

**ONTARIO CIVILIAN COMMISSION ON POLICE
SERVICES**

Annual Report



2007

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Mission Statement

The Ontario Civilian Commission on Police Services 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.

Chair's Message

I am pleased to present the Annual Report for the Ontario Civilian Commission on Police Services for 2007.

This report provides an overview of the Commission's activities for the year. It also includes summaries of hearings conducted throughout the year.

This, again, has been a busy year with respect to hearings held or investigations conducted by our staff. We rendered nineteen disciplinary appeal decisions, one section 25 hearing decision, one section 65 hearing decision, one disbandment decision and conducted 553 complaint reviews. As well, three investigations or fact-finding reviews were commenced or concluded during this calendar year 2007.

This year we continued to work hard to enhance our operational, procedural and policy framework to meet our legislative responsibilities. I would like to thank both staff and members for their efforts in this regard.

Detailed information on all of our proceedings held during the year can be found on our website at www.occps.ca.

Murray W. Chitra, Chair
Ontario Civilian Commission on Police Services

Role of the Commission

The Ontario Civilian Commission on Police Services is an arm's length, quasi-judicial agency of the Ministry of Community Safety and Correctional Services.

The mandate and duties of the Commission are set out in the Police Services Act. They are primarily adjudicative in nature and include:

- hearing appeals of police disciplinary decisions;
- adjudicating disputes between municipal councils and police services boards involving budget matters;
- considering requests for the reduction, abolition, creation or amalgamation of police services;
- conducting investigations and inquiries into the conduct of chiefs of police, police officers and members of police services boards;
- determining the status of police service members;
- hearing disputes relating to the accommodation of disabled police service members;
- conducting reviews of local decisions relating to public complaints at the request of complainants; and,
- general enforcement relating to the adequacy and effectiveness of policing services.

In Ontario, municipal police services and police services boards are ultimately accountable to the public through the Commission.

Commission Organization

In 2007 the Commission had a full-time Chair and 7 part-time members.

Members are appointed by Order-in-Council for terms of two, three and five years. The men and women who serve on the Commission represent a diverse cross-section of professions and communities across Ontario. The work of the Commission is supported by a small core of advisory, investigative and administrative staff.

The entire Commission meets in Toronto monthly. Members also participate regularly on panels to review local police service decisions concerning the classification and investigation of public complaints about the conduct of police officers. They also preside at various types of quasi-judicial proceedings.

ORGANIZATION CHART 2007



Commission Budget 2007

The annual budget for the Ontario Civilian Commission on Police Services for the calendar year 2007/2008 was \$1,684,200.

The following is a breakdown of the allocated budget:

ITEM	ALLOCATION (\$000)
Salaries & Wages	1,457.70
Employee Benefits	151.90
Transportation & Communications	37.80
Services	27.60
Supplies & Equipment	9.20
Total	1,684.20

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, Deputy Judge (Small Claims). He has served the community as a municipal councilor as Chair, 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.

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 his Municipality's 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. At the present time he is a member of the Citizens' Advisory Committee for the Sudbury Region of Correctional Service of Canada.

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.

Biagio (Bill) Marra – Member

Mr. Bill Marra is a graduate of the University of Windsor. He has worked in the criminal justice field since 1988. Mr. Marra is currently the executive director of an agency, which provides residential and non-residential youth services for young offenders, at risk youth and foster care youth. He is very active in his community serving on several other committees/boards including as first vice-chair of a Hospital Board. From 1994 to 2003, Mr. Marra served as a member of city council in his home community. During his tenure on city council he served on over two-dozen committees, boards and commissions including as chairperson of the local police services board. Mr. Marra was also very active at the national level as a five-year board member of the Federation of Canadian Municipalities where he chaired two national standing committees related to community safety, corrections and national parole.

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.

The members of the Commission are representative of all areas of the Province including the Northern, Southern, Eastern and Western regions.

Inquiries, Investigations and Fact-Finding Reviews

Section 25 of the Police Services Act provides that the Commission may at the Minister's request, a municipal council's request, a board's request or of 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; or
- the police needs of a municipality.

Initiation of a section 25 inquiry is a serious, resource-intensive process with the potential for negative consequences for members, chiefs of police and police services boards found to be in non-compliance. These can include demotion, dismissal, suspension or revocation of an appointment.

In 1998 the Commission initiated an innovative approach to addressing those 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 2007, the Commission received ten requests for section 25 investigations. Of those requests, the Commission directed staff to conduct investigations on two matters.

In the remaining requests the Commission decided that the allegations did not rise to the level of serious to warrant invoking the extraordinary powers contained in section 25.

Both formal investigations were with respect to allegations about the conduct or performance of duties of a member of a police services board. One proceeded to a formal section 25 hearing that resulted in a conviction of misconduct. Discipline was imposed.

In the second investigation, the Commission returned the matter to the local police services board to resolve at the board level. As well, certain recommendations were made regarding training.

INQUIRY INTO THE CONDUCT AND PERFORMANCE OF DUTIES OF DAVID ASPDEN OF THE BARRIE POLICE SERVICES BOARD

Presiding Members:

Garth Goodhew, Member
David Edwards, Member

Appearances:

D. Thomas Bell, Commission Counsel
Morris Manning, Q.C. and Timothy J. Riddell, Counsel for David Aspden

Heard:

December 4 and 5, 2007

Date of Decision:

December 12, 2007

Summary of Reasons for Decision

A member of the Barrie Police Services Board wrote to the Commission, asking the Commission to investigate whether or not Board Chair David Aspden was in breach of s. 2 of the Code of Conduct for members of police services boards. Section 2 of O. Reg. 421/97 states that board members "...shall not interfere with the police force's operational decisions and responsibilities or with the day-to-day operation of the police force, including the recruitment and promotion of police officers."

The Commission decided on its own motion to investigate, pursuant to s. 25 of the Police Services Act. David Aspden was suspended pending the outcome of the investigation. The panel members who presided at this inquiry hearing did not participate in the investigation or subsequent decision to proceed to a hearing.

The hearing was adjourned so that the parties could pursue settlement discussions. The next day the parties presented an agreed statement of fact and a joint submission. The agreed facts included Mayor Aspden's admission that at the request of counsel for the police officer he had provided a character reference for use in the penalty phase of the officer's disciplinary hearing. The Mayor further admitted that in providing the letter he had unintentionally contravened s. 2 of the Code of Conduct. The Hearing Officer had admitted the letter but did not rely on it. The Barrie Police Services Board had no policy in place at the time with respect to the propriety of submitting such letters. The parties jointly recommended a penalty of time-served suspension.

Held, Breach of s. 2 established; joint submission as to penalty accepted with further order to undergo training.

Board members have no role in disciplinary proceedings against police officers. Writing a letter of support in the midst of a disciplinary proceeding crossed the statutory line dividing the duties of chiefs and boards. The public perception of interference was obvious; and it was self-evident that such interference by a board member in police operational matters amounted to misconduct, which might explain the absence of any precedent decisions by the Commission on point.

Although the letter had no impact on the Hearing Officer's decision, the fact that the interference might not be successful was not a determinant when assessing the seriousness of the misconduct. However, in this case the misconduct could be described as not of a serious nature by virtue of Mr. Aspden's acknowledgement that he unintentionally contravened the regulation.

Panel members accepted the parties' joint submission as to penalty - that is, the time served suspension from board duties, approximately eight months. In addition, they ordered Mr. Aspden to attend board governance training offered by the Ontario Association of Police Services Boards. There was no legal impediment to Mr. Aspden resuming his role as Chair of the Board; subject to the wishes of the Board, he was free to do so, but the panel made no order to that effect.

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 Police Services 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. There is an association for officers and civilians and another for senior officers. Under section 115(2) 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 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 were no section 116 status hearings before the Commission during 2007. The full text of previous section 116 status decisions can be found on the Commission’s web site at www.occps.ca.

Police Service Restructuring

Section 40 of the Police Services 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. Following the completion of the meeting, the Commission renders a written decision.

There was one downsizing hearing in the calendar year 2007 in the municipality of Temiskaming Shores. A summary of this decision follows. The official text of this and previous restructuring decisions can be found on the Commission's web site at www.occps.ca or obtained through the Commission office.

TEMISKAMING SHORES POLICE SERVICE
Application for Consent to Abolish

Presiding Members:

Murray W. Chitra, Chair
Hyacinthe Miller, Member

Appearances:

Mayor Judy Pace, Chair, Temiskaming Shores Police Services Board
Brenda M. Glover, Counsel, Temiskaming Shores PSB
Brian Carré, Chief Administrative Officer, City of Temiskaming Shores
S/Sergeant Alex Ivanov, Detachment Commander, Temiskaming OPP
Maurice (Moe) Hodgson, Principal, Hodgson Associates, Keep Our Police Service
Douglas Jelly, Chief, Temiskaming Shores Police Service
Shannon Austin, President, Temiskaming Shores Police Assn.

Heard:

March 28, 2007

Date of Decision:

June 15, 2007

Summary of Reasons for Decision

The city of Temiskaming Shores was an amalgamation of the former municipalities of New Liskeard, Dymond and Haileybury. The former town of New Liskeard was the commercial, industrial and administrative centre for the area. After the three towns amalgamated in 2004, New Liskeard continued to function as the region's service centre.

On January 9, 2006 the Temiskaming Shores municipal council asked the Commission to hold a disbandment hearing. There had been considerable public debate over the issue of whether to retain the current hybrid policing model. Under arrangements to date, the former town of New Liskeard was policed by a municipal service, while the rest of the city was policed by the OPP from the Temiskaming OPP Detachment.

The municipal force consisted of ten officers, which included one chief, one staff sergeant, one sergeant and seven constables. The community was patrolled 24 hours a day, 7 days a week. The service operated a 24-hour emergency communications centre staffed by several civilians. The service also dispatched for twelve area fire departments, and it maintained contact with emergency medical services, hydro and VCARS staff. The service also answered after-hours calls for the

Temiskaming Child and Family Services as well as the City Works Department. The service had one full-time and one part-time clerical support staff. Communications and clerical staff were designated special constables. The front counter was open to the public 24 hours a day.

There were 7.57 full-time equivalent OPP officers who policed the remainder of the city.

The Commission held a public meeting on February 1, 2007 to examine the OPP proposal for an integrated policing service.

Held, Application granted.

An application under s. 40 of the Police Services Act for consent to abolish a municipal police force raised two fundamental issues: whether the proposed arrangement appeared to provide adequate and effective police services, in accordance with the municipality's obligations under ss. 4(1), 4(3) and O. Reg. 3/99; and whether the parties had reached an agreement with respect to severance for members of the service who were likely to be terminated as a result of the disbandment.

In terms of staffing, the proposal consisted of a detachment strength of 55 uniform officers; of these, 8.96 FTE officers would be allocated to the former town of New Liskeard. Combined with officers allocated to the former towns of Dymond and Haileybury, the city of Temiskaming Shores would have a total complement of 16.53 officers. The city would also have access to 15 OPP auxiliary officers. The resulting workload averages per officer were within the historical Canadian average. Calls for service in the former town of New Liskeard had declined considerably between 2003 and 2006. The reduction in complement was attributable to a flattening of management, not frontline policing. In that regard, one constable would be added from the current 7, bringing the number of frontline officers up to 8. There were also advantages to the city in having access to specialized services provided by the OPP, including auxiliary officers and a large backup complement. The proposal would permit an effective management of workload, and thus, it would allow for adequate and effective policing.

The proposed equipment for the integrated Detachment and the existing facility were both adequate. Although the building was only open to members of the public during normal business hours, residents would still be able to call 9-1-1 for emergencies; and a fixed phone with direct free access to the North Bay communications centre would be outside the building, for use during evening hours. In addition, there would be a minimum of two officers on patrol at any given time. This situation was operationally acceptable.

The communications centre in North Bay appeared to have the capacity to assume the additional workload generated by calls from the city. The implications for fire and

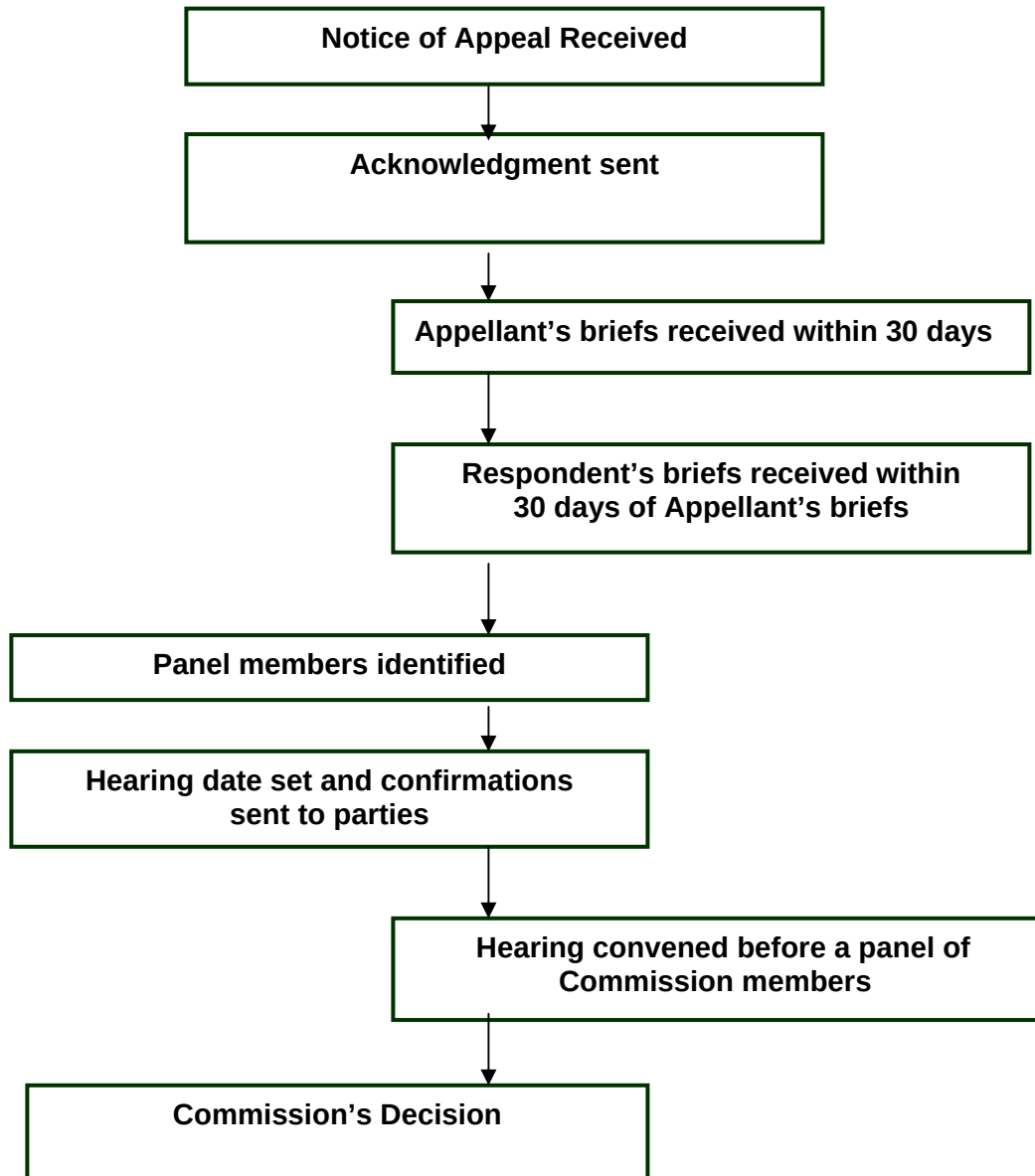
other emergency services of disbanding the city's communications centre would have to be addressed; but they were not within the Commission's mandate. Similarly, issues concerning projected costs associated with the disbandment, the potential for future escalating costs and the absence of a budgetary dispute resolution mechanism were issues for the municipal council. The Commission's role was to assess the adequacy of the proposed policing arrangement.

Arrangements had been concluded for severance or termination with regard to the Chief. The OPP would be offering full-time employment to all uniform members of the service. Those holding supervisory ranks would be eligible to participate in the OPP rank level determination process. The Police Services Board and the Association had concluded a new collective agreement in November 2006. A Memorandum of Settlement provided that differences between the parties with respect to severance would be referred to arbitration. Civilian members were invited to submit their resumes to the city, which had agreed to give them preference in filling vacancies, based on their qualifications. Contract employees would be given notice that their contracts would be terminated upon disbandment.

The proposal thus appeared to provide both adequate and effective policing, as well as proper treatment of members with respect to severance. Any outstanding severance issues were to be referred to arbitration within 90 calendar days.

