point, the plan calls for the allocation of 42.56 uniform officers from the Detachment to police the 210.91 square kilometres of the City. On the face of it this would represent a loss of 4.56 officers or 9.7% of the current City uniform complement. As well, it would mean a reduced officer to citizen ratio from 1:322 to 1:357.

Both the current and proposed ratios for the City are favourable when viewed in the national and provincial context. On the latter point, we would note that in the past Commission decisions have approved ratios for integrated policing arrangements of 1:633 (Elliot Lake), 1:546 (Atikokan), 1:513 (Terrace Bay) and 1:543 (Red Rock).

However, for such numbers to be meaningful they must be viewed in the context of officer based workload. This is a function of the number of proposed officers measured against local crime rates. In this regard, it is evident that the City has a special challenge-a high crime rate.

²⁵ Statistics Canada, Canadian Centre for Justice Statistics, "Police Resources in Canada, 2007", page 7

To put this in context, the average number of crimes per 100,000 citizens in the Province of Ontario in 2006 was 5,689.²⁶ For the City it was 14,812.²⁷ That would mean, at least for that year, the City had a crime rate that was 2.6 times the Provincial average. Unfortunately, this reality is not restricted to 2006.

Rather, it would appear to be a reflection of unique policing requirements of the City. This no doubt flows from the fact that during the year the City sees thousands of travelers, tourists, cottagers, neighbouring First Nation's citizens and others taking advantage of local services. As well, it no doubt reflects the special demands of the local homeless population.

Currently, based on a three year average, each officer in the City has to respond to 49 criminal offences per year. This is close to the workload benchmark approved by the Commission in previous decisions of between 1:43 to 1:51.²⁸

What is being proposed would raise that level to 1:54.6 (42.56 officers to an annual average of 2,324 crimes). To our mind, notwithstanding the evident staffing advantages of an integrated structure, this represents too high a workload - particularly for those officers assigned to patrol the former Town of Kenora.

We are of the view, given the current number of officers policing the City, the historical high crime rate and the need to maintain a manageable workload for officers, that the present City complement should not be reduced by the proposed 9.7%.

Rather, we are of the view that the proposed City complement of 42.56 uniform officers should be increased by five for a total of 47.56.

Four of these five additional officers should be front line constables. One should be assigned to each of the Detachment's four platoons and allocated to the regular patrols of the City. This will mean that on any given shift, eight constables under the direction of a sergeant will be dedicated to policing the City.

The fifth officer should function as a community services officer, with a specific mandate to work with First Nations and other community groups.

As a practical matter this additional complement, along with the proposed reduction of management levels, the consolidation of administrative functions, the introduction of auxiliary officers and the access to a wider range of OPP support services, should facilitate proactive policing for all of the City's residents - be they permanent, seasonal, homeless or otherwise vulnerable.

²⁶ Statistics Canada, Canadian Centre for Justice Statistics, "Juristat", Vol. 27, No. 5, page 3

²⁷ Page 2 of Submission of Chief Dan Jorgensen entitled "Examining the 42.5 Officer Proposal to Police the City of Kenora"

²⁸ Township of Atikokan (20 July, 2005, O.C.C.P.S.) at page 15

It would allow for an acceptable officer to citizen ratio of 1:319, an officer to crime ratio of 1:48.9 and supervisor to officer ratio of 1.6.5 (12 supervisors for 74 constables).

On the subject of staffing, we would also like to address two issues raised with us. The first, related to the potential loss of expertise and goodwill that might occur if policing in the City were to be transferred to the OPP. In this regard we would simply note that the proposal calls for all of the officers of the Service to be offered employment. No doubt, the majority will elect to remain and the City's citizens would continue to benefit from their knowledge and expertise.

Second, an issue was raised about the potential impact on the proposed level of service by the application of the Provincial Services Usage Offset. The Commission has spoken to this matter in previous decisions. In Town of Goderich (27 October, 1997) at pages 9 and 10 it stated:

That brings us to the matter of the "10% provincial services offset". That is described as a reduction to the base cost of OPP municipal contract policing in recognition of the necessity to secure the ongoing availability of officers to meet provincially mandated responsibilities. Examples given include the need to mobilize officers and equipment in times of emergencies and disasters or the requirement to assemble numbers of front-line municipal officers for short periods to assist in major investigations.

