

**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: Rollins v. Pinkerton, Ontario Provincial Police and the Independent Police Review
Director, 2020 ONCPC 7

Date: 08-31-2020
File Number: 19-ADJ-001

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

Between:

Louise Rollins

Appellant

and

Sergeant C.D. Pinkerton

Respondent

and

Ontario Provincial Police

Respondent

The Independent Police Review Director

Intervener

DECISION

Panel: D. Stephen Jovanovic, Associate Chair
Laura Hodgson, Vice-Chair
John Kromkamp, Member

Appearances: Louise Rollins, the appellant
Genevieve McInnes, counsel for the respondent Sergeant C.D. Pinkerton
Adrien Iafrate, counsel for the respondent OPP
Pamela Stephenson-Welch, counsel for the OIPRD

**Place and date of
hearing:**

Toronto, Ontario
February 25, 2020

INTRODUCTION

- [1] This matter is an appeal from the decision of Superintendent K.M. Bickerton (the Hearing Officer) dated January 7, 2019 in which he found Sgt. Pinkerton, the respondent, not guilty of discreditable conduct under s. 2(1)(a)(xi) of the *Schedule Code of Conduct* in O. Reg 268/10 under the *Police Services Act*, R.S.O. 1990, c.P.15 (the *PSA*).

DISPOSITION

- [2] For the reasons that follow, the decision of the Hearing Officer is confirmed.

BACKGROUND

- [3] On August 23, 2015, the appellant was cutting plants with a knife at the edge of her rural property. She had an exchange with the respondent's wife, Shannon Pinkerton, who was walking by the property. Subsequently, Shannon Pinkerton called the appellant's husband and uttered what the appellant believed to be a threat.
- [4] The Rollins contacted the Ontario Provincial Police (OPP), Pembroke detachment to report the incident and Cst. Desjardins was dispatched to investigate. The respondent was Cst. Desjardins' immediate supervisor. At some point, Shannon Pinkerton spoke with the respondent, who later spoke to Cst. Desjardins. The respondent relayed information received from his wife, including that the appellant had held a knife. Cst. Desjardins attended the site in order to conduct an investigation. The parties had different perceptions of how events had unfolded. At the conclusion of the investigation no criminal charges were laid. The appellant laid a private information against Mrs. Pinkerton that was ultimately withdrawn or dismissed.
- [5] On August 9, 2015, the Office of the Independent Police Review Director (OIPRD) received a public complaint from the appellant regarding Sgt. Pinkerton and others. Sgt. Pinkerton was served with a Notice of Hearing outlining the charge of Discreditable Conduct, based on the allegation that he improperly interfered with the police investigation. More specifically, Sgt. Pinkerton was alleged to have improperly directed the course of the investigation by providing information to Cst. Desjardins.
- [6] A three-day disciplinary hearing was held before the Hearing Officer in Pembroke, Ontario in October 2018. At the hearing, the appellant participated, testified, and represented herself.
- [7] On January 7, 2019, the Hearing Officer found that the evidence "falls well short of establishing misconduct" and found Sgt Pinkerton not guilty of Discreditable Conduct.

Issues

Standard of Review

- [8] The standard of review traditionally applied by the Commission to a decision of a hearing officer has been reasonableness on questions of fact and correctness on questions of law: *Ottawa Police Service v. Diafwila*, 2016 ONCA 627 at paras. 61-63. Questions as to whether the facts satisfy a legal test are questions of mixed fact and law and were also to be reviewed on the standard of reasonableness unless there was an extricable question of law involved: *Dunsmuir v. New Brunswick*, 2008 SCC 9 at para. 53.
- [9] No party took the position that we should instead apply the appellate standard of review for questions of fact, palpable and overriding error, as set out in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65.
- [10] Additionally, when considering issues of procedural fairness, the Commission may consider whether the required elements of procedural fairness in the particular circumstances have been met: see *Forestall v. Toronto Police Services Board*, 2007 CanLII 31785 (Ont. Div. Ct.) at para. 38; *Canadian Pacific Railway Company v. Canada (Attorney General)*, 2018 FCA 69 at para. 49 and; *Brooks v. Ontario Racing Commission*, 2017 ONCA 833 at para. 5.
- [11] The issues raised by the appellant can be summarized as follows:
- I) The Notice of Hearing was inaccurate.
 - II) The appellant was prevented from fully participating in the hearing because of her hearing impairment.

ANALYSIS

I) Accuracy of the Notice of Hearing

- [12] The appellant argues that the Notice of Hearing (NOH) contains inaccuracies with respect to the timing of calls Sgt. Pinkerton made to his wife at the time of the investigation. The appellant does not take issue with the specific charge in the NOH but with particulars relating to the chronology of the calls. The appellant argues that she asked to amend NOH particulars prior to and during the proceedings and that the particulars impact the proceedings.
- [13] A NOH is served on the parties to commence the disciplinary proceeding and provide parties with reasonable notice of the hearing (*PSA*, s. 83(4)). The Police Chief has the discretion to determine the wording, including the particularization of allegations of misconduct: see *Grychtchenko v. McCartney*, 2016 CanLII 81396 (ONCPC). The NOH particulars are an outline of the alleged facts, that have yet to be proven by the prosecutor. The NOH need only be reasonably sufficient to allow the officer charged

with misconduct to know the allegations against him: *Grychtchenko*. A hearing officer is not obligated to accept the alleged facts as true.

