ONTARIO CIVILIAN POLICE COMMISSION

Annual Report

2009

ONTARIO CIVILIAN POLICE COMMISSION

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Mission Statement

The Ontario Civilian Police Commission is an independent oversight agency committed to serving the public by ensuring that adequate and effective policing services are provided to the community in a fair and accountable manner.

Ontario Civilian Police Commission

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Commission civile de l'Ontario sur la Police

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Ontario

The Honourable Jim Bradley
Minister of Community Safety and
Correctional Services
25 Grosvenor Street
18th Floor
Toronto, ON M7A 1Y6

Dear Minister:

Pursuant to the Memorandum of Understanding with the Ministry, I am pleased to forward the Annual Report of the Ontario Civilian Police Commission for the calendar year ending December 31st, 2009.

Yours sincerely,

Murray W. Chitra
Chair

Chair's Message

As Chair of the Ontario Civilian Police Commission, I am pleased to report on our activities during the calendar year 2009. I would like to begin by recognizing the hard work and commitment of Commission members and staff.

During 2009 the Commission released nineteen decisions. These related to police discipline, employment status, budgets and restructuring. Summaries are contained in this report and the full texts of these decisions can be found on our website at www.ocpc.ca.

The Commission received five requests to initiate investigations. Two investigations were commenced. One remains outstanding.

As well, the Commission received 644 requests to review decisions made by police services with regard to public complaints about police officer conduct, and police service policies and services.

With the Proclamation of the *Independent Police Review Act* on October 19, 2009 the responsibility for the oversight of public complaints was transferred to a new agency. However, the Commission remains responsible for complaints arising before the date of Proclamation.

The Act also brought other changes. The name of the Commission has been simplified. Our longstanding role as an adjudicative appeal and decision making body has been enhanced.

In August of 2009 the Commission moved into new offices at 250 Dundas Street West. These offices have state of the art hearing facilities and are readily accessible to the public.

Over the course of the next year, the Commission will be revising its Rules, procedures and structure to reflect the legislative changes and to better serve the public.

With this in mind, I would like to reaffirm the Commission's commitment, as demonstrated through 48 years of responsive public service, to ensuring the delivery of adequate and effective police services throughout Ontario.

Murray W. Chitra
Chair
Ontario Civilian Police Commission

Role of the Commission

Mandate

The Ontario Civilian Police Commission is an independent oversight agency of the Ministry of Community Safety and Correctional Services. It reports administratively to the Minister of Community Safety and Correctional Services.

The Commission is responsible for ensuring that adequate and effective police services are provided throughout Ontario. Its oversight powers are an important element of the civilian governance structure set out in the *Police Services Act* (the "Act"). To ensure compliance with the Act, the Commission has the authority to investigate policing-related matters, hold different types of hearings and make recommendations with regard to the nature and delivery of police services in a community.

Police services and police services boards are ultimately accountable to the public through the Commission.

Public Complaints

The Commission had responsibility for overseeing public complaints against police involving officer conduct, and the policies and services provided by a police service until the proclamation of Bill 103 on October 19, 2009.

The Commission will continue to process complaints that are based on an incident that occurred prior to October 19, 2009. The process for dealing with such matters is as follows. Members of the public, who are not satisfied with a local police decision about their complaints, may ask the Commission to review the matter.

When conducting a review, the Commission receives the complaint file from the police service as well as submissions from

the complainant. A Commission case manager will analyze the file and prepare a case summary to present to a review panel composed of Commission members.

The panel may:

- confirm the decision of the Chief of Police/OPP Commissioner;
- refer the matter back to the involved police service or another police service for further investigation;
- find misconduct of a less serious nature; or
- order a disciplinary hearing.

As part of its oversight function, the Commission is provided with complaint statistics by all police services in Ontario.

Appeals

The Commission considers appeals of decisions at police disciplinary hearings arising from complaints about police conduct by members of the public or internal complaints initiated by chiefs of police. The hearings are called by a chief of police about the conduct or work performance of a police officer, and are presided over by a hearing officer who is a police officer, a former police officer, judge or former judge.

A public complainant and a police officer both have the right to appeal to the Commission in writing within 30 days of receiving notice of the outcome of a disciplinary hearing. After hearing submissions, the Commission may:

- confirm, vary or revoke the decision of the disciplinary hearing;
- substitute its own decision; or
- for matters arising after October 19, 2009, order a new hearing.

In fulfilling its appellate role, the Commission ensures that the decision of the hearing officer is based on facts established by the evidence at the hearing, and reflects the proper application of the law.

Investigations and Inquiries

The Commission may investigate and inquire into the administration of a municipal police service, the manner in which policing services are being provided, and the policing needs of a municipality. The Commission may be directed by the Lieutenant-Governor-in-Council to hold an inquiry into any matter relating to crime or law enforcement. As well, the Commission may independently investigate and inquire into the conduct or work performance of police officers, chiefs of police, members of local police services boards, auxiliary members of a police service, special constables and municipal law enforcement officers.

Hearings

As a quasi-judicial body, the Commission has specific authority to hold different types of hearings to ensure compliance with the Act. The Commission:

- decides disputes between local police services boards and municipal councils about annual police budgets;
- approves the restructuring of municipal police services;
- determines whether or not a disabled member of a police service has been accommodated;
- rules on disputes about membership in municipal police bargaining units; and
- rules on whether or not prescribed standards of police services are being met.

As well, the Commission approves the appointment of First Nation constables to perform specified duties in designated geographical areas.

Commission Organization

The Commission is made up of a full-time Chair and seven part-time members.

Members are appointed by Order-in-Council for terms of two, three and five years, and represent a diverse cross-section of professions and Ontario communities. They have extensive backgrounds in law, education, community advocacy, human rights, corrections, victims' rights, and criminal and aboriginal justice. Members are supported in their role by advisory, legal, investigative and administrative Commission staff.

In addition to attending regular monthly meetings at the Commission's Toronto office, members participate in in-house panels to review how local police services have classified and investigated public complaints dealing with officer conduct, and police policies and services.

Commission members also preside at a range of hearings, including disciplinary appeals.

ORGANIZATION CHART

Commission Budget

The annual budget for the Commission for the calendar year 2009 was $1,595.30.

The following is a breakdown of the budget:

ITEM	ALLOCATION ($000)
Salaries & Wages	1,207.40
Employee Benefits	129.70
Transportation & Communications	81.80
Services	124.90
Supplies & Equipment	50.50
Other	1.00
Total	1,595.30

Members of the Commission

Murray W. Chitra - Chair

Prior to his appointment to the Chair of the Commission, Mr. Chitra was the Legal Director of the Ontario Insurance Commission (OIC) for four years. As well, Mr. Chitra worked for ten years with the Legal Services Branch of the Ministry of Correctional Services assigned for six years as Legal Director. He was called to the bar in Ontario in 1980. Mr. Chitra is the former President of the Society of Ontario Adjudicators and Regulators (SOAR) and a member of the Board of Canadian Administrative Tribunals (CCAT).

Noëlle Caloren - Member

Noëlle Caloren is a lawyer who was called to the Ontario Bar in 1995. She practices law in a large national Canadian law firm. With a background in general litigation, Ms. Caloren has developed an expertise in employment and labour law, human rights and education law matters. Over the last six years, Ms. Caloren has taught Civil Procedure at the Bar Admission Course of the Law Society of Upper Canada. She is also a contributing author to a comprehensive employment law text Employment Law – Solutions for the Canadian workplace. Ms. Caloren is fluently bilingual.

Roy B. Conacher - Member

Roy B. Conacher is a senior partner with an eastern Ontario law firm. He was called to the Bar in 1971 and after practicing in Toronto for several years moved to eastern Ontario. He has served on many boards and tribunals during his career including appointments as Co-Chair, Ontario Psychiatric Review Board; Regional Vice-Chair, Ontario Consent & Capacity Board; Independent Chairperson, Federal Penitentiaries Act; and Deputy Judge (Small Claims Court). Mr. Conacher has also served as a Municipal Councillor; as Chair of the Professional Division, Eastern

Ontario United Way Campaign; and a Director of a local Rotary Club. His practice now concentrates on real estate development and municipal law.

Zahra Dhanani - Member

Zahra Dhanani is the legal director of a prominent women's organization. Called to the Bar in 1999 after studying at Osgoode Hall Law School and receiving her LL.B., Ms. Dhanani is currently completing her LL.M in Alternative Dispute Resolution with a focus on restorative justice. During her legal career, Ms. Dhanani has worked at various community legal clinics, run her own law practice and has participated in various social justice projects. She has specialized in mediation, human rights and immigration/refugee law.

Dave Edwards - Member

Dave Edwards has been a partner in a Niagara Region law firm since 1978 practicing primarily in the areas of corporate and commercial law. During his professional career he has served on a number of community organizations and held a number of positions, including: Chair of the Board of Trustees of Brock University, President of the United Way of his Municipality and District, Member of the Niagara District Airport Commission, and a Member of the Boards of Directors of The Alzheimer Society of Niagara, and the Rotary Club.

Garth Goodhew – Member

Garth Goodhew spent most of his professional career in secondary education in Northern Ontario serving 23 years as a Principal. Throughout his career he served on a variety of boards and agencies, was a member of City Council and chaired the National Candidature Committee of the United Church of Canada. He received the Queen's Silver Jubilee Medal for community service. After leaving secondary education Garth completed 6 years as a Board member in the Ontario Region of the National

Parole Board. He is a Board Member of the North Bay Recovery Home.

Tammy Landau – Member

Tammy Landau is Associate Professor in the School of Criminal Justice at Ryerson University. She has a PhD in criminology from the Centre of Criminology at the University of Toronto, and has been involved in a wide range of community projects and agencies. Dr. Landau has been a consultant to federal, provincial and local governments on a variety of justice issues. Her research interests include policing, Aboriginal justice and victimology.

Hyacinthe Miller - Member

Following graduation from university, Ms. Miller worked in the private sector and for the federal and provincial governments in Ontario. She has also been active in various community agencies. During her career, Ms. Miller has been a senior manager, a technology consultant and general advisor to federal and provincial government ministries and central agency officials, law enforcement agencies and civilian oversight organizations. Currently an organizational development consultant, Ms. Miller is also the former Executive Director of the Canadian Association for Civilian Oversight of Law Enforcement.

Outreach

Each year, the Commission actively engages police officers and civilian staff of police services and police services boards in discussions about their roles in police governance and civilian oversight. The ultimate goal is to ensure understanding of the Commission's work.

Members of the Commission lend their time and expertise in promoting general awareness of legislative requirements and specific operational responsibilities. Opportunities for open dialogue – both formal and informal - include annual conferences/zone meetings of the Ontario Association of Chiefs of Police, Ontario Association of Police Services Boards and the Police Association of Ontario.

The Commission is regularly invited to participate in ongoing education and training programs offered by the Ontario Police College and the Ontario Provincial Police Training Academy. Presentations are made to Professional Standards officers as well as senior officers and legal staff who have investigative and administrative responsibilities within the complaints and appeal processes.

Inquiries, Investigations and Fact-Finding Reviews

Section 25 of the Act provides that the Commission may at the Minister's request, a municipal council's request, a board's request or on its own motion, investigate, inquire into and report on:

- the conduct or the performance of duties of a police officer, a municipal chief of police, a special constable, a municipal law enforcement officer or a member of a board;
- the administration of a municipal police force;
- the manner in which police services are provided to a municipality; and
- the police needs of a municipality.

Initiation of a section 25 inquiry is a serious, resource-intensive process with the potential for serious consequences for the members, chiefs of police and police services boards who are involved. The consequences can include demotion, dismissal, suspension or revocation of an appointment.

In 1998 the Commission initiated an innovative approach to addressing issues that were deemed to be of concern, but not falling within the parameters of a full-scale inquiry, the Fact-Finding review. This approach continues today.

In 2009, the Commission received five requests to undertake section 25 investigations. Issues included the conduct of two members of municipal police services boards, the manner in which municipal police services boards dealt with public complaints, the release of information, and the conduct of a chief of police. One investigation remains outstanding from 2008.

Upon review, it was decided that three of the requests did not warrant invoking the Commission's extraordinary powers contained in section 25. Investigations were commenced into the conduct of two members of police services boards. One of the board member's appointments expired and consequently the Commission lost jurisdiction. The other investigation is ongoing.

Section 116 Status Hearings

Municipal police forces in Ontario are composed of “members” who are appointed by local police services boards. Section 2 of the “Act” defines “members” to include both police officers and civilian employees.

The Act permits members to form associations for the purposes of collective bargaining. Normally, there are two associations: one for officers and civilians, and another for senior officers. Under section 115(2) of the Act chiefs and deputy chiefs are excluded from this scheme.

From time to time a dispute arises as to whether or not a particular member should be assigned to the local police association or to the senior officers association. Section 116 of the Act sets out a process to resolve such disagreements. It states:

> 116(1) If there is a dispute as to whether a person is a member of a police force or a senior officer, any affected person may apply to the Commission to hold a hearing and decide the matter.
>
> (2) The Commission’s decision is final.

There was one section 116 status matter before the Commission during 2009. A summary of two decisions arising from this matter follows. The full text of previous section 116 status decisions can be found on the Commission’s web site at www.ocpc.ca

DURHAM REGIONAL POLICE SENIOR OFFICERS' ASSOCIATION
Applicant

AND

DURHAM REGIONAL POLICE SERVICES BOARD
Respondent

Presiding Members:
Murray W. Chitra, Chair
Hyacinthe Miller, Member

Appearances:
Brian Fazackerley, for the Applicant
Kevin Inwood, for the Respondent

Heard: February 17, 2009

Date of Decision: February 26, 2009

Summary of Reasons for Decision

This decision dealt with a preliminary motion by the Durham Regional Police Services Board, in response to an application brought by the Durham Regional Police Senior Officers' Association pursuant to s. 116 of the Act. In the application the Association was seeking a determination of the status of an individual, Mr. Stan McLellan, who occupied the position of Strategic Human Resources Officer (SHRO) under a personal service contract with the Board. The Association was seeking: a declaration that Mr. McLellan was a senior officer; a direction that the Board must divest him of operational police responsibilities, and Mr. McLellan's reappointment to an Association position.

The application had not yet been heard by the Commission. In the meantime the Board brought a preliminary motion asking the

Commission to determine a question of law - namely, whether the Act exempted employees from membership in a bargaining unit on the basis that such membership could conflict with their employment duties.

The Association opposed a preliminary ruling on the broader question of a statutory exemption/exclusion based on conflict of interest.

The Association sought a ruling on the status of a particular individual. The Board, on the other hand, was seeking to have the Commission rule at the outset on a much broader question than the status of one individual. The Board sought a determination that would have broad application to all individuals employed with police services in Ontario who were in a potential conflict of interest.

The Board's request represented a substantial modification to the application. It was not appropriate to determine this question in a factual void, particularly as no notice had been given to potentially affected or interested parties.

The Association was entitled to proceed to a hearing and obtain a ruling grounded in fact and based on the application of the law to their particular dispute. The motion was denied.

DURHAM REGIONAL POLICE SENIOR OFFICERS' ASSOCIATION

Applicant

AND

DURHAM REGIONAL POLICE SERVICES BOARD
Respondent

Presiding Members:
Murray W. Chitra, Chair
Hyacinthe Miller, Member

Appearances:
Brian Fazackerley, for the Applicant
Kevin Inwood, for the Respondent
Ian B. Johnstone, for Stan MacLellan

Heard: March 31, April 1 and April 2, 2009

Date of Decision: July 2, 2009

Summary of Reasons for Decision

The Durham Regional Police Senior Officers' Association brought an application pursuant to s. 116 of the Act, seeking a determination of the status of Mr. Stan MacLellan. Mr. MacLellan occupied the position of Strategic Human Resources Officer (SHRO) under a personal services contract with the Durham Regional Police Services Board. The Association asked the Commission to declare that Mr. MacLellan was a "senior officer" and a member of their bargaining unit. Alternatively, the Association sought a direction to the Board to divest Mr. MacLellan of day-to-day operational police responsibilities.

Mr. Johnstone, who attended as counsel for Mr. MacLellan, brought two preliminary motions. He requested standing to represent Mr. MacLellan in his capacity as a witness. He also

requested an adjournment pending the Commission's ruling in another proceeding, namely an application by the Board under s. 118(1) of the Act to authorize the creation of a new category of senior officers, which would include Mr. MacLellan.

Mr. MacLellan joined the service in 2003 as Manager of Human Resources. He reported to an inspector and was a civilian member of the service and a member of the Association. In the fall of 2006 he became Director of Human Resources, performing essentially the same HR functions. He remained a civilian member of the Service and a member of the Association. In addition to his HR functions, Mr. MacLellan was from time to time assigned by the Chief to assist the Board in labour relations matters, including collective bargaining.

In response to the anticipated departure of its Executive Director, who had served as the Board's negotiating aide, in March 2007 the Board announced the creation of a new excluded position, Strategic Human Resources Officer. Mr. MacLellan then signed an agreement with the Board and became the SHRO, reporting directly to the Chief. The job description for this new position contained basically the same duties as the HR Director held, but also included some new duties, such as assisting the Board in the search for and selection of police executives (a replacement for the Chief, among others), preparing Board responses to grievances, supporting bargaining and participating in negotiations as a member of the Board's team.

The Board's rationale for removing the SHRO position from the Association's bargaining unit was that the SHRO was a confidential excluded position, and to maintain it as part of any bargaining unit would give rise to a conflict of interest.

