

**ONTARIO CIVILIAN
POLICE COMMISSION**

**COMMISSION CIVILE DE
L'ONTARIO SUR LA POLICE**



**Safety, Licensing Appeals and
Standards Tribunals Division**

**Division de la sécurité, des appels en
matière de permis et des normes**

Citation: Campoli v. Toronto Police Service, 2020 ONCPC 11

Date: 2020-11-09
File Number: 20-ADJ-004

***In the Matter of an Appeal under Section 87 (1) of the Police Services Act,
R.S.O. 1990, c. P.15, as amended***

Between:

Cst. Adam Campoli

Appellant

And

Toronto Police Service

Respondent

And

The Independent Police Review
Director

Intervener

And

D. John

Public Complainant

Panel:

D. Stephen Jovanovic, Associate Chair
Laura Hodgson, Vice-Chair
Jesse Boyce, Member

Appearances:

David Butt, counsel for the appellant
Alexandra Ciobotaru, counsel for the respondent
Morvarid Shojaei, counsel for the Intervener

**Place and date of
hearing:**

October 13, 2020

INTRODUCTION

- [1] This appeal arises from the decision of Superintendent Riyaz J. Hussein (the Hearing Officer) dated December 6, 2019 by which he found the appellant guilty of one count of Discreditable Conduct contrary to s. 2(1)(a)(v) of the *Code of Conduct*, O. Reg. 268/10 under the *Police Services Act* (the *PSA*). The particulars of the charge were as follows:

Being a member of the Toronto Police Service, you were attached to 23 Division in a uniform capacity.

On Tuesday, February 4th, 2014, you were on duty and received a radio call regarding a stolen vehicle at 32 Stoffel Drive.

You and your partner, Police Constable Joshua SARASUA (9439) attended the 627 Dixon Road to speak with the complainant, D.J., and commenced an investigation in relation to the stolen vehicle.

You used profane, abusive or insulting language towards D.J.

In doing so, you committed misconduct in that you did use, profane abusive or insulting language or is otherwise uncivil to a member of the public.

- [2] The appellant was charged with two other counts of Discreditable Conduct relating to his search of Mr. John's rental vehicle and his allegedly unlawful strip search of Mr. John following his arrest for Public Mischief. The appellant was acquitted of these two counts. His hearing took place together with one involving officer Sarasua who was charged and acquitted of one count of Discreditable Conduct which charge arose from the same incident and his involvement in the strip search of Mr. John.

DISPOSITION

- [3] For the reasons that follow, the decision of the Hearing Officer finding the appellant guilty of Discreditable Conduct is revoked.

OVERVIEW

- [4] The essential facts giving rise to the charges are not in dispute. Mr. John had reported that his car was stolen to the Peel Regional Police Service (the PRPS) in April 2013. Two to three months later, he received a letter advising him that the car was found and was being stored at Collision World in Etobicoke. Mr. John testified that he waited until February 4, 2014 to contact the PRPS again, to report the location of his car which was still at Collision World. He was advised to contact the Toronto Police Service (the TPS).
- [5] Mr. John then placed two calls to 911, the second because he believed the TPS was not responding quickly enough to his first call. In a series of recordings of his conversations with the 911 dispatcher that were played before the Hearing Officer, Mr. John was heard making various comments about how one of the people at the location where his car was may have had a gun as he thought he saw the handle or the butt of a gun in the person's waistband. Numerous TPS officers were dispatched to the call.
- [6] The officers who responded, including the appellant, were advised that the car had not been reported stolen and that Mr. John was known to harbour anti-police sentiments. Officer Sarasua testified before the Hearing Officer that he was told that "this male is very aggressive and belligerent towards police, this male made it known that he is happy when a police officer is killed or a member of a police officer's family is killed."
- [7] The appellant testified that because of the urgency of the situation, the conflicting information about whether the vehicle had in fact been stolen and the belligerence of Mr. John at the scene, he felt that he had to gain control of the situation. The appellant said the following to Mr. John: "What's the plate, because that plate doesn't come back as anything. I don't know what the fuck you're talking about". To which Mr. John replied: "You don't know what the fuck I'm talking about?"
- [8] The Hearing Officer's analysis as to whether this comment amounted to Discreditable Conduct was brief. He disagreed with the appellant's position that the context in which the language was used mattered and that he engaged in a "legitimate use of

tactical communication.” The Hearing Officer accepted the prosecution’s position that “this language was used without justification and it’s irrelevant whether or not there was provocation by the complainant.....de-escalation and tactical communication can be accomplished without the use of profanity”.

[9] The Hearing Officer also agreed with the prosecution’s submission that “the target of that language is irrelevant. It’s not acceptable and the prosecution’s position is that based on the audio, that charge has been proven on a clear and convincing standard”.

[10] His ultimate conclusion is found at paragraphs 415-416 of his decision where he wrote the following:

415. The Police must be held to a higher standard in order to maintain Public trust and legitimacy. Professionalism at all times, and refraining from using profanity is a corner stone of positive, efficient and legitimate communication with the Public. The Public must be confident that the Police are under control at all times and are properly trained to address even the most frustrating of circumstances.

416. The Tribunal cannot condone the use of profanity nor can it sanction it as training provided by the Toronto Police Service, as acceptable tactical communication.

[11] The Hearing Officer appears to have equated the use of profanity with Discreditable Conduct, absolutely.

ISSUES

[12] In our view, there is a single issue in this appeal that can be simply stated: Did the Hearing Officer correctly state and apply the test for Discreditable Conduct? The parties are in agreement that he did not. We concur. Our analysis of what the test is follows below.