- [14] The appellant has not established that the NOH failed to meet the requirement in s. 83(4) of providing the parties with reasonable notice of the hearing. The particulars challenged by the appellant were subject to the fact-finding function of the Hearing Officer and did not affect the parties' ability to know the case to be met.
- [15] Appeals to the Commission are proceedings on the record. The appellant's evidence that she sought to have the OPP amend the NOH prior to the proceeding being commenced is not part of that record. She has not brought a motion to introduce fresh evidence. Accordingly, this ground of appeal fails.
- [16] The OPP submitted that the Commission did not have the "jurisdiction" to review whether it erred by failing to amend the alleged inaccuracy in the NOH and that the Commission is not well-suited nor "authorized" under the *PSA* to review the decision not to amend. Given our comments above, we need not deal with these submissions.
- [17] With respect to requests to amend the NOH during the proceedings, again there is no evidence of this on the record. In her closing submissions before the Hearing Officer, the appellant specifically indicated that she was not seeking to amend the NOH:

The Adjudicator: -so you're asking for an amendment to the Notice of Hearing?
Ms. Rollins: No, I'm not. I'm not asking for an amendment at all.
(Transcript of Hearing, Oct 17, 2018 at p.95, l.3)

- [18] Prior to this exchange, the Hearing Officer explained to the appellant that evidence called at the hearing had clarified some of her stated concerns with details in the NOH (e.g., that the Pinkertons were not, in fact, the Rollins' direct neighbors).
- [19] The specific NOH details that the appellant now takes issue with were not found to be of significance to the allegations. Before the Hearing Officer and again before the Commission, the appellant sought to argue that Sgt. Pinkerton provided a false timeline of his phone calls with his wife. With respect to this, the Hearing Officer concluded at page 43 of his decision that, while the timing was not absolutely determined, it was "not specifically pertinent to the allegations on the NOH." Findings of fact made by a Hearing Officer are owed deference by the Commission: *Toronto Police Service v. Blowes-Aybar*, 2004 CanLII 34451 (ON SCDC). It is not our role to retry this issue.
- [20] The particulars of the allegations as set out in the NOH were fully canvassed at the hearing. The Hearing Officer addressed select concerns the appellant had with the NOH when raised in closing submissions. With respect to the timing of phone calls as detailed in the NOH, the Hearing Officer ultimately concluded that it was not material to the allegations. We agree. We see no basis to set aside the Hearing Officer's decision on this ground.

II) Hearing Impairment Limited Meaningful Participation

- [21] The appellant submits that, because of a hearing impairment, she was unable to properly participate in the hearing. She has requested a new hearing with microphones and headsets.
- [22] A hearing officer clearly has an obligation to ensure meaningful participation by an unrepresented public complainant: see *Challans v. Timms-Fryer*, 2017 ONSC 1300 at paras. 18-19. Further, service providers have a duty to accommodate individuals with disabilities. This duty requires reasonable accommodation short of undue hardship. In *Renaud v. Central Okanagan School District No. 23*, [1992] 2 S.C.R. 970 the court wrote: “The search for accommodation is a multi-party inquiry. Along with the employer and the union, there is also a duty on the complainant to assist in securing an appropriate accommodation.”
- [23] The parties and the Hearing Officer were aware of the appellant’s hearing impairment and the issue was addressed at the outset of the proceedings:

I've already mentioned Ms. Rollins is the public complainant, and we are aware that Ms. Rollins is hearing impaired and all the parties involved are aware of that, and we will make all the provisions that we can and any adjustments necessary to make sure that you [Ms. Rollins] can follow along with the proceedings here today.

Transcript of Proceedings dated October 15, 2018 at page 1

- [24] The Hearing Officer later stated:

If you have any questions during the course of the hearing, don't hesitate to ask ... We've talked about the fact that you are hearing impaired and, again, at any point if you can't hear something, please let us know either by raising your hand or standing up so that we know at that point that we have to repeat or go back over something before we get too far ahead.

Transcript of Proceedings dated October 15, 2018 at page 7

- [25] Counsel for the respondent specifically advised the applicant to indicate if she had difficulty hearing. Throughout the hearing, the appellant was asked, and she affirmed that she could hear questions asked. For example:

Counsel for the respondent: Mrs. Rollins, you'll let me know if you can't hear me? I don't want to shout at me (sic), but I want you to hear me. Can you hear me okay?

Mrs. Rollins: Okay, I can hear you. (October 15, 2018, p. 98, l.10)

- [26] On occasion, witnesses were asked to repeat evidence and they complied. Throughout the course of the proceedings the appellant provided responsive answers, asked relevant questions, and made full submissions.
- [27] As noted, appeals to the Commission are proceedings on “the record”. The record demonstrates that the Hearing Officer addressed the appellant’s hearing impairment at the outset of the proceedings. All parties, including the appellant, agreed how to proceed. The appellant shared a responsibility to advise the Hearing Officer if she required additional accommodation measures. There is nothing on the record to suggest that the Hearing Officer did not take sufficient steps to accommodate or that the appellant was unable to meaningfully participate because of her hearing impairment. In all the circumstances, the appellant was accorded the requisite level of procedural fairness.

ORDER

- [28] Pursuant to section 87(8) of the *Police Services Act*, the Commission confirms the decision of the Hearing Officer.

Released: August 31, 2020



Laura Hodgson



D. Stephen Jovanovic



John Kromkamp