The Association submitted that the Board could not retain an employee by contract to perform both service operational duties and collective bargaining duties. Consequently, the Association requested that either Mr. MacLellan be returned to the bargaining unit, or divested of his operational functions.

The Board submitted that Mr. MacLellan's removal was necessary to insulate him from an inherent conflict of interest. The Board argued that together ss. 49(1), 119(3) and 126 of the Act permitted the exclusion of persons with potential conflicts of interest from membership in a bargaining unit.

On the first preliminary motion, in accordance with s. 11(1) of the *Statutory Powers Procedure Act* it was appropriate to permit Mr. Johnstone to represent Mr. MacLellan. This meant that he was entitled to be present during the proceeding, to hear all testimony, to advise Mr. MacLellan and to clarify any matters arising from Mr. MacLellan's evidence by putting questions to him. However, since Mr. MacLellan was not a party to the proceeding, it was not appropriate for Mr. Johnstone to participate in the cross-examination of other witnesses.

The request for an adjournment was denied for several reasons: as a non-party, Mr. MacLellan did not have standing to request an adjournment; the request was not filed in a timely manner; the parties were ready to proceed; and the parties had already been advised that the Commission would proceed to hear the s. 116 application and that the s. 118 application would be scheduled once the Commission Rules were met. In addition, and as noted in the Commission's preliminary decision in this case (OCCPS ST#09-01), the Association was entitled to a ruling and the Board's s. 118 application ought not to receive precedence over the Association's earlier application.

Section 116(1) of the Act provided that an affected party may apply to the Commission for a determination as to whether a person was a member of a police force or a senior officer. Section 116 had to be read in the context of the definition in s. 2 of a "member of a police force", which included an employee who was not a police officer, as well as the definition of "senior officer" under s. 114, which referred to a member of a police force who had the rank of inspector or higher or who was employed in a "supervisory or confidential capacity".

In accordance with s. 2, Mr. MacLellan was a civilian employee and thus a “member” of the Durham Regional Police Service. The issue was whether he was employed in a “supervisory or confidential capacity” and thus had the status of a senior officer.

For four years Mr. MacLellan had senior officer status and was part of the Association’s bargaining unit. That changed in 2007 when he was appointed as the SHRO. Following appointment as the SHRO he retained his previous HR responsibilities but was assigned additional duties aimed at supporting the Board, specifically its collective bargaining obligations. The Association took the position that Mr. MacLellan could not play these dual roles. The Board took the position that there was nothing improper with Mr. MacLellan performing both HR operational functions as well as providing support services to the Board. The Board was of the view that recent changes to the Act permitted “conflict of interest” exclusions for persons employed in sensitive roles.

However, the Act assigned distinct roles and responsibilities to boards and chiefs. Under Part VIII of the Act boards had exclusive responsibility for collective bargaining. Chiefs of police, on the other hand, were responsible for the day-to-day management of the service and its employees. The Act imposed limitations on the board’s capacity to intrude on functions of the chief, and vice versa. In particular, a board had the authority to order a chief to provide it with information to assist in its bargaining role; but a board could not order any other member of the service to perform collective bargaining functions.

Thus a board could not do indirectly what it could not do directly. A board could not by job description create a position assigning to a specific member the responsibility of supporting exclusive board functions. The Board could order the Chief to provide information and advice to assist with labour relations matters such as grievances and collective bargaining, but it was for the Chief to delegate such tasks to members, not the Board. Some of the duties assigned to Mr. MacLellan blurred the statutory delineation of responsibilities. In addition to offending the scheme of the Act,

the SHRO job description also offended the spirit of the Act, since the SHRO could not be expected to sit as a member of the Board's bargaining team and at the same time function as an approachable point of contact for day-to-day issues. It was also inappropriate for the SHRO, who reported directly to the Chief, to have any role in the hiring of a new Chief or any role in developing performance measures for that position.

A board was not without the benefit of expert advice and assistance: under s. 30(1) a board could contract and engage staff dedicated to performing board functions; but such staff would not be members of a police force and fall within Part VIII.

The Board suggested that recent amendments to s. 49 imposed a prohibition against engaging in any activity that might create a conflict of interest; and that, by virtue of ss. 119(3) and 126, this prohibition extended to collective bargaining. By implication, this would prevent membership in a bargaining unit where such membership would give rise to a conflict of interest.

However, s. 49 was focused on outside (secondary) activities. The conflict of interest concerns in s. 49 were not intended to limit access to collective bargaining or participation in a police association. Had the Legislature intended to exclude a class of persons from collective bargaining it would have done so clearly, not by implication. Moreover, the "confidentiality exclusion by implication" argument ran counter to the Supreme Court of Canada's recent decision in Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia (2007) S.C.R. 27, in which the Court stated that the process of collective bargaining enjoyed constitutional protection. This argument also appeared to run counter to evolving case law (Durham Regional Police Assn. and Regional Municipality of Durham Police Services Board, *infra*). If a constitutionally protected right were to be limited or removed, this had to be done explicitly and prescribed by law.

Accordingly Mr. MacLellan remained a member of the Senior Officers' Association, employed in a supervisory or confidential

capacity within the meaning of s. 114. In light of the statutory division of authority, the Commission strongly advised that his job description be modified to remove any responsibilities that related to exclusive Board functions.

Section 39 Budget Hearing

Police services boards are required annually to submit their operating and capital estimates to municipal council that show, separately, the amounts that will be required to maintain their police force and provide it with the equipment and facilities that it needs to operate, as well as the amount of money required to pay the expenses of the board's operation other than the remuneration of board members.

Upon a review of the estimates, it is the municipal council's responsibility to establish an overall budget for the board.

Section 39(5) of the Act states, "If the board is not satisfied that the budget established for it by the council is sufficient to maintain an adequate number of police officers or other employees of the police force or to provide the police force with adequate equipment or facilities, the board may request that the Commission determine the question and the Commission, shall, after a hearing, do so."

There was one section 39 budget matter before the Commission during 2009. A summary of the two decisions relating to this matter follows. The full text of previous section 39 budget decisions can be found on the Commission's web site at www.ocpc.ca

REGIONAL MUNICIPALITY OF NIAGARA POLICE SERVICES BOARD
Applicant (Respondent on Motion)

AND

REGIONAL MUNICIPALITY OF NIAGARA
Respondent (Moving Party on Motion)

Presiding Members:
Murray W. Chitra, Chair
Roy B. Conacher, Member

Appearances:
Brian Gover and Patricia Latimer, for Regional Municipality of Niagara,
Woodward B. McKaig, for Regional Municipality of Niagara Police Services Board

Heard: June 29, 2009

Date of Decision: July 8, 2009

Summary of Reasons for Decision

This decision dealt with a preliminary motion by counsel for the Municipality seeking a declaration that Mr. Chitra was disqualified from presiding at a hearing into a budget dispute, on the ground that Mr. Chitra had presided at a pre-hearing conference which allegedly involved attempts to settle the dispute.

On January 28, 2009 the Board filed an application requesting a budget hearing pursuant to s. 39 of the Act. At issue was the capital budget for the police service.

On February 11, 2009 counsel for the Board wrote to the Commission requesting a pre-hearing conference "…to discuss issues, the exchange of documents and set a tentative or firm

hearing dates…so that these budget issues can move toward a resolution at a Section 39 hearing."

Commission counsel responded by agreeing to a pre-hearing conference, indicating "preliminary matters to be discussed" which included identifying and possibly narrowing the areas in dispute, the type of information to be presented at the hearing, a timetable for disclosure, identifying any preliminary motions and the anticipated length of the hearing.

An exchange of correspondence and e-mails followed. On March 31, 2009 Board counsel requested that a s. 39 hearing also be convened to deal with the Service's operating budget.

The pre-hearing conference commenced on April 23, 2009 with Mr. Chitra presiding. Not all of the issues identified could be dealt with, so the pre-hearing conference reconvened on May 1, 2009. In advance of the second date the Board was asked to clarify how much money it was seeking for capital improvements, while the Municipality was asked to articulate its position on the adequacy of current facilities and to indicate whether it intended to raise an issue of "affordability" at the hearing.

The memorandum which was drafted pursuant to s. 16.3 of the Commission's Rules of Practice summarized: the parties' agreement on several issues such as disclosure; the intention to deal with both operating and capital disputes in a single hearing; and the amounts in dispute. The Commission determined that it lacked jurisdiction to grant certain orders requested by the Municipality such as a direction to submit to mediation. Both preliminary motion and hearing dates were set.

Prior to the first date for the hearing of preliminary motions, counsel for the Municipality raised concerns about Mr. Chitra presiding at the remaining preliminary motions and the eventual hearing.

Counsel for the Municipality did not assert bias or an apprehension of bias on the part of Mr. Chitra. Instead he relied

on s. 5.3(4) of the *Statutory Powers Procedure Act ("SPPA")* and s. 19.1 of the Commission's Rules of Practice in support of his motion to disqualify. Section 5.3(4) of the SPPA stated: "A member who presides at a pre-hearing conference at which the parties attempt to settle issues shall not preside at the hearing of the proceeding unless the parties consent." Rule 19.1 echoed this requirement.

Counsel asserted that the pre-hearing conference in this case attempted to settle three issues: the adequacy of service facilities, the funds necessary to address any inadequacies and the amount of money in dispute. Given the attempt to settle, Mr. Chitra was precluded from presiding at the remaining motions and the hearing.

Counsel for the Board argued that ss. 5.3(4) of the *SPPA* and 19.1 of the Commission's Rules had no application in this case. He asserted that the pre-hearing conference dealt with the simplification and clarification of issues and other procedural matters which did not involve the settlement or attempted settlement of substantive issues.

Two questions were at the center of any budget dispute under s. 39 of the Act whether the budget established by the municipality provided for adequate staffing, facilities and equipment for the service; and if not, how much additional money would be needed to make the budget adequate.

Pre-hearing conferences were authorized under s. 16 of the Commission's Rules. Those rules flowed from the tribunal's authority under s. 25.1 of the *SPPA* to make rules. Sections 5.3(1) to (3) of the *SPPA* specified matters which could be dealt with at a pre-hearing conference. Section 5.3(1)(a) referred to "the settlement of any or all of the issues" while ss. (b) to (e) referred to procedural matters including simplification of the issues, agreed upon facts or evidence, establishing dates and the estimated duration of a hearing. Section 5.3(1)(f) referred to "any other matter that may assist in the just and most expeditious disposition of the proceeding".

Thus a pre-hearing conference could deal with a wide range of issues. Normally participation in a pre-hearing conference would not disqualify a member from presiding at subsequent motions or hearings arising from an application. However, an exception existed: where a member was involved in the settlement or attempted settlement of issues per s. 5.3(4) of the *SPPA* and Rule 19.1. This was to encourage the parties to speak freely and frankly during serious settlement discussions.

In this case, it was clear that the pre-hearing conference focused on procedural matters of a preliminary nature. It was directed at simplifying, clarifying and focusing the issues in dispute, as a means of ensuring an effective and efficient hearing. All of the items dealt with fell within the scope of subsections 5.3(1) (b) to (f) of the *SPPA*. Instructing clients were not invited to attend and did not attend. Neither of the parties included in their summaries any proposals for settlement. Moreover, among the directions sought by the Municipality was an order to engage in mediation, an order which the Commission advised it lacked jurisdiction to grant.

The information sought in advance of the second pre-hearing conference date was a request for the Board to identify how much money it was seeking, and a request for the Municipality to outline its position on adequacy and to indicate whether it intended to raise the defence of “affordability”. This information had an obvious bearing on the possible duration of the hearing and disclosure requirements. To seek such information was not to “settle issues” within the meaning of s. 5.3(4) or Rule 19.1. The type of information contemplated in these provisions must be substantive. The information sought in this case, by contrast, concerned procedural matters.

Accordingly ss. 5.3(4) and Rule 19.1 did not apply, and Mr. Chitra was not disqualified.

REGIONAL MUNICIPALITY OF NIAGARA POLICE SERVICES BOARD
Applicant

AND

REGIONAL MUNICIPALITY OF NIAGARA
Respondent

Presiding Members:
Murray W. Chitra, Chair
Roy B. Conacher, Member

Appearances:
B. Gover and P. Latimer, for Regional Municipality of Niagara
W. B. McKaig, for Regional Municipality of Niagara Police Services Board

Heard: July 31, 2009

Date of Decision: September 15, 2009

On January 28, 2009 the Regional Municipality of Niagara Police Services Board filed an application with the Commission requesting a hearing under s. 39 of the Act. The Board asserted that the capital budget established by the Regional Municipality of Niagara was insufficient to provide adequate facilities for the police service. On March 31, 2009 the Board requested that the Commission also deal with the Service's 2009 operating budget. During a pre-hearing conference with the parties it was agreed that the s. 39 hearing would deal with both operating and capital budget disputes.

Each of the parties brought a preliminary motion. The Municipality sought a declaration that the Commission had no jurisdiction to hear the Board's application. The Board sought a declaration that the Municipality exceeded its jurisdiction by

imposing conditions on capital budgets approved for 2007 and 2008.

Section 39 required municipal police services boards to submit annual operating and capital budgets to the municipal council (s. 39(1)), according to the timetable and format as determined by the council (s. 39(2)). In establishing a budget for the police service a municipal council was not obliged to accept a board's estimates, but did not have the authority to approve or disapprove specific items (s. 39(4)). If the board was not satisfied that the budget approved by council afforded sufficient funds to maintain adequate policing services, the board could request that the Commission hold a hearing and determine that question.

The Municipal Council had approved capital budgets for 2006, 2007 and 2008, but had imposed certain conditions on its approval of the 2007 and 2008 budgets. No funds had actually been advanced for any of the three prior years.

With respect to the Municipality's motion, it was asserted that the Board failed to submit its operating and capital estimates in accordance with the Municipality's timetable and format. In addition, the Municipality argued that since prior budgets had been approved, there could be no dispute under s. 39. The Board, in its preliminary motion, argued that a municipal council could not impose conditions on budgetary approval that would effectively give it a veto power over specific estimate items, contrary to s. 39(4).

The motions were dismissed.

The primary objective of the Act was to ensure that all citizens in Ontario received adequate and effective policing. The Act assigned specific responsibilities to various parties in order to achieve this objective. The core issue of any budget dispute was whether the budget established by municipal council was sufficient to maintain an adequate police service. This issue bore directly on public safety.

With respect to the Municipality's motion, the evidence clearly established that the Municipality historically had been flexible about timelines and annual budgeting practices. Thus to allow delay to bar potential relief would be unfair. In addition, the failure to meet deadlines was administrative in nature. Non-compliance with s. 39(2) was not a precondition to seeking relief. As for the no-dispute argument, the lengthy delay in disbursing funds suggested disagreement with the Board's estimates, notwithstanding formal approval of the budgets. In addition, there had been a clear refusal to approve the 2009 capital estimates. Together these actions were sufficient to engage s. 39.

The Commission endorsed the principle that various parties must observe their assigned statutory roles and responsibilities. However, the imposition of conditions on prior budgets was not relevant to the essential question in this application, being the adequacy of the Service in 2009.

Police Service Restructuring

Section 40 of the Act allows police services boards to terminate the employment of a member of a police force for the purpose of abolishing the force or reducing its size if the Commission consents and if the abolition does not contravene the Act.

When a municipality requests the approval of the Commission for the disbandment or downsizing of their police service, they must supply the Commission with a copy of a resolution passed by municipal council. The Commission requests a copy of the proposal for the provision of alternative policing services and also ascertains whether severance arrangements have been made with those members whose employment would be terminated if the proposal is accepted.

It is not the Commission's function to judge whether or not what is being proposed is economical or superior to what may already be in place or any other alternative. The Commission's focus is to determine whether the proposed arrangements meet the requirements of the Act. It is not the function of the Commission to determine what constitutes appropriate severance arrangements. That is a matter for bargaining between the parties and, in the absence of agreement, for arbitration.

A public meeting is held to hear presentations and receive submissions about the proposal to reduce or disband the municipal police service. Following the completion of the meeting, the Commission renders a written decision.

During 2009, the Commission approved the disbandment of the municipal police service in Oxford County in favour of contract policing by the Ontario Provincial Police. A summary of the decision follows. The official text of this and previous restructuring decisions can be found on the Commission's web site at www.ocpc.ca.

OXFORD COMMUNITY POLICE SERVICE

Presiding Members:
Murray Chitra, Chair
Hyacinthe Miller, Member

Appearances:
G. Christie, counsel for OCPS and City of Woodstock
W. McKaig, counsel for Townships of Norwich, Blandford-Blenheim and East Zorra-Tavistock
I. Roland, counsel for Oxford Community Police Assn.
C. Butler, Sgt. Contract Policing Section, OPP
R. Fraser, Chief, OCPS
J. Goodlett, Insp. Oxford Detachment Commander, OPP
D. Preston, Police Services Advisor, MCSCS

Heard: May 14, 2008

Date of Decision: September 4, 2009

Summary of Reasons for Decision

The Townships of Norwich, Blandford-Blenheim and East Zorra-Tavistock and the City of Woodstock were all located in Oxford County, which comprised eight area municipalities. In 1998 the Commission consented to a proposal from these four municipalities to establish a joint municipal police service. Accordingly the Oxford Community Police Service (OCPS) was established on February 1, 1999. In 2007 and 2008 the municipal councils of the three Townships passed resolutions agreeing in principle to contract policing proposals presented by the Ontario Provincial Police (OPP). Each of the three Townships had held public meetings prior to adopting their resolutions.