Disciplinary Appeals

Appeal Process



Disciplinary Appeal Decisions

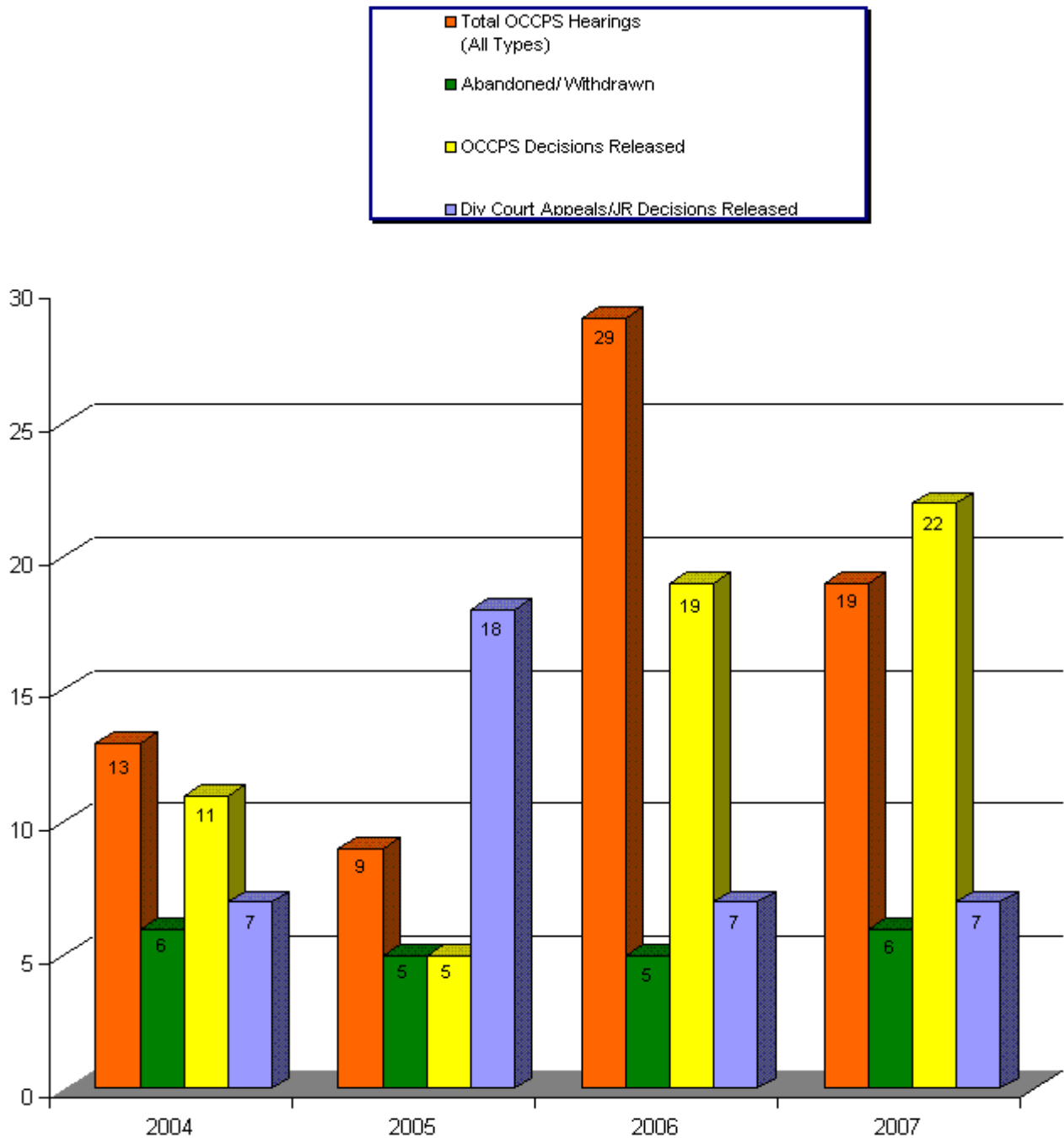
During 2007, the Commission heard nineteen disciplinary appeals.

The following list identifies the complainant, 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.occps.ca.

DATE	COMPLAINANT/POLICE OFFICER/POLICE SERVICE	RESULT
February 5, 2007	Robert Elliot/Constable Wayne King/Durham Regional Police Service	Appeal against acquittal allowed Dec. 8/06. Penalty of reprimand imposed and training directed.
February 23, 2007	Constable Dean Ion/Toronto Police Service	Appeal allowed. Conviction quashed.
February 27, 2007	Constable Joseph Carriere/Greater Sudbury Police Service	Appeal dismissed
April 4, 2007	Constable Shawn Nelles/Cobourg Police Service	Appeal dismissed
May 3, 2007	Staff Sergeant Christopher Herridge/St. Thomas Police Service	Appeal allowed in part. Neglect of duty conviction upheld; penalty varied.
May 8, 2007	Paul Smith/Constable Paulo Batista/Ottawa Police Service	Appeal dismissed
May 16, 2007	Sergeant Shawn Hewlett/Ontario Provincial Police	Appeal dismissed
May 24, 2007	Sergeant Brian Berger/Toronto Police Service	Appeal allowed. Penalty reduced.
June 18, 2007	Constable Dianne Clarke/Peel Regional Police Service	Motion to introduce new evidence allowed in part. Convictions and penalty quashed. Appeal allowed.
June 26, 2007	George Berger/Constable Philip D'Souza/ Toronto Police Service	Motion to quash convictions dismissed. Convictions upheld; forfeiture of penalty reduced from five to three days.

July 4, 2007	Constable Paul Stone/Toronto Police Service	Appeal dismissed
July 16, 2007	Constable Michael Byrne/Ontario Provincial Police	Appeal against conviction denied; Penalty varied from a forfeiture of sixteen hours to a forfeiture of eight hours, to be served on annual leave or rest days, but with the conditions of the Hearing Officer deleted.
September 18, 2007	Constable Jeffrey Gough/Peel Regional Police Service	Appeal dismissed
September 25, 2007	Constable Imants Karklins/Toronto Police Service	Appeal dismissed
October 9, 2007	Constable Michael Byrne/Ontario Provincial Police	Appeal dismissed
November 6, 2007	Constable Nathan Parker/Niagara Regional Police Service	Appeal dismissed
December 5, 2007	Constable Kevin Hall/Ottawa Police Service	Preliminary motion allowed in part. Penalty upheld; appeal dismissed.
December 18, 2007	Susan Cole(Respondent on Motion)/Sergeant (Retired) David Ray/Ontario Provincial Police(Applicants on Motion)	No jurisdiction; motion granted.
December 21, 2007	Constable Michael Byrne/Ontario Provincial Police	Appeal allowed; conviction quashed.

HEARING ACTIVITY CHART



Summary of Disciplinary Appeal Decisions

ROBERT ELLIOTT
Appellant

AND

CONSTABLE WAYNE KING AND DURHAM REGIONAL POLICE SERVICE
Respondents

Presiding Member:
David Edwards, Member

Appearances:
Sunil S. Mathai, for the Appellant
William R. MacKenzie, for Constable King
Staff Insp. Brian Fazackerley, for Durham Regional Police Service

Heard:
September 26, 2006

Date of Penalty Decision:
February 5, 2007

Summary of Reasons for Decision

This decision dealt with the penalty aspect of the Commission's decision #06-013, dated December 8, 2006. The Commission had revoked the decision of the Hearing Officer, and substituted in its place a finding that Constable King was guilty of breaching s. 2(1)(g)(i) of the Code of Conduct, in that Constable King unlawfully or unnecessarily arrested the Appellant, Robert Elliott. The Commission had invited the parties to provide written submissions with respect to penalty.

The circumstances of the arrest began with Constable King's "door knock" at Mr. Elliott's residence. The central issue in the first decision was whether Mr. Elliott revoked his implied invitation to knock, and whether the resulting arrest was unlawful. The Commission found that Mr. Elliott had indeed revoked consent, at which point Constable King became a trespasser. The ensuing arrest was therefore unlawful.

Counsel for the Appellant argued that Constable King's misconduct was serious. The Appellant suffered significant injuries as a direct result of the misconduct, and also

incurred a significant financial burden. Counsel argued that deterrence was a compelling factor. He suggested a suspension of 15 days, pursuant to s. 68(1)(d) of the Police Services Act, as well as a reprimand, pursuant to s. 68(5)(a).

Counsel for the Durham Police Service advised that the service was giving recognition to the Commission's decision, by making changes in its training and procedures. At the time of the incident Constable King was a junior officer, with approximately one year of service. Constable King now had five years of service, and had successfully completed courses in Investigative Interviewing Techniques and Sexual Assault Responders. Counsel argued that Constable King had now had an opportunity to reflect upon his tactical and decision making errors. Counsel for the service sought a direction pursuant to s. 68(5)(b) of the Act, that Constable King under go training, specifically the Advanced Patrol Training Course at the Ontario Police College. Counsel also sought a direction pursuant to s. 68(5)(c) that Constable King participate in a critical incident debrief of the Robert Elliott matter with the Police Learning Centre training staff. Counsel submitted that traditional penalties were not appropriate, and that a reprimand would be stale or moot.

Counsel for Constable King argued that the misconduct arose from an attempted good faith performance of duties. He stressed that the law governing invitation to knock and revocation of implied license was unclear. He also pointed out that Constable King was now a first class constable, and had no disciplinary occurrences in the four and one-half years after the incident. Counsel adopted the service's submission on penalty.

Held, Directed activity and reprimand imposed

The critical issue in this case was how an occupant terminated the implied license to knock, once the police officer had entered the property and was in the act of exercising the right to knock. There were apparently no prior judicial or tribunal decisions directly on point. The seriousness of the misconduct had to be considered in light of the fact that Constable King was a junior officer, who was required to make a decision with respect to a legal issue that was both complex and, heretofore, unclear. Constable King believed, albeit mistakenly, that he was acting appropriately and lawfully. While the consequences to Mr. Elliott were significant, he bore some of the responsibility for the nature of the interaction.

Given the circumstances, and Constable King's conduct in the period after the incident, the ability to reform the officer was extremely high. The chance of damage to the police service if he remained on the force was remote.

The Commission's decision provided clarification regarding the method of revocation of the license to knock after contact. This factor, together with the facts of the case and the principles of sentencing, suggested that a traditional penalty was not appropriate. The Commission therefore endorsed the submission of the service with respect to a directed activity, namely the critical incident debrief. No specific training

was ordered. However, since Constable King's actions had been found to constitute misconduct, a reprimand was appropriate, regardless of the amount of time that the matter had taken to reach conclusion.

CONSTABLE DEAN ION
Appellant

AND

TORONTO POLICE SERVICE
Respondent

Presiding Members:

Murray W. Chitra, Chair
Biagio (Bill) Marra, Member

Appearances:

Joanne E. Mulcahy, for the Appellant
Ian Solomon, for the Respondent

Heard:

December 12, 2006

Date of Decision:

February 23, 2007

Summary of Reasons for Decision

Constable Ion was convicted on a charge of being absent without leave, contrary to s. 2(1)(c)(ix) of the Code of Conduct. He appealed the conviction as well as the penalty imposed, forfeiture of two days or sixteen hours off.

Constable Ion was a member of the 52 Division Plainclothes Unit. The unit consisted of two teams of seven constables each. The two teams were supervised by a Sergeant. Each team worked a modified compressed work week. On Thursdays there was an overlap, when both teams were scheduled to work.

Officers assigned to the unit were commonly required to be in court before their scheduled shift and to be available for other related duties. As a result, a practice developed whereby officers were occasionally given permission to arrive late or leave early.

On Thursday December 25, 2003 Constable Ion was scheduled to work his regular shift, from 4:00 p.m. to 2:00 a.m. His supervisor, Sergeant Berger, had told staff that some officers could go home early and others could come in late, so that they could have Christmas dinner with their families.

Constable Ion testified at his disciplinary hearing that Sergeant Berger told him that he didn't have to come in at the start of his shift. Constable Ion telephoned Sergeant Berger at several points throughout the shift. Later he was told that because there were two teams on duty he needn't come in, but should be on standby. Constable Ion lived close to the station and could arrive there if necessary within 5 minutes. Nevertheless, Constable Ion did go to the station at approximately 8:00 p.m. He spent an hour there, then patrolled around the Division for approximately two hours, and returned home at 11:00 p.m.

Sergeant Berger's evidence supported Constable Ion's account.

The Hearing Officer concluded that Constable Ion failed to be at work on Christmas Day; that Sergeant Berger had no authority to allow officers to stay at home; that Constable Ion knew this or ought to have known that Sergeant Berger lacked that authority; and that Constable Ion should have reported to the officer in charge of the station. He therefore found Constable Ion guilty of neglect of duty.

Counsel for the Appellant argued that Constable Ion was given permission to remain at home by his immediate supervisor, and that Constable Ion was entitled to rely on that permission. Counsel for the Respondent argued that Sergeant Berger did not issue a legitimate "order" to Constable Ion. Sergeant Berger had pled guilty to neglect of duty for permitting officers to take unscheduled time off. Sergeant Berger's misconduct did not excuse the misconduct of his subordinate officers; and thus Constable Ion failed to establish that he had a reasonable excuse for his absence.

Held, Conviction overturned; acquittal substituted. Appeal allowed.

Not every absence necessarily constituted misconduct. An absence might not be culpable if the officer could show that he/she had either "leave" to be absent or other "reasonable excuse".

In this case, it was clear that Constable Ion had been given leave to be absent. Constable Ion's belief that Sergeant Berger had authority to grant him leave to remain at home on "standby" was based on past practice. There was no evidence to support the Hearing Officer's finding that Constable Ion knew, or should have known, that Sergeant Berger lacked that authority. Instead, and consistent with the case law on the subject of unauthorized absences, Constable Ion was entitled to rely on the explicit permission of his supervisor as a reasonable excuse to be absent from the station.

Whether or not Sergeant Berger in fact had actual authority to grant such permission was a separate issue, and one which had no bearing on Constable Ion's culpability.

CONSTABLE JOSEPH CARRIERE
Appellant

AND

GREATER SUDBURY POLICE SERVICE
Respondent

Presiding Members:

Nöelle Caloren, Member
Hyacinthe Miller, Member
Garth Goodhew, Member

Appearances:

Terry P. Waltenbury, for the Appellant
Réjean Parisé, for the Respondent

Heard:

August 9, 2006

Date of Decision:

February 27, 2007

Summary of Reasons for Decision

The Appellant, Constable Carriere, was a First-Class Constable with the Greater Sudbury Police Service. He had been employed with the service since 1999. On November 25, 2005 he was convicted on three counts of discreditable conduct, contrary to s. 2(1)(a)(xi) of the Code of Conduct. He appealed those convictions; and in the event that conviction on the third count was set aside, he also appealed the penalty of dismissal imposed by the Hearing Officer; otherwise, he conceded that the penalty was appropriate.

The allegations related to off-duty conduct of a sexual nature, and they concerned three different complainants. The third incident pre-dated Constable Carriere's employment as a police officer.

The first incident concerned R, who was the family babysitter and a relative of Constable Carriere's spouse. R alleged that between October and December 2002, Constable Carriere returned home from work in the early hours of the morning. He found R lying on the couch in the downstairs recreation room. R alleged that Constable Carriere turned on the television to a pornographic channel and masturbated in her presence; although she had her back turned to him, she could

hear him masturbating. Constable Carriere denied masturbating; he claimed that R was already watching a pornographic channel and that they discussed her sex life.

The second incident concerned S, another relative of Constable Carriere's spouse. S related that in June of 2003, Constable Carriere helped her unlock her vehicle with a coat hanger. S alleged that Constable Carriere repeatedly rubbed his groin against her during the process, commented to the effect that "It's almost like having sex"; and when she turned, she observed that he had an erection. Constable Carriere denied touching S in a sexually inappropriate way, and denied that he had an erection. He conceded that the "almost like having sex" comment may have been made, although he couldn't recall who made the remark.

The third incident occurred in 1993, when Constable Carriere was on a camping trip with L, a former girlfriend. L alleged that Constable Carriere forced himself on her and had sexual intercourse with her, contrary to her wishes. Constable Carriere denied that his sexual relations with L were ever coercive.

The Hearing Officer described the conflicts in the evidence as boiling down to a "contest of credibility". On the basis of his assessment of credibility, he found Constable Carriere guilty of discreditable conduct on all three counts; and he ordered Constable Carriere's dismissal within seven days unless he resigned.

Counsel for the Appellant argued that the Hearing Officer erred by approaching the case as a contest of credibility. He contended that the Hearing Officer improperly determined the credibility of witnesses solely through their demeanor and appearance, without regard for other necessary elements such as opportunity for knowledge, powers of observation, judgment, memory and ability to describe events clearly. Counsel for the Respondent contended that the credibility of witnesses was not assessed solely on the basis of demeanor. Counsel noted that the standard on appeal was whether the Hearing Officer's conclusions were reasonable and supported by the evidence; and he submitted that in this case, there were no manifest errors.

Held, Convictions and penalty upheld; appeal dismissed.

