

Subject Officer: *CST. GRUS*

Exhibit Number: *8*

IN THE MATTER OF THE *POLICE SERVICES ACT*, R.S.O. 1990. C. P. 15, as amended

Date: *April 20, 2023*

Signature: 

BETWEEN :

THE OTTAWA POLICE SERVICES

Respondent/ Chief's Complaint

- and -

CST. HELEN GRUS (#1631)

Applicant/Respondent

MOTION REGARDING DISCLOSURE

DECEMBER 29, 2022

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IN THE MATTER OF THE *POLICE SERVICES ACT*, R.S.O. 1990. C. P. 15, as amended

B E T W E E N :

THE OTTAWA POLICE SERVICES

Respondent/ Chief's Complaint

- and -

CST. HELEN GRUS (#1631)

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NOTICE OF MOTION

TAKE NOTICE THAT the Applicant, Constable, now Detective, Helen Grus ("Applicant") will make a motion to the Ottawa Police Service on a date and time to be determined at 474 Elgin Street Ottawa, ON K2P 2J6 to be decided on the basis of written representations.

THE MOTION IS FOR:

1. A Decision, for the Ottawa Police Service ("OPS") and Chief, the Professional Standards Unit ("PSU"), Angela Stewart, legal counsel for OPS, designated prosecutor ("Prosecutor"), or either or all of them (collectively the "OPS") to produce full disclosure in order to assist Superintendent Chris Renwick (retired), the designated hearing officer pursuant to Section 94, Subsection (1) of the *Police Services Act*, R.S.O. 1990, c. P.15 ("PSA"), ("Hearing Officer") to provide full and complete disclosure to the Applicant.

GROUND FOR MOTION

2. All relevant evidence in possession of the OPS should be disclosed.

3. Decisions such as *May v. Ferndale Institution*, [2005] 3 S.C.R. 809 from the Supreme Court of Canada dictate that the OPS is required to disclose to the Applicant the actual evidence the OPS used to come to their conclusion with respect to the allegations made. The allegations made and consequences arising are such that a large degree of procedural fairness must be given to the Applicant, including full and frank disclosure of all evidence regarding the matter. As such, again, the Applicant, demands that the full and complete disclosure be produced forthwith regarding the allegation of discreditable conduct under s.2(1)(a) of the Code of Conduct Schedule of O. Reg. 268/10: GENERAL under *Police Services Act*, R.S.O. 1990, c. P.15 (“PSA Code of Conduct”).
4. The Applicant states, and the fact is, that the disclosure provided so far is incomplete and insufficient, and that the reasons for denying the Applicant’s requests for certain disclosure is prejudicial to the Applicant and, *inter alia*, undermines the procedural fairness of this disciplinary hearing.

THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:

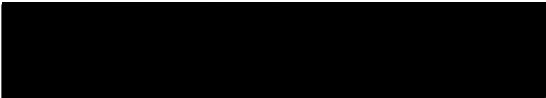
5. The Written Representations contained herein; and
6. Such further and other evidence as counsel may advise and the Hearing Officer may admit.

Date: **December 29, 2022**

Bath-Sheba van den Berg

Bath-Sheba van den Berg
Foster LLP
Counsel for the Applicant

TO: Angela Stewart, Prosecutor
Ottawa Police Services
474 Elgin Street
Ottawa, ON K2P 2J6


Counsel for the Respondent

IN THE MATTER OF THE *POLICE SERVICES ACT*, R.S.O. 1990. C. P. 15, as amended

B E T W E E N :

THE OTTAWA POLICE SERVICES

Respondent/ Chief's Complaint

- and -

CST. HELEN GRUS (#1631)

Applicant/Respondent

WRITTEN REPRESENTATIONS - MOTION REGARDING DISCLOSURE

PART I – OVERVIEW AND SUMMARY OF FACTS

1. The Applicant is the respondent in a matter pertaining to a Chief's Complaint 'PSU File No. 22-0063'.
2. Section 76 (9) of the *Police Services Act*, R.S.O. 1990, c. P.15 ("PSA") stipulates that "if at the conclusion of the investigation and on review of the written report submitted to him or her the chief of police **believes on reasonable grounds** that the police officer's conduct constitutes misconduct as defined in section 80 [...], he or she shall hold a hearing into the matter. 2007, c. 5, s. 10." [Emphases added].
3. Part VII 'Code of Conduct' Section 30(1) of the O. Reg. 268/10: GENERAL under *Police Services Act*, R.S.O. 1990, c. P.15 ("PSA Regulations") states that "conduct described in the code of conduct, set out in the Schedule, constitutes misconduct for the purpose of section 80 of the Act."
4. Section 2(1) of the Schedule 'Code of Conduct' reads the following:

Any chief of police or other police officer commits misconduct if he or she engages in,

(a) DISCREDITABLE CONDUCT, in that he or she,

(i) fails to treat or protect persons equally without discrimination with respect to police services because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or disability,

(ii) uses profane, abusive or insulting language that relates to a person's race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or disability,

(iii) is guilty of oppressive or tyrannical conduct towards an inferior in rank,

(iv) uses profane, abusive or insulting language to any other member of a police force,

(v) uses profane, abusive or insulting language or is otherwise uncivil to a member of the public,

(vi) wilfully or negligently makes any false complaint or statement against any member of a police force,

(vii) assaults any other member of a police force,

(viii) withholds or suppresses a complaint or report against a member of a police force or about the policies of or services provided by the police force of which the officer is a member,

(ix) is guilty of a criminal offence that is an indictable offence or an offence punishable upon summary conviction,

(x) contravenes any provision of the Act or the regulations, or

(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 of which the officer is a member;

(b) INSUBORDINATION, in that he or she,

(i) is insubordinate by word, act or demeanour, or

(ii) without lawful excuse, disobeys, omits or neglects to carry out any lawful order [.]

5. Section 80(1)(a) of the PSA states that: “A police officer is guilty of misconduct if he or she commits an offence described in a prescribed code of conduct[.]”

6. On February 3, 2022, a Chief's Complaint Notice from the Professional Standards Unit (“PSU”) dated February 3, 2022 (“Feb 3rd Chief’s Complaint”) was issued to the Applicant.

7. The Feb 3rd Chief’s Complaint read the following:

“Please be advised that this correspondence serves as your notification pursuant to section 76(3) of the Police Services Act (“PSA”) that an Internal (Chief’s) Complaint has been initiated into your conduct.

The investigation stems from allegations that between January 10th and January 28th, 2022, you accessed the Ottawa Police Service’s RMS database for the purpose of researching and collecting information involving the death of children. It is further alleged that you have made inquiries as to whether the parents of these children were vaccinated.

As such, you have been designated as a ‘respondent’ officer in this complaint. You are directed not to discuss this matter with other persons involved in the incident.”

8. On February 4, 2022, the Applicant was notified by Sgt Arbuthnot (“Arbuthnot”) of a Suspension for Insubordination (“Suspension”).

9. On March 25, 2022, the Applicant received information that CBC was contacting OPS in relation to Suspension.

10. On March 28, 2022, an article was published in CBC by journalist Shaamini Yogaretnam (“Yogaretnam”) entitled “Detective tried to uncover vaccine status of dead children’s parents, sources say: Det Helen Grus suspended with pay, under investigation, say Ottawa police.” (“1st CBC Article”)
11. On March 31, 2022, a second article was published in CBC by Yogaretnam entitled “Grieving mother not told nature of misconduct in probe of baby’s death: lawyer: ‘Losing a child is very family’s nightmare,’ lawyer says.” (“2nd CBC Article”).
12. On April 7, 2022, the Applicant requested Arbuthnot for the OPS Professional Standards Unit (“PSU”) to investigate who leaked the case information, personal and suspension details of Grus to Yogaretnam. The Applicant received a response by email correspondence advising that no PSU investigation would be initiated.
13. On May 12, 2022, the Applicant is interviewed by Arbuthnot, Sgt Berube, and with Ottawa Police Association (“OPA”) Pamela Twining, Labour Officer present (“Twining”).
14. On May 12, 2022, Arbuthnot mentions to the Applicant a possible second allegation of Discreditable Conduct, and explained the Applicant, that as a result of the alleged RMS breaches, the parents of the deceased infants were required to be notified by the OPS. Arbuthnot further explained to the Applicant that one family retained legal counsel and spoke to the media about what had allegedly happened. Arbuthnot told the Applicant that the two CBC articles that were published generated public attention and that as a result of the Applicant’s alleged actions, OPS’s reputation was brought into disrepute. The Applicant understood through conversation with Arbuthnot, that there was potential charge of Discreditable Conduct being investigated.
15. On July 6, 2022, the OPS Professional Standards Unit (“PSU”) produce an ‘Investigative Report’ for the Feb 3rd Chief’s Complaint (collectively “Chief’s Complaints”). It reads:

“Background:

This Chief’s Complaint was opened after the Sexual Assault and Child Abuse Unit provided information to Professional Standards which alleged Detective Helen Grus had made unauthorized inquiries into an infant death investigation.