Faced with the proposed withdrawal of the Townships from the joint policing arrangement, the City of Woodstock resolved to continue with a local municipal police service, to be renamed the Woodstock Police Service. The Woodstock proposal called for a

reduction in uniform strength of 14 officers. The Townships and the City applied to the Commission under s. 40 of the Act for its consent to the contract policing arrangement and the reduction of the police service for Woodstock.

On May 14, 2008 the Commission held a public meeting to receive these proposals and to accept public submissions on three questions: 1) whether the proposed contracts for integrated OPP policing in the Townships would allow those communities to continue to receive adequate and effective policing; 2) whether the City of Woodstock would continue to receive adequate and effective policing under the proposed reduction and restructuring of OCPS into a municipal service; and 3) whether members of OCPS were liable to termination and if so, whether the parties had agreed on severance issues.

The OPP currently policed four municipalities in Oxford County. The OPP proposal involved the creation of an integrated detachment to provide policing for seven of the eight County municipalities. The detachment would continue to be managed and supervised by a Detachment Commander, a commissioned officer at the rank of inspector. Both the uniform and civilian complements would increase, as would the number of uniform supervisors. Each Township would form a patrol zone, with 24/7 patrol coverage. Proposed equipment would not be reduced, and in some instances would increase. The existing detachment headquarters and satellite office would continue to be used. In addition, reporting centres would be established in the three Townships. Existing secure holding facilities would continue to be used and a third civilian court officer would join the current complement of two court officers. With respect to communications, residents of the townships would not experience any changes to the 911 system; and the OPP Communication Centre in London would continue to provide support services.

The renamed/restructured Woodstock Police Service would have a total sworn officer complement of 63 officers, supported by a staff of 25 full-time civilians and 12 part-time civilians. Patrol coverage would be 24/7. Existing departments including criminal

investigations, domestic violence, drugs and intelligence, community services/crime stoppers, canine and traffic enforcement would be maintained. The Service would use existing equipment. Current facilities consisting of a Service headquarters and a satellite facility would also continue to be used. With respect to communications, the OCPS was in the process of replacing/upgrading analog vehicle and handheld radios. Following the reduction, the Service would continue to provide 911 dispatch emergency medical service for the County of Oxford. Fourteen officers were liable to termination if the proposals were approved. All would be offered employment with the OPP. The Board and the Association had already had considerable discussion about identifying surplus officers. Attempts were being made to accommodate officer preferences; however no supervisors or specialist constables would be eligible to move to the OPP.

Section 4(1) of the Act imposed upon all municipalities an obligation to provide adequate and effective police services. A police service, in order to be adequate and effective, had to have the necessary staff, administration, equipment, infrastructure and facilities to perform certain minimum functions: crime prevention, law enforcement, assistance to victims of crime, maintenance of public order and emergency response (ss. 4(2) and 4(3)). A municipality could provide policing by establishing its own force, by entering into a joint arrangement with another municipality, or by contracting for services with the OPP.

In this case the applicants proposed to dissolve a joint policing arrangement and to reduce, restructure and rename the existing force serving the City of Woodstock. In order to grant these applications, the Commission had to be satisfied that the proposed arrangements met the requirements of ss. 4(2) and 4(3), as well as the requirements of s. 40, which provided that adequate severance agreements must be in place for any members terminated as a result of the abolishment or reduction of a police service.

Commission decisions in the past had posed different tests to determine adequacy, including comparative tests, both historical and geographical.

With respect to the staffing component of the OPP proposal, the number of constables would increase by 22; there would be an additional sergeant, and three additional administrative support staff. The proposed police to population ratios were low for each of the three townships. In terms of workload, as measured by reported occurrences and criminal offences, the proposal represented a manageable workload for all three Townships. Furthermore, the officers would be deployed in an integrated policing arrangement as part of a larger regional policing organization, and would thus have access to a larger pool of resources. The overall police to population, officer to crime and supervisor to constable ratios were acceptable.

Detachment headquarters would remain at the present location, and would be sufficient to accommodate the additional officers. The Commission had approved this facility in Town of Tillsonburg (June 13, 2000, OCCPS). The satellite office in Ingersoll would continue to be open to the public Monday to Friday, 8:30 a.m. to 4:30 p.m. Although the reporting centres to be established in each of the townships would not be staffed on a regular basis, exterior mounted telephones that connected to the Provincial Communications Centre in London would be installed for the public. Finally, the proposed additional equipment was satisfactory.

Thus, measured both historically and comparatively, the three Township proposals represented adequate and effective policing arrangements.

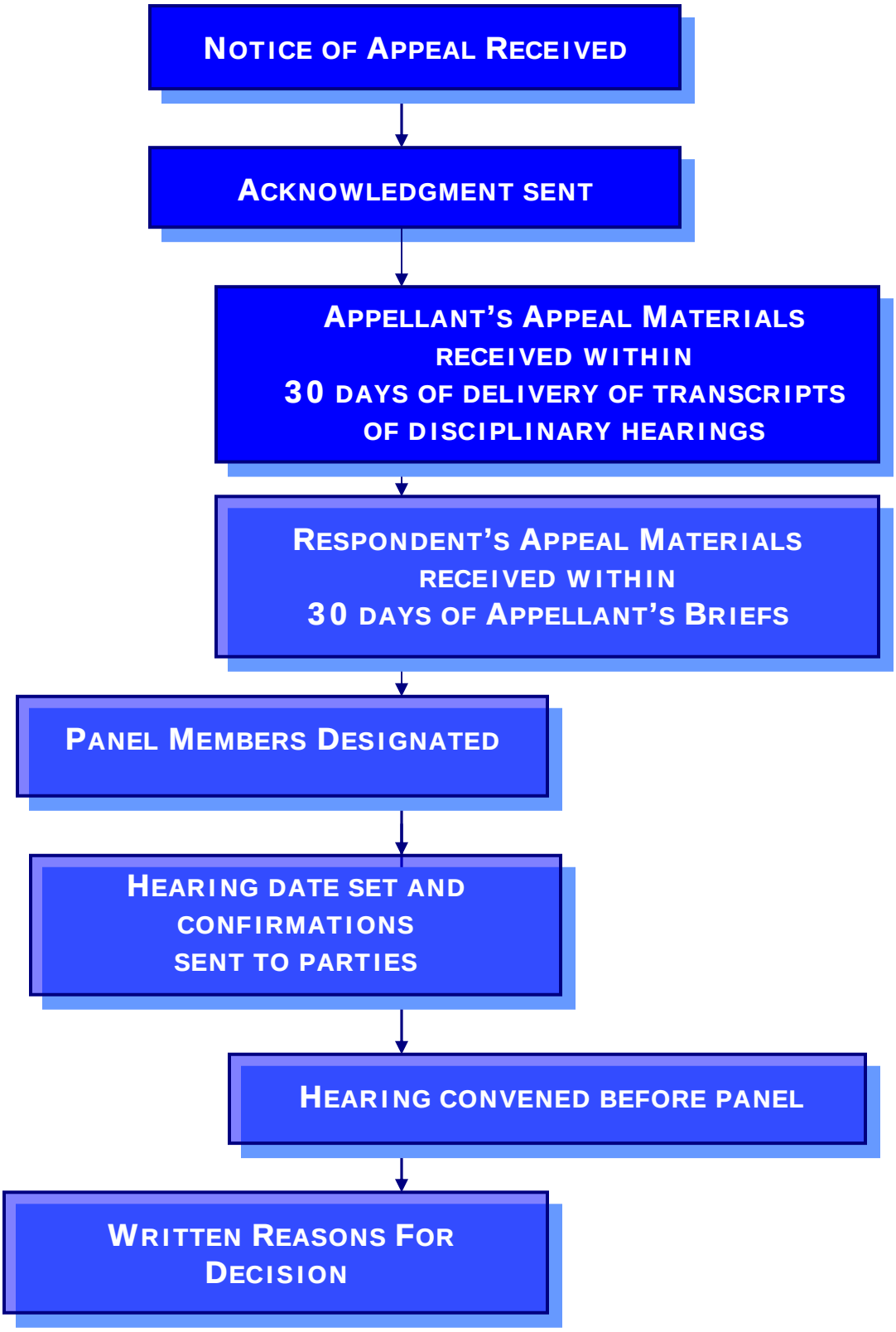
For Woodstock, the officer complement would be reduced from 85 to 63. The proposed complement would still represent a manageable workload (officer to criminal offences), but would have to be adjusted if the current slight upward trend in occurrences continued. The ratio of supervisor to officers was also acceptable.

Officers would patrol in five patrol zones, deployed from facilities already approved in previous Commission decisions. Existing equipment would be used. The proposal also called for an enhanced and improved communications and dispatch system.
The fourteen officers who stood to be terminated as a result of the proposal had been offered employment with the OPP. The Board and the Association had held discussions concerning the proposed terminations and some severance issues had already been resolved. The Association had identified a suitable number of front line officers who were interested in moving to the OPP. The Board and the Association were agreeable to remitting any outstanding disputes to arbitration.

Thus the proposal for a restructured/renamed Woodstock Police Service likewise satisfied the adequacy and effectiveness requirements of the Act.

Accordingly the Commission consented to the applications. The Woodstock application was subject to two conditions: that any outstanding severance issues would be submitted to arbitration, and that the OCPS Board would confirm that the transfer of officers to the OPP would not represent a material loss of critical skills to the proposed Woodstock Police Service.

Disciplinary Appeals Process



Summary of Disciplinary Appeal Decisions

During 2009, the Commission heard 12 disciplinary appeals. Two other decisions concerned preliminary motions.

The following list identifies the appellant, respondent, the police service and the date and outcome of the decision.

Summaries of these decisions are included in this report. The official text of the full decisions can be found on the Commission's web site at www.ocpc.ca.

DATE OF DECISION	COMPLAINANT/POLICE OFFICER/POLICE SERVICE	RESULT
February 19, 2009	Constable Robert Correa/Toronto Police Service	Conviction – insubordination. Penalty – forfeiture of seven days or fifty-six hours off. Appeal of conviction dismissed.
February 20, 2009	Staff Sergeant John McCormick/ Greater Sudbury Police Service	Conviction – neglect of duty. Penalty – demotion. Appeal of conviction dismissed.
March 5, 2009	Christopher Taillon/Constable James B. Pigeau/OPP	Preliminary motion directing service on Mr. Taillon of Notice of Appeal and related documents.

DATE OF DECISION	COMPLAINANT/POLICE OFFICER/POLICE SERVICE	RESULT
April 3, 2009	Gus Bakos/Detective Constable George Gallant/Hamilton Police Service	Conviction – neglect of duty. Penalty – loss of five days. Appeal dismissed.
April 20, 2009	David Canton/ Constable Kenneth Kaija/Hamilton Police Service	Appeal of Hearing/Officer's dismissal of charge of misconduct against officer. Appeal dismissed.
May 4, 2009	Gayle Ikemoto/ Constable Randy (R.C.) Cota/OPP	Appeal of Hearing/Officer's dismissal of charge of unlawful or unnecessary exercise of authority. Appeal of conviction dismissed.
May 27, 2009	Constable Bogumil Bryl/Toronto Police Service	Conviction – two counts of discreditable conduct Penalty – demotion from first-class constable to third- class constable for a period of two years. Appeal against conviction and penalty dismissed.

DATE OF DECISION	COMPLAINANT/POLICE OFFICER/POLICE SERVICE	RESULT
July 15, 2009	Christopher Taillon/Constable James Pigeau/OPP	Conviction - unlawful or unnecessary exercise of authority. Penalty - loss of two days or sixteen hours off and direction for in-service training. Penalty varied and a reprimand substituted.
July 24, 2009	Constable Wendy Bromfeld/Hamilton Police Service	Conviction – discreditable conduct. Penalty – demotion to third-class constable for a period of six months. Penalty varied to demotion from first-class constable to second-class constable for a period of six months.
August 17, 2009	Constable Walter Martin/Windsor Police Service	Conviction – neglect of duty and one count of deceit Penalty – dismissal. Appeal dismissed.
November 3, 2009	Owen Kerr/Constable Todd Bennett/Belleville Police Service	Motion for an order dismissing the appeal for failure to comply with the appeal timeline. Motion granted. Appeal dismissed.

DATE OF DECISION	COMPLAINANT/POLICE OFFICER/POLICE SERVICE	RESULT
November 3, 2009	Constable Michael Jander/Toronto Police Service	Conviction – insubordination. Penalty - one-year reduction in rank. Appeal dismissed.
November 13, 2009	Constables Hartnett, MacLean and Robinson/Peterborough Lakefield Community Police Service.	Conviction – neglect of duty and discreditable conduct. Penalty – forfeiture of five days time each. Appeal dismissed.
November 23, 2009	Constable Daniel Zarello/OPP	Conviction – neglect of duty. Penalty - suspension without pay for a period of three days or twenty-four hours. Appeal dismissed.

CONSTABLE ROBERT CORREA
Appellant

AND

TORONTO POLICE SERVICE
Respondent

Presiding Members:
Roy Conacher, Member
Hyacinthe Miller, Member

Appearances:
Harry Black, Q.C., for the Appellant
Darragh Meagher, for the Respondent

Heard: July 30 & October 22, 2008

Date of Decision: February 19, 2009

Summary of Reasons for Decision

Constable Correa appealed his conviction on one charge of insubordination, contrary to s. 2(1)(b)(ii) of the Code of Conduct, as well as the penalty imposed, loss of seven days or fifty-six hours. At the time of events giving rise to the charge Constable Correa had 20 years of service and a clear disciplinary record.

An investigation led by the RCMP into the Plainclothes Unit at 52 Division resulted in a number of officers being charged with various disciplinary offences, including corruption. Constable Correa, who had worked at 52 Division, was one of the officers charged.

On November 23, 2004 a full-page article appeared in the Toronto Sun newspaper. The article quoted Constable Correa at length and identified him by name. Remarks attributed to

Constable Correa included his views on the corruption investigation, his declaration of innocence and derogatory comments about the Service, particularly Constable Correa's description of the Toronto Police disciplinary tribunal as a "kangaroo court".

Three days later Constable Correa was served with a Notification pursuant to s. 56(7) of the Act and the Service's complaint intake procedure. The Notification advised Constable Correa that he was the subject of an internal, non-criminal complaint investigation in connection with the Toronto Sun article. Constable Correa was directed to contact Professional Standards within five days for the purpose of scheduling an interview regarding the matter. He was also advised of his right to have legal representation at the interview. Acting on the advice of his legal counsel, Constable Correa did not contact Professional Standards for an interview.

Between December 2004 and January 2005 Constable Correa received three additional Notifications, each one expanding on the allegations that he committed discreditable conduct and breach of confidence as a result of the newspaper interview and article. Each Notification directed Constable Correa to contact Professional Standards for an interview. Constable Correa's legal counsel had responded to each Notification, asserting that Constable Correa was not required to obey these directives as the Notifications were deficient and did not comply with s. 56(7) or the Service's internal protocols.

On March 3, 2005 the Professional Standards investigator personally attended 23 Division, where Constable Correa worked, and gave him a direct order to contact Professional Standards to schedule an interview. Constable Correa failed to comply with the oral direction, as he had similarly failed to comply with the four written orders.

On April 7, 2005 Constable Correa was issued a further Notification of Investigation, alleging that he had committed the offence of insubordination by failing to respond to a direct lawful order.

At the disciplinary hearing Constable Correa pled not guilty. His legal counsel was called as a defence witness. The Hearing Officer found Constable Correa guilty of insubordination. At the sentencing portion of the hearing commendations, positive evaluations and character references were submitted on behalf of the Appellant. The Prosecutor suggested a penalty of loss of three days. The Defence suggested that a reprimand was an appropriate penalty. The Hearing Officer imposed a penalty of loss of seven days.

Counsel for the Appellant argued that the Notifications were defective in that they did not identify the "substance of the complaint" in accordance with s. 56(7), and did not detail the allegations in accordance with the Service's complaint intake policy. As a result, the orders were not lawful and the Hearing Officer lacked jurisdiction to conduct a hearing on the charge of insubordination. Counsel submitted that the conviction was based on several manifest errors and the Hearing Officer failed to give proper weight to the Appellant's good-faith reliance on legal advice as a lawful excuse. Further, the Hearing Officer erred in failing to accept the penalty submission of the Prosecutor. Counsel submitted that the penalty was excessive and thus inconsistent with comparator cases.

Counsel for the Respondent argued that the notices were not deficient or non-compliant; they contained sufficient information for the Appellant to know what would be discussed at the investigative interview. Counsel submitted that reliance on legal advice was not a lawful excuse for disobeying a lawful order. The conviction was based on a sound evidentiary foundation, and the penalty reflected no manifest errors, nor did it fall outside the range of appropriate penalties in other similar cases involving insubordination.

The Hearing Officer had to answer four fundamental questions: 1) whether the Appellant received an order; 2) whether the order was lawful; 3) whether the Appellant disobeyed, neglected or omitted to carry out the order and if so, 4) whether he had a lawful excuse for doing so.