ANALYSIS

- [13] The standard of review to be applied by the Commission hearing an appeal from a decision of a hearing officer is reasonableness on questions of fact and correctness on questions of law: *Ottawa Police Service v. Diafwila*, 2016 ONCA 627. Questions as to whether facts satisfy a legal test are questions of mixed fact and law which are also to be reviewed on the standard of reasonableness unless there is an extricable question of law involved: *Dunsmuir v. New Brunswick*, 2008 SCC 9 at para. 53
- [14] All parties cite the Commission's decision in *Mulville and Azaryev and York Regional Police Service*, 2017 CanLII 19496 (ON CPC) as setting out the correct test for determining whether an officer's conduct, as found by a hearing officer, amounts to Discreditable Conduct. In *Mulville* the Commission wrote the following:
44. The Hearing Officer was required to apply an objective test when considering the actions of P.C. Mulville.
45. The objective test would require that the Hearing Officer place a reasonable citizen fully apprised of the same facts and circumstances, aware of the applicable rules and regulations, in the same situation to assess whether the officer's language was discreditable: See: *Toy v. Edmonton (City) Police Service*, [2014] A.J. No. 1191 at para. 11.
46. The Hearing Officer did not define or identify the objective, reasonable person test or include any type of reasonable person analysis of P.C. Mulville's language or conversation with the youths, language which Ms. MacDonald acknowledged was not racist, sexist, derogatory or abusive. The Hearing Officer also did not measure P.C. Mulville's language or conversation against the reasonable expectations of the community.
- [15] The appellant also cites the Commission's decision in *Mulligan v. Ontario Provincial Police*, 2017 ONCPC 19 and the Divisional Court decision *Monaghan v. Toronto Police Service*, 2005 CanLII 11796 as setting out the correct test for discreditable conduct.
- [16] While *Mulville*, *Mulligan* and *Monaghan* may have some application to the appeal

before us, it is important to note that in all three of these cases the officers were charged with Discreditable Conduct under s. 2(1)(a)(xi) of the *Code of Conduct* which reads as follows:

2(1) Any chief of police or other officer commits misconduct if he or she engages in,

(a) Discreditable Conduct, in that he or she,

(xi) acts in a disorderly manner or in a manner prejudicial to discipline or **likely to bring discredit upon the reputation of the police force** (emphasis added).

[17] However, in *Saxon v. Amherstburg Police Service*, 2011 ONCPC 2, also cited by the appellant, the officer was charged under s. 2(1)(a)(v) of the *Code of Conduct* and the Commission nevertheless adopted the following test:

The most recent application of the test for discreditable conduct in Ontario confirms that the test is “primarily an objective one” and that the conduct must be measured against the “reasonable expectations of the community”.

[18] The appellant submits that the measure of whether conduct is discreditable is “whether the conduct is likely to damage the reputation and image of the police service. In dealing with the language of s. 2(1)(a)(v) of the *Code of Conduct* he submits that “It is not simply a question of whether ‘profane, abusive or insulting language’ was used but rather, whether the conduct of the appellant was ‘uncivil’ and likely to bring discredit on the police force on an objective standard”.

[19] The Intervener agrees, submitting: “Stated differently, the test is whether an objective, reasonable individual in the community would consider the language used to be uncivil”. The Intervener also agrees with the appellant that the context within which the profanity was used may be considered in deciding whether it amounted to Discreditable Conduct. The Intervener states the following in his factum:

...the Director agrees with the submissions of the appellant at paragraph 34 of

his factum that the Commission may consider the following factors in determining whether an objective, reasonable person would find the profanity to constitute discreditable conduct: the nature of the call; that Constable Campoli perceived Mr. John to be evasive and there was confusion about whether Mr. John's car had been previously reported stolen; that Constable Campoli had no intent to disparage or demean Mr. John and did not use profanity as part of an insult but rather in an effort to gain control of the conversation; and that the profanity was used once only.

- [20] The TPS in its factum writes that "...it agrees that the correct test for discreditable conduct through the use of profane language requires the Tribunal to apply an objective test as set out by the Commission in *Mulville*..."
- [21] Based on the foregoing, we agree that in considering whether the profanity used by the appellant constituted Discreditable Conduct the Hearing Officer ought to have applied an objective test viewed from the perspective of a reasonable person in the community. That would involve some consideration of the context of the situation faced by an officer. By way of an example, if an officer were to encounter a violent situation involving uncontrollable groups of people, some with weapons, the use of polite language may not necessarily be what first comes to his or her mind.
- [22] It should be remembered that the appellant was one of 10-15 officers responding to what they believed, based on Mr. John's reporting, to be a gun call: a tense, inherently dangerous and often confusing situation. In our view, the use of one expletive in these circumstances would not meet the objective test for Discreditable Conduct.
- [23] Our analysis of this matter is confined to a consideration of s. 2(1)(a)(v) of the *Code of Conduct* which has the element of uncivility to a member of the public. Our reasons should not be read as requiring an objective test for all other sub-sections of s. 2(1)(a), except for 2(1)(a)(xi) which does have that requirement.
- [24] The appellant and the TPS take the position that the finding of Discreditable Conduct should be revoked and that the matter should not be remitted for a new hearing. The Intervener takes no position on the ultimate disposition. Given all of

the foregoing, including the fact that the incident giving rise to the charges is almost seven years old, we do not believe that the public interest would be served by ordering a new hearing.

ORDER

[25] Pursuant to s. 87(8)(a) of the *Police Services Act*, the Commission revokes the finding of Discreditable Conduct.

Released: November 09, 2020



D. Stephen Jovanovic



Laura Hodgson



Jesse Boyce