Notwithstanding that the allegations against the Appellant arose from off-duty incidents, they represented serious misconduct.

Cases involving sexual conduct often hinged on credibility. Assessment of the credibility of witnesses did not turn simply on the appearance of sincerity or the individual's demeanor.

Although the Hearing Officer may not have explicitly highlighted them in his summary of the evidence, the factual discrepancies in this case did factor into his analysis. His summary contained a detailed recitation of events as related by the witnesses during examination-in-chief and cross-examination. He noted a number of inconsistencies

and indicators of potential unreliability with respect to all three incidents. While the Hearing Officer may have described the conflicts in the evidence as boiling down to a contest of credibility, his analysis suggested that he did not base his conclusions solely on the demeanor of the witnesses. He was aware of the standard of proof required. There were no obvious errors in his decision; instead, his findings were reasonable and supported by the evidence as a whole.

CONSTABLE SHAWN NELLES
Appellant

AND

COBOURG POLICE SERVICE
Respondent

Presiding Members:

Murray Chitra, Chair
David Edwards, Member
Hyacinthe Miller, Member

Appearances:

Harry G. Black, Q.C., for the Appellant
Lynda A. Bordeleau, for the Respondent

Heard:

April 4, 2007

Date of Decision:

May 3, 2007

Summary of Reasons for Decision

Constable Nelles pled guilty to four charges of misconduct: two counts of discreditable conduct, contrary to s. 2(1)(a)(xi) of the Code of Conduct; one count of neglect of duty, contrary to s. 2(1)(c)(ii); and one count of deceit, contrary to s. 2(1)(d)(ii). The Hearing Officer imposed the penalty of immediate dismissal. Constable Nelles appealed that penalty.

The neglect of duty charge arose from Constable Nelles' actions surrounding a two-day seminar held on June 16th and 17th, 2004. Constable Nelles had permission to be absent for the second day of the seminar. However, he left the seminar during the morning of the first day and never returned. Instead, he drove to a parking lot north of Highway 401 where he met a woman, K, and had a personal conversation with her that lasted approximately two hours.

The deceit charge arose from Constable Nelles' false statements about his activities on June 16th, 2004. He completed his duty book as though he had attended the seminar all day. The following day he completed a duty report which stated that he had left the seminar early due to illness.

The first charge of discreditable conduct arose from an incident that occurred seven months after Constable Nelles joined the Cobourg Police Service. On August 16, 2001 Constable Nelles worked the night shift. He and his partner, Constable Allison, drove an eighteen-year old woman, L, to an isolated country road, outside the jurisdiction of the service, where Constable Nelles received oral sex. He was in full uniform and wearing a police belt with a loaded firearm.

The second charge of discreditable conduct arose from incidents that occurred approximately one year later. On September 1, 2002, while on duty and driving a police cruiser, Constable Nelles arranged to meet another woman, J. He drove his cruiser to an isolated road and had sex with her. He admitted having sex with J. on another occasion while on duty.

At the sentencing portion of his disciplinary hearing Constable Nelles expressed regret and apologized for his actions. Character witnesses were called on behalf of Constable Nelles. Exhibits filed included positive performance evaluations, letters of support and commendations, and case law on the issue of penalty.

The Hearing Officer found that all four allegations of misconduct related either directly or indirectly to Constable Nelles' activities with women when he was supposed to be working. The Hearing Officer described the conduct as "disturbing", "disconcerting", "appalling" and "totally unacceptable". He found that the damage to the employment relationship was irreparable; and he imposed the penalty of immediate dismissal.

Counsel for the Appellant argued that the Hearing Officer committed various errors; in particular, that he: failed to apply the principle of consistency in sentencing; overstated the seriousness and nature of the Appellant's misconduct; ignored character evidence; and failed to properly assess mitigating factors such as the Appellant's guilty plea, apology and potential for rehabilitation. Counsel for the Respondent asserted that there was no absolute standard that governed sentencing; rather, there existed a range of available penalties for various sorts of misconduct. The Hearing Officer had not exaggerated the seriousness of the Appellant's misconduct, nor misunderstood or ignored the evidence and relevant sentencing principles. Counsel argued that the decision of the Hearing Officer as a whole was reasonable and should be upheld.

Held, Appeal dismissed.

The Hearing Officer concluded that the four allegations of misconduct were not isolated incidents; rather, they demonstrated a pattern of behaviour over a significant length of time. The common thread, as he found, was activity with females at times when Constable Nelles was supposed to be working. This conclusion was reasonable, and was supported by the evidence.

The case law dealing with issues of sexual misconduct presented a spectrum of offences. Sexual activity between an on-duty police officer and a member of the

public fell at the serious end of this spectrum, given the inherent power imbalance within the relationship and hence, the potential for implicit coercion. The Appellant's conduct thus raised obvious questions about his ability to: work alone; deal professionally with vulnerable women; account honestly to his employer for his actions; and refrain from using his position and office for personal purposes.

The Hearing Officer had not overstated the seriousness of the Appellant's conduct, nor had he misconstrued Constable Nelles' rehabilitative potential. He did consider the mitigating factors, but found that these were insufficient to overcome the harm to the employment relationship as well as the damage to the reputation of the service, since the case had received much media attention.

In light of the Appellant's multiple acts of misconduct, immediate dismissal was clearly within the range of penalties available to the Hearing Officer.

The Hearing Officer took into account relevant facts and principles; the penalty imposed was not inconsistent with cases involving similar misconduct; and the decision as a whole was reasonable.

STAFF SERGEANT CHRISTOPHER HERRIDGE
Appellant

AND

ST. THOMAS POLICE SERVICE
Respondent

Presiding Members:

David Edwards, Member
Hyacinthe Miller, Member

Appearances:

Norman Peel, for the Appellant
David S. Thompson, for the Respondent

Heard:

February 12, 2007

Date of Decision:

May 3, 2007

Summary of Reasons for Decision

Two penalties were at issue in this appeal, as well as one conviction. Staff Sergeant Herridge pled guilty to two counts of discreditable conduct, contrary to s. 2(1)(a)(xi) of the Code of Conduct, and one count of insubordination, contrary to s. 2(1)(b)(i). In addition, he was found guilty on one count of neglect of duty, contrary to s. 2(1)(c)(ii). Staff Sergeant Herridge appealed the neglect of duty conviction, as well as the two penalties imposed for the four counts of misconduct. For the insubordination conviction the Hearing Officer imposed a forfeiture of 40 hours pay, either by working on annual leave or rest days, to be completed within six months. For the other three convictions, the Hearing Officer imposed a demotion in rank to First Class Constable for 12 months; at the end of the 12 months the Appellant would be reinstated to the rank of Sergeant at the highest pay level, upon completion of a successful performance evaluation.

As a result of an internal audit, the service discovered that there were a number of e-mail exchanges of a personal nature between Staff Sergeant Herridge and a female civilian employee. An investigation followed, which revealed that Staff Sergeant Herridge and the civilian employee were involved in an intimate relationship. They met in a drug intelligence office which had a coded door. On one occasion Staff Sergeant Herridge was off duty. On another occasion Staff Sergeant Herridge

attended at the employee's home while he was on duty. The neglect of duty charge arose from that incident. The insubordination charge arose from misuse of the service's internal e-mail system for sexually explicit communications with the civilian employee. The two discreditable conduct charges arose from Staff Sergeant Herridge's meetings with the employee on two occasions in a restricted area (the drug intelligence office).

Prior to being suspended, Staff Sergeant Herridge delivered letters of apology to the Chief, the Deputy Chief, and two Inspectors.

At the disciplinary proceeding the Hearing Officer received an assessment from a forensic psychiatrist, Dr. Klassen.

Counsel for the Appellant argued that the Hearing Officer failed to specify a particular duty which the Appellant had neglected to perform. He suggested that it was neither unreasonable nor neglectful for Staff Sergeant Herridge to take a noon break at the home of a civilian employee. He further suggested that the penalty of 40 hours was excessive for the conviction on the charge of insubordination, and the penalty was structured in an impractical way. Counsel argued that the Hearing Officer failed to give sufficient weight to the mitigating factors, such as the Appellant's clear record, positive character references, timely apologies and his cooperation throughout the investigation. Counsel suggested that the demotion should be restricted to one rank, for a three-month period, and reversion at the end should be automatic. Finally, counsel requested an order that Dr. Klassen's report be sealed.

Counsel for the Respondent countered that the evidence supported the conviction on the neglect of duty charge. With respect to the other charges, the penalty was appropriate because the higher the rank, the higher the standard of performance expected; and the demotion would provide a period of time during which the service could assess the Appellant's suitability for a leadership position.

Held, Neglect of duty conviction upheld; forfeiture of hours penalty varied with removal of six-month condition; demotion penalty varied by substituting one-rank demotion. Appeal allowed in part.

With respect to the neglect of duty charge, Staff Sergeant Herridge was on duty that day. He left work to go the civilian employee's house; and he was aware that he should not have been there. Given those facts, there was a clear evidentiary foundation for the Hearing Officer's finding of guilt.

With respect to the penalty of 40 hours' pay, there were a number of distinguishing features in this case, relative to the lesser penalties imposed for misuse of police equipment or resources in other cases. In particular, other cases did not involve the conduct of a supervisor. The penalty was thus within the appropriate range. However, satisfaction of the penalty within a six-month period raised scheduling complications; and therefore it was appropriate to remove that condition.

With respect to the demotion of two ranks for a period of one year, imposed for the three other convictions, the choice of penalty was appropriate, but the magnitude was not. The Appellant had a very positive, 16 year record of service. The Hearing Officer described his conduct as “out of character”. Rehabilitation was a key factor where an officer had such lengthy and exemplary service. This and other mitigating factors received insufficient weight.

The Appellant’s misconduct was serious and unacceptable; and although his sexual relations with the civilian employee were consensual, some of their meetings did occur while he was on duty and/or on police property. This was inexcusable, particularly for a supervisor.

Nevertheless, the Hearing Officer overstated the damage to the reputation of the service. He also erred in his consideration of ability to reform the officer. He gave insufficient consideration to the Appellant’s admission, apology and expressions of remorse. The Hearing Officer questioned Dr. Klassen’s conclusion that the Appellant could resume his leadership functions, but failed to provide any specific evidentiary foundation for questioning the doctor’s conclusion.

In light of the insufficient weight assigned to mitigating factors, it was appropriate to revoke the original penalty, and substitute an order that the Appellant be demoted one rank to Sergeant for 12 months. Following that period, and upon successful completion of performance criteria for the rank of Sergeant, he should be reinstated to the rank of Staff Sergeant at his current grade.

The Commission was not a court of justice, and therefore it had no authority to order that Dr. Klassen’s psychiatric report be sealed. Further, the report had been tendered in evidence in a public proceeding, the disciplinary hearing, without any request that it be viewed *in camera*.

CONSTABLE PAULO BATISTA
Appellant/Respondent

AND

PAUL SMITH
Respondent/Appellant

AND

OTTAWA POLICE SERVICE
Respondent

Presiding Member:
Garth Goodhew, Member

Appearances:
Allan R. O'Brien, for Constable Batista
Matthew T. McGarvey, for Paul Smith
Lynda A. Bordeleau, for Ottawa Police Service

Heard:
February 22, 2007

Date of Decision:
May 8, 2007

Summary of Reasons for Decision

Constable Batista appealed his conviction on a charge of unnecessary exercise of authority, contrary to s. 2(1)(g)(ii) of the Code of Conduct. Constable Batista was found guilty of having used unnecessary force against Paul Smith, a participant in a public demonstration. Mr. Smith, who filed a public complaint against Constable Batista, appealed the penalty imposed upon Constable Batista by the Hearing Officer, namely a reprimand.

Mr. Smith was participating in a public demonstration in Ottawa on May 29, 2003. A large number of RCMP and Ottawa police officers were present, monitoring the demonstration. RCMP Constable Messier recognized Mr. Smith, a frequent participant in public protests, and mistakenly believed that Mr. Smith was in violation of a bail condition imposed after a previous demonstration. Together with Constable Jordan of the Ottawa service, Constable Messier arrested Mr. Smith. Mr. Smith was placed in handcuffs. Initially Mr. Smith followed the officers' instructions and walked

towards a police cruiser. However, he then went limp, fell to the ground, and refused to cooperate. Constable Jordan called for a taser. Constable Batista, who was an Acting Sergeant at the time, responded. Mr. Smith yelled some obscenity about “you fucking cops” to the crowd, whereupon Constable Batista tasered him. Mr. Smith was dragged towards the cruiser; then Constable Batista tasered him a second time before Mr. Smith was placed in the cruiser.

Mr. Smith was subsequently released without charges. Later that year he filed public complaints against Constables Batista and Jordan.

RCMP Constable Nault had made a videotape of the demonstration, which was tendered at Constable Batista’s disciplinary hearing. The Hearing Officer also heard evidence from experts in use of force and crowd control. A critical piece of documentary evidence was the service’s Standard Operating Procedure relating to tasers. The Procedure defined the taser as a device used to “control a violent and/or aggressive subject”. The Procedure stated tasers may be used where the officer has “reasonable and probable grounds” to believe that a subject is a danger to themselves or the public and needs to be immediately controlled, or where the officer believes the subject “...will be, or has been, resistive...”

Relying on previous authorities on the issue of unnecessary force, particularly Burgess and St. Thomas Police Service, the Hearing Officer found that it was important to examine the totality of circumstances when determining whether an officer’s actions were “reasonable”. Constables Jordan and Batista testified that Mr. Smith was actively resistant, whereas Constable Messier and other constables testified that Mr. Smith was merely uncooperative. The Hearing Officer accepted the evidence of Constable Messier and the other constables. From this evidence, together with the videotape, he concluded that Mr. Smith was not actively resistant, did not constitute an imminent danger or threat, nor did he have the ability to incite the crowd to riot. He therefore determined that Constable Batista’s use of force against Mr. Smith was unnecessary and/or unreasonable.

At the sentencing hearing, the Hearing Officer stated that he found Constable Batista’s use of the taser inappropriate but not malicious. He characterized Constable Batista’s actions as an error of judgment. He noted the officer’s excellent employment record and discipline-free history. He also noted that as a result of the conviction Constable Batista reverted to the rank of constable, and suffered a pay loss of approximately \$10,000. The Hearing Officer further stated that deterrence was not a consideration, given that the officer’s actions were an error and an honest mistake.

Counsel for Constable Batista argued that the Hearing Officer erred by importing a reasonableness test, because the Procedure did not require the officer’s belief with respect to the issue of resistance to be reasonable. In addition, counsel asserted that the Hearing Officer improperly concluded that the use of the taser was unreasonable because it did not work. On the issue of penalty, counsel argued that

the applicable standard of review was that the Commission should show great deference; and in this case, there was no basis for interfering with the penalty.

With respect to the conviction, counsel for Mr. Smith argued that the Hearing Officer properly concluded that there was no rational basis for Constable Batista to use the taser on either of the two occasions. In his view, the Hearing Officer considered all essential matters, did not take into account any irrelevant factors, and committed no error in law. However, counsel did take issue with the imposition of a reprimand, which he submitted was an inappropriately lenient penalty for an act of “unjustified violence”. Counsel argued that the Hearing Officer failed to consider Mr. Smith’s injuries and Constable Batista’s refusal to accept responsibility. He asserted that the Hearing Officer erred by suggesting that the misconduct in question was properly characterized as an error in judgment and as such, was not subject to principles of deterrence. Counsel argued that an appropriate penalty would be forfeiture of leave time.

The position of the Service was that there was no basis for interfering with either the conviction or the penalty. Counsel argued that the Hearing Officer’s decision on conviction should not be parsed component by component; rather, the decision as a whole should be assessed. Counsel submitted that the Hearing Officer properly reviewed all of the evidence, made no errors, and his decision as a whole was reasonable. Again, on the issue of penalty, she submitted that there were no manifest errors in the decision, and the Commission should not intervene.

Held, Appeals against conviction and penalty dismissed.

The essential question for the Hearing Officer was whether Constable Batista’s use of force was unnecessary or “unreasonable under the circumstances”. Findings of fact and of credibility were the Hearing Officer’s domain. In this case, the Hearing Officer assessed the service’s Procedure against what he observed on the video; considering this evidence, the expert evidence, and the conflict in testimony between the various officers, it was open to him to conclude that Mr. Smith had not exhibited active resistance. A passing observation that the unnecessary use of force was not effective (the tasering appeared “to have done little to alter Mr. Smith’s conduct”) did not amount to a reviewable error. Accordingly, it was open to the Hearing Officer to conclude that tasering Mr. Smith was both unnecessary and unreasonable under the circumstances.