With respect to the first and second questions, the Appellant received four written Notifications. These contained the degree of substance and detail required by s. 56(7) and the Service's policies, such that the Appellant was required to comply with the orders. The Notifications directed the Appellant to attend an investigative interview. In a labour relations context, it was inappropriate to import a criminal or quasi-criminal threshold for notifications. The notices outlined the basic information: they advised of an internal complaint and the nature of the allegations, and they provided sufficient detail that the Appellant ought reasonably to have known the substance of the complaint. It was unreasonable to expect the Service to provide particulars which were not within its knowledge and which it sought to ascertain through the process of the investigative interview. The fact that the Appellant's counsel requested more detail did not invalidate the notices or relieve the Appellant of his duty to comply. Thus the Hearing Officer did not err in concluding that five lawful orders were issued to the Appellant.

With respect to the third question, there was no dispute that the Appellant did not comply with any of the orders to contact Professional Standards to arrange an investigative interview.

With respect to the fourth question, the Hearing Officer rejected the Appellant's assertions that he relied in good faith on the advice of his counsel and/or that he made an honest or innocent mistake. The Appellant was not an uninformed civilian or a novice officer; he was a seasoned police officer. While it might explain his motivation, his reliance on the advice of legal counsel did not relieve him of the duty to obey a lawful order. Therefore the Appellant did not have a lawful excuse for failing to obey the orders.

With respect to penalty, the Hearing Officer regarded the repeated disobedience of an order as an aggravating factor, while the Appellant's positive employment record and character references were regarded as mitigating factors. The Hearing Officer interpreted the fact that the Appellant remained non-compliant with the order as indicating a lack of recognition and

remorse. This finding, which was based on the evidence before him, was not invalidated or undermined by the use of some strong statements.

The Hearing Officer referred to the need for general and specific deterrence to avoid the prospect of officers picking and choosing which orders they will obey. Potential damage to the service and effective management of the force were also considered.

The Hearing Officer concluded that he was not bound by the submissions of counsel. In addition, consistency of penalty was not an absolute; rather, a range of penalties were available depending on the mitigating and aggravating factors in any given case. The Hearing Officer did not err by choosing a penalty which was at the higher end of the scale of penalties for other cases involving insubordination.

There were no manifest errors in principle or a failure to consider relevant sentencing factors, and thus no basis for varying the penalty imposed. The conviction and penalty were upheld and the appeal dismissed.

STAFF SERGEANT JOHN McCORMICK
Appellant

AND

GREATER SUDBURY POLICE SERVICE
Respondent

Presiding Members:
David Edwards, Member
Hyacinthe Miller, Member

Appearances:
Peter M. Brauti, for the Appellant
Réjean Parisé, for the Respondent

Heard: January 8, 2009

Date of Decision: February 20, 2009

Summary of Reasons for Decision

Staff Sergeant McCormick appealed his conviction on two disciplinary charges: neglect of duty, contrary to s. 2(1)(c)(ii) of the Code of Conduct and unlawful or unnecessary exercise of authority, contrary to s. 2(1)(g)(ii) of the Code. In addition, Staff Sergeant McCormick appealed the penalty imposed, demotion to first-class constable for a period of one year.

At the time of events giving rise to the charges the Appellant was a sergeant. On January 14, 2001 he participated in the pursuit and arrest of RG. RG was apprehended and arrested by Constable Hart, a subordinate officer in the Appellant's platoon. During a Professional Standards investigation, Constable Hart indicated that the Appellant kicked RG in the face while he was handcuffed and compliant on the ground. Constable Train, an auxiliary officer, indicated that when he arrived on the scene RG was standing close to the police cruiser, and he saw the Appellant

slap RG in the face. The Appellant denied both of these allegations.

Photographs were taken of RG's injuries while he was in custody. RG denied that it was the Appellant who was responsible for his injuries. He also denied being slapped in the face. RG maintained that the arresting officer pummelled him and pushed his face into the pavement.

The Appellant was charged with unlawful or unnecessary exercise of authority, in that he intentionally kicked RG in the head and intentionally slapped RG in the face. He was also charged with neglect of duty, in that he failed to file a use of force report or to make an entry about the incident in his duty book, all contrary to the Service's policies.

Counsel for the Appellant argued that the Hearing Officer erred in refusing to order disclosure of a photograph of Constable Hart and refusing to admit the photograph into evidence. Counsel further argued that the Hearing Officer erred in pitting witnesses against each other, contrary to the Supreme Court of Canada's decision in R v. W.(D). [1991] 1 S.C.R. 742. Finally, counsel asserted that there were several errors, omissions, misapprehensions and unreasonable findings in the Hearing Officer's decision, including his assessment of the credibility of witnesses. With respect to the neglect of duty charge, counsel argued that although the Appellant's notes were sparse, his involvement in the incident was marginal and the lack of notes did not rise to the level of neglect of duty. Counsel submitted that the findings of guilt should be set aside or the penalty reduced.

Counsel for the Respondent argued that the Appellant failed to make any notes about RG's injuries. The Hearing Officer properly refused to allow a photograph of Constable Hart to be shown to RG, whom he found to be a confused and unreliable witness. Counsel argued that R v. W.(D) was not applicable, since it concerned instructions given to a jury, not to a trier of fact. The Hearing Officer's reasons demonstrated that he understood and

applied the proper test and burden of proof. There was ample evidence to support his findings, and the appeal against convictions and penalty should be dismissed.

The credibility of witnesses and the reliability of their evidence were central in the disciplinary hearing. The Hearing Officer found that RG was not credible. His testimony was confused and riddled with inconsistencies. Given the Hearing Officer's views in that regard, his ruling not to allow the photograph was reasonable. Further, there was nothing to suggest that the ruling was contrary to some failure on the Prosecution's part to meet a disclosure obligation.

As for Constable Hart, the Hearing Officer accepted his explanation for having made no notation of the kick. He also concluded that Constable Train's testimony was compelling. It was open to the Hearing Officer to accept or reject witnesses' testimony.

With respect to the Hearing Officer's failure to follow R v. W.(D.), the Supreme Court of Canada had said that in a criminal case it was an error for a trial judge to instruct a jury that in order to render a verdict they had to decide whether they believed the defence's evidence or the Crown's evidence. Recently the Ontario Divisional Court had commented that a strict application of the test in R v. W.(D.) was not required in the context of disciplinary hearings before an administrative tribunal, as long as the trier of fact applies the correct burden and standard of proof (Law Society of Upper Canada v**.** Neinstein, *infra*). The Hearing Officer made reference to the standard of proof, and it was clear that he believed the truth and accuracy of the testimony of Constables Hart and Train.

Although he may not have specifically stated why he did not find the Appellant's testimony to be credible, the Hearing Officer indirectly did so through his acceptance of the other officers' testimony. Failure to provide detailed reasons was not fatal. There was an evidentiary foundation for the Hearing Officer's

decision, and no errors of law. Consequently the convictions had to stand.

As for penalty, the Hearing Officer noted that the Appellant had no prior disciplinary record, and had received numerous commendations and awards. However, the disciplinary charges were serious and troubling. As a supervisor, the Appellant was under a greater duty to ensure compliance with service policies and procedures.

Considering the repugnant nature of the misconduct, including the unauthorized use of force on a handcuffed individual, demotion was within the range of penalties available. The Hearing Officer identified the relevant sentencing principles, applied them in a fair and impartial manner, and committed no errors by imposing the penalty of demotion rather than the penalty of dismissal sought by the service. The convictions and penalty were upheld and the appeal dismissed.

CONSTABLE J.B. PIGEAU
Appellant

AND

ONTARIO PROVINCIAL POLICE AND CHRISTOPHER TAILLON

Respondents

Presiding Members:
Dave Edwards, Member
Hyacinthe Miller, Member

Appearances:
Gavin May, for the Appellant
Jinan Kubursi, for the Respondent OPP

Heard: February 27, 2009

Date of Decision: March 5, 2009

Summary of Reasons for Decision

Constable Pigeau appealed his conviction on one count of unlawful or unnecessary exercise of authority, contrary to s. 2(1)(g)(i) of the Code of Conduct. He also appealed the penalty imposed, loss of two days or 16 hours plus a direction to undergo in-service training dealing with issues of mental illness and arrest procedures.

Mr. Taillon filed a complaint with the OPP about the circumstances surrounding his arrest by Constable Pigeau and his partner. Professional Standards determined that the officers had not committed misconduct. Mr. Taillon appealed to the Commission, requesting a review. The Commission then remitted the matter to the OPP for a hearing. Mr. Taillon participated in the

disciplinary hearing as a witness and as a party. He was self-represented.

Prior to the commencement of oral argument on the appeal it was discovered that neither the Appellant nor the Respondent OPP had served notice of the appeal or any documents relating thereto upon Mr. Taillon, contrary to the Commission's Rules of Practice. The Commission held that the failure to serve Mr. Taillon was clearly an error. As a complainant he was a full party to the appeal with all the attendant rights to notice and disclosure of documents. The issue was what consequences flowed from the error. Counsel for the Appellant suggested several possible remedies: dismissing the appeal, proceeding without notice to Mr. Taillon, or adjourning to allow Professional Standards to contact Mr. Taillon.

Each of these options, however, entailed some degree of prejudice to one or the other of the parties. The appropriate remedy was to order the Appellant and the Respondent OPP to jointly arrange for service upon Mr. Taillon of the notice of appeal with all other documents to which he was entitled within 21 days. Following the Commission's receipt of an Affidavit of Service, the appeal would be rescheduled.

GUS BAKOS
Appellant

AND

DETECTIVE CONSTABLE GEORGE GALLANT AND HAMILTON POLICE SERVICE
Respondents

Presiding Members:
Noëlle Caloren, Member
Garth Goodhew, Member

Appearances:
Gus Bakos, Appellant
Tom Andrew, for the Respondent Officer

Heard: February 8, 2009

Date of Decision: April 3, 2009

Summary of Reasons for Decision

Mr. Bakos appealed the Hearing Officer's finding that the Respondent, Detective Constable Gallant, was not guilty of neglect of duty, contrary to s. 2(1)(c)(i) of the Code of Conduct.

In connection with an investigation of motorcycles with suspicious histories, Constable Smith stopped the Appellant's motorcycle when it was being driven by the Appellant's friend. Detective Constable Gallant was called, and he seized the motorcycle. Approximately one month later the motorcycle was returned to the Appellant. Detective Constable Gallant had been unable to establish that the engine was stolen.

Mr. Bakos filed a public complaint. Following an investigation, Mr. Bakos was advised by the Service that his allegations were unsubstantiated and no further action would be taken. Mr. Bakos

appealed to the Commission. The Commission directed an investigation to determine what actions Detective Constable Gallant took to comply with s. 489.1(1)(b) of the *Criminal Code*, which requires that a police officer submit a report to a Justice of the Peace after property is seized subsequent to a search without a warrant. The second investigation yielded a similar answer from the Service. Mr. Bakos again requested a review by the Commission. The Commission then directed a hearing. The Respondent was charged with neglect of duty and a disciplinary hearing ensued.

The Hearing Officer referred to the two-part test for establishing neglect of duty. For a conviction on this charge, it must be shown that the member failed to perform a duty because of neglect or did not perform the duty in a prompt or diligent matter. To avoid conviction, the member had to show that he or she had a lawful excuse for not performing the duty. Since the Respondent admitted that he failed to comply with s. 489.1(1)(b), the sole issue before the Hearing Officer was whether he had a lawful excuse. The Respondent argued that he did have a lawful excuse, because his failure was not wilful and it was consistent with the prevailing practice of not filing a report in common law seizures of property. The Prosecutor argued that ignorance of the law or inadvertence was not an adequate defence.

Documentary evidence was tendered at the hearing with respect to the Service's Search of Premises Policy. Oral evidence was also given, suggesting that it was a common practice throughout Ontario for police officers not to file a report with a Justice when items were seized under the common law.

The Hearing Officer determined that the Respondent had a lawful excuse for failing to comply with s. 489.1(1)(b). His conclusion was based on the ambiguity in the Service's policy as well as the pervasive practice on reporting seizures of property.

At the appeal hearing the Appellant essentially reiterated arguments made by the Prosecutor at the disciplinary hearing.

The Appellant asked that the decision of the Hearing Officer be reversed. The Respondent argued that the Hearing Officer made no error in his findings of fact or in his application of the law to those facts. The Respondent emphasized that the Service's policies were not clear as to common law seizures of property off premises.

In his decision the Hearing Officer considered the requirements of s. 489.1(1) of the *Criminal Code*. He accurately summarized the evidence with respect to the ambiguity of the Service's policy and the practice in Ontario with respect to warrantless property seizures. He reviewed the relevant law and applied the two-part test for a finding of neglect of duty. The Hearing Officer referred to R. v. Backhouse (*infra*), a decision of the Ontario Court of Appeal which was released around the time of the alleged offence in this case. The Hearing Officer found that prior to the release of this decision there was a lack of clarity in the procedure to be applied to the preservation and return of property seized without a warrant. In concluding that in this case the duty to be followed was not sufficiently clear or explicit, the Hearing Officer relied on the Service policy and the generalized practice in Ontario.

It was open to the Hearing Officer to find that the matter must be viewed as a performance issue rather than an issue of statutory misconduct. The Respondent's actions were not inconsistent with his employer's policies and the procedure followed in many Ontario jurisdictions regarding warrantless property seizures.

The Hearing Officer's reasons as a whole supported his decision. The appeal was dismissed.

DAVID CANTON
Appellant

AND

CONSTABLE KENNETH KAIJA AND
HAMILTON POLICE SERVICE
Respondents

Presiding Members:
Noëlle Caloren, Member
Tammy Landau, Member

Appearances:
David Canton, Appellant
Tom Andrew, for the Respondent Officer

Heard: January 16, 2008

Date of Decision: April 20, 2009

Summary of Reasons for Decision

Mr. Canton appealed the decision of the Hearing Officer, dismissing a charge of misconduct against the Respondent, Constable Kaija. The Hearing Officer found that the Respondent's arrest of the Appellant was not unlawful or unnecessary pursuant to s. 2(1)(g)(i) of the Code of Conduct.

On the morning of July 26, 2005 Constable Kaija stopped Mr. Canton for driving with an expired license plate. After Constable Kaija stopped his cruiser behind Mr. Canton's vehicle, Mr. Canton got out of his vehicle and walked towards Constable Kaija's vehicle. The form and nature of the exchange which followed was in dispute. Constable Kaija maintained that Mr. Canton assumed an aggressive stance, while Mr. Canton maintained that he was non-confrontational. Constable Kaija requested that Mr. Canton

place his hands on the cruiser. He then arrested Mr. Canton, handcuffed him and placed him in the back of the cruiser. It was not disputed that Constable Kaija failed to inform Mr. Canton of his right to counsel, contrary to s. 10(b) of the *Charter of Rights and Freedoms.*

Constable Kaija had called for back-up during the arrest. Two officers arrived at the scene after the arrest and searched Mr. Canton's vehicle. They found tools in his car, which Mr. Canton said he used in his work as an instructor in the Tool & Die program at Sheridan College. Following the search Constable Kaija issued Mr. Canton a ticket for driving without a validated plate and released him from custody. Upset about the manner in which he had been dealt with, Mr. Canton then attended the Hamilton Police Service to lodge a complaint against Constable Kaija.

At the disciplinary hearing Mr. Canton stated that he was non-confrontational during the exchange leading up to his arrest. He also claimed that he was not told why he was being arrested. Constable Kaija disputed that claim. He testified that Mr. Canton was aggressive and threatening; among other aspects of his demeanour suggesting this were Mr. Canton's "bladed" stance. It was Constable Kaija's perception that he was about to be assaulted.

The two back-up officers testified that Mr. Canton appeared upset, agitated, hostile and uncooperative. Expert evidence was led on Use of Force training of police officers. The expert witness testified that a bladed stance in a suspect could prompt an officer to bypass the normal recommended response of verbal communication, i.e. asking the stopped individual to return to his vehicle as a first step.

The Hearing Officer identified five issues: 1) whether the arrest was lawful; 2) whether the arrest, if lawful, was necessary; 3) whether the arrest became unlawful at some point; 4) whether a breach of s. 10(b) of the *Charter* was sufficient to cause the

arrest to be deemed unlawful; and 5) whether there was clear and convincing evidence of misconduct.

The Hearing Officer found that a reasonable person in the position of Constable Kaija would have come to the same conclusion, namely that he was about to be assaulted. Consequently the arrest was both lawful and necessary, and misconduct was not established on clear and convincing evidence. Issue three was determined to be outside his authority, given the wording and scope of the notice of hearing. In relation to the fourth issue the Hearing Officer decided that Constable Kaija's admitted breach of Mr. Canton's *Charter* rights did not negate the original grounds for making the arrest.

The Appellant argued that the Hearing Officer's decision was unreasonable. He also contended that his arrest was unlawful in light of the violation of his s. 10(b) *Charter* rights. The Respondent argued that the Hearing Officer's decision was supported on the evidence, which he assessed fairly and reasonably. The Respondent submitted that the Hearing Officer had no jurisdiction to consider the *Charter* allegation since it was not included in the notice of hearing.

The Hearing Officer's summary of the evidence revealed that he was very aware of the conflicts in the evidence, which required him to engage in an assessment of the credibility of Mr. Canton and Constable Kaija. The Hearing Officer reconciled these conflicts in a reasonable and logical manner. Without discounting either of the witnesses' recollection of events, he concluded that Constable Kaija, who was trained to identify threat cues, reasonably perceived that Mr. Canton was about to assault him. Further, that belief was a reasonable one under the circumstances. It was reasonable for the Hearing Officer to reach that conclusion; and the process by which he arrived at his conclusion - weighing both objective evidence as well as the officer's subjective belief - was likewise reasonable.