The concept of mutual support makes sense, For instance, if a tornado were to strike a part of Huron County it is right that OPP Goderich staff be available to aid their neighbours. The same expectation would apply if a natural disaster were to happen in the Town of Goderich.

That being said, it is difficult to reconcile the idea of exclusively dedicated officers with a costing formula that suggests that up to 10% of their time could be spent elsewhere.

However, as noted earlier it is not our role or mandate to pass any judgements with respect to cost or pricing. Our review of the proposed agreement indicates that it clearly commits the OPP to assign the uniformed staff noted earlier to dedicated services to the Town of Goderich ...

Similarly, regardless of the costing formula used here, it is our expectation that the City will receive the services of the 47.56 officers and seven civilians reflected in this decision and deemed necessary for adequate and effective policing.

Facilities, Communications and Equipment

As noted earlier, it is proposed that these officers continue to be deployed from the same facilities located at 1125 Highway 7 East and 350 Highway 17A. Some minor renovations would be required to the former.

Both buildings are in the City. Both have served their purposes well in the past and there is no reason to suggest that they would not continue to do so.

Some reservation was expressed that the current Service facility (like the OPP Detachment building) would only be open to the public during normal business hours. This would flow from the fact that the Service's current dispatching function would be transferred elsewhere and therefore staff would not be present at the Highway 7 East building 24 hours a day.

In City of Temiskaming Shores (15 June, 2007, O.C.C.P.S.) the Commission spoke to a similar issue. It stated at page 16 of that decision:

Concern was expressed that this building is only open to the members of the public during normal business hours. The Service's building is open twenty-four hours a day. There is little doubt that keeping the station available to the public at all times would be preferable. The reality is that in many communities staffing a local police facility twenty-four hours a day is not the norm. This is particularly so where there are no local dispatch staff.

Such a situation does not necessarily mean that a police service is inadequate. The key is whether or not citizens have access to adequate and effective policing. Citizens of the City would continue to have 24-hour policing coverage. The Detachment front counter would be open during the day. Residents will still be able to call 9-1-1 for emergencies. A fixed phone with direct free access to the North East Region Communications Centre in North Bay will be outside the building for use during evening hours. There would be a minimum of two constables patrolling the community at any time. Given the above, while the reduced office hours may be regrettable, operationally the situation is acceptable.

We believe the same logic applies here.

That then leads to the matter of communications. At the present time the OPP is dispatched from the Centre in Thunder Bay and the Service locally. Essentially, the City uses two dispatch services based in two different places. It is proposed that all dispatching be done from Thunder Bay.

Concerns were expressed about the possible impact on policing in the City if it were to lose the local knowledge of the Service's current dispatchers. We have

heard such reservations before. In City of Orillia (17 January, 1996, O.C.C.P.S.) the Commission stated:

Concern was expressed about having the dispatching function operate from Barrie. It must be noted that the dispatching function in many parts of Ontario is not located in the community that it directly serves. This is true of both the Ontario Provincial Police and a number of municipal police services. To our mind the measure of “adequacy” is not where such a service is based, but how well it is organized and managed. This is certainly something in which the Ontario Provincial Police has expertise.

Leaving aside the fact that the Centre currently dispatches for a portion of the City, it is worth noting that the Commission has examined the capacity of the Centre in Thunder Bay on two previous occasions and found it to be more than adequate for similar proposed arrangements.²⁹ Based on the information provided to us, we see no reason why this should not also be the case for the City.

Finally as noted earlier, the officers and staff transferred to the OPP would be provided with the necessary personal equipment. Further, where possible the other equipment of the Service would continue to be used in the integrated Detachment.

In summary, with the addition of the five officers identified above and the completion of the renovations described we are satisfied that the proposal would permit the City to continue to provide adequate and effective policing and meet the requirements of the Act and Ontario Regulation 3/99.

Termination and Severance

As noted earlier, the proposal provides for:

- Offers of employment for all Service uniform officers who meet the requirements of the Act;
- Transfer of the Service’s four bylaw officer’s to the City payroll;
- The Service’s part-time contract guards would be added to the OPP call out roster; and
- Six civilian positions (two special constables, two clerical support and two data entry) would be created and open to current Service staff.

²⁹ Township of Red Rock (26 May, 2000, O.C.C.P.S.) and Township of Terrace Bay (31 July, 2001, O.C.C.P.S.)

Given the above, it is evident that some members of the Service will be without employment.

At the Commission's public meeting of September 11, 2008, Mr. Johnstone, on behalf of the Board, advised us that the current Collective Agreement with the Association addresses the question of severance for both uniform and civilian members. He summarized these provisions as follows:

The Collective Agreement provides for the payment of one month's pay for every year of service for each full-time employee, to a maximum of 36 months. All other benefits shall continue for the period of the payments. Additionally, 40% of all banked sick time shall be paid. Furthermore, the Board must provide legal indemnity for the members for a period of 5 years and reimburse members up to \$3,000 for education or retraining expenses.

Part-time employees are paid 100 hours of wages for each year of service to a maximum of 1,300 hours. Additionally, any accrued vacation and statutory holiday pay, pursuant to the Employment Standards Act.³⁰

All members of the Service are covered by these provisions with the exception of Chief Jorgensen and Deputy Chief Csuzdi. We are advised that neither of these two senior officers have any agreement for severance pay.

Further, Mr. Johnstone informed us that there were a number of outstanding questions, both substantive and procedural. The main unresolved substantive severance issue would appear to concern a possible pension shortfall for transferred members. Procedural matters include the possible application of "bumping" rights to the hiring process to be adopted by the OPP for filling the new civilian positions and status of the bylaw officers with the City.

As of the date of our meeting no discussions have taken place between the Board and its employees concerning any of these matters. Further, it would not appear that the Board has sought to address these concerns with City Council or the OPP.

For all of the members of the Service and their families, facing the uncertainty of this process, the absence of answers to such questions must have caused great worry and stress. This cannot continue.

Under the Act, boards have an important role in the statutory process that follows a municipal decision to disband a police service. As Mr. Justice Smith wrote at paragraph 63 of his judgment: "Once a council makes this decision then a board is required to deal with pension and severance matters."

³⁰ Page 8 of Submission of Ian Johnstone, Counsel, Kenora Police Services Board

The Board clearly has a statutory duty to address and settle, prudently and expeditiously, all pension and severance issues related to the disbandment of the Service. It has a duty to facilitate a smooth and effective transition.

In conclusion, subject to the conditions and directions set out below, we approve the City's request under section 40 of the Act for consent to abolish the Service to permit policing under contract with the OPP. This allows us to consent to the termination of all current members of the Service.

Our consent is subject to the following conditions:

1. The proposed uniform complement shall be increased by five constables to be allocated as described. This will mean that the City's portion of the uniform complement of the integrated Detachment will be 47.56 of a new total of 87 officers.
2. The process of seeking tenders for the proposed renovations to the Police Station at 1125 Highway 17 East shall be initiated within 30 days of the date of this decision. These renovations must be completed prior to any final transfer to OPP policing.
3. The OPP shall provide uniform members of the Service with applications for transfer within 30 days of the date of this decision and complete the processing the applications of those seeking employment within 75 days.
4. The OPP establish a process for filing the six civilian vacancies and advise eligible candidates of the procedure to be followed within 60 days of the date of this decision.

Further, we direct:

1. The Board to enter into good faith severance negotiation with the Chief and Deputy Chief. If no agreement is reached within 60 days of the date of this decision, then we order that any unresolved matters are to proceed forthwith to arbitration.
2. The Board enter into good faith negotiations with the Association to resolve any outstanding pension issues that might arise for transferred employees. If no agreement is reached within 60 days of the date of this decision, then we order that any unresolved matters are to proceed forthwith to arbitration.
3. The Board forthwith provide City Council and the OPP with any information requested to facilitate the orderly disbandment of the Service and to ensure that the terms and conditions of this decision are met in a timely manner.

4. The Board provide the Commission with a written report within 60 days of this decision outlining the steps that it has taken to comply with the conditions and directions set out above.

We remain seized of this matter until there has been full compliance with all of these conditions and directions.

DATED AT TORONTO, THIS 18TH DAY OF DECEMBER, 2008

Murray Chitra
Chair, OCCPS

Roy Conacher
Member, OCCPS