The Commission should interfere with a penalty only if there were a manifest error in principle or if relevant factors were ignored. Neither ground was evident here. The Hearing Officer identified all the relevant sentencing factors. His comments on the mitigating factors - lack of malice, excellent record, impact of the disciplinary action on the officer and his family - were neither unfair nor improper. Notwithstanding his comments on deterrence, the decision as a whole and the resulting penalty were reasonable. As the Hearing Officer noted, the conviction resulted in an effective demotion; and the combined loss of rank, salary and reprimand represented a

serious consequence which addressed any considerations that might arise with respect to general deterrence. There was thus no basis for interfering with the penalty.

SERGEANT SHAWN HEWLETT
Appellant

AND

ONTARIO PROVINCIAL POLICE
Respondent

Presiding Members:

Biagio (Bill) Marra, Member
Hyacinthe Miller, Member

Appearances:

William R. MacKenzie, for the Appellant
Lynette E. D'Souza, for the Respondent

Heard:

January 10, 2007

Date of Decision:

May 16, 2007

Summary of Reasons for Decision

Sergeant Hewlett appealed his conviction on one count of neglect of duty, contrary to s. 2(1)(c)(i) of the Code of Conduct.

On September 13, 2003 Sergeant Hewlett was on duty, driving in his police vehicle, when he heard a dispatch call in relation to a report of domestic violence. The situation involved Mr. and Mrs. R, a couple who were in the midst of an acrimonious separation, as well as their adult children. This was not the first time the police had been summoned to the Rs' residence. On this occasion, an altercation ensued when Mrs. R and some of the children arrived to remove some of her belongings. R grabbed his wife by the arm, threatened to kill his son, tried to push one daughter down the stairs and tried to run another daughter over with a car. One daughter, W called 9-1-1, reporting that her father was becoming violent, may have been drinking, and that guns were on the property.

Constable McTeague was dispatched. A second unit, consisting of Constables Stringer and Avery, also responded. Sergeant Hewlett heard the dispatch and decided to drive to the residence. He found five adult family members speaking with Constable McTeague, who assured them that the police were not leaving without R.

At some point an off-duty OPP officer, Constable Moon, appeared, having been called by R. Constable Moon was married to one of the Rs' daughters.

After some 2-3 hours, a decision was made that there was no substance to the allegations of domestic violence. With Sergeant Hewlett's approval, Constable McTeague decided that R would not be arrested. Constable McTeague distributed OPP statement forms, asking individuals on the scene to complete the forms and fax them to the detachment.

Three of the adult children who were assisting Mrs. R were not satisfied. They filed a formal public complaint against Sergeant Hewlett and Constable Moon. The Commission eventually directed that a disciplinary hearing be held. Sergeant Hewlett was charged with neglect of duty, specifically, failing to have "assault and threatening allegations properly investigated."

At the disciplinary hearing, Sergeant Hewlett testified that he attended at the scene as a "backup" officer. He was present when Constable McTeague brought Mr. and Mrs. R together for a conversation. Mrs. R was asked if she had been assaulted, and she said that she hadn't been. Based on her denial, together with Constable Moon's input, Sergeant Hewlett and Constable McTeague decided that no domestic violence had occurred, and there was no need to arrest Mr. R.

After the family brought the public complaint, an investigation ensued. The lead investigator testified that OPP protocols relating to domestic violence were not followed in this case; no report was filed; and the Crown had not been consulted with a view to laying charges. She also testified that Sergeant Hewlett was aware that R's son had been assaulted by his father on September 13th, and that R had threatened several other people. Investigators arrested R for assault and threatening. The charges were withdrawn when R agreed to enter into a peace bond.

The Hearing Officer noted the history of prior calls to the police during the Rs' acrimonious separation. He found that there were clear allegations of assault, threats and domestic violence. He also noted that Mrs. R's denial of assault took place in front of the alleged assaulter - a questionable investigative technique. The Hearing Officer observed that Sergeant Hewlett regarded R's threats against his son as "minor". He found that the investigation as a whole was substandard; and that Sergeant Hewlett had neglected his duties.

Counsel for the Appellant argued that it was Constable McTeague who was responsible for the investigation. Sergeant Hewlett was there as back up; he did provide advice and assistance, but ultimately, he deferred to Constable McTeague's decision-making. Counsel for the Respondent argued that there were clear policies in place for investigations and follow-up in family violence situations; Sergeant Hewlett was aware of these policies but hadn't followed them; and the Hearing Officer rightly found that his role extended beyond mere attendance at the scene.

Held, Appeal dismissed.

The Hearing Officer was troubled by the lack of responsiveness to clear threats and allegations of assault. His concerns in that regard were reasonable. The involvement of Constable Moon, at the request of the potential accused, was similarly troubling. These factors, together with the history of prior calls from family members, demanded, in the words of the Hearing Officer, a “meticulous investigation”. The Hearing Officer’s conclusion that the investigation was substandard was borne out by the evidence. At the end of the day, R was not arrested, parties were issued blank forms, and weeks later, no incident reports had been prepared, and the Crown had not been consulted.

The Appellant’s main defense to the charge seemed to be that his attendance was voluntary; that he was there as backup. However, he was on duty, and he chose to drive to the residence and to remain there. As such, he was the senior officer on the scene, and he was responsible for ensuring that subordinate officers performed their duties satisfactorily. His role as supervisor was to provide advice and guidance while the occurrence was being investigated, and to ensure afterwards that the investigation was properly completed by his subordinates. The Hearing Officer’s conclusion that the Appellant neglected his duties as a supervisor was well supported on the evidence. The Hearing Officer rejected the Appellant’s explanations as self-serving and an attempt to deflect responsibility. On the evidence, these characterizations were open to him.

The decision as a whole was certainly not lacking in evidentiary foundation, there were no clear errors of law, and no other basis for intervening.

SERGEANT BRIAN BERGER
Appellant

AND

TORONTO POLICE SERVICE
Respondent

Presiding Members:

Sylvia Hudson, Vice-Chair
Hyacinthe Miller, Member

Appearances:

Peter M. Brauti, for the Appellant
Zoya Trofimenko, for the Respondent

Heard:

February 12, 2007

Date of Decision:

May 24, 2007

Summary of Reasons for Decision

Sergeant Berger contested the penalty imposed by the Hearing Officer after he pled guilty to two counts of neglect of duty, contrary to s. 2(1)(c)(i) of the Code of Conduct. The Hearing Officer ordered Sergeant Berger to forfeit 20 days or 160 hours.

Sergeant Berger was the supervisor in charge of a team of plainclothes officers attached to 52 Division. In 2003-2004, an unrelated RCMP investigation into the plainclothes unit at 52 Division revealed that Sergeant Berger was using an “informal system” of authorizing overtime and lieu time for himself and for his subordinates. Officers would sometimes work at times they were not scheduled to work, and in return, they would receive compensatory time off.

Sergeant Berger pled guilty to the charges. At the disciplinary hearing, it became apparent that this practice of “flex-time” scheduling was fairly widespread; at any rate, it was not confined to Sergeant Berger’s unit. Management witnesses appeared to be aware of such practices, although they did not condone them.

The Hearing Officer characterized Sergeant Berger’s misconduct as very serious, damaging to the reputation of the service, and as warranting general deterrence.

Counsel for the Appellant argued that the Hearing Officer erred by: concluding there was no evidence that the informal system had management approval; injecting his own personal experience on time management systems, without notice to the parties; misapprehending the evidence; failing to apply a “test case” approach; and imposing a sentence that was harsh and not in keeping with precedents. Counsel for the Respondent argued that there was no evidence that this was a “test case”; in fact, the service had already laid charges against two other officers arising out of related matters (Ion and Knott). Counsel argued that the Appellant’s leadership position gave rise to higher expectations of conduct; and it was an aggravating factor for a supervisor to influence a junior officer to participate in the misconduct. Counsel argued that the Hearing Officer’s decision on penalty contained no manifest errors, was reasonable as a whole, and the Commission should not intervene.

Held, Penalty reduced; appeal allowed.

The Hearing Officer did not err when he concluded that there was no evidence management had approved any system of “give-and-take” timekeeping. Witnesses testified they were aware of the informal system, but none testified that management had sanctioned the practice.

Hearing officers were entitled to bring their knowledge and experience of police services to disciplinary proceedings; so there was nothing improper about the Hearing Officer in this case commenting on his familiarity with a common, service-wide system for scheduling.

While the Hearing Officer used strong language to describe the Appellant’s misconduct, this did not invalidate his approach to the evidence or his assessment of the misconduct.

There was no evidence to indicate that a “test case” approach to sentencing was necessary in this case to resolve a point of law. Instead, ordinary principles of sentencing applied. In that regard, the Appellant’s misconduct was serious. He personally violated timekeeping rules for his own benefit and the benefit of his subordinates. His/their willingness to put in extra time was not a rationale for wilful misrepresentation of hours worked and entitlement to time off. As the Hearing Officer found, abuse of timekeeping systems was damaging to the reputation of the Service and must be deterred.

However, the practice was clearly not confined to the Appellant’s unit. Instead, in some places within the service a climate of “don’t ask, don’t tell” existed with respect to scheduling practices. This was an important context which the Hearing Officer failed to acknowledge. In addition, there were other strong mitigating factors which appeared to have been under-assessed: the Appellant’s 29 years of service, with an exemplary, discipline-free record; and his guilty plea, evidencing acceptance of responsibility for his actions. Finally, the sentencing decision made no mention of

progressive discipline, an important principle and one that was particularly relevant in this case, being an instance of first misconduct.

Taking full account of the mitigating factors, as well as the disposition in the cases of two other Toronto officers involving similar activity (neither of whom was a supervisor), forfeiture of 20 days/160 hours was excessive. The penalty was accordingly varied to 10 days/80 hours.

CONSTABLE DIANNE CLARKE
Appellant

AND

PEEL REGIONAL POLICE SERVICE
Respondent

Presiding Members:

Sylvia Hudson, Vice-Chair
Noëlle Caloren, Member
Garth Goodhew, Member

Appearances:

Harry G. Black, Q.C., for the Appellant
Andrew J. Heal, for the Respondent

Heard:

September 7 and October 10, 2006

Date of Decision:

June 18, 2007

Summary of Reasons for Decision

Constable Dianne Clarke appealed her convictions on two counts of misconduct: discreditable conduct, contrary to s. 2(1)(a)(xi) of the Code, and deceit, contrary to s. 2(1)(d)(i). She also appealed the penalty imposed, dismissal failing her resignation within seven days.

At the outset of the hearing of her appeal, counsel for the Appellant brought a motion pursuant to s. 70(5) of the *Police Services Act* to permit the introduction of new or additional evidence. The evidence consisted of letters of commendation from the Appellant's file, letters concerning her character, information about her background and the impact of dismissal on the Appellant and her family, and evidence of an inconsistent approach by management to allegedly similar misconduct. Counsel for the Respondent opposed the motion to permit new evidence.

The basis for the disciplinary charges against Constable Clarke stemmed from a parking ticket issued to her personal vehicle on September 30, 2003, in Mississauga. Constable Clarke did not pay the fine, and a conviction was registered against her. In January 2004 Constable Clarke swore an affidavit, stating that the ticket must have been issued in error because she was at work in Brampton that day.

The Mississauga Parking Control Manager became concerned about perceived inconsistencies in the affidavit, and she referred the matter to the Service's Public Complaints Office. An investigation was assigned on January 26, 2004. In July 2004 Constable Clarke received a notice of investigation from the Internal Affairs Bureau. Later that month she was interviewed in the presence of an Association representative and her lawyer. During the interview Constable Clarke maintained that she wasn't at the location in question, that she didn't know the address, and would have had no reason to be there.

Two months later (September 2004), the investigator began canvassing stores in the vicinity of the parking infraction. The owner of a local knitting store across the street identified the Appellant as a regular client. Bank records obtained via a search warrant in January 2005 showed that the Appellant had purchased merchandise from the knitting shop on the date in question, September 30, 2003. The Appellant was interviewed a second time, on January 26, 2005. She acknowledged having been in the area in question in the past, but couldn't recall being there on September 30th, 2003.

On January 27, 2005, the day after the second interview, a Notice of Hearing was prepared, which was issued to Constable Clarke on February 16, 2005. The Notice contained two allegations: that the Appellant's provision of false information on her affidavit was discreditable conduct; and that she committed the offence of deceit by maintaining her denial in the second interview.

When the disciplinary hearing commenced, counsel for Constable Clarke brought a no-jurisdiction motion, arguing that the Hearing Officer could not proceed because the Notice of Hearing had not been served within six months, as required under s. 69(18) of the Police Services Act. That section provided that "If six months have elapsed since the facts on which a complaint is based first came to the attention of the chief of police...no notice of hearing shall be served unless the board....is of the opinion that it is reasonable, under the circumstances, to delay serving the notice of hearing."

The Hearing Officer observed that the investigation in this case "took too long". However, he ruled that the six-month limit commenced in September 2004, when the investigator confirmed that the Appellant was a client with the owner of the knitting store. In his view, the Notice was timely, and he dismissed the motion. Ultimately, he found Constable Clarke guilty on both counts of misconduct and ordered dismissal failing resignation within seven days.

Counsel for the Appellant argued that the Hearing Officer erred in dismissing the no-jurisdiction motion. Counsel argued that the investigation was conducted in an unfair manner: the focus shifted from criminal to disciplinary, and the Appellant was interviewed a second time for the sole purpose of obtaining a further denial in order to charge her with deceit. In addition, he argued that the penalty was excessive, and

inconsistent with comparator cases. He asserted a number of errors with respect to sentencing.

Counsel for the Respondent argued that the Notice of Hearing was timely, that any delay did not prejudice the Appellant's ability to defend herself against the charges, that there was an ample evidentiary basis for the findings of misconduct, and that the penalty was within the range available to the Hearing Officer.

Held, Motion to introduce new evidence allowed in part. Violation of s. 69(18) established; convictions and penalty quashed. Appeal allowed.

Evidence with respect to character witnesses, the impact of penalty or management's approach could have, with due diligence, been led before the Hearing Officer. The Commission thus declined to receive this evidence. However, four documents were referred to in the summary of the Appellant's personnel file, but were not tabled before the Hearing Officer. These documents were considered part of the record, and the Commission permitted counsel to introduce those documents.

From the case law on s. 69(18) an understanding had emerged, that the six-month time-limit would not start to run until a clear body of factual information had been collected to support the allegations of misconduct arising from a complaint. The wording of s. 69(18), "no notice of hearing shall be served", was mandatory. This was a clear indication that failure to request an extension within six months would be fatal to the right to prosecute a complaint regarding an officer's conduct. Statutory time-limits such as s. 69(18) went directly to the decision maker's jurisdiction, such that a failure to observe the time-limits would deprive the decision maker of jurisdiction to proceed with the hearing.

In this case, the requirements of s. 69(18) were not met. The Notice of Hearing was served on Constable Clarke 12 ½ months after the complaint was assigned for investigation. The investigator had enough evidence to issue a Notice after interviewing the Parking Control Manager (March 9, 2004) or, at the latest, after interviewing the Appellant for the first time (July 26, 2004). The investigation was punctuated by periods of inactivity, which were not attributable to an inherent complexity of the case being investigated. The Appellant was not given proper notice of the substance of the complaint, as required by s. 56(7). Instead, in July 2004, when she was informed that she was the subject of an investigation, the investigation appeared to be criminal in its focus. Further, the second interview, in which the Appellant merely repeated her earlier denial, could not support an independent charge of misconduct (deceit); otherwise, the purpose of s. 69(18) could be circumvented.

Given the mandatory nature of s. 69(18), the Hearing Officer did not have jurisdiction to hear the case. Accordingly, the convictions and penalty were quashed.

CONSTABLE PHILIP D'SOUZA
Appellant

AND

TORONTO POLICE SERVICE AND GEORGE BERGER
Respondents

Presiding Members:

David Edwards, Member
Hyacinthe Miller, Member

Appearances:

Joanne Mulcahy, for the Appellant
Darragh Meagher, for the Respondent, Toronto Police Service

Heard:

February 27, 2007

Date of Decision:

June 26, 2007

Summary of Reasons for Decision

Constable D'Souza was found guilty on two counts of discreditable conduct, contrary to ss. 2(1)(a) (v) and (xi) of the Code of Conduct, as well as one count of insubordination, contrary to s. 2(1)(b)(ii). He appealed the findings of guilt on all three counts. He also appealed the penalty imposed for the s. 2(1)(a)(xi) count, forfeiture of five days or forty hours off.

The Respondent, George Berger, was an Associate Director of the Canadian National Exhibition (CNE). On August 24, 2003, he attempted to enter the gates in his vehicle. With him in the vehicle were two children and a friend, Ms. K. Mr. Berger wore a badge identifying him as an Associate Director of the CNE, and his vehicle displayed a CNE Official sign.

As Mr. Berger attempted to drive onto the access route for CNE employees, he was stopped by Constable D'Souza, who was on traffic duty at the grounds entrance. A verbal exchange ensued, culminating in Constable D'Souza issuing Mr. Berger an offence notice for disobeying an officer directing traffic. Afterwards Mr. Berger attended the CNE sub-station and spoke with the officer in charge. Some months later, he filed a complaint against Constable D'Souza, on the basis of a verbal comment and the traffic ticket.