On the essential question of the grounds for arrest, there was nothing in the Hearing Officer's decision that amounted to a

manifest error. On the issue of the failure to read the Appellant his rights and the impact of that failure, the Panel agreed with the Respondent that the Hearing Officer did not have jurisdiction to consider this allegation, since it was not set out in the notice of hearing.

The appeal was dismissed.

GAYLE IKEMOTO (ON BEHALF OF CODY IKEMOTO)
Appellant

AND

CONSTABLE R.C. (RANDY) COTA AND
ONTARIO PROVINCIAL POLICE
Respondents

Presiding Members:
Dave Edwards, Member
Garth Goodhew, Member

Appearances:
Paolo Giancaterino, for the Appellant
William R. MacKenzie, for Constable Cota
Superintendent Michael Shard, for OPP (via Factum)

Heard: April 22, 2009

Date of Decision: May 4, 2009

Summary of Reasons for Decision

On behalf of Cody Ikemoto, Gayle Ikemoto appealed the decision of the Hearing Officer, dismissing a charge of misconduct against the Respondent, Constable Cota. The Hearing Officer found Constable Cota not guilty of unlawful or unnecessary exercise of authority, contrary to s. 2(1)(g)(i) of the Code of Conduct.

In 1987 Constable Cota joined the OPP and served in the First Nations program. In 1992 he rejoined the uniform division of the OPP. He had experience in the drug enforcement unit, including undercover work on drug projects.

Constable Cota was alleged to have arrested Cody Ikemoto, on September 20, 2006 without good and sufficient cause. On that date Cody, who was in attendance at Sharbot Lake High School, drove his father's truck to a local pizza place with two female

friends. Prior to Cody's departure from the school Constable Cota received information from a confidential informant, who had proved in the past to be credible and reliable, that a drug transaction had occurred in the school cafeteria, specifically the purchase of marijuana. Cody was identified as being involved.

Constable Cota then followed the vehicle driven by Cody to the pizza place and back to the high school. In the meantime he ran the vehicle's license plate through CPIC and discovered that the vehicle was of special interest due to its association with the Hell's Angels motorcycle gang.

Constable Cota activated his emergency lights. He testified at his disciplinary hearing that the vehicle travelled 300-400 yards before coming to a stop. When he approached the vehicle Constable Cota observed a sticker on the dash reading "Support Hell's Angels, Hamilton Chapter". The evidence about what followed diverged, with Constable Cota claiming that he placed everyone in the vehicle under arrest after asking for identification papers. Cody testified that he was never advised that he was under arrest.

Cody was asked some questions, and denied having any narcotics. He was told to exit the vehicle, which he did, and Constable Cota did a "pat down" search of Cody. Another police officer attended the scene, and Cody was asked to sit in the back of that car. The two girls were allowed to leave and return to school. Constable Cota searched the vehicle driven by Cody but found no narcotics. Cody and the vehicle were unconditionally released.

Gayle Ikemoto then filed a complaint on behalf of Cody Ikemoto. After a hearing which included testimony from Det. Sgt. Giwa of Professional Standards Bureau, who investigated the complaint, the Hearing Officer dismissed the charge against Constable Cota. The Hearing Officer found that the information received by Constable Cota was reliable, that he used what investigative methods he had available to him and due to the exigency of the

circumstances made a good faith and reasonable decision to arrest Cody.

Counsel for the Appellant argued that the Hearing Officer erred in finding that s. 11(7) of the *Controlled Drugs and Substances Act* provided Constable Cota with the authority to make a warrantless arrest and search. He argued that the exigency of the circumstances had not been established, and that reasonable grounds did not exist. Counsel also argued that the warrantless arrest was not authorized pursuant to s. 495(1) of the *Criminal Code*, and that the officer did not act in good faith.

Counsel for Constable Cota argued that the Hearing Officer correctly applied s. 11(7) of the *CDSA* and determined that exigent circumstances were present. He submitted that pursuant to s. 495(1) of the *Criminal Code*, Constable Cota had reasonable and probable grounds for arresting Cody, and that a reasonable person in Constable Cota's position would likewise have believed that reasonable and probable grounds existed. Further, the Hearing Officer found that Constable Cota acted in good faith, so he could not be held guilty of misconduct even in the absence of reasonable and probable grounds.

Counsel for the OPP submitted that the reasonable and probable grounds test was satisfied in this case. The Hearing Officer did not rely upon s. 11(7) of the *CDSA* but found that Constable Cota believed he was acting under that authority. The search was incidental to the arrest and was authorized under s. 11(7). Noting the Respondent's concern about the loss or destruction of evidence, counsel argued that exigent circumstances existed. Finally, the finding of good faith should not be overturned lightly.

The authority of a police officer to effect a warrantless arrest derived from s. 495(1) of the *Criminal Code*. Whether the arrest in this instance was lawful depended on whether Constable Cota had reasonable grounds to believe that Cody had committed an indictable offence.

R. v. Storrey (1990), 53 C.C.C. (3d) 316 (S.C.C.) contemplated a two-part test for establishing reasonable grounds under s. 495(1). The officer must have a subjective belief, and that belief must be objectively reasonable. From the record it was clear that Constable Cota had a subjective belief that he had reasonable and probable grounds. As for the second part of the Storrey test, Detective Sergeant Giwa from Professional Standards testified that he would have done the same thing. Thus reasonable grounds were established.

The Hearing Officer also found that Constable Cota acted in good faith, a finding which would not be lightly overturned on appeal. While a finding of good faith would not provide blanket protection from a charge of misconduct, it was an important element to consider. In this case the Hearing Officer's finding of good faith was not void of evidentiary foundation, and it served to strengthen the conclusion that the officer's actions were reasonable.

As was evident from the record, the search of Cody and the vehicle occurred after the arrest. The charge of misconduct comprised only the issue of unlawful or unnecessary arrest, so the search was not relevant to the appeal. The case of R. v. Debot (1989), 52 C.C.C. (3d) (S.C.C.), which was relied upon by the Appellant, concerned the use of information from confidential sources for the purpose of undertaking a warrantless search. To this extent it was relevant by way of analogy in determining whether the information received by Constable Cota satisfied the standard set in Storrey for warrantless arrests. It was apparent that in this case the test in Debot had been met: the information provided was very compelling and very specific, and the source had proved to be very accurate in the past. The third part of the Debot test - corroboration by investigation prior to the search - had also been met. The Hearing Officer referred to: the CPIC inquiry and the association of the vehicle with the Hell's Angels; Constable Cota's concern about the proximity of the vehicle to the school; the observation of delay in stopping after emergency lights were activated; and the observed Hell's Angels sticker.

Constable Cota had a subjective belief that there were reasonable and probable grounds for the arrest, and on the evidence a reasonable person in his position could have come to the same conclusion. Thus the Hearing Officer's decision was not void of evidentiary foundation and contained no fundamental errors or errors in principle.

The appeal was dismissed.

CONSTABLE BOGUMIL BRYL
Appellant

AND

TORONTO POLICE SERVICE
Respondent

Presiding Members:
Roy Conacher, Member
Garth Goodhew, Member

Appearances:
Peter Thorning, for the Appellant
Zoya Trofimenko, for the Respondent

Heard: December 5, 2008

Date of Decision: May 27, 2009

Summary of Reasons for Decision

Constable Bryl appealed the decision of the Hearing Officer, finding him guilty on two counts of misconduct. A single conviction was registered for Constable Bryl's violation of s. 2(1)(a)(xi) of the Code of Conduct. Constable Bryl also appealed the penalty imposed for this conviction, demotion from first-class constable to third-class constable for a period of two years, with reinstatement to his original rank contingent upon evaluation by his unit commander.

The disciplinary conviction arose as a result of an off-duty road trip which Constable Bryl undertook on September 5, 2004. He left in the evening and drove his motorcycle across the U.S. border. En route he stopped at several rest stops on interstate 75, and consumed a total of nine plus beers during these stops, within the space of approximately three hours. While he was

stopped on the side of the highway, an Ohio State trooper approached him and asked him whether he had been drinking, which Constable Bryl denied. During discussions with the state trooper Constable Bryl identified himself as a police officer.

The state trooper asked Constable Bryl to perform some field sobriety tests. Based on Constable Bryl's performance, the state trooper placed Constable Bryl under arrest. At the local Sheriff's office, a demand was made to submit to a breath test. A single reading was taken, which resulted in a reading of .116. Constable Bryl was charged and allowed to post a bond.

When he appeared in Ohio court on January 26, 2005 Constable Bryl entered a plea of no-contest to the charge of having physical control of a motor vehicle while impaired. A finding of guilt was entered. Constable Bryl was fined $100 plus costs and placed on probation for a short period.

On February 18, 2005 Constable Bryl was served with notices of hearing relating to two charges of misconduct under s. 2(1)(a)(xi) of the Code. The first count alleged that the arrest and charge in Ohio constituted discreditable conduct. The second count referred to the breathalyzer result and the no-contest plea; this, too, was alleged to constitute discreditable conduct.

At his disciplinary hearing Constable Bryl pled not guilty to both counts. The Hearing Officer dismissed a motion to quash count one on the grounds that the notice of hearing disclosed no offence under the Act and that to proceed would amount to an abuse of process. The Hearing Officer also dismissed a motion to stay both charges on the ground that the prosecution failed to preserve and produce audio and video tape evidence made at the time of the Appellant's arrest. These tapes had been destroyed by the Ohio state police and were not available for the disciplinary hearing.

A number of witnesses testified at the disciplinary hearing, including a recognized expert on the operation of breathalyzer

machines, who cited problems with the methodology used in this case.

At the outset of the appeal hearing, counsel for Constable Bryl brought a motion to allow the introduction of fresh evidence: letters of commendation, an awards recommendation, and a uniform performance appraisal and development plan. All of these documents post-dated the imposition of penalty.

The motion to admit fresh evidence was granted.

The fresh evidence met the criteria for admission set forth in Palmer v. the Queen [1980] 1 S.C.R. 759 (S.C.C.). The evidence came into existence following the disciplinary hearing and thus with due diligence it could not have been made available at the hearing. The evidence appeared to be credible, and it appeared to be relevant to the issue of penalty. Therefore it was appropriate to admit the fresh evidence.

With respect to the first ground of appeal, the Appellant's position was that the notice of hearing did not relate to a disciplinable offence, since the mere fact of being charged did not amount to misconduct. The Hearing Officer considered this argument but rejected it, and found that the notice referred to the behaviour underlying the arrest, not the arrest itself. On a purposive and grammatical reading of the language of the charge, this was a reasonable interpretation. Moreover, the Hearing Officer found the Appellant guilty on both counts, but convicted him only on count two because there was a single transgression. Thus the validity of count one was moot, and no useful purpose would be served if the Commission were to exercise its discretion to consider the issue further.

With respect to the second ground of appeal, the Hearing Officer concluded that the no-contest plea and its underlying facts were admissible pursuant to s. 15(2) of the *Statutory Powers Procedure Act*. That conclusion was not erroneous. The no-contest plea amounted to an admission by the Appellant of the truth of the underlying facts. Section 15 conferred upon tribunals

the power to admit into evidence any testimony or document relevant to the proceeding and to act upon the evidence. Nevertheless, the Hearing Officer considered whether this evidence should be excluded on the grounds of abuse of process and natural justice/procedural fairness. After carefully reviewing the evidence, submissions, authorities and relevant statutory provisions, he concluded that there was no prejudice or unfairness to the Appellant and the admission of the evidence did not amount to an abuse of process. Taking the reasons as a whole, there was no manifest error in law. The evidence was properly admitted and the Hearing Officer was entitled to act on that evidence in reaching his decision.

The third ground of appeal concerned the quality of the breathalyzer test. The Appellant argued that the sample was not collected or verified in accordance with Canadian standards, and that the Hearing Officer erred in rejecting the evidence of the only expert called by the Appellant. However, evidence of impairment also included the observations of two state troopers, such as the Appellant's slurred speech and an odor of alcohol.

The Hearing Officer accepted the evidence of the expert witness as it related to scientific protocols and Canadian standards. He found that it affected the weight to be given to the breathalyzer evidence, but not its reliability or admissibility. The Hearing Officer did not accept the expert's evidence as it related to the specific sample in this case, because that evidence rested upon certain unproved assumptions, such as the assertion that the Appellant was an alcoholic, which would affect his tolerance level and elimination rate. Such assumptions and assertions were not verified by any medical assessment. Thus the Hearing Officer made no manifest error in considering the results of sobriety testing.

Counsel's position on the appeal was that the Hearing Officer made several errors in law:

1) in failing to quash the first count;

2) by relying on the facts and findings underlying the no-contest plea;
3) by considering the results of sobriety testing without any expert evidence and by taking judicial notice of foreign law;
4) by failing to provide a remedy for the destruction of the audio and video tapes; and
5) by imposing an unduly harsh penalty.

Counsel for the Respondent submitted that:

1) the validity of count one was moot;
2) the Hearing Officer did not err with respect to the admissibility and use of the no-contest plea;
3) there was no evidence that the breathalyzer sample or methodology was substandard relative to Canadian standards;
4) there was no failure to disclose evidence, and the Hearing Officer did not err by refusing to grant a stay of proceedings; and
5) the penalty fell within the acceptable range.

With respect to the fourth ground of appeal, the Appellant submitted that failure to disclose the audio/video tape evidence should have resulted in a stay of proceedings. Alternatively, the evidence of the state troopers concerning events leading up to the arrest and charging should have been excluded. In the further alternative, the Hearing Officer ought to have preferred the evidence of the Appellant over that of the state troopers. The Hearing Officer found that the threshold test for a stay of proceedings was not met in this case. He found the Appellant had prior knowledge of the existence of the tapes; his evidence and that of the state troopers did not diverge significantly on the events; and there was no malice or unfairness on the part of the prosecutor in failing to obtain and disclose the tapes. He concluded that there was no prejudice requiring exclusion of the state troopers' evidence. These findings as they related to the issue of disclosure were not without evidentiary foundation.

In the absence of any manifest errors in the Hearing Officer's reasons, there was no basis for overturning the conviction.

As to the fifth ground of appeal, the Hearing Officer considered all of the relevant sentencing factors. He characterized the offence in this case as being at the high end of the seriousness continuum. In the Hearing Officer's view, the Appellant's explanation for his behaviour and his rationalizing demonstrated that he did not accept full responsibility. The Appellant had lengthy service with the force and positive commendations, but he also had a disciplinary record, including a previous conviction for impaired driving which likewise resulted in disciplinary action. The public interest factored heavily into the penalty decision, as did general deterrence.

A demotion was not an unreasonable penalty. Considering the Commission's scope of review regarding penalty, there was no basis for varying the result. The appeal was dismissed.

CONSTABLE J.B. PIGEAU
Appellant

AND

ONTARIO PROVINCIAL POLICE AND
CHRISTOPHER TAILLON
Respondents

Presiding Members:
Dave Edwards, Member
Hyacinthe Miller, Member

Appearances:
Gavin May, for the Appellant
Jinan Kubursi, for the OPP

Heard: February 27, 2009 and June 16, 2009

Date of Decision: July 15, 2009

Summary of Reasons for Decision

Constable Pigeau appealed his conviction on one count of unlawful or unnecessary exercise of authority, contrary to s. 2(1)(g)(i) of the Code of Conduct. He also appealed the penalty imposed, loss of sixteen hours and a direction that he undergo in-Service training dealing with issues of mental illness and arrest procedures, particularly schizophrenia and illnesses occasioned by diabetic complications.

In the early hours of December 9, 2006 Constable Pigeau arrested Christopher Taillon. At the time, Constable Pigeau had been a police officer for approximately fourteen months. During the evening of December 8, 2009 Constables Pigeau and Lobsinger were working a paid duty assignment as part of the seasonal RIDE program. They noticed a man, Mr. Taillon, walking

on the sidewalk around midnight. The sidewalks were icy. They thought Mr. Taillon stumbled. Concerned that he might be intoxicated, the officers approached Mr. Taillon and tried to speak to him. Mr. Taillon did not want to speak to the officers, and proceeded to walk off in the opposite direction. Constable Pigeau followed on foot. He called out and asked Mr. Taillon to stop. According to the officers, Mr. Taillon responded "Get the fuck away from me." Constable Pigeau found Mr. Taillon's behaviour bizarre. He testified that he felt obliged to touch Mr. Taillon to get his attention. An altercation ensued, and quickly escalated into a takedown and an arrest for assaulting a police officer.

Mr. Taillon was released when the officers' supervisor, Sergeant Walker, appeared on the scene. He did not believe that Mr. Taillon was intoxicated. Mr. Taillon advised Sergeant Walker that he was schizophrenic. Mr. Taillon went to the ER of a local hospital later that night and received treatment for injuries arising from the incident.

Mr. Taillon filed a public complaint against both officers. The OPP found that the complaint was not substantiated. Mr. Taillon appealed to the Commission; and the Commission ordered that a hearing be held. At the disciplinary hearing Mr. Taillon represented himself. The Appellant requested that a subpoena be issued for Dr. Spiller, who had treated Mr. Taillon. The Hearing Officer denied the request on the basis that there was other sufficient evidence of Mr. Taillon's injuries. The Hearing Officer found Constable Lobsinger not guilty and Constable Pigeau guilty of unlawful or unnecessary exercise of authority. He assessed a penalty of forfeiture of sixteen hours and the direction to undergo training. However, the hearing record form noted loss of eight hours or one day off.

Constable Pigeau appealed both the conviction and the penalty decisions. When the Commission convened to hear the appeal, it was noted that Mr. Taillon, who was a party to the proceeding, had not been served with a Notice of Appeal or other materials. In a preliminary decision (OCCPS #09-03) the Commission ordered the Appellant and the police service to serve these

documents upon Mr. Taillon. Counsel complied with that order accordingly; however Mr. Taillon did not appear for the appeal hearing.

Counsel for the Appellant argued that there were several grounds for appeal:

1) the Hearing Officer's refusal to issue a subpoena for Dr. Spiller, which amounted to a denial of natural justice;
2) the erroneous acceptance of Mr. Taillon's credibility;
3) the Hearing Officer's misapprehension of the evidence and misapplication of the law concerning the grounds for arrest;
4) the failure to give complete reasons; and
5) a penalty which was harsh, excessive, inconsistent with the hearing record form and with the mitigating factors, and which lacked a proper foundation in the evidence (e.g. the absence of any evidence in the hearing documentation regarding diabetes).

Counsel requested that the conviction be revoked. In the alternative, he requested that the penalty be varied to a reprimand.

Counsel for the Respondent OPP submitted:

1) the denial of the request for a subpoena was not an error, on the basis of sufficiency of the other evidence and irrelevance to the central issue of whether the arrest was unlawful;
2) the Hearing Officer did not err in finding Mr. Taillon credible with respect to the critical issues;
3) there was no misapprehension of the evidence regarding the reason for arrest;
4) the reasons should be assessed as a whole, and in this case they were sufficient; and
5) the penalty was within the range available to the Hearing Officer.

Counsel argued that the appeal should be dismissed.

The standard of review exercised by the Commission was reasonableness. In Dunsmuir v. New Brunswick [2008] S.C.J. No. 9, the Supreme Court of Canada said that the standard of reasonableness was concerned with both the decision-making process and with outcomes. Where, as in this case, the reasons were deficient the Commission must determine the appeal on the basis of the evidentiary record.

The Hearing Officer misstated the grounds for refusing a summons. However, it was clear from the record that Dr. Spiller's testimony was marginally relevant to the disciplinary charge. Thus the Hearing Officer did have proper grounds for refusing the summons (relevance), and his order did not result in a breach of natural justice for the Appellant.

Although a hearing officer's findings of credibility were entitled to deference, in this case it was unclear exactly which portions of Mr. Taillon's version of the entire incident were accepted, and why. Similarly, there was no explication of which documents and case law were helpful, and why. Furthermore, there was a troubling discrepancy between the penalty as described in the written penalty decision and the penalty as contained in the hand written record. Given the cumulative qualitative deficiencies in the Hearing Officer's decision, it was therefore necessary for the Commission to examine the record to determine whether there was a factual basis to support the Hearing Officer's conclusion.

Based on a clear reading of Constable Pigeau's own testimony, the only potential indication of public intoxication was a single stumble on an icy sidewalk late at night. It was apparent that Mr. Taillon didn't wish to speak to the officers. Absent other indicia of public intoxication, information that a crime may have been committed, or indications that the individual was a danger to himself or others, there were no grounds for arrest prior to the touch. Whether the purpose of the touch was to get Mr. Taillon's attention (Constable Pigeau's testimony) or to arrest him for public intoxication (Sergeant Walker's testimony), the contact was therefore improper, which rendered the subsequent arrest unnecessary. According to the OPP's policy on arrest and

detention, making physical contact was a step along the arrest continuum. If Constable Pigeau simply wanted to get Mr. Taillon's attention, he had other options for accomplishing that objective.

On a clear reading of Constable Pigeau's own evidence, his conduct precipitated the altercation. He made physical contact with Mr. Taillon without proper justification; doing so led directly to an unnecessary arrest. Alternatively if the contact were part of the process of arresting Mr. Taillon for public intoxication, that too was an unnecessary arrest.

Notwithstanding the deficiencies in the reasons of the Hearing Officer, his conclusion was thus one of the possible outcomes which would be defensible in respect of the facts and the relevant law [per Dunsmuir]. The conclusion being reasonable, the appeal from the conviction was dismissed.

However, the Hearing Officer erred in his assessment of the penalty. The order with respect to training was incomprehensible based on the record. The inconsistencies between the penalty as described in the decision and the penalty as described in the hand written hearing record were also of concern.

The Appellant was a very junior officer at the time of the incident, with a good work history and positive references from his superiors. The Commission accepted that Constable Pigeau incorrectly assessed the situation in which he found himself. The Hearing Officer appropriately recognized that Constable Pigeau's conduct was a momentary lapse of judgment and inconsistent with his normal conduct, yet this mitigating factor was not reflected in the penalty. The loss of sixteen hours was harsh and excessive.

Accordingly, the appeal from the penalty was allowed, the penalty was varied and a reprimand substituted. The training portion of the penalty was revoked. Instead, Constable Pigeau was ordered to attend an approved refresher training program regarding powers of arrest.

CONSTABLE WENDY BROMFIELD
Appellant

AND

HAMILTON POLICE SERVICE
Respondent

Presiding Members:
Garth Goodhew, Member
Tammy Landau, Member

Appearances:
Joanne Mulcahy, for the Appellant
Marco Visentini, for the Respondent

Heard: June 18, 2009

Date of Decision: July 24, 2009

Summary of Reasons for Decision

This appeal on consent related to the penalty imposed on Constable Bromfield, demotion to third class constable for a period of six months, following her guilty plea to a charge of discreditable conduct, contrary to s. 2(1)(a)(ix) of the Code of Conduct.

While off-duty Constable Bromfield had a verbal confrontation with another parent during a soccer game in which her child was playing. On February 22, 2008 she pled guilty to the criminal offence of causing a disturbance by fighting. She received an absolute discharge and made a donation to a local charity.

As a result of the criminal proceeding Constable Bromfield was also charged with one count of discreditable conduct. On January 20, 2009 she pled guilty to the disciplinary charge. At the

disciplinary hearing the parties presented a joint submission for a penalty of demotion to second class constable for a period of six months.

The Hearing Officer rejected the joint submission and imposed a demotion to third-class constable for a period of six months. He did not give notice to the parties that he was considering rejecting the joint submission, and he provided no reasons for rejecting it.

As the Commission had previously noted in Kelly (*infra*), a hearing officer was not obliged to accept a joint submission, but was obliged to provide clear reasons for rejecting the joint submission. In this case no clear reasons were provided for departing from the joint submission. In not giving advance notice that he was considering imposing a harsher penalty, and in not giving the parties an opportunity to make submissions with respect to penalty, the Hearing Officer violated principles of fairness. The penalty proposed was fair, reasonable, fell within the acceptable range for comparator cases, and appropriately reflected such factors as the Appellant's remorse, unblemished work record and commendations on file.

Accordingly the appeal was allowed and the penalty was varied to demotion to second-class constable for a period of six months.

CONSTABLE WALTER MARTIN
Appellant

AND

WINDSOR POLICE SERVICE
Respondent

Presiding Members:
Roy Conacher, Member
Garth Goodhew, Member
Hyacinthe Miller, Member

Appearances:
Jeffrey J. Hewitt, for the Appellant
David M. Amyot, for the Respondent

Heard: January 15, 2009

Date of Decision: August 17, 2009

Summary of Reasons for Decision

On August 15, 2008 Constable Martin was convicted on one count of neglect of duty, contrary to s. 2(1)(c)(viii) of the Code of Conduct and one count of deceit, contrary to s. 2(1)(d)(ii) of the Code. The Hearing Officer imposed the penalty of dismissal failing resignation within seven days. Originally Constable Martin appealed the convictions as well as the penalty. However prior to the appeal hearing he accepted the findings of misconduct. Thus the appeal was in respect of the penalty only. The conduct giving rise to the disciplinary charges related to Constable Martin's abuse of sick leave and Workplace Safety and Insurance Board (WSIB) benefits. He was found to have absented himself from duty at times when he was capable of working the modified job which the Service had provided for him.

Constable Martin had a lengthy and an unblemished employment record, having joined the Service in 1981. He had worked in the Traffic Branch since 1993 and had developed expertise in traffic enforcement and the investigation of serious motor vehicle collisions.

In June of 2000 while on motorcycle patrol Constable Martin was hit by a motorist and suffered a number of serious injuries. He was off work until September 2000 and received WSIB benefits. For a year thereafter he attempted to return to full-time duties, but was unable to do so because of pain from his injuries. Constable Martin requested a transfer to the Collision Reporting Centre ("CRC") and was accordingly transferred to the CRC in March 2002, where he was placed in a sedentary job which became a permanent modified position.

Throughout 2003, 2004 and 2005 Constable Martin claimed he was unable to perform the modified duties due to pain stemming from his injuries. Notwithstanding rehabilitation treatments, chiropractic care and medical consultations, his periods of absence increased during these years. He received WSIB benefits during his absences. In February 2005 the WSIB concluded that the physical demands of the modified job did not exceed Constable Martin's limitations.

The Service grew concerned not only about the number of absences and their increasing frequency but also a pattern of absenteeism, whereby Constable Martin would take most of the summer off and return to work just prior to his scheduled vacation time in the fall. Constable Martin's supervisor also received information suggesting that Constable Martin planned to go on a hunting trip in the fall of 2005.

In August 2005 the Service hired a private investigation agency to undertake surreptitious surveillance of Constable Martin. The investigator observed Constable Martin repeatedly engaging in physical activities that were inconsistent with his claim of being unable to work.

In May 2006 pending approval of a WSIB claim Constable Martin went on sick leave, claiming a re-injury to his back while performing modified duties. Surveillance was resumed. On May 30, 2006 the investigator reported seeing Constable Martin lifting 37 lb. bags on and off a truck, lifting a large rototiller, operating the rototiller and performing other strenuous tasks without any indications of pain or restricted range of motion. On that same date and at the time when Constable Martin was under surveillance, an HR employee of the Service called Constable Martin and left a voice message. Constable Martin returned her call approximately 90 minutes later, telling her that he had been outside with his dog when she left the message.

Constable Martin made several brief returns to work throughout the summer of 2006, but these always ended with Constable Martin booking off sick. Based on information gathered by the surveillance, the Service contacted WSIB and objected to Constable Martin's receipt of benefits. The WSIB conducted another fitness for work review, which indicated that the modified job met the claimant's limitations. In July the WSIB denied Constable Martin's claim.

Surveillance videotapes from August of 2006 revealed Constable Martin again performing activities which exceeded his limitations, with no apparent difficulty. When he returned to work in September he was suspended with pay, and subsequently he was charged with seven counts of misconduct. Constable Martin denied all of the allegations.

The Hearing Officer convicted Constable Martin on two counts, having found the other charges merely duplicated those two counts. He found that Constable Martin's conduct was a serious breach of trust and that dismissal was the appropriate response, notwithstanding several mitigating factors which he considered.

Prior to the appeal hearing, counsel for the Appellant filed a motion to allow the introduction of fresh evidence pursuant to s. 70(5) of the Act. The evidence consisted of letters of character reference. Counsel for the Respondent opposed the motion,

arguing that the Commission's test for allowing fresh evidence had not been met.

With respect to the penalty imposed, counsel for the Appellant argued that it was harsh, excessive and inconsistent with other sentences imposed for comparable conduct. Although there were no prior reported cases involving abuse of sick leave or disability benefits by a police officer, nevertheless civilian case law from the labour and employment field provided useful guidance. According to counsel these cases suggested that the Hearing Officer had underweighted mitigating factors such as the Appellant's lengthy, clear employment record and had failed to apply the principles of progressive discipline. Counsel submitted that the Hearing Officer's reasons contained manifest errors in principle and the penalty should be varied.

Counsel for the Respondent argued that the penalty was reasonable and within the range of appropriate penalties under the Act and under labour and employment law decisions. Feigning or exaggerating injury or illness to evade duty was a serious breach of trust tantamount to theft; and in cases of theft the penalty of dismissal was often imposed and upheld.

With respect to the preliminary motion to admit fresh evidence, in past decisions the Commission had been guided by the criteria set forth in Palmer v. Her Majesty the Queen (1980), 1 S.C.R. 759 (S.C.C.). The Palmer decision provided a framework for assessing the relevancy, credibility and potential impact of the proposed new evidence. In this case, Constable Martin or his counsel could have called character witnesses prior to sentencing, but chose not to do so. The record demonstrated that the Hearing Officer considered commendations relating to the Appellant's character and employment record. Thus the fresh evidence was not potentially decisive with respect to the penalty. To permit the evidence at this stage would be equivalent to allowing a re-hearing of the sentencing portion of the disciplinary proceedings. The test set forth in Palmer was not met, and it was not appropriate to admit the fresh evidence.

The issue in this appeal was whether the Hearing Officer fairly and impartially considered the relevant sentencing factors when assessing the penalty.

It was not disputed that Constable Martin was seriously injured in the collision on June 28, 2000. Despite being placed on modified duties which met his stated limitations, he developed a pattern of absenteeism which gave rise to legitimate concern on the part of the employer. The surveillance appeared to confirm the employer's suspicion that Constable Martin was neglecting his official duties by feigning or exaggerating his injuries. Indeed, when confronted with this evidence Constable Martin himself admitted that he remained off work collecting sick pay or disability benefits at times when he was capable of working. Moreover, when surveillance videos were shown to the medical professionals who treated Constable Martin they were at a loss to explain the discrepancy between stated and apparent capacities.

The Hearing Officer considered, analyzed and weighed the appropriate sentencing factors. He concluded that the seriousness of the Appellant's misconduct outweighed the mitigating factors. That conclusion was reasonable on the evidence. This was not an isolated instance of misconduct, but a pattern of deception which occurred over an extended period of time. This factor alone was sufficient to distinguish this case from cases cited by the Appellant wherein tribunals had substituted lesser penalties for misconduct which demonstrated an employee's lack of honesty or integrity.

Constable Martin's conduct in collecting sick/disability payments when he could have been working constituted a serious breach of trust, a betrayal of his oath of office, and was tantamount to time theft from his employer. Such behaviour was typically viewed as striking at the heart of the employment relationship, and therefore as rupturing the employment bond. In the case of police officers, who were justifiably held to a higher standard of conduct due to the public trust aspect of their work, such behaviour appeared to be even more incompatible with reintegration in the workplace, particularly in the absence of

demonstrated remorse or rehabilitative potential. In that regard, the Hearing Officer was not convinced that the Appellant recognized the seriousness of his misconduct. There had been no acknowledgment of wrongdoing, acceptance of responsibility or expressions of remorse or apology. There were no errors in the Hearing Officer's analysis on these points, or in his consideration of specific and general deterrence.

The Hearing Officer's analysis of mitigating factors was appropriate. He acknowledged Constable Martin's unblemished employment record, his expertise in traffic enforcement and accident reconstruction, letters of commendation, and the impact on Constable Martin's life and work of the on-duty accident. He also acknowledged that the Appellant sustained serious injuries from that accident. However, he went on to note that the Service's attempts to accommodate Constable Martin's limitations were not reciprocated: Constable Martin did not make a genuine effort to work at a job which fell within his approved limitations.

Although he did not explicitly refer to progressive discipline, the Hearing Officer did make reference to the Appellant having "lost" the characteristics necessary for a police officer to do his or her work: "honesty, integrity and accountability". Under those circumstances, he concluded that management had little if any flexibility in dealing with the Appellant's misconduct. Contrary to the Appellant's suggestion, these comments did not mean that the Hearing Officer had closed his mind to the possibility of any penalty other than dismissal. The Hearing Officer was entitled to give greater weight to the seriousness of this misconduct than to principles of progressive discipline.

The decision contained no manifest errors in principle; and the penalty was within the range of dispositions applied in similar types of cases.

The appeal was dismissed.

OWEN KERR
Appellant (Respondent on Motion)

AND

CONSTABLE TODD BENNETT
Respondent (Applicant on Motion)

AND

BELLEVILLE POLICE SERVICE
Respondent (on Appeal and Motion)

Presiding Members:
Noëlle Caloren, Member
Garth Goodhew, Member

Appearances:
Owen Kerr, Appellant
Harry Black, Q.C., for Constable Bennett
Kevin Inwood, for Belleville Police Service

Heard: October 16, 2008

Date of Decision: November 3, 2009

Summary of Reasons for Decision

This decision concerned a motion brought on behalf of Constable Bennett for an order dismissing Mr. Kerr's notice of appeal as being untimely. On October 14, 2004 Mr. Kerr filed a public complaint with the Belleville Police Service against Constable Bennett and another officer. He also filed a complaint with the Ontario Human Rights Commission based on the same facts. The Service investigated and found the allegations to be unsubstantiated. Mr. Kerr asked the Commission to review that decision. The Commission directed that a hearing be held, with an outside prosecutor and an external hearing officer. A notice of

hearing was issued. However, the hearing never took place because the parties reached a settlement in the context of the human rights complaint. Mr. Kerr executed a Release as part of the settlement.

In light of the settlement, the Prosecutor brought a motion to stay the disciplinary proceedings. The Hearing Officer issued a written decision on November 4, 2007 staying the proceedings. The decision was e-mailed by the Prosecutor for dissemination to the parties, including Mr. Kerr, on November 5, 2007. Mr. Kerr e-mailed a confirmation on November 22, 2007, although he later acknowledged that he actually received the decision on November 5, 2007. On January 8, 2008 Mr. Kerr filed a notice of appeal with the Commission. Constable Bennett received a copy of the notice on February 1, 2008.

Counsel for Constable Bennett argued that the notice of appeal was filed outside the 30-day mandatory time-limit under s. 70(1) of the Act and s. 8.1 of the Commission's Rules of Practice. Since the notice was untimely, the Commission had no jurisdiction to hear the appeal. Alternatively, the Commission should not exercise its discretion under s. 3.4 of the Rules to extend the time-limit. Counsel for the Service supported Constable Bennett's motion to dismiss. Mr. Kerr pointed out: that he was self-represented; did not have a working knowledge of the Act or its requirements; and mistakenly believed that the time-limit was the 60-day time-limit applicable in criminal proceedings.

Section 70(1) of the Act stated that a police officer or a complainant may appeal a disciplinary hearing decision within 30 days of receiving notice of the decision, by serving a written notice on the Commission. Section 8.1 of the Commission's Rules echoed that 30-day time-limit for service on the Commission, and imposed an additional requirement of service on the affected parties, also within 30 days. Rule 3.4 provided that the Commission may vary "any of these Rules, including time limits set out in these Rules…"

Mr. Kerr did not dispute the fact that he received the Hearing Officer's decision on November 5, 2007. Therefore he had until December 6, 2007 to serve the affected parties and the Commission with his notice of appeal. The notice was filed on January 8, 2008, one full month beyond the 30-day time-limit.

The possibility of extending the 30-day time-limit was not contemplated by the Act. Because of the statutorily prescribed time-limit for service on the Commission, the Commission's discretion under Rule 3.4 to vary time-limits could only apply to service of notice on a party. Section 3.4 could not be invoked to vary the time-limit in s. 70(1) of the Act.

Mr. Kerr's complaint could not be dealt with on the merits because of these procedural failings and legal requirements. The Commission had no jurisdiction to hear the appeal, or to extend the time-limit for filing the appeal.

The motion was allowed and the appeal dismissed.

CONSTABLE MICHAEL JANDER
Appellant (Respondent on Motion)

AND

TORONTO POLICE SERVICE
Respondent (Applicant on Motion)

Presiding Members :
Murray W. Chitra, Chair
Zahra Dhanani, Member

Appearances :
Peter Thorning, for the Appellant
Ian Solomon, for the Respondent

Heard : October 14, 2009

Date of Decision : November 3, 2009

Summary of Reasons for Decision

Constable Jander was found guilty of insubordination on December 3, 2008. On June 10, 2009 the Hearing Officer released her decision, imposing a one-year reduction in rank. Constable Jander was served with a copy of the decision. His counsel filed a notice of appeal with the Commission on July 21, 2009. The Toronto Police Service was served with a notice of appeal on July 22, 2009. The Respondent brought a motion to dismiss the appeal for failure to comply with the 30-day time-limit under s. 70(1) of the Act.

The notice of appeal was filed 11 days beyond the 30-day time-limit under s. 70(1). The previous legislation granted discretion to the Commission to consider extending the time for submitting a notice of appeal. Amendments to the legislation expressly removed that discretion. Nothing in the current Act allowed for

an extension of the time-limit. Consequently the Commission lacked jurisdiction to hear the appeal.

The motion was granted and the appeal dismissed.

CONSTABLES JAMIE HARTNETT, DAN MACLEAN AND GREG ROBINSON
Appellants

AND

PETERBOROUGH LAKEFIELD COMMUNITY POLICE SERVICE AND SEAN O'BRIEN
Respondents

Presiding Members:
Dave Edwards, Member
Hyacinthe Miller, Member

Appearances:
David Butt, for the Appellants
Glenn P. Christie, for Peterborough Lakefield Community Police Service

Heard: July 27 and September 29, 2009

Date of Decision: November 13, 2009

Summary of Reasons for Decision

Constables Hartnett, MacLean and Robinson appealed their conviction on one count each of neglect of duty, contrary to s. 2(1)(c)(ii) of the Code of Conduct and one count each of discreditable conduct, contrary to s. 2(1)(a)(xi) of the Code. They did not contest the penalty imposed, which reflected the parties' joint submission on penalty, forfeiture of five days' time.

On December 13, 2005 Constables Hartnett and MacLean attended Mr. O'Brien's last known address for the purpose of serving an arrest warrant. Mr. O'Brien's former domestic partner had filed a complaint and as a result he had been charged with criminal harassment.

When the officers attended the address they identified themselves through the door, indicating they were looking for Mr. O'Brien. A male, T.O., answered indicating that Mr. O'Brien was not at home and that he and a female were the only people there. T.O. denied the police access to the apartment. A call was made for another officer to attend and shortly thereafter Cst. Robinson arrived. Constable MacLean made a call with the intention of obtaining a Feeney endorsement to the arrest warrant, which would authorize the police to enter the apartment without consent to make the arrest. As he was placing the call, T.O. and the female, G.R., exited the apartment. T.O. indicated that he was the one in authority and he would not permit the police to enter Mr. O'Brien's apartment. The officers asked G.R. several times if they could enter the apartment to see for themselves whether Mr. O'Brien was there. She indicated that she did not know Mr. O'Brien, repeated that he was not in the apartment, but finally agreed to allow them entry. The officers searched the apartment but did not locate Mr. O'Brien. The officers left the apartment with G.R., but returned a few minutes later, for the stated purpose of making sure the windows and patio door were locked.

The officers were unaware that a video camera positioned in the hallway had recorded their two entries. Subsequently Mr. O'Brien lodged a public complaint, alleging that the three officers entered his apartment without proper authorization.

After investigating, the Service charged the officers with one count of neglect of duty for failing to work in accordance with Service Policy LE-011 ("Search of Premises") and one count of discreditable conduct with respect to Service order LE-005 ("Arrest"), by entering an apartment without obtaining a Feeney endorsement or proper consent.

Mr. O'Brien was present during the disciplinary proceeding and testified, but did not exercise his right to participate as a party. In a decision dated November 30, 2007 the Hearing Officer found the officers guilty of neglect of duty and discreditable conduct.

Subsequent to that decision but prior to the sentencing portion of the proceeding, counsel for the officers advised the Hearing Officer of fresh evidence in the form of a DVD containing information from two confidential informants, which he felt might alter the findings of guilt. With the consent of both parties, the Hearing Officer heard the motion. He considered the information, which appeared to indicate that Mr. O'Brien was present in the apartment when the officers first arrived. However, he declined to admit the evidence, because in his view it was not relevant to the critical question of whether the police had consent to enter the apartment.

Following a joint submission, the Hearing Officer then released his decision as to penalty.

The complainant, Mr. O'Brien, was served with the notice of appeal, the Appellants' factum and the disciplinary hearing transcript only four days before the scheduled date for the appeal hearing. Mr. O'Brien contacted the Commission and requested an adjournment because of the late delivery of materials. As of the appeal hearing date he had not been served with the Respondent's factum. On the scheduled hearing date, counsel for the Appellants confirmed that he had been deliberately selective about the material disclosed to Mr. O'Brien, and he requested an *in camera* hearing to protect the confidential informants. The Commission ordered that Mr. O'Brien be served with the Service's factum. The Commission also granted Mr. O'Brien's request for an adjournment, stating its concerns with the parties' deviation from the Commission's Rules of Practice on a number of points. The request for an *in camera* hearing was denied because absent compelling reasons, the Act mandated that Commission hearings be public.

Counsel for the Appellant argued that the Hearing Officer made two errors: in his treatment of the fresh evidence, and in his interpretation of Policy LE-005 and Policy LE-011. The fresh evidence suggested that Mr. O'Brien had set up the entire incident and enlisted the aid of T.O. and G.R., so as to entice the officers to illegally enter his apartment, thereby furnishing

grounds for a civil lawsuit. Counsel argued that it was inconsistent for the Hearing Officer to accept this theory and yet reject the evidence, then convict the officers on the disciplinary charges. Counsel also argued that there were inconsistencies between the Hearing Officer's decisions on conviction and penalty. With respect to the Service policies, counsel argued that the policies dealt with different events and he asserted that the Hearing Officer erred by mixing them together. Counsel requested that the decision be revoked and a finding of not guilty be substituted.

Counsel for the Respondent argued that the Hearing Officer properly rejected the fresh evidence because it did not meet the threshold identified in R. v. Palmer [1980] 1 S.C.R. 759 (S.C.C.); the evidence was not relevant to the critical issue of whether the Appellants entered the apartment without obtaining a Feeney endorsement or proper consent. Counsel argued that there were no internal contradictions in the Hearing Officer's decisions. The Appellants were convicted of neglect of duty because they failed to obtain appropriate consent from an "occupant", contrary to Service policy. Similarly, they were convicted of discreditable conduct because they ought to have known that their entry into the dwelling was without genuine permission, G.R. not being an "occupant". The Hearing Officer properly considered the fresh evidence and rejected it because it was not relevant to the central issue. As for the Service policies, the Hearing Officer's interpretation reflected his understanding that there was a degree of overlap between the policies.

In light of the Supreme Court of Canada's decision Dunsmuir v. New Brunswick [2008] 1 S.C.R. 190, the standard of review applicable to the Hearing Officer's decision was reasonableness. According to Dunsmuir, reasonableness should be assessed in relation to both process and outcome.

This appeal raised two issues: first, whether the Hearing Officer rendered three contradictory decisions (the findings decision, the fresh evidence ruling and the disposition decision) and if so,

whether that was a reviewable error; secondly, whether the Hearing Officer erred in his analysis of the two Service policies.

At the first scheduled appeal hearing date, the Commission brought to the attention of the parties the case of Cate and Peel Regional Police Service (*infra*). At issue in Cate was whether a hearing officer had the authority to revisit his/her decision once the decision had been released. In Cate the Commission determined that a hearing officer had no authority to declare a mistrial, based on newly discovered information, once the conviction decision had been released. No judicial authority was brought to the Commission's attention that would demonstrate that the reasoning in Cate was wrong. In addition, nothing in the Commission's Rules authorized such a review. The Hearing Officer was a statutory tribunal with no inherent powers. He had no power to revisit his decision, and no legal authority to entertain the motion to admit fresh evidence. In any event, the Hearing Officer denied the motion.

In the event the Commission declared that the motion was a nullity, counsel for the Appellants requested an adjournment to allow his clients the opportunity to file a motion to admit fresh evidence on appeal. However, counsel for both parties should have been aware that the Hearing Officer had no authority to entertain the motion; any doubts in that regard should have been dispelled when they were provided with a copy of Cate. The Appellants could have filed a motion in accordance with the Commission's Rules, but did not. There was no valid rationale for granting a second adjournment in this case. Thus neither the fresh evidence which was not admitted at the disciplinary hearing nor the Hearing Officer's decision on the motion formed part of the record on this appeal.

As for the alleged inconsistency between the decision on guilt and the decision on penalty, only the conviction was being appealed in this case. Even if there were an error in the penalty decision, the finding of guilt was independent of penalty.

Examining the Hearing Officer's decision as a whole, his conclusions were based on a reasonable assessment of the facts. He turned his mind to the requirements of the *Charter*, the issue of consent and the content of the Policies.

The Hearing Officer's reasons showed that he was aware the Policies were for two different matters. He noted their commonality with respect to the requirement to obtain consent. The fact that he considered the two Policies in concert was not an error, since they were not contradictory. The Hearing Officer examined the word "occupant" in LE-005 and determined that G.R. was not an occupant. That was a reasonable conclusion. If she was not an occupant, the Appellants could not have obtained the "lawful consent offered by an occupant of the building". Accordingly, they were in breach of Policy LE-005.

Applying the Dunsmuir framework, the Hearing Officer's analysis and conclusions were reasonable; and conviction on the disciplinary charges represented one of the possible outcomes that would be defensible in respect of the facts and the relevant law.

The appeal was dismissed.

CONSTABLE DANIEL ZARELLO
Appellant

AND

ONTARIO PROVINCIAL POLICE
Respondent

Presiding Members:
Roy Conacher, Member
Garth Goodhew, Member

Appearances:
Leo A. Kinahan, for the Appellant
Jordana Joseph, for the Respondent

Heard: April 14, 2009

Date of Decision: November 23, 2009

Summary of Reasons for Decision

Constable Zarello appealed his conviction on one count of neglect of duty, contrary to s. 2(1)(c)(i) of the Code of Conduct. He also appealed the penalty imposed, suspension without pay for 3 days or 24 hours.

Constable Zarello joined the OPP in 1989. He had a prior disciplinary record consisting of three previous disciplinary offences.

Constable Zarello was serving in the Traffic Patrol Unit at the time of events giving rise to the appeal. On January 7, 2004 he was called to investigate an accident on Highway 400 involving ML, who alleged that his vehicle was struck from behind by DB. Constable Zarello investigated and charged DB with careless driving.

ML was subpoenaed as a witness for the trial, which was set for June 30, 2004 at the Provincial Court, Tannery Mall. Constable Zarello was present as the investigating officer. The OPP alleged that as a result of an interaction that morning between ML and Constable Zarello, ML left the court and did not testify. The careless driving charge was withdrawn by the Crown Prosecutor and dismissed by the court. In particular, the notice of hearing subsequently served upon Constable Zarello alleged that he met ML outside the courtroom, and when asked by the witness whether he had to be there, Constable Zarello replied “no, not really”.

ML, the Crown Prosecutor and the Court Officer testified for the prosecution at the disciplinary hearing. Constable Zarello did not testify.

Counsel for the Appellant argued that the Hearing Officer: misapprehended the evidence; rationalized inconsistencies in the evidence; failed to properly assess the credibility of witnesses; failed to consider that the evidence did not confirm the identity of the Appellant as the officer with whom ML interacted; failed to give adequate reasons; drew incorrect and unsupported inferences; applied a reverse onus of proof with respect to evidence of the Appellant’s attendance at ML’s residence later on June 30, 2004; and, imposed a penalty which was excessive.

Counsel for the Respondent submitted that: the conviction was reasonable based on the evidence; the factual findings were based on credibility, issues of credibility being the domain of the Hearing Officer; the reasons were sufficient; the standard for intervention by the Commission had not been met; and the penalty was reasonable.

The Commission’s role in reviewing the decision of the Hearing Officer was to ascertain whether the decision was reasonable or whether a manifest error had been committed which required intervention. In applying the standard of reasonableness, the Hearing Officer’s reasons had to support the decision and, the reasons should be read as a whole.

In this case, the issue before the Hearing Officer was whether Constable Zarello neglected his duty in the prosecution of the careless driving charge which he had laid against DB, by failing to ensure that the witness ML remained at the court to testify.

Counsel for the Appellant pointed out that ML's description of the physical layout of the court facilities was wrong, and was directly contradicted by the testimony of the Crown Prosecutor and Constable Singh, the Court Officer. The Hearing Officer acknowledged the discrepancies between the physical layout and ML's recollection, but was not troubled by those discrepancies, which he attributed to ML's unfamiliarity with the facility, June 30, 2004 being his only visit to that court. The Hearing Officer found that the discrepancies did not adversely affect ML's credibility. The Hearing Officer's reasons adequately set out the analysis and conclusions reached.

Counsel for the Appellant also noted the contradictory evidence with respect to the timing of certain phone calls made to ML by Constable Singh after ML left the court and went home. The Hearing Officer found the testimony of Constable Singh to be problematic and evasive. In reviewing the Hearing Officer's analysis of that evidence, the Commission concluded that he was entitled to find that the evidence of Constable Singh did not undermine the credibility of ML.

The Hearing Officer found that there was uncontested evidence that Constable Zarello attended ML's residence later on June 30th to discuss the matter. His comments did not indicate an improper reversing of onus, but rather a weighing of the evidence to determine the issue of ML's attendance at court.

Clearly the Hearing Officer accepted and preferred the evidence of ML on the substantive issues. He indicated that he found ML a candid, forthright and compelling witness. From the reasons he gave, he was entitled to draw the inferences he did, based upon the testimony of the witnesses.

The identity of the officer was not an issue at the disciplinary hearing; nor was it raised in the grounds for appeal. From the evidence before him, the Hearing Officer was entitled to infer that Constable Zarello was the officer with whom ML had an exchange.

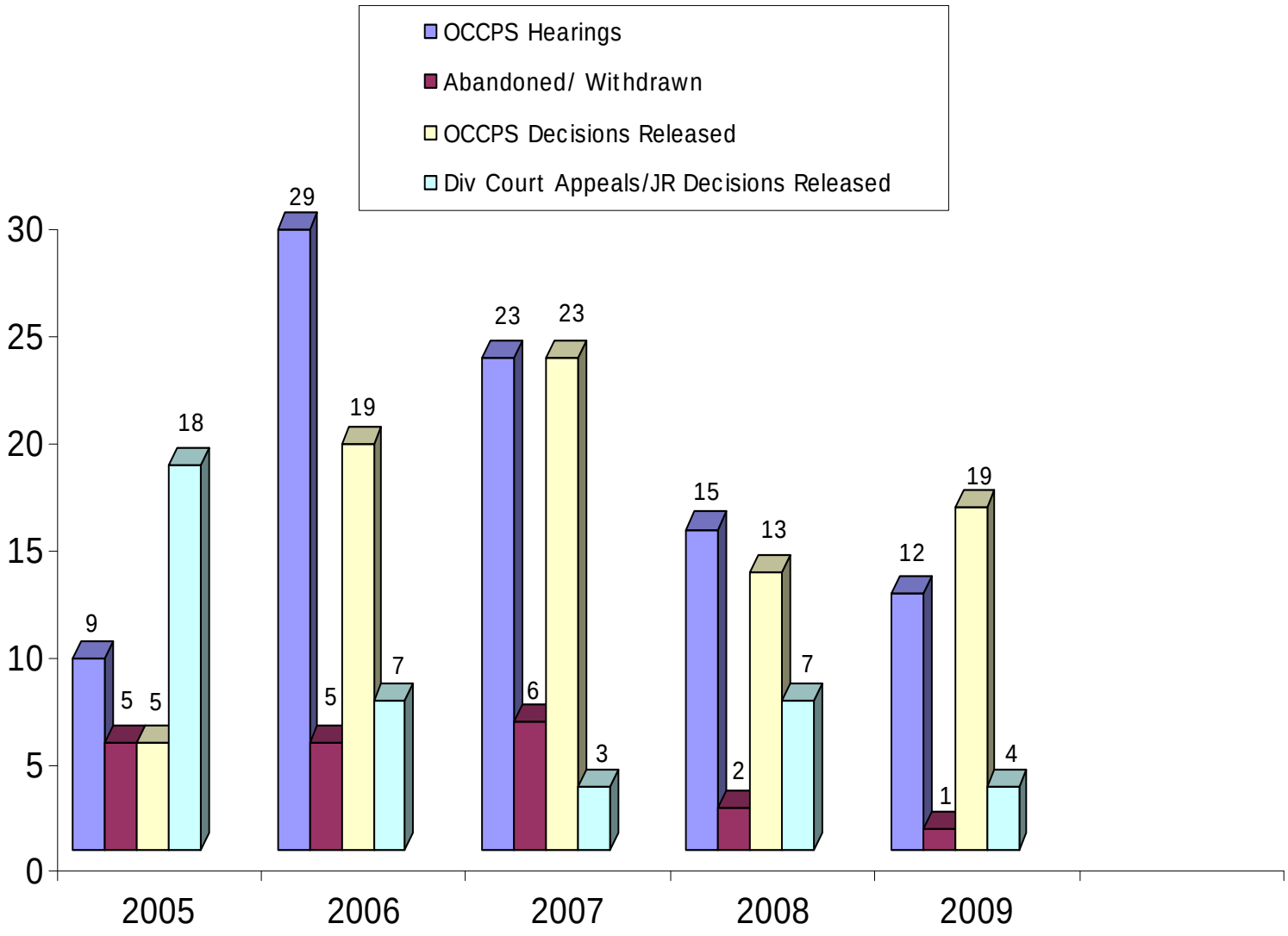
Contrary to the Appellant's assertion, the Hearing Officer did not reject the evidence of the Crown Prosecutor. Instead he found that her testimony did not affect the credibility of ML on the central issues, which involved confirming that ML did attend the court facility that day, and did have some exchange with Constable Zarello which left ML with the impression that he could leave.

The Hearing Officer, unlike the Commission, had the benefit of observing and hearing the witnesses. Absent some patent error in his interpretation of the evidence, deference was owed to his findings of credibility. In this case the Hearing Officer's reasons were not void of evidentiary foundation and did not reveal any palpable errors. The reasons gave adequate justification for the findings he made.

With respect to penalty, the Hearing Officer reviewed and appropriately applied the relevant sentencing criteria; and there was no reason to vary the sentence imposed.

The conviction and penalty were upheld and the appeal dismissed.

2009
HEARING ACTIVITY CHART



Summary of Statutory Appeals and Judicial Reviews

The following is a list of Commission decisions that were subject to statutory appeals, judicial reviews and applications decided in 2009. The decisions can be found at: http://www.canlii.org/on/.

PARTIES	COURT	OUTCOME
GOUGH, Constable Jeffrey Peel Regional Police Service	Divisional Court	Appeal allowed March 20, 2009
D'SOUZA, Constable Philip Toronto Police Service	Divisional Court	Appeal dismissed March 27, 2009.
HAMPEL, Constable Scott Toronto Police Service	Divisional Court	Motion for leave to appeal dismissed July 29, 2009.
CHRISTIANSON, Michael and OCPC	Human Rights Tribunal of Ontario	Application dismissed June 4, 2009.

Public Complaints

As noted earlier, the Act was amended on October 19, 2009. This amendment provides that the Commission continues to be responsible for public complaints about police conduct, services and policies for events that occurred prior to October 19, 2009.

For such matters the Commission is the review body for public complaint decisions made by chiefs of police and the Commissioner of the Ontario Provincial Police.

Complaints may be made about the conduct of a police officer (including the Chief of Police or Commissioner of the Ontario Provincial Police), the policies of a police service or the services provided by a police service. Only the individual directly affected can file a complaint and the complaint must be in writing and signed.

If the individual involved is not satisfied with the decision of the Chief of Police or Commissioner of the Ontario Provincial Police, the complainant has 30 days to write to the Commission and request a review. To conduct the review, the Commission requests information from the complainant as well as the investigation file from the involved police service. Case Managers analyze each file and prepare a written Case Summary that is presented to a Review Panel composed of Commission members.

On review, the Commission may confirm the decision of the Chief/Commissioner, vary the decision to less serious misconduct, direct a public hearing, or return the file to the involved police service or another police service for further investigation.

In 2009, there were 2,625 public complaints filed against the reported sworn police officers or their police services in Ontario. This represents a slight increase in complaints from 2008.

During 2009, the Commission received 644 requests for review, an increase of 76 requests from the previous year.

An overview of the complaints review process and a statistical summary of public complaints from 2005 to 2009 are set out on the following pages.

Statistical Charts

The following four charts depict:

- The number of public complaints against police officers in Ontario for the period 2005 - 2009
- Reviews requested by complainants for the period 2005 - 2009
- Commission review statistics 2005 – 2009
- 2009 Police Service Complaints Activity

PUBLIC COMPLAINTS AGAINST POLICE OFFICERS IN ONTARIO +

2005 - 2009

2005	2,868
2006	2,613
2007	2,623
2008	2,583
2009	2,625

+ *Source: Police Services Self Reported*

REVIEWS REQUESTED BY COMPLAINANTS **
2005 – 2009

2005	569
2006	546
2007	553
2008	568
2009	644

***Source: Commission*

OCPC REVIEW STATISTICS
2005 - 2009

	2005	2006	2007	2008	2009
Total Complaints Reported in Ontario*	2868	2613	2623	2,583	2,625
Reviews by OCPC	**569**	**546**	**553**	**568**	**644**
Decisions Varied:	128	110	116	97	111
% Varied	22%	20%	20%	17%	17%
Hearings Ordered	14	13	18	5	12
Less Serious Misconduct	4	8	5	-	3
Further Investigation	74	61	60	49	51
Varied Classification	33	28	19	13	11
Less Serious to No Misconduct	3	-	-	-	3
No jurisdiction			24	12	24
Other				8	7

*As self-reported by Police Service

2009 Police Services	Total Officers subject to Part V	TOTAL PUBLIC COMPLAINTS 2008	TOTAL PUBLIC COMPLAINTS 2009 (NEW)	TOTAL PUBLIC COMPLAINTS --- CONDUCT	TOTAL PUBLIC COMPLAINTS --- SERVICE	TOTAL PUBLIC COMPLAINTS --- POLICY	PUBLIC COMPLAINTS CARRIED FROM PREVIOUS YR 2008	ALLEGATIONS - Incivility	ALLEGATIONS - Neglect of Duty	ALLEGATIONS - Discreditable Conduct	ALLEGATIONS - Excessive Use of Force	ALLEGATIONS - Exercise of Authority	ALLEGATIONS - Unsatisfactory Work Performance	ALLEGATIONS - Other	NOT DEALT WITH (Section 59)	RESOLUTION - Informal (Conduct)	WITHDRAWN	UNSUBSTANTIATED	INFORMAL DISCIPLINE	HEARING	LOST JURISDICTION	OUTSTANDING INVESTIGATIONS (December 2009)
Amherstburg	31	9	4	3	0	0	0	0	3	5	0	0	0	1	0	0	3	6	0	0	0	0
Aylmer	13	0	2	2	0	0	0	1	0	0	0	1	0	0	0	0	0	2	0	0	0	0
Barrie	218	26	27	25	2	0	2	3	1	1	7	4	7	3	4	3	13	3	0	0	3	0
Belleville	19	14	14	0	0	0	0	0	3	8	2	3	1	0	0	0	3	6	0	0	0	5
Brantford	157	14	25	24	1	0	2	4	7	7	5	0	0	1	13	4	2	3	3	0	0	0
Brockville	42	5	13	11	0	0	0	1	4	0	3	2	1	0	5	0	1	4	0	0	0	1
Chatham Kent	170	28	24	17	7	0	4	1	4	9	3	0	4	3	0	0	3	14	3	0	0	4
Cobourg	30	4	0	4	0	0	0	0	0	4	0	0	0	0	1	0	0	3	0	0	0	0
Cornwall	90	2	10	10	0	0	0	0	1	3	6	0	0	0	2	1	1	1	1	0	0	4
Deep River	9	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0
Dryden	21	9	4	4	0	0	2	0	0	3	1	0	0	0	0	0	0	5	0	1	0	0
Durham Regional	993	108	97	93	94	0	0	0	25	61	17	8	0	1	24	1	36	20	2	1	0	12
Espanola	12	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Essex	32	1	0	1	0	0	3	0	2	1	0	0	0	1	0	0	2	2	0	0	0	0
Gananoque	15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Guelph	192	23	10	9	1	0	9	2	0	3	4	0	0	1	2	1	2	3	0	0	0	2
Halton Regional	623	55	70	66	0	4	9	0	7	48	9	3	0	0	5	7	19	37	3	1	0	

2009 Police Services	Total Officers subject to Part V	TOTAL PUBLIC COMPLAINTS 2008	TOTAL PUBLIC COMPLAINTS 2009 (NEW)	TOTAL PUBLIC COMPLAINTS --- CONDUCT	TOTAL PUBLIC COMPLAINTS --- SERVICE	TOTAL PUBLIC COMPLAINTS --- POLICY	PUBLIC COMPLAINTS CARRIED FROM PREVIOUS YR	ALLEGATIONS - Incivility	ALLEGATIONS - Neglect of Duty	ALLEGATIONS - Discreditable Conduct	ALLEGATIONS - Excessive Use of Force	ALLEGATIONS - Exercise of Authority	ALLEGATIONS - Unsatisfactory Work Performance	ALLEGATIONS - Other	NOT DEALT WITH (Section 59)	RESOLUTION - Informal (Conduct)	WITHDRAWN	UNSUBSTANTIATED	INFORMAL DISCIPLINE	HEARING	LOST JURISDICTION	OUTSTANDING INVESTIGATIONS (December 2009)
Hamilton	805	131	130	128	2	0	0	18	22	33	37	18	0	0	23	24	23	52	1	0	0	28
Hanover	15	2	3	0	0	0	1	1	1	0	1	1	0	0	0	1	1	2	0	0	0	0
Kawartha Lakes City of (formerly Lindsay)	39	8	5	4	1	0	0	2	2	0	1	0	0	0	0	0	1	3	1	0	0	0
Kenora	35	8	0	8	0	0	0	4	1	1	2	0	0	0	0	1	2	3	0	0	0	2
Kingston	196	23	34	31	0	3	6	13	6	0	12	0	0	0	3	2	3	19	0	1	3	3
LaSalle	36	3	2	2	0	0	0	0	0	2	0	0	0	0	0	0	0	2	0	0	0	0
Leamington	43	5	6	5	1	0	2	0	1	1	1	1	2	0	0	0	5	0	0	1	0	0
London	600	90	104	100	2	2	20	5	26	39	20	2	0	8	15	12	11	38	6	9	0	13
Michipicoten Township	11	4	0	2	2	0	2	0	2	2	0	0	0	0	0	1	0	0	2	0	0	1
Midland	26	2	2	2	0	0	2	2	1	0	0	0	1	0	1	0	1	1	0	0	0	1
Niagara Regional	675	83	103	103	0	0	7	0	26	53	24	0	0	0	19	4	13	63	0	0	0	5
North Bay	93	12	21	21	0	0	0	11	6	0	1	3	0	0	1	12	7	1	0	0	0	0
Ontario Provincial Police	5992	435	510	458	43	9	2	114	171	0	57	84	2	90	187	7	57	359	18	0	0	20
Orangeville	41	7	8	7	1	0	1	3	0	2	1	3	0	0	2	2	0	1	2	0	0	2
Ottawa	1356	237	155	145	9	1	84	0	37	87	21	0	0	0	36	11	17	41	2	0	0	41
Owen Sound	40	5	5	5	0	0	1	0	1	0	4	1	0	0	0	0	1	3	0	0	0	3
Oxford Community	83	8	0	8	0	0	0	2	0	0	3	2	1	0	0	0	0	6	1	0	0	1
Peel Regional	1785	57	84	79	5	0	21	22	0	49	20	1	0	0	3	59	1	12	2	0	0	23
Pembroke	30	3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Perth	15	2	2	2	0	0	0	0	1	0	1	1	0	0	0	2	0	0	0	0	0	0
Peterborough Lakefield	125	22	19	18	0	1	2	0	10	8	0	0	0	1	6	3	3	2	3	0	0	2
Port Hope	25	1	0	1	0	0	1	0	0	0	1	0	0	0	0	0	0	1	0	0	0	0
Sarnia	111	15	22	20	2	0	7	5	0	2	10	0	2	3	3	6	8	12	0	0	0	0

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Saugeen Shores	21	2	1	1	0	0	0	0	0	0	0	1	0	0	1	0	0	0	0	0	0	0
Sault Ste. Marie	138	12	15	14	0	1	3	4	6	0	1	3	0	1	1	0	0	8	0	0	0	6
Shelburne	12	3	1	1	0	0	0	0	1	0	2	0	0	0	0	0	1	1	0	0	0	0
Smiths Falls	25	7	7	0	0	1	0	2	1	2	1	0	1	2	0	1	4	0	0	0	0	0
South Simcoe	78	5	7	5	0	2	0	3	0	0	2	2	0	0	0	1	3	2	0	0	0	1
St. Thomas	66	4	6	6	0	0	0	1	2	1	2	1	0	0	0	0	1	4	1	0	0	2
Stirling Rawdon	9	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Stratford	56	2	3	2	1	0	0	1	1	0	0	0	1	0	0	0	0	2	0	0	1	0
Strathroy Caradoc	31	1	0	0	0	0	1	0	1	0	0	0	0	0	0	0	0	1	0	0	0	0
Sudbury Regional	262	28	30	29	0	1	1	8	15	3	1	2	0	1	4	1	10	12	0	0	0	4
Thunder Bay	224	59	43	0	0	0	0	12	10	12	8	4	0	1	13	0	8	8	5	0	4	5
Timmins	85	13	11	8	3	0	0	3	1	2	0	2	0	0	1	4	0	3	1	0	0	2
Toronto	5651	756	712	406	4	4	180	65	22	193	98	23	0	5	295	73	87	186	4	1	3	63
Waterloo Regional	728	77	71	71	0	0	10	22	8	25	15	3	0	0	10	35	0	24	2	0	0	0
West Grey (formerly Town of Durham)	21	1	3	3	0	0	0	0	0	0	0	1	0	2	0	0	0	1	0	0	0	2
West Nipissing	21	7	7	5	2	0	0	2	2	0	3	0	0	0	1	2	0	1	0	0	0	3
Windsor	464	76	60	57	3	0	24	22	7	12	3	14	2	0	10	0	6	34	29	5	0	17
Wingham	7	1	7	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1	0	0	0
Woodstock	65		10	8	2	0	1	0	3	3	4	0	0	0	1	0	0	5	4	0	0	1
York Regional	1402	111	116	116	0	0	63	40	13	26	17	20	0	0	14	34	3	27	2	0	0	36

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SERVICES DISBANDED DURING 2009	1																					
Oxford Community Police Service																						
TOTALS	24211	2626	2625	2150	188	29	473	400	464	711	431	214	25	125	706	315	362	1050	99	20	14	319

First Nations Policing

The Constitution Act, 1867, assigned responsibility for the administration of justice to the provinces. Constitutionally and legislatively, Ontario is responsible for the delivery of policing services in all parts of the province, including on First Nations reserves and territories.

In 1975, the Task Force on Policing led to the establishment of a tripartite arrangement for funding the Ontario First Nations Policing Agreement. The Ontario Provincial Police administer the program and provide support. There has been a gradual transfer of administrative responsibility from the OPP to First Nations governing authorities. Some of the functions, which previously had been the exclusive responsibility of the OPP, have become jointly administered; others have been assumed completely by First Nations.

Section 54(i) of the Act, states, “With the Commission’s approval, the Commissioner may appoint a First Nations Constable to perform specific duties”, Section 54(2) of the Act states, “If the specified duties of a First Nations Constable relate to a reserve as defined in the Indian Act (Canada), the appointment also requires the approval of the reserve’s governing authority or band council.”

First Nations police officers are responsible for enforcing provincial and federal laws and band bylaws in First Nations territories.

In 2009, there were 551 First Nations Constables serving. During the year, the Commission approved 59 First Nations Special Constable appointments.