Detective Grus was suspended from duty on February 4, 2022.

Code of Conduct Allegations:

Allegation #1 – Police Services Act Section 2(1)(b) Insubordination, in that she,

ii) without lawful excuse, disobeys, omits or neglects to carry out any lawful order.

Allegation #2 – Police Services Act Section 2(1)(a) Discreditable Conduct, in that she, (xi) acted in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the police force of which the officer is a member.

It is alleged Detective Grus acted in a disorderly manner when she undertook an unsanctioned quality control project of infant death investigations without informing her chain of command or the lead investigators. Further, she interfered in an infant death investigations when, without the lead detective's knowledge or authorization, she contacted the father of one of the deceased babies and inquired about the mother's COVID-19 vaccination status.

Findings:

This investigation has determined there is insufficient evidence to form grounds to believe Detective Grus was insubordinate of General Order EX/ORD/2013-532 and the OPS Acceptable Use of Information Policy. Although she did use RMS to query nine separate reports involving sudden infant deaths, much of the evidence suggests it was not done for personal reasons. Allegation #1 is unsubstantiated.

However, there is sufficient evidence to believe that Detective Grus's conduct was discreditable when she, without asking permission from her chain of command or the lead investigators, undertook an unsanctioned quality control project of SACA infant death investigations. She later directly interfered in one such investigation when she contacted Mr. [redacted], father of deceased infant [redacted], and asked him whether the baby's mother was vaccinated for COVID-19. Absent any context or an established relationship with the parents of the deceased infant, a phone call such as this had the potential to compound the family's tragedy and bring the reputation of the Ottawa Police Service, and in particular the Sexual Assault and Child Abuse Unit, into disrepute. Allegation #2 is substantiated." ("Discreditable Conduct Charge").

16. On July 25, 2022, the Applicant is notified by Arbuthnot to attend OPS for the Discreditable Conduct Charge.

17. On July 26, 2022, the Applicant receives the Notice of Disciplinary Hearing which states that:

It is alleged that you committed the following acts of misconduct contrary to the Police Services Act, R.S.O 1990 c. P.15, as amended:

COUNT ONE: Discreditable Conduct S.2(1)(a)(xi)

IN THE MATTER OF an allegation of Discreditable Conduct regarding your actions, wherein it is alleged you committed Discreditable Conduct in that between June 2020 and January 2022, you did, without lawful excuse, act in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the Ottawa Police Service (OP), in that you self-initiated an unauthorized project, wherein you accessed nine child and/or infant death cases in which you had no investigative role/responsibility and failed to then record your involvement or findings in the files. Further, on or about January 30th, 2022, you interfered in an investigation of an infant

death, without the lead detective's knowledge or authorization, by contacting the father of the deceased baby to inquire about the COVID vaccination status of the mother. The foregoing conduct constitutes an offence against discipline as prescribed in section 2(1)(a)(ix) of Schedule 1 of the Code of Conduct, Ontario Regulation 268/10, as amended, and is thereby contrary to section 80(1) of the *Police Services Act*.

This is therefore to order you to appear before Superintendent Chris Renwick (retired) on the 8th day of August at 9:30 in the forenoon [...] ("Disciplinary Hearing").

18. On August 8, 2022, the Applicant attends the first appearance of the Disciplinary Hearing.
19. On August 29, 2022, 29 August 2022, Twining, now acting as the Applicant's non-legal representative, receives disclosure and notifies the Applicant.
20. On August 30, 2022, the Applicant receives the initial disclosure.
21. On September 8, 2022, Twining is advised by the Prosecutor of a plea offer for the Applicant.
22. On September 11, 2022, Twining submits a 1st request for additional disclosure to the Prosecutor.
23. On September 15, 2022, the Applicant attends the second appearance of the Disciplinary Hearing.
24. On September 20, 2022, the Applicant receives a written version of the plea offer and a draft copy of a Statement of Agreed Facts prepared by the Prosecutor.
25. On September 29, 2022, the Applicant instructs Twining to request a 2nd request for further disclosure from the Prosecutor.
26. On October 11, 2022, the Applicant attends the third appearance of the Disciplinary Hearing and Brendan Miller and Bath-Sheba van den Berg go on record as legal counsel for the