Constable D'Souza's interaction with Mr. Berger resulted in the two charges of discreditable conduct. He was also charged with insubordination, after he failed to attend traffic court on the date when Mr. Berger's case was scheduled for hearing. Constable D'Souza was scheduled to attend a training course on the day of the court appearance.

The contents of the verbal exchange, and the sequence of events surrounding it, were in dispute. Constable D'Souza did not testify at his disciplinary hearing, but both Mr. Berger and Ms. K. did testify. The Hearing Officer found that Mr. Berger had in fact obeyed the traffic signals, and thus the ticket was groundless. He further found that Constable D'Souza had said "Everyone's a moron", and that the officer's rudeness led Mr. Berger to request his badge number, which in turn resulted in the officer issuing a traffic ticket. The Hearing Officer characterized Constable D'Souza's conduct as an abuse of authority. With respect to Constable D'Souza's non-attendance at court, he concluded that Constable D'Souza had failed to report his scheduling conflict. The Hearing Officer imposed reprimands for the insulting language and court attendance offences, and for the traffic ticket matter, forfeiture of five days.

Counsel for the Appellant brought a motion for an order quashing the findings of guilt, on the basis that the transcript was of poor quality, and not a true and accurate record. Counsel reiterated this position after a revised transcript was submitted. As to the merits, counsel suggested that the Hearing Officer erred by: ignoring factual evidence, such as the notes made by Constable D'Souza on the back of the ticket issued on August 23, 2003; disregarding positive evidence concerning the Appellant; focusing on the credibility of the complainant instead of on the issue of whether the evidence proved the allegations; assessing the credibility of the prosecution witnesses' testimony; failing to consider that Constable D'Souza had a lawful excuse for not attending court. Counsel also submitted that the five-day penalty was excessive.

Counsel for the Respondent argued that the appeal as to guilt and penalty should be dismissed. Counsel noted that although the Hearing Officer didn't mention the notes on the back of the ticket, neither did the Appellant's defense counsel. Counsel argued that the Hearing Officer did turn his mind to inconsistencies between the evidence of Mr. Berger and Ms. K. Ms. K's recollection of details of the encounter was imprecise, except for her certainty that Constable D'Souza did say, "Everyone's a moron". There was no evidence that Constable D'Souza had a lawful excuse to be absent from court. Finally, he asserted that the penalty appealed was not excessive.

Held, Motion to quash convictions dismissed. Convictions upheld; forfeiture penalty reduced from five to three days.

The panel was able to fully understand the case based on the original and revised transcripts, counsel for the Appellant's affidavit and notations, and the parties'

arguments. Any concerns about the quality or accuracy of the transcript were not of such magnitude as to require the quashing of the charges.

This case turned in large measure on the credibility of Mr. Berger; and it was open to the Hearing Officer to accept the evidence of Mr. Berger and Ms. K. No error was committed by the Hearing Officer in failing to refer to Constable D'Souza's handwritten notes: Constable D'Souza did not testify, so he couldn't have been cross-examined on the notes; and neither the Prosecutor nor the Defense made any reference to the notes during the hearing. The Hearing Officer's conclusions with respect to the two counts of discreditable conduct were not void of evidentiary foundation. Similarly, his conclusion that the Appellant failed to report a scheduling conflict, and was thus guilty of insubordination, was not void of evidentiary foundation.

However, the penalty for issuing the traffic ticket was excessive. Insufficient weight was attributed to the significant mitigating factors of a positive, 15-year work record and the Appellant's discipline free history. A penalty of three days or twenty-four hours off was substituted, on the basis of these mitigating factors, comparator cases and the principles of progressive discipline.

CONSTABLE PAUL STONE
Appellant

AND

TORONTO POLICE SERVICE
Respondent

Presiding Members:

Murray W. Chitra, Chair
Hyacinthe Miller, Member

Appearances:

Alan D. Gold, for the Appellant
Michael G. Martosh, for the Respondent

Heard:

February 5, 2007

Date of Decision:

July 4, 2007

Summary of Reasons for Decision

Constable Stone appealed his conviction on one count of corrupt practice, contrary to s. 2(1)(f)(v) of the Code of Conduct. The penalty imposed for this conviction, in conjunction with his guilty plea to a charge of insubordination, was demotion. Constable Stone appealed the penalty as well. The Hearing Officer ordered a demotion from First to Third-Class constable for five months, followed by ten months at Second-Class constable. Return to First-Class constable status was contingent upon an assessment by the Unit Commander that Constable Stone was qualified to hold the First-Class constable rank.

While working the midnight shift on February 4, 2004, Constable Stone stopped a speeding Mercedes, driven by M, the owner of a restaurant in downtown Toronto. M's wife was a passenger in the vehicle. Constable Stone observed a "police type wallet" containing a badge with M's name inscribed. M told Constable Stone that he was a "friend of the police." Constable Stone noticed a smell of alcohol, and asked M if he had been drinking. M acknowledged he had, but refused Constable Stone's request that he take a roadside breath test. Constable Stone handcuffed M and placed him in the rear of the cruiser. M's wife was apologetic, and told Constable Stone that her husband was very "pro-police" and that many officers ate at their restaurant. She mentioned Michael McCormack, a director of the Toronto Police Association.

Constable Stone did not issue M a ticket for speeding, nor did he lay a charge for refusing to provide a breath sample. He released M and allowed M's wife to drive them home. Constable Stone made no entries in his notebook concerning the arrest, nor did he complete any record of arrest report.

Later on that morning, Constable Stone encountered Michael McCormack. During their conversation, Michael McCormack confirmed that M was a friend of his. On February 7, 2004 Constable Stone received a call on his cell phone from Constable William McCormack Jr., brother of Michael McCormack. Unbeknownst to the two officers, William McCormack's calls were being intercepted in connection with an unrelated criminal investigation. Constable Stone mentioned that he had received a phone call from Michael McCormack the previous day; the gist of that call had been that M was trying to give Constable Stone tickets, and that Constable Stone would take them. A few days later Constable Stone received two tickets to a Toronto Maple Leafs hockey game, with a face value of \$320, from Michael McCormack.

When questioned about these events, Constable Stone denied that he had accepted tickets for not making an arrest.

Constable Stone was then charged with two counts of misconduct: insubordination, contrary to s. 2(1)(b)(ii) of the Code, in failing to make any record of arrest; and corrupt practice, contrary to s. 2(1)(f)(v), in using his position to accept a private advantage.

Constable Stone was represented by four different lawyers over the course of the disciplinary proceedings. Mr. Gary Clewley represented Constable Stone on the date when he pled guilty to the charge of insubordination. Mr. Clewley moved for a non-suit on the corrupt practice charge. The Hearing Officer dismissed the motion. When the hearing resumed, Constable Stone was represented by different counsel, who was permitted to lead exculpatory evidence, notwithstanding the non-suit dismissal. During this phase, Constable Stone explained his remarks on the wiretap, as well as his motivation for giving M a "break". M testified, and denied giving Constable Stone tickets. Another witness testified that Michael McCormack had brought an unrelated civil suit against Gary Clewley and other individuals. Michael McCormack testified that the tickets he gave to Constable Stone were his to offer. He was cross-examined about disciplinary charges that he was facing, arising out of this matter.

The Hearing Officer found Constable Stone guilty of corrupt practice. The Hearing Officer rejected the evidence of Michael McCormack and found that he was not a credible witness.

At the penalty phase of the hearing Mr. Gold, who advised that he was now Constable Stone's lawyer, requested and was granted an adjournment. When the hearing resumed, Mr. Gold brought two motions. The first was for a declaration of "mishearing" because of ineffective assistance of counsel. The basis for this was Mr.

Clewley's agreement to the admission of the wiretap. The second motion alleged reasonable apprehension of bias on the part of the Hearing Officer. The basis for this was a ruling by the Divisional Court, removing the Hearing Officer from the disciplinary proceeding concerning Michael McCormack. In turn, this stemmed from the Hearing Officer's finding in Constable Stone's hearing that Michael McCormack was not a credible witness. The Court held there was a reasonable apprehension of bias if the Hearing Officer continued to hear Michael McCormack's disciplinary charges.

The Hearing Officer denied both motions, concluding that he had no authority to declare a "mishearing", and that it was not proper to revisit his decision on culpability.

Mr. Gold, for the Appellant, argued that the Hearing Officer failed to identify the essential components of the offence of corrupt practice, and erred in dismissing the two motions. He asserted that the penalty was harsh and excessive. Mr. Gold asked the Commission to set aside the conviction and order a new hearing; alternatively, he requested that the penalty be reduced. Counsel for the Respondent argued that there was more than enough evidence to support the conviction for corrupt practice. With respect to the two motions, counsel argued that it was too late to bring the first motion as the Hearing Officer was then *functus officio* with respect to the conviction. Counsel argued that there was no evidence to establish a reasonable apprehension of bias. Finally, he submitted that there were no manifest errors in the penalty decision.

Held, Appeal dismissed.

The question for the Hearing Officer was whether there was clear and convincing evidence that the release of M and the receipt of hockey tickets were linked. The question for the Commission, on appeal, was different - namely, whether there was an evidentiary foundation for the Hearing Officer's conclusions; if not, the Commission could intervene. The Commission could also intervene in the face of clear errors of law or obvious misapprehension of the evidence.

It was not unreasonable for the Hearing Officer to conclude that the offer of tickets flowed directly from the Appellant's release of M without charges. There was a clear nexus between the two events. Thus there was an evidentiary foundation for the finding of corrupt practice.

With respect to the first motion, seeking a "mishearing", the Hearing Officer was correct that there was no basis in either the Police Services Act or the Statutory Powers Procedure Act for him to revisit his decision. In addition, Constable Stone himself had agreed that the wiretap evidence should be tendered, apparently believing that the prosecution's evidence would prove exculpatory. Furthermore, the wiretap was clearly relevant and there was a high likelihood that it would be admissible even if there had been no consent to its admission. Finally, Constable

Stone knew about Mr. Clewley's alleged conflict of interest well before his conviction, so his motion was also untimely.

With respect to the issue of reasonable apprehension of bias, the Divisional Court concluded that the Hearing Officer should be removed from the McCormack hearing because of his adverse findings of credibility against McCormack in Constable Stone's hearing. This conclusion was understandable. However, it didn't follow that the Hearing Officer's assessment in the Stone proceeding was flawed, inappropriate or tainted. On the contrary, the record indicated that the Hearing Officer went out of his way to ensure that Constable Stone received a fair hearing, including the granting of numerous adjournments and an opportunity to re-open his defence, by allowing the Appellant to call exculpatory evidence after he had denied the Appellant's non-suit motion.

As for penalty, the Hearing Officer's approach was thorough, balanced, considered and fair. He assessed all of the relevant factors. Considering that corrupt practice was one of the most serious disciplinary charges, and one which undermined public confidence in policing, the choice of demotion was reasonable.

CONSTABLE MICHAEL BYRNE
Appellant

AND

ONTARIO PROVINCIAL POLICE
Respondent

Presiding Members:

Murray W. Chitra, Chair
Garth Goodhew, Member

Appearances:

Jonathan D. Cocker, for the Appellant
Marnie Bacher and Jordana Joseph, for the Respondent

Heard:

February 7, 2007

Date of Decision:

July 16, 2007

Summary of Reasons for Decision

Constable Byrne appealed his conviction on one count of discreditable conduct, contrary to s. 2(1)(a)(xi) of the Code of Conduct. He also appealed the penalty imposed, forfeiture of sixteen hours, to be served on either annual leave or rest days. The Hearing Officer placed conditions on the penalty, by suggesting a four-month period for satisfaction, and a direction to advise Professional Standards Bureau when the penalty was completed.

Constable Byrne had authorized secondary employment, in the form of a small landscaping business. Snow removal was a part of his business. On January 23, 2003 while off-duty, Constable Byrne asked Donald Ray to assist him in removing snow from a local company, using equipment belonging to the Ray family farm, located in Kenilworth, Ontario. When Mrs. Ray, mother of Donald, returned from vacation, she sent an invoice to Constable Byrne for \$130. Constable Byrne didn't respond, so she sent a second invoice on March 3, 2004, for \$143, an amount which included 10% interest. By October 2004, Constable Byrne had still not paid the invoice, and Mrs. Ray prepared a written complaint. In December 2004 the Detective Sergeant who received the complaint sent a copy to Constable Byrne, along with an order to prepare a duty report. Constable Byrne didn't respond. On March 7, 2005 he was served with a Notice of Hearing, alleging discreditable conduct.

At the outset of the disciplinary hearing, counsel for the Appellant argued that the Hearing Officer had no jurisdiction to proceed, because there was no evidence that the Commissioner or her delegate had exercised their authority under s. 59(4) of the Police Services Act. Section 59(4) stated that the chief of police “may decide not to deal with any complaint made by a member of the public if the complaint is made more than six months after the facts on which it is based occurred.” Counsel further argued that even if the discretion had been exercised, it was not done in accordance with the principles of natural justice, since Constable Byrne was not provided with notice or the opportunity to make submissions. In an oral decision, the Hearing Officer rejected counsel’s submissions, and proceeded with the hearing.

Before the Commission, counsel for the Appellant renewed his s. 59(4) arguments, submitting that the failure to exercise a legislated discretion under s. 59(4) was an error of law going to jurisdiction that could not be cured, and that a duty of procedural fairness under s. 59(4) existed, which hadn’t been met in this case. Counsel argued that there was no evidence Constable Byrne ever received the invoices. Counsel pointed out that Constable Byrne had paid \$179 to the Rays. He argued that Constable Byrne’s debt was now satisfied, and the penalty was excessive for what was essentially a civil dispute over payment of a bill. Counsel suggested the conviction should be overturned; alternatively, the penalty should be reduced to a reprimand. Counsel for the Respondent argued that the Hearing Officer properly applied s. 59(4); the scope of the duty of procedural fairness under s. 59(4) was narrower than under s. 69(18); there was a sufficient factual foundation for the conviction; and the penalty was appropriate.

Held, Appeal against conviction denied; appeal against penalty allowed in part.

The Hearing Officer did not err in his interpretation and application of s. 59(4). The use of the word “may” under s. 59(4) indicated that the six months was not a mandatory limitation period. Instead, timeliness was just one of several vetting considerations to be taken into account during the process of screening complaints. The legislation did not contemplate an elaborate system of notification at each step during the 30-day vetting process. Unless the chief thought it might prejudice the investigation, an officer was entitled to be notified “forthwith” of the substance of the initial complaint. But in this case, Constable Byrne did have notice of the complaint against him.

By contrast, the six-month limit for issuing a notice of hearing under s. 69(18) was mandatory and did go to jurisdiction. Moreover, the requirements of procedural fairness under s. 69(18) were much higher than they were under the s. 59(4) vetting process. Any departure from the mandatory time-limit under s. 69(18) would trigger, at a minimum, entitlement to notice and an opportunity to make written submissions. In this case, it was clear that the requirements of s. 69(18) had been met.

It was open to the Hearing Officer to find that in the absence of any evidence to the contrary, Constable Byrne would have received the two invoices mailed by Mrs. Ray. Even if he hadn't received them, he was aware by December 2004 that he had an outstanding debt. Thus there was a sufficient evidentiary foundation for the conviction.

Although the misconduct was off-duty, it was incorrect to characterize the matter as a civil debt, unconnected to Constable Byrne's status as an OPP officer. As the Hearing Officer pointed out, given the small size of the community residents would necessarily have been aware of Constable Byrne's failure to honour his debt as well as his status as a member of the OPP.

Nevertheless, the Hearing Officer's comments with respect to the seriousness of the conduct and general deterrence appeared to be overstated. At issue in this case was a small outstanding debt, which called into question Constable Byrne's ability to manage his finances; thus there was no need for an exemplary penalty or general deterrence. The misconduct was relatively minor on the spectrum of employment related offences. In addition, Constable Byrne did ultimately pay the debt, and he had 19 years of positive employment. Given these factors, the number of hours imposed was an excessive penalty. Moreover, for the reasons given in Wolfe and Ontario Provincial Police, the conditions attached to serving the penalty were not appropriate.

Accordingly, the Commission varied the penalty from a forfeiture of sixteen hours to a forfeiture of eight hours, to be served on annual leave or rest days, but with the conditions imposed by the Hearing Officer deleted.

CONSTABLE JEFFREY GOUGH
Appellant

AND

PEEL REGIONAL POLICE SERVICE
Respondent

Presiding Members:

Garth Goodhew, Member
David Edwards, Member

Appearances:

Leo A. Kinahan, for the Appellant
Andrew Heal, for the Respondent

Heard:

August 20, 2007

Date of Decision:

September 18, 2007

Summary of Reasons for Decision

Constable Gough was charged with one count of discreditable conduct, contrary to s. 2(1)(a)(v) of the Code of Conduct. The charge arose from Constable Gough's encounter with Mr. Naail Falah, during which he allegedly used uncivil language to Mr. Falah. Mr. Falah filed a public complaint against Constable Gough on August 16, 2001. Constable Gough was advised of the investigation into the complaint on August 21, 2001. However, the investigation report wasn't completed until March 15, 2002, because the investigating officer had been unable to obtain statements from two witnesses until February 11, 2002. Constable Gough was served with a notice of hearing on July 24, 2002 - 11 months and 8 days after the complaint was filed.

On September 9, 2002 Constable Gough brought an application before the Hearing Officer to quash or stay the charge, based on delay. He argued that the notice of hearing had not been served within six months, contrary to s. 69(18) of the Police Services Act. The Hearing Officer denied the motion, concluding that the six-month time limit didn't commence until the investigation report was completed.

On December 10, 2002 Constable Gough pled guilty to the charge. The Hearing Officer accepted a joint submission on penalty - the forfeiture of one eight hour day.

Constable Gough then launched an appeal of the Hearing Officer's decision to deny his motion. The Commission ruled that the appeal was filed outside the 30-day time-limit under s. 70(1) of the *Act*, and that it had no jurisdiction to hear the appeal. The Divisional Court overturned the Commission's decision, concluding that the 30-day time-limit for the appeal ran from the Hearing Officer's decision on the merits, December 10, 2002. The Court remitted the matter to the Commission for re-hearing. The Court made no comment with respect to the effect of Constable Gough's guilty plea on his appeal rights.

At the commencement of the appeal, Counsel for the Respondent sought permission to amend the service's factum to include events subsequent to the first Commission hearing. Counsel for the Appellant argued that the Divisional Court's direction, properly interpreted, was that only the s.69(18) issue should be considered. However, the overriding obligation was to ensure a fair hearing. In its first decision, the Commission had raised the issue of waiver of appeal rights. That issue could not be ignored. Consequently, the Commission received evidence, on consent, that Constable Gough had authorized the deduction of hours from his holiday bank, in satisfaction of the penalty.

Counsel for the Appellant argued: that the notice of hearing was untimely; that the Appellant's guilty plea should not preclude him from bringing the appeal; and that the appeal was not rendered moot by Constable Gough's guilty plea. Counsel for the Respondent argued: that the Appellant waived his right of appeal by pleading guilty; that the appeal was moot; and that the six-month time-limit for serving the notice of hearing commenced upon completion and review of the investigation report.

Held, Waiver established; appeal dismissed.

There were three issues on appeal: whether the appeal was moot; whether Constable Gough waived his right of appeal; and whether the notice of hearing was timely.

With respect to the issue of mootness, the evidence was that Constable Gough served his penalty in September 2004. However, s. 25 of the Statutory Powers Procedure Act provided that an appeal stayed any penalty. Thus Constable Gough's direction to deduct hours from his holiday bank would be of no force or effect in terms of his appeal rights. The conclusion that a live controversy remained between the parties was also apparent when viewed in the context of the employment relationship, and the lingering effect of a disciplinary penalty on an employee's record of service.

However, Constable Gough's guilty plea did constitute waiver of his right to appeal. The general principle was that an appeal may only be granted after a guilty plea in exceptional circumstances, such as duress, deceit, ignorance or mistake. Those circumstances were not present in this case, in which the Appellant, represented by counsel, made a deliberate, informed choice to plead guilty. In the absence of any

reservation of the right to appeal, Constable Gough was thus precluded from appealing the Hearing Officer's decision concerning timeliness of the notice of hearing.

In the alternative, the notice itself was timely. An objective test had emerged from past Commission decisions, concerning when the six-month time-limit under s. 69(18) would be triggered: when the chief or a board was possessed of a "...sufficient body of factual information, so as to create a reasonable belief that misconduct has occurred." Moyle and Palmerston Police Service. In this case, the time-limit commenced when the investigating officer obtained the independent witness statements (February 11, 2002). Therefore, although the Hearing Officer erred in applying the test, his conclusion on the motion was correct.

CONSTABLE IMANTS KARKLINS
Appellant

AND

TORONTO POLICE SERVICE
Respondent

Presiding Members:

Murray Chitra, Chair
Sylvia Hudson, Vice-Chair
Hyacinthe Miller, Member

Appearances:

Harry Black, for the Appellant
Robert Fredericks, for the Respondent

Heard:

April 12, 2007

Date of Decision:

September 25, 2007

Summary of Reasons for Decision

Constable Karklins appealed his conviction on one count of discreditable conduct, contrary to s. 2(1)(a)(xi) of the Code of Conduct, as well the penalty imposed by the Hearing Officer, dismissal in the absence of resignation within seven days.

The incident giving rise to the charge of discreditable conduct occurred some five years prior to the Appellant's conviction on the charge. On December 8, 2000 Constable Karklins was on uniform patrol, accompanied by a junior officer, when he stopped a car driven by Antonio Ferreira because the rear licence plate was hanging loose. The motorist didn't have registration and insurance documents with him, but provided his name, address and driver's licence number to Constable Karklins. Upon checking the motorist's information on his mobile data terminal, Constable Karklins discovered that the plate was registered to the motorist's wife and belonged on another vehicle. Further inquiries revealed that there were two Antonio Ferreras, and that the second one was a suspended driver.

Constable Karklins served the motorist with five summonses for violations of the Highway Traffic Act and the Compulsory Automobile Insurance Act. A court date of January 5, 2001 was identified on the summonses. Constable Karklins also prepared, and insisted that he served the motorist with, a further six summonses,

based on the second Antonio Ferreira's driving history. The court date identified on the further summonses was January 9, 2001. The motorist insisted that he was never served with these additional summonses.

The motorist appeared in court on January 5, 2001. Constable Karklins did not appear, nor did he appear on the trial date. Consequently, all five charges were withdrawn. However, Constable Karklins did appear in court on January 9, 2001, while the motorist didn't. A court date was set. Again, Constable Karklins appeared, but the motorist did not. Constable Karklins did not tell the court about the first set of summonses. The motorist was convicted in absentia; penalties included a fine of \$15,000 and fifteen days imprisonment for driving while under suspension. A warrant was issued for the motorist's arrest. The court records of the two Antonio Ferreriras were cross-referenced and merged.

On April 6, 2003 the motorist was stopped by a patrol officer who ran a vehicle licence plate check. Pursuant to the outstanding warrant, the motorist was taken into custody. He spent five days in jail before his brother was able to convince authorities that he was not the second Antonio Ferreira. When the motorist was released, he brought a lawsuit against the service, which was settled. On August 19, 2004 Constable Karklins was served with a Notice of Hearing, alleging discreditable conduct.

In his testimony at the disciplinary proceeding, Constable Karklins stated that: he had a "gut feeling" that the motorist he stopped was the suspended driver, Antonio Ferreira, so he prepared the second set of six summonses just in case; he intended to sort out the question of identity but didn't because of a heavy workload; the court date on the second set of summonses was an inadvertent error; he didn't attend court on the first set because he was on vacation. The Hearing Officer rejected Constable Karklins' explanation, and found him guilty of discreditable conduct. On June 27, 2006 the Hearing Officer ordered that Constable Karklins be dismissed unless he resigned within seven days.

Counsel for the Appellant argued that the Hearing Officer: erred in finding misconduct and exceeded the scope of matters specified in the Notice of Hearing; imposed a penalty that was disproportionate; failed to apply the proper test for dismissal; failed to give proper consideration to mitigating factors; and ignored evidence that Constable Karklins was still useful to the service. Counsel for the Respondent argued that there were no errors in the Hearing Officer's decision; and the penalty was not unfair, given the extremely serious nature of Constable Karklins' misconduct.

Held, Conviction and penalty upheld; appeal dismissed.

The Hearing Officer recognized that credibility was crucial in this case. His conclusion that Constable Karklins prepared two sets of summonses, but didn't serve the second set and a notice of suspension on Mr. Ferreira, was supported on the evidence. In rejecting Constable Karklins' evidence, he did not rely solely on his

observations of Mr. Ferreira's testimony. Rather, his findings were buttressed by other evidence, such as: Mr. Ferreira's honesty with Constable Karklins when he was stopped; Mr. Ferreira's appearance in court with the intention of disputing the charges; the absence of any reference to a second set of charges in the junior officer's memo book; the fact that Constable Karklins did not receive confirmation of the second motorist's suspension until two hours after he allegedly attempted to serve the notice of suspension; Constable Karklins' failure to mention the first set of charges when he appeared in court. The Hearing Officer rejected Constable Karklins' explanation for issuing a second set of tickets and his failure to clarify the identity of the motorist. The finding of guilt was reached after a thorough analysis of the evidence, and an application of the correct standard of proof. Constable Karklins' actions, which led to the imprisonment of an innocent man, were clearly discrediting to the Service.

As for the penalty of dismissal, the Hearing Officer rightly considered the misconduct as being "at the highest end of the serious spectrum." While the allegations contained in the Notice of Hearing focused on Constable Karklins' failure to serve the second set of summonses and Mr. Ferreira's conviction in absentia, the Hearing Officer was entitled to examine events leading up to the conviction and the consequences that flowed from Constable Karklins' misconduct, particularly given Constable Karklins' assertion of innocent error. This was not an instance of penalizing the officer for matters outside the scope of the Notice of Hearing.

The misconduct involved dishonesty repeated over the course of five years. It was not a spontaneous mistake. The Appellant was a senior, experienced traffic officer, and his course of conduct resulted in a serious and preventable miscarriage of justice. Moreover, the Hearing Officer found that Constable Karklins displayed no recognition of the seriousness of his actions, and no remorse. Given this absence of contrition, he felt that the Appellant's rehabilitative potential was in doubt. Reinforcing this view was his consideration of the progressive discipline factor: the Hearing Officer acknowledged the Appellant's 24-year, and generally good, employment record, while noting that recent discipline for unlawful/unnecessary exercise of authority appeared to have been ineffective in terms of correcting an unacceptable attitude.

The Hearing Officer's description of the test for dismissal as a "character attribute test" may not have been accurate; nevertheless, there were certain types of misconduct, such as the misconduct in issue here, which raised obvious concerns with respect to character. The evidence before the Hearing Officer supported his doubts about the Appellant's rehabilitative potential, and his future usefulness as a police officer. The conclusion that dismissal was warranted, notwithstanding the mitigating factors, was not erroneous or unreasonable.

CONSTABLE MICHAEL BYRNE
Appellant

AND

ONTARIO PROVINCIAL POLICE
Respondent

Presiding Members:

Murray W. Chitra, Chair
Garth Goodhew, Member

Appearances:

Jonathan D. Cocker, for the Appellant
Marnie Bacher and Jordana Joseph, for the Respondent

Heard:

February 7 and May 24, 2007

Date of Decision:

October 9, 2007

Summary of Reasons for Decision

Constable Michael Byrne appealed his conviction on one count of discreditable conduct, contrary to s. 2(1)(a)(xi) of the Code of Conduct, as well as the penalty imposed, forfeiture of 16 hours. Directions attached to the penalty were that it be worked on days off, completed within two months, with notification to Professional Standards upon completion.

Constable Byrne had secondary employment, in the form of a small landscaping business. At the time of events giving rise to the charge he was on medical leave. On April 12 and 13, 2004 he assisted Mr. Elmer Martin in transporting goods from an auction. On one of those trips auction staff loaded a wood splitter on Constable Byrne's truck. The wood splitter was not paid for prior to being removed. Later, during an investigation, Constable Byrne admitted that he had purchased the splitter. Several weeks later, the auction house owners contacted Mr. Martin, who referred them to Constable Byrne. The auction house owners sent repeated invoices and requests for payment to Constable Byrne. Payment was not received until August 12 or 13, 2004, after Constable Byrne had been interviewed with respect to this matter. In the meantime Mr. Martin, concerned for his own reputation because the splitter

had been left on his farm, contacted the OPP. A local officer was assigned to speak to the auctioneer, who then filed a written complaint.

The complaint resulted in a charge of discreditable conduct. Three of the four allegations were not proved at the disciplinary hearing; however, the Hearing Officer found that the fourth allegation was established, namely that Constable Byrne failed to pay for his purchase until the date he was interviewed by the Professional Standards Bureau. The Hearing Officer imposed a penalty of forfeiture of 16 hours.

Counsel for the Appellant brought a preliminary motion to introduce new or additional evidence, pursuant to s. 70(5) of the Police Services Act. The evidence consisted of the decision released by another Hearing Officer in a parallel proceeding against Constable Byrne, involving a charge of insubordination for Constable Byrne's failure to provide a duty report in response to the public complaint. The Hearing Officer on the insubordination charge found Constable Byrne not guilty, and commented that the two disciplinary charges should not have been "split" because this was contrary to "principles of natural justice and procedural fairness." The decision was released after Constable Byrne had filed his appeal.

Counsel for the Appellant argued that it was the OPP who had approached the auction house owner to file a public complaint, contrary to s. 57 of the Act; and as such, the conviction was without evidentiary foundation. Counsel argued that Constable Byrne was denied natural justice and procedural fairness because he was charged with two disciplinary offences arising from the same events; and accordingly, the penalty should be either quashed or reduced to a reprimand.

Counsel for the Respondent opposed the introduction of the new evidence, arguing, *inter alia*, that the Appellant was trying to expand the scope of grounds for appeal, without adhering to the time-limitations under s. 70(1). Counsel argued that the complaint filed by the auction house owner met the statutory requirements of a public complaint under Part V of the Act. Counsel further argued that the penalty was reasonable.

Held, Conviction and penalty upheld; appeal dismissed.

There were two grounds specified in the notice of appeal: the first focused on non-compliance with s. 57 and the second concerned the penalty. The notice contained no references to procedural unfairness; and procedural fairness could not be added as a substantive ground at this stage. However, the decision in the parallel proceeding was not available to Constable Byrne before his appeal materials were filed; and it was appropriate to receive the decision in support of the penalty component of the appeal, subject to relevance and weight.

The conviction rested upon a proper evidentiary foundation, because the complaint itself was valid. On its face, the complaint met all the statutory requirements: it was in writing; it concerned the conduct of a police officer; it was signed by the complainant;

it was filed in a timely manner; the complainant was directly affected; and the concerns were not frivolous, vexatious or made in bad faith.

The public complaints provisions of the *Act* were not designed to allow police officers to complain about treatment by fellow officers; instead, they were designed to promote public confidence in police conduct; hence the restrictions on who could bring complaints. However, in this case there was no evidence that the complaints procedure had been misused in this fashion. The complainant's right to complain was not extinguished because he filed it after a discussion with an OPP officer who was merely following up on an inquiry from Mr. Martin.

With respect to penalty, and for the reasons given in Byrne and Ontario Provincial Police, the Hearing Officer overstated the need for general deterrence. At the same time, he appeared to have understated the significance of the Appellant's prior disciplinary history, which he dismissed as being irrelevant because the offences were unrelated. Balancing the overstatement and the understatement, the penalty imposed was within the available range.

As for the decision in the parallel proceeding, the other Hearing Officer's comments did not provide a basis for either quashing or reducing the penalty. Procedural fairness could not be added as a substantive ground of appeal, nor could procedural fairness be invoked to mitigate the penalty. There might be situations where a reduction in penalty was warranted solely on the grounds of fairness, in the face of an egregious breach of natural justice or procedural fairness; but there was nothing of that sort in this case.

The Hearing Officer had the authority to impose a forfeiture that required the officer to work what would otherwise be time off; but for the reasons given in Wolfe and Ontario Provincial Police it was appropriate to delete the directions surrounding satisfaction of the penalty.

CONSTABLE NATHAN PARKER
Appellant

AND

NIAGARA REGIONAL POLICE SERVICE
Respondent

Presiding Members:

Noëlle Caloren, Member
Biagio (Bill) Marra, Member

Appearances:

David Pickering, for the Appellant
Woodward B. McKaig, for the Respondent

Heard:

May 9, 2007

Date of Decision:

November 6, 2007

Summary of Reasons for Decision

Constable Parker appealed his conviction on two counts of misconduct: use of unnecessary force against a prisoner, contrary to s. 2(1)(g)(ii) of the Code of Conduct, and neglect of duty, contrary to s. 2(1)(c)(v) of the Code.

Constable Parker had been employed by the Niagara Regional Police Service for 17 years. On June 11, 2005 a 13-year old male notified the service that he had been robbed by a group of youths, one with a knife. Constable Parker was on patrol that evening. He and his partner, Constable Wooley, observed a group of five young men who fit the description of the suspects. They pulled up alongside the young men, told them they were under arrest for robbery, and ordered them to sit down. All complied, except AB. Constable Parker used "open hand distraction techniques", giving AB one to three slaps about the head.

Constable Parker then claimed that he used pepper spray on AB, while he was outside the cruiser and unrestrained. Constable Parker stated that he was then able to handcuff AB, searched him, seized a knife, and placed AB in the cruiser. AB's version of events differed. He claimed that Constable Parker continued hitting him, got him handcuffed, and pepper sprayed him after he got him in the cruiser.

Back up officers arrived at the scene. At the police station, AB was searched and booking officers removed a folding buck knife, whereupon he was charged with possession of a prohibited weapon.

After AB's booking, Constable Parker completed an arrest report, in which he mentioned his use of open hand strikes. He made no mention of his use of pepper spray, either in the arrest report or in his notebook. Constable Parker did not complete a use of force report.

AB filed a complaint against Constable Parker, which led to the disciplinary charges.

At the disciplinary hearing, the Hearing Officer heard testimony from 15 witnesses, and received 39 exhibits. The central conflict in the evidence was when AB was pepper sprayed: before he was handcuffed and placed in the cruiser, or after he was handcuffed and placed in the cruiser. Constable Parker acknowledged his failure to mention the use of pepper spray in the arrest report and his failure to complete a use of force report; but he claimed that it was not a deliberate omission; that he was tired and simply forgot.

Counsel for the Appellant argued that the preponderance of evidence supported Constable Parker's version of events, and that the Hearing Officer focused solely on the issue of Constable Parker's credibility. Counsel argued that the Hearing Officer failed to consider the defence of inadvertence with respect to the Appellant's failure to report his use of pepper spray. Counsel for the Respondent argued that the Hearing Officer properly accepted AB's version of events; and that the failure to report the pepper spray was deliberate.

Held, Convictions upheld; appeal dismissed.

This case turned primarily on credibility. The Hearing Officer found Constable Parker's evidence on several aspects of the events misleading, inconsistent or untruthful. His preference for AB's version of events was not based solely on an assessment of demeanour, but rather on his analysis of the evidence of numerous witnesses. The Hearing Officer's finding regarding Constable Parker's credibility was reached after a careful consideration and weighing of all the evidence before him. There were no manifest errors in his decision, nor any other grounds for intervention.

In order to establish neglect of duty, the conduct in question had to contain an element of wilfulness or a degree of neglect which would cross the line from a mere performance issue to misconduct. The Hearing Officer found that line had been crossed in this case; and his conclusion was neither erroneous nor unreasonable. Police officers had a duty to report any use of force, pursuant to s. 14.5 of Reg. 926. This requirement was reinforced by service rules and directives. Constable Parker clearly did not meet these requirements. It was open to the Hearing Officer to conclude that Constable Parker's failure to do so was not an innocent error or omission, and that his explanation was not credible.

CONSTABLE KEVIN HALL
Appellant

AND

OTTAWA POLICE SERVICE
Respondent

Presiding Members:

Murray Chitra, Chair
Garth Goodhew, Member
Hyacinthe Miller, Member

Appearances:

Steven J. Welchner, for the Appellant
Robert E. Houston, Q.C., for the Respondent

Heard:

April 26, 2007

Date of Decision:

December 5, 2007

Summary of Reasons for Decision

Constable Hall appealed the penalty decision of the Hearing Officer, imposing dismissal in the absence of resignation within seven days. Constable Hall pled guilty to eight disciplinary charges: five counts of discreditable conduct, contrary to s. 2(1)(a)(xi) of the Code of Conduct, two counts of corrupt practice, contrary to s. 2(1)(f)(ii) of the Code, and one count of neglect of duty, contrary to s. 2(1)(c)(v) of the Code.

Constable Hall began using alcohol at age 14, and began using marijuana at age 15. At age 33 he decided to become a police officer. In 1996 he entered a treatment program, and was diagnosed as being chemically dependent on alcohol and cannabis. Around that time he enrolled in the Law Enforcement Foundation Program at Algonquin College. He volunteered with the Ottawa Police Service, and in 1999 he was hired by the Service. As part of the employment application process, Constable Hall completed a Good Moral Character and Habits Questionnaire, in which he failed to disclose the nature and extent of his drug and alcohol use. Consequently the service was unaware of his substance abuse problems.

From 1996 to 2001 Constable Hall did not use marijuana, and did not abuse alcohol. However, in 2001 he experienced personal/domestic problems, and he resumed

using marijuana. He continued to do so for the next three years. In November 2004, during a routine traffic stop, he seized a quantity of crack cocaine, kept the drug without reporting it, and used it himself. Constable Hall then developed a third addiction, to crack cocaine. Over the course of the following year he purchased drugs, both on and off duty, stole drugs from motorists and stole drugs from court exhibits. He attended treatment programs, which he did not disclose to the service. He also began seeing a specialist in addiction medicine, Dr. Morissette.

In December 2005 Constable Hall was charged with nine counts of misconduct, one of which was later withdrawn. He pled guilty to eight charges. In December 2006 the Hearing Officer issued his sentencing decision.

At the outset of the appeal proceeding, counsel for the Appellant brought a motion to introduce fresh evidence: an e-mail sent by the Chief to all members of the service in September, 2006 and a medical progress letter from Dr. Morissette dated April 13, 2007, stating that Constable Hall remained abstinent, was continuing treatment, and that his prognosis was excellent. The e-mail informed members that Constable Hall had pled guilty to eight disciplinary allegations and that the service would be seeking Constable Hall's dismissal at the sentencing hearing. Counsel for the Appellant argued that the e-mail was improper and prejudicial; the Hearing Officer could have been aware of the contents prior to rendering his decision; and the e-mail was an abuse of process that gave rise to a reasonable apprehension of bias. Counsel argued that in his decision the Hearing Officer made a number of errors, such as the conclusion that Constable Hall was likely at work under the influence of drugs, and his potential for relapse. Alleged errors also included the Hearing Officer's admission of the Good Moral Character and Habits Questionnaire. Counsel contended that the Hearing Officer failed to give proper weight to human rights principles, and the service's duty to accommodate. Counsel further contended that the Hearing Officer erred in distinguishing Kelly and Toronto Police Service as well as Guenette and Ottawa-Carleton Regional Police Service.

Counsel for the Respondent argued that the e-mail should not be accepted as fresh evidence; there was no evidence it came to the Hearing Officer's attention; and the evidence was neither relevant nor significant. Counsel argued that this was not fundamentally a human rights matter; instead it was a case of gross abuse of authority. Counsel argued that the Hearing Officer's conclusions were not erroneous, and the penalty was appropriate.

Held, Preliminary motion allowed in part. Penalty upheld; appeal dismissed.

The e-mail came to the attention of the Administrator of the service, who was one of Constable Hall's witnesses, prior to the conclusion of the sentencing hearing. Thus there was no reason why it could not have been raised with the Hearing Officer. As such, the evidence did not meet the due diligence test and was not admissible. However, the medical progress note was not available at the time of the disciplinary

hearing. The note was relevant, credible, and it was appropriate to receive the most current information on the Appellant's medical status.

The Hearing Officer did not err in admitting the questionnaire completed by Constable Hall when he applied for employment with the service. The document went astray from Constable Hall's personnel file and did not come to the Prosecutor's attention until the week before the hearing. The Prosecutor then promptly disclosed it to Constable Hall's counsel. The document was relevant to Constable Hall's employment history and was properly received into evidence.

There was no evidence that Constable Hall ever used cocaine or marijuana while on duty, so the Hearing Officer's finding that he was "in all probability" under the influence while on duty could not stand. Nevertheless, the remainder of the undisputed evidence against Constable Hall clearly warranted dismissal, in the absence of significant mitigating factors. The Hearing Officer noted some mitigating factors in this case: letters of support, an expression of remorse and the guilty plea, which indicated Constable Hall's acceptance of responsibility. Constable Hall also had a clear disciplinary record, although his employment was brief, and during that period he was purchasing and using drugs.

Constable Guenette's conduct was distinguishable, in that a single aberrant act of misconduct was involved in that case. In this case Constable Hall engaged in a course of conduct during a one-year period, involving multiple offences, both on and off duty.

Kelly and Toronto Police Service was also distinguishable. Constable Kelly did not steal drugs from citizens or evidence envelopes, and did not purchase drugs while on duty. However, the human rights principles articulated in Kelly were likewise applicable here. The service was under a legal duty to accommodate Constable Hall's disability (addiction to crack cocaine). The duty to accommodate involved an individualized assessment, which also took account of the employment setting. In this case, Constable Hall's drug use appeared in part to be stress-driven, yet employment as a police officer was inherently stressful; it was also difficult to avoid exposure to drugs which, Dr. Morissette had commented, could trigger intense cravings in the case of a drug like cocaine. This gave rise to the Hearing Officer's reasonable conclusions about the possibility of relapse. Although Dr. Morissette felt that Constable Hall could be readily accommodated, the evidence before the Hearing Officer was that Constable Hall was unsuited to the positions identified as available.

The duty to accommodate was not limitless. Given the evidence that stress and exposure to drugs could trigger relapse, it was a reasonable conclusion that Constable Hall could not remain employed in an environment which could not be purged of those two elements. Under the circumstances, it was open to the Hearing Officer to conclude that accommodation would cause undue hardship. The penalty imposed was reasonable and did not reflect an error in principle.

SUSAN COLE
Appellant (Respondent on Motion)

AND

SERGEANT (RETIRED) DAVID RAY AND ONTARIO PROVINCIAL POLICE
Respondents (Applicants on Motion)

Presiding Members:

Noëlle Caloren, Member
Hyacinthe Miller, Member

Appearances:

Susan Cole, Appellant
Leo Kinahan, for the Respondent Sergeant Ray
Superintendent Michael Shard, for the Respondent OPP

Heard:

May 2, 2007

Date of Decision:

December 18, 2007

Summary of Reasons for Decision

The Appellant brought a public complaint against the Respondent Sergeant Ray, alleging he improperly disclosed information pertaining to her. On October 27, 2006 the Hearing Officer rendered an oral decision, concluding that Sergeant Ray was not guilty of breach of confidence. Ms. Cole filed a notice of appeal two days later. The Hearing Officer released his written decision on December 1, 2006. In the meantime, on October 31, 2006 Sergeant Ray retired from the OPP.

Counsel for the Respondent brought a motion, challenging the Commission's jurisdiction to proceed with the appeal. Counsel argued that the Commission lacked jurisdiction because the Respondent was no longer a police officer, and the matter was moot because the Commission could impose no further penalty against Mr. Ray. The OPP supported the no-jurisdiction motion. The Appellant argued, *inter alia*, that a live controversy existed between the parties, and that the Hearing Officer's oral decision operated to "freeze" Mr. Ray's status as a police officer.

Held, No-jurisdiction motion granted.

As found in the Holder decision, the Commission did not have jurisdiction over persons who were not members of a police service. It was the status of parties at the time an appeal was heard that determined jurisdiction, not their status on the date that the decision being appealed from was rendered. Once Sergeant Ray retired, he ceased to be a police officer. Accordingly, the Commission lacked jurisdiction to proceed with the appeal.

CONSTABLE MICHAEL BYRNE
Appellant

AND

ONTARIO PROVINCIAL POLICE
Respondent

Presiding Members:

Murray W. Chitra, Chair
Garth Goodhew, Member

Appearances:

Jonathan D. Cocker, for the Appellant
Marnie Bacher, for the Respondent

Heard:

October 30, 2007

Date of Decision:

December 21, 2007

Summary of Reasons for Decision

Constable Michael Byrne, a nineteen-year member of the OPP, appealed his conviction on one count of discreditable conduct, contrary to s. 2(1)(a)(xi) of the Code of Conduct, as well as the penalty imposed for the conviction, forfeiture of sixteen hours off.

Constable Byrne had secondary employment in the form of a small business which focussed on landscaping and snow removal. He entered into an unwritten contract with Ms. Maas for snow removal. Ms. Maas brought a formal complaint against Constable Byrne. After investigating, the OPP charged him with one count of discreditable conduct. The charge included three allegations: that Constable Byrne inappropriately used his position to attempt to collect monies owed to him through his secondary employment; that he made inappropriate comments to a member of the public, Ms. Maas; and that he breached the secondary employment policy by failing to obtain permission for his secondary employment.

On the first day of the disciplinary hearing counsel for Constable Byrne brought a preliminary motion, challenging the Hearing Officer's jurisdiction to proceed. The motion alleged that Constable Byrne had been denied procedural fairness, and also that there was an institutional bias on the part of the OPP in their investigation of

various public complaints against Constable Byrne. Counsel for the OPP opposed the motion on several grounds, including the fact that she had only been advised of the motion the previous day.

The Hearing Officer denied the motion, but indicated that Constable Byrne would be permitted to lead evidence in support of his motion during the disciplinary hearing.

After closing her case and during Constable Byrne's cross-examination the Prosecutor presented, over Defence Counsel's objection, a letter stating that a search of Constable Byrne's personnel file failed to disclose any written permission to undertake secondary employment. The Hearing Officer admitted the document, and allowed cross-examination on the scope of Constable Byrne's secondary employment and the issue of whether he had permission for his secondary employment activities.

Constable Byrne testified that he had been involved in secondary employment since 1992, but that his business evolved from CPR/First Aid to its present form. He produced a memorandum providing approval for secondary employment which indicated that approval was subject to conditions, including the condition that the occupation remain within its original parameters. He testified that he advised his Staff Sergeant of the expanded scope of his business, that the Staff Sergeant had checked and told him that written approval was not required.

The Hearing Officer found that two of the three allegations - inappropriate use of position and inappropriate comments - had not been proved. However, he found that the third allegation concerning unauthorized secondary employment was substantiated. Consequently, he found Constable Byrne guilty of discreditable conduct. In a subsequent decision, he imposed a penalty of forfeiture of sixteen hours.

Counsel for the Appellant argued that the Hearing Officer denied Constable Byrne a full, fair and impartial hearing. In particular, he argued that the Hearing Officer breached principles of natural justice and procedural fairness by not permitting him to call evidence in support of his preliminary motion, and by permitting the Prosecution to raise the issue of secondary employment while the Defence was putting in its case. Counsel argued that the secondary employment allegation had not been proved, and the penalty was also unreasonable.

Counsel for the Respondent argued that the denial of the Appellant's preliminary motion did not involve any breach of fairness because he had the opportunity to present evidence on those issues during the hearing itself. Counsel argued that the Appellant was not taken by surprise with respect to the issue of secondary employment, since this was included in the notice of hearing and disclosure was provided. Counsel argued that neither the conviction nor the penalty should be disturbed.

Held, Conviction revoked; appeal allowed.

There were essentially two grounds for appeal: the first was the denial of the preliminary motion, while the second was the conduct of the hearing and its outcome, i.e. the conviction and penalty.

Faced with the preliminary motion, the Hearing Officer had two options: granting an adjournment to allow the Prosecutor to prepare a full response, or proceeding with the hearing, subject to Constable Byrne's right to bring his motion later. The Hearing Officer chose the second option. This was a reasonable course under the circumstances. The Appellant had an opportunity to renew his motion during the hearing, but did not do so. Thus it was not apparent that the denial of his preliminary motion resulted in any procedural unfairness or breach of natural justice.

However, the second ground of appeal succeeded. The Hearing Officer stated that the Prosecutor proved her case, but did not provide any reasons in support of his conclusion. And yet, the Prosecutor had led no evidence to substantiate the allegation concerning secondary employment. In addition, it was unfair to confront the Appellant with evidence that should have been led during the Prosecutor's case. The employer should not be allowed to split its case in this fashion. Finally, the Appellant's assertion that he had sought and received modification of his secondary employment permission was not contradicted. If the Hearing Officer rejected the Appellant's explanation - that Constable Byrne's Sergeant told him written authorization was not required - this was not apparent in his reasons.

Constable Byrne had twice been successfully prosecuted for secondary employment activities other than CPR/First Aid training (Byrne and Ontario Provincial Police, July 16, 2007 and Byrne and Ontario Provincial Police, October 9, 2007, *infra*), yet no issue was raised about authorization for those activities. Raising that issue for the first time during prosecution of the third matter created further concerns about fairness.

Accordingly the conviction could not stand.

Judicial Appeals and Reviews

The following is a list of Commission decisions that were subject to Judicial Appeal or Review where the courts rendered their decision in 2007. A full text of the Judicial Appeal or Review decisions can be obtained at: <http://www.canlii.org/on/>.

PARTIES	COURT	OUTCOME
Russell (Applicant) v. Ontario Civilian Commission on Police Services (Respondent)	Supreme Court of Canada	Dismissed.
Roger Rolfe (Respondent/Applicant) v Ontario Civilian Commission on Police Services (Appellant/Respondent)	Supreme Court of Canada	Dismissed.
Lorraine v Ontario Civilian Commission on Police Services	Divisional Court	Appeal abandoned July 16, 2007.
Gonzales (OPP) v Ontario Civilian Commission on Police Services	Divisional Court	Appeal denied June 21, 2007
Nemmour v Ontario Civilian Commission on Police Services	Divisional Court	Motion denied June 26, 2007
Blakely (Quinte West) v Ontario Civilian Commission on Police Services	Divisional Court	Commission's decision set aside. Penalty of reprimand imposed by Hearing Officer restored.
Carson(Pembroke) v Ontario Civilian Commission on Police Services	Divisional Court	Appeal dismissed. Costs to appellant fixed at \$5,000.

Public Complaints

Part V of the Police Services Act mandates the Commission as 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.

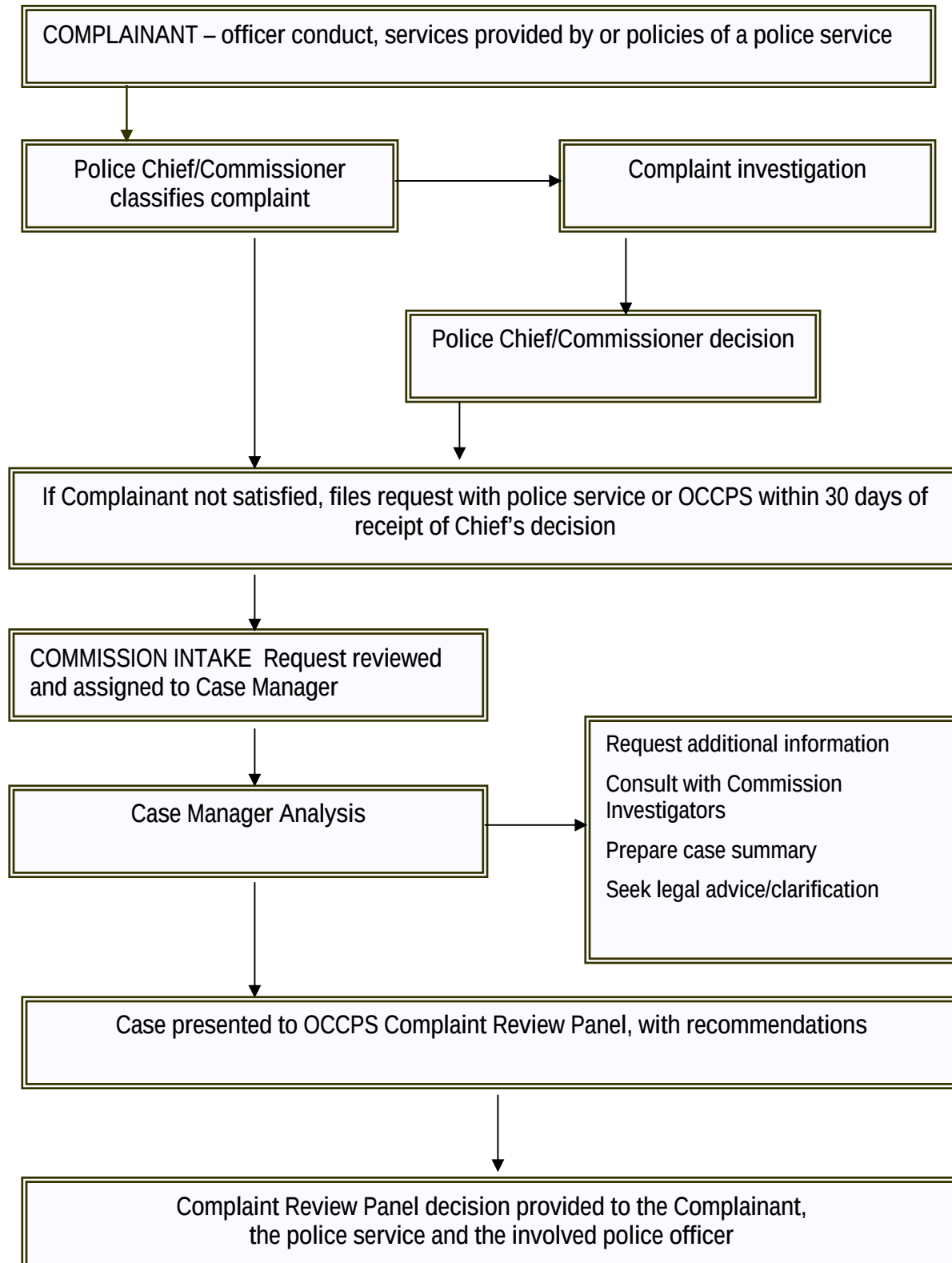
If the individual involved is not satisfied with the decision of the Chief of Police or Commissioner of the Ontario Provincial Police, the complainant has 30 days to write to the Commission and request a review. To conduct the review, the Commission requests information from the complainant as well as 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 or they may vary the decision. The Review Panel may 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 2007, there were 2,623 public complaints filed against the 23,383 sworn police officers or their police services in Ontario. This represents a slight increase in complaints made against the sworn police officers for 2006. During 2007 the Commission received 553 requests for review, an increase of requests from the previous year.

An overview of the complaints review process and a statistical summary of public complaints from 2003 to 2007 are contained on the following pages.

Overview of Public Complaints Process



Statistical Charts

The following four charts depict:

- The number of public complaints against police officers in Ontario for the period 2003 - 2007
- 2007 Police Service Complaints Activity
- Reviews requested by complainants for the period 2003 - 2007
- Commission review statistics 2003- 2007

PUBLIC COMPLAINTS AGAINST POLICE OFFICERS IN ONTARIO + 2003 - 2007

2003	2,845
2004	3,110
2005	2,868
2006	2,613
2007	2,623

+ Source: Police Services Self Reported

2007 Police Services	OUTSTANDING INVESTIGATIONS (December 2007)																					
	LOST JURISDICTION	HEARING	INFORMAL DISCIPLINE	UNSUBSTANTIATED	WITHDRAWN	RESOLUTION - Informal (Conduct)	NOT DEALT WITH (Section 59)	ALLEGATIONS - Other	ALLEGATIONS - Unsatisfactory Work Performance	ALLEGATIONS - Exercise of Authority	ALLEGATIONS - Excessive Use of Force	ALLEGATIONS - Discreditable Conduct	ALLEGATIONS - Neglect of Duty	ALLEGATIONS - Incivility	PUBLIC COMPLAINTS CARRIED FROM PREVIOUS YR 2006	TOTAL PUBLIC COMPLAINTS --- POLICY	TOTAL PUBLIC COMPLAINTS --- SERVICE	TOTAL PUBLIC COMPLAINTS --- CONDUCT	TOTAL PUBLIC COMPLAINTS 2007 (NEW)	TOTAL PUBLIC COMPLAINTS 2006	Total Officers subject to Part V	
Amherstburg	0	0	0	1	3	0	0	0	0	1	0	1	0	2	0	0	0	4	4	9	31	
Aylmer	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	13	
Barrie	9	0	0	0	5	12	5	0	10	6	13	2	0	9	10	0	1	39	40	34	199	
Belleville	3	0	1	0	6	6	0	3	0	11	0	4	3	1	3	0	2	17	19	16	86	
Brantford	5	0	0	4	6	4	0	1	0	2	2	2	6	6	0	1	1	18	20	25	155	
Brockville	0	0	0	2	3	0	0	0	0	0	0	0	0	0	0	0	0	5	5	2	41	
Chatham Kent	2	1	0	5	3	5	3	1	0	3	8	10	7	1	3	0	0	29	29	30	170	
Cobourg	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	28	
Cornwall	1	0	0	2	3	1	0	0	0	0	2	7	0	0	0	0	0	9	9	16	91	
Deep River	0	0	1	1	0	0	0	0	0	1	0	1	0	0	1	0	0	1	1	2	8	
Dryden	1	0	0	5	0	0	0	1	1	1	1	1	0	3	0	0	1	6	7	2	20	
Durham Regional	16	0	2	0	21	5	39	16	0	14	19	74	12	0	1	0	5	94	99	100	971	
Espanola	0	0	0	1	0	1	0	1	0	0	1	1	0	1	0	0	0	3	3	0	11	
Essex	3	0	0	2	0	0	0	0	0	0	0	1	3	0	0	0	1	4	5	3	32	
Gananoque	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	2	15	
Guelph	1	0	1	5	0	5	0	2	2	1	2	2	1	6	0	1	1	14	14	14	182	
Halton Regional	12	0	0	3	12	6	2	2	0	0	11	38	8	0	9	0	0	59	59	61	582	

2007 Police Services	OUTSTANDING INVESTIGATIONS (December 2007)																					
	LOST JURISDICTION	HEARING	INFORMAL DISCIPLINE	UNSUBSTANTIATED	WITHDRAWN	RESOLUTION - Informal (Conduct)	NOT DEALT WITH (Section 59)	ALLEGATIONS - Other	ALLEGATIONS - Unsatisfactory Work Performance	ALLEGATIONS - Exercise of Authority	ALLEGATIONS - Excessive Use of Force	ALLEGATIONS - Discreditable Conduct	ALLEGATIONS - Neglect of Duty	ALLEGATIONS - Incivility	PUBLIC COMPLAINTS CARRIED FROM PREVIOUS YR 2006	TOTAL PUBLIC COMPLAINTS --- POLICY	TOTAL PUBLIC COMPLAINTS --- SERVICE	TOTAL PUBLIC COMPLAINTS --- CONDUCT	TOTAL PUBLIC COMPLAINTS 2007 (NEW)	TOTAL PUBLIC COMPLAINTS 2006	Total Officers subject to Part V	
Hamilton	0	0	3	73	11	26	28	0	0	22	23	41	26	29	0	0	6	141	147	117	787	
Hanover	1	0	0	0	3	0	0	0	0	0	3	0	0	1	2	0	0	2	2	4	14	
Kawartha Lakes City of (formerly Lindsay)	1	0	0	8	0	0	0	0	0	2	2	2	2	1	0	0	1	8	9	4	38	
Kenora	0	0	0	1	2	1	0	0	0	2	0	1	1	0	0	0	0	4	4	6	35	
Kingston	5	3	1	8	1	3	2	0	0	0	8	0	6	5	5	4	0	19	23	25	188	
LaSalle	0	1	0	0	1	1	0	0	0	1	0	1	0	1	0	0	0	3	3	2	34	
Leamington	2	0	0	1	0	2	1	0	1	0	0	0	4	1	0	0	0	6	6	2	41	
London	20	4	8	16	6	7	6	8	0	9	7	15	21	7	6	3	5	67	75	81	578	
Michipicoten Township	0	0	0	0	0	1	0	0	0	0	0	0	1	0	0	0	1	0	1	1	11	
Midland	0	0	0	4	0	1	0	0	0	0	1	0	0	0	4	0	0	1	1	6	26	
Niagara Regional	20	2	0	24	11	11	24	0	2	15	24	16	21	24	21	0	0	92	92	82	648	
North Bay	2	2	0	0	6	2	2	0	3	3	4	0	2	2	0	0	0	14	14	12	92	
Ontario Provincial Police	31	6	22	153	59	14	131	0	0	15	36	274	162	106	10	5	26	380	411	422	5754	
Orangeville	0	0	0	3	1	0	1	0	2	2	1	0	0	0	1	0	1	4	5	13	38	
Ottawa	100	4	0	98	61	12	36	0	0	0	26	189	22	0	77	4	6	237	247	204	1270	
Owen Sound	0	1	1	1	0	0	2	0	0	0	2	0	2	1	0	0	0	5	5	2	40	
Oxford Community	2	1	0	4	0	0	0	1	0	1	4	0	1	0	0	0	0	7	7	3	79	
Peel Regional	17	4	1	23	4	64	38	0	0	5	26	0	63	28	44	0	3	81	84	130	1735	

2007 Police Services	OUTSTANDING INVESTIGATIONS (December 2007)																					
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Pembroke	0	0	0	0	1	0	0	0	2	0	0	0	1	0	0	0	0	2	3	7	29	
Perth	0	0	0	0	0	1	0	0	0	1	0	0	0	0	0	0	0	0	1	2	15	
Peterborough Lakefield	2	0	7	4	6	2	2	0	0	0	2	8	13	0	5	0	0	23	23	33	125	
Port Hope	0	0	0	2	0	0	0	0	0	0	0	0	2	0	0	0	0	2	2	1	24	
Sarnia	14	0	0	0	3	0	0	0	0	9	5	3	2	5	8	0	0	15	15	11	111	
Saugeen Shores	0	0	0	0	1	0	0	0	0	0	0	0	0	1	1	0	0	1	4	20		
Sault Ste. Marie	6	0	0	7	0	0	0	0	0	3	2	1	5	2	7	0	0	13	21	138		
Shelburne	0	0	0	2	1	1	0	1	0	0	1	0	2	0	0	0	0	4	4	1	11	
Smiths Falls	0	0	0	5	2	0	0	2	0	2	2	0	2	1	2	1	0	6	6	23		
South Simcoe	0	0	0	4	2	2	0	0	0	1	2	2	3	0	0	1	0	7	7	79		
St. Thomas	1	0	0	2	1	0	0	0	0	1	1	0	2	0	1	0	0	4	10	61		
Stirling Rawdon	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	9		
Stratford	1	1	0	1	2	0	0	0	0	2	1	0	1	0	1	0	0	4	5	55		
Strathroy Caradoc	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	30		
Sudbury Regional	11	0	2	26	22	0	13	3	0	13	13	4	13	6	23	0	1	51	71	255		
Thunder Bay	3	0	4	9	14	0	14	8	0	3	5	0	18	10	1	1	18	25	39	222		
Timmins	3	0	0	1	4	3	0	0	0	3	3	6	4	2	5	0	0	14	22	13		
Toronto	139	1	5	112	58	59	303	5	0	10	81	110	47	121	196	4	5	374	659	5588		

2007 Police Services	OUTSTANDING INVESTIGATIONS (December 2007)																					
	LOST JURISDICTION	HEARING	INFORMAL DISCIPLINE	UNSUBSTANTIATED	WITHDRAWN	RESOLUTION - Informal (Conduct)	NOT DEALT WITH (Section 59)	ALLEGATIONS - Other	ALLEGATIONS - Unsatisfactory Work Performance	ALLEGATIONS - Exercise of Authority	ALLEGATIONS - Excessive Use of Force	ALLEGATIONS - Discreditable Conduct	ALLEGATIONS - Neglect of Duty	ALLEGATIONS - Incivility	PUBLIC COMPLAINTS CARRIED FROM PREVIOUS YR 2006	TOTAL PUBLIC COMPLAINTS --- POLICY	TOTAL PUBLIC COMPLAINTS --- SERVICE	TOTAL PUBLIC COMPLAINTS --- CONDUCT	TOTAL PUBLIC COMPLAINTS 2007 (NEW)	TOTAL PUBLIC COMPLAINTS 2006	Total Officers subject to Part V	
Waterloo Regional	0	0	0	0	0	55	27	0	0	6	52	32	20	17	11	0	1	65	66	69	700	
West Grey (formerly Town of Durham)	0	0	0	0	2	0	0	1	1	0	0	0	0	1	0	0	1	2	3	4	20	
West Nipissing	2	0	0	0	1	0	1	0	0	0	1	1	2	0	1	0	0	4	4	1	20	
Windsor	17	0	3	12	19	26	12	0	0	9	36	57	29	25	2	0	5	82	87	87	479	
Wingham	0	0	1	0	0	1	0	1	1	0	0	0	0	0	0	0	0	2	2	0	7	
York Regional	65	0	1	13	12	26	13	0	0	10	19	45	21	35	42	1	0	130	131	116	1296	
Services disbanded during 2007																						
Temiskaming Shores (formerly New Liskeard)	0	0	0	0	1	0	0	0	0	0	0	1	0	0	0	0	0	1	0	0	10	
TOTALS	552	13	28	82	769	386	366	690	34	25	190	452	680	559	463	504	26	93	2204	2623	23383	

REVIEWS REQUESTED BY COMPLAINANTS **

2003 – 2007

2003	488
2004	562
2005	569
2006	546
2007	553

****Source:** *Ontario Civilian Commission on Police Services*

OCCPS REVIEW STATISTICS
2003 - 2007

	2002	2003	2004	2005	2006	2007
Total Complaints Reported in Ontario*	2814	2845	3110	2868	2613	2623
Reviews by OCCPS	466	488	562	569	546	553
Decisions Varied:	91	85	126	128	110	116
% Varied	20%	17%	22%	22%	20%	20%
Hearings Ordered	19	30	18	14	13	18
Less Serious Misconduct	8	5	13	4	8	5
Further Investigation	39	31	67	74	61	60
Varied Classification	25	19	28	33	28	19
Less Serious to No Misconduct				3		
No jurisdiction						24

*As self reported by Police Service

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 First Nations.

In 1975, the Task Force on Policing lead 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 of the Police Services Act, states that, “with the Commission’s approval, the Commissioner may appoint a First Nations Constable to perform specific duties” and further, “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 are responsible for enforcing provincial and federal laws and band bylaws in First Nations Territories.

In 2007, there were in excess of 400 First Nations Constables serving in Ontario. The Commission approved 50 First Nations Special Constable appointments in the calendar year 2007.