

Legislative  
Assembly  
of Ontario



Assemblée  
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de l'Ontario

Office of the Integrity Commissioner  
The Honourable J. David Wake, Commissioner

Bureau du commissaire à l'intégrité  
L'Honorable J. David Wake, Commissaire

**CONFIDENTIAL**

March 5, 2020

Mr. Randall Arsenault  
Commissioner  
Ontario Human Rights Commission  
180 Dundas Street West, Suite 900  
Toronto, ON M7A 2G5  
Sent via email: [REDACTED]

Dear Mr. Arsenault,

**Re: Conflict of Interest – Request for Determination 19-188**

I am writing to you because your ethics executive, Renu Mandhane, Chief Commissioner of the Ontario Human Rights Commission (the “OHRC”), has asked that I make a conflict of interest determination about your recent appointment to the OHRC as a Commissioner. She has asked me to consider whether your appointment may create a conflict of interest because the OHRC is involved in matters that involve your employer, the Toronto Police Service (the “TPS”).

I have considered the information provided in writing by Chief Commissioner Mandhane on January 17, January 27, and February 7, 2020 as well as by [REDACTED] from the Office of the Premier of Ontario on January 28, and February 11, 2020. I also considered the information you shared with me during our meeting on February 6, 2020 and which Chief Commissioner Mandhane shared with me during my meeting with her on February 28, 2020. Based on this information, I have concerns about your involvement in some OHRC matters and have provided you with directions to address these concerns.

**Your role with the Toronto Police Service**

As you explained during our meeting, you have been an employee of the TPS for 19 years and have served as a School Liaison Officer, Community Engagement Officer and a Primary Response Officer. You told me that you have promoted and advocated human rights within the TPS. You also indicated that in your capacity as an employee of the TPS, you have not been involved with any matters related to the OHRC. You are seeking authorization from the TPS to accept the appointment to the OHRC.

**Role of the Ontario Human Rights Commission and its appointees**

Under the Ontario *Human Rights Code*, the OHRC must promote, protect and advance respect for human rights, and identify and promote the elimination of discriminatory practices. The OHRC fulfills this mandate through education, policy development, public inquiries and

litigation. As an appointee to the OHRC, your duties would include providing oversight over the activities of the OHRC including making decisions about whether the OHRC should conduct inquiries and commence or intervene in litigation before the Human Rights Tribunal of Ontario.

As set out in its 2017 to 2022 Strategic Plan, the OHRC has decided to concentrate its activities on four strategic focus areas: reconciliation, criminal justice system, poverty and education. As part of its focus on the criminal justice system, the OHRC is currently dealing with several matters related to the TPS, including a public interest inquiry into racial profiling and discrimination by the TPS. This inquiry is one of only two inquiries the OHRC is conducting. The TPS inquiry, which the OHRC started in November 2017, reviews data from the TPS and the Special Investigations Unit to determine how and where racial profiling operates in law enforcement. The OHRC released an interim report in December 2018. Chief Commissioner Mandhane has advised that the final report of this inquiry is expected to be released in the next fiscal year and as a result over the course of the next year, appointees to the OHRC may spend up to half of their time on matters related to the inquiry and related litigation. She explains that appointees to the OHRC also participate in public hearings and community consultations, and they approve the content of inquiry reports and associated communications plans. The OHRC has also identified 21 other ongoing initiatives related to policing services, of which 10 relate specifically to the TPS. Based on data from the last six months, the OHRC has estimated approximately 30% of its overall workload was devoted to the TPS specifically and 40% for policing work more generally.

### **Relevant Conflict of Interest and Political Activity Considerations**

As we discussed, as a part-time appointee to the OHRC, you are a public servant and are subject to the Conflict of Interest Rules under the *Public Service of Ontario Act, 2006* (the “PSOA”) as set out in Ontario Regulation 381/07 (the “Rules”). Because of your presence on social media, we also discussed the political activity restriction that appointees to the OHRC must follow as set out in sections 85 to 93 of the PSOA. A summary of the Rules and these sections were provided to you in our earlier correspondence.

As we discussed during our meeting, a conflict of interest can arise when a person has obligations to more than one organization and it is not possible to meet both sets of obligations. Because you are an employee of the TPS and much of the OHRC’s current work relates to the TPS, I have determined that your appointment to the OHRC, at this time, creates conflict of interest concerns related to sections 6 and 8 of the Conflict of Interest Rules. Section 6 requires public servants to avoid giving preferential treatment to any person when carrying out their duties to the Crown, and to take steps to avoid creating the appearance that such treatment is being given. I am concerned that your work for the OHRC could create the *appearance* that you or the OHRC is giving preferential treatment to the TPS. Section 8 of the Rules states that a public servant may not engage in an activity that could conflict with their duties to the Crown or interfere with their ability to perform those duties. I am concerned that your role with the TPS could interfere with your ability to perform your duties as an appointee to the OHRC.

### **Directions to Minimize Conflict of Interest Concerns**

As I do whenever I have determined there are conflict of interest concerns, I have considered whether there are steps that you could take to mitigate the potential conflicts identified above. At minimum, I direct you to recuse (or remove) yourself from any OHRC discussions or decision-making related to the TPS inquiry or other policing services matters. This means, for

example, if you are attending an OHRC meeting where half of the agenda relates to the inquiry into TPS, you will have to leave the room and not be involved in any discussions about these matters. Your recusal should also be noted in the minutes of the OHRC meetings.

I also caution you that you may need to be recused from additional OHRC matters as there could be potential intersections between your role as a police officer and other OHRC initiatives, notably those related to the criminal justice system. For example, it would not be appropriate for you to represent the OHRC during tours of correctional facilities. As your ethics executive, Chief Commissioner Mandhane may provide you with such additional directions.

In relation to your role with the TPS, I direct you to take the following steps:

- Immediately seek authorization from the TPS to be an appointee of the OHRC and provide a copy of this authorization to Chief Commissioner Mandhane;
- Recuse or remove yourself from discussions and decision-making at the TPS related to matters which fall under the jurisdiction of the OHRC;
- Do not use provincial government resources, including time and email;
- Do not use or disclose OHRC-related confidential information;
- Do not participate in any lobbying activities directed at the provincial government; and
- Do not publicly comment, including through social media, on *any* subjects related to matters which fall under the jurisdiction of the OHRC.

Lastly, in order to minimize concerns about the appearance of preferential treatment set out above, it is my recommendation that the OHRC publicly disclose the steps being taken to mitigate potential conflicts which, as set out above, should also be noted in the minutes of the OHRCs meetings where applicable.

### **Conclusion**

The Office of the Premier of Ontario explained that your appointment to the OHRC proceeded on the recommendation of the Attorney General. Given that the directions set out in this letter will limit your ability to contribute fully to the work of the OHRC because of the large amount of time that appointees to the OHRC may spend on matters related to the TPS, I will be providing the Attorney General with a copy of this letter. I understand that Chief Commissioner Mandhane has written to you to advise you that she could not meet with you until my determination of this matter was concluded. This was entirely appropriate but now that my involvement has concluded there should be no impediment to the two of you meeting to discuss your role with the OHRC. I wish you success in your efforts to contribute to the public service of Ontario.

Should you have any questions about the directions set out in this letter, you may contact [REDACTED]

Sincerely,



The Honourable J. David Wake  
Integrity Commissioner

c.c The Honourable Doug Downey, Attorney General [REDACTED]  
Renu Mandhane, Chief Commissioner [eco@ohrc.on.ca](mailto:eco@ohrc.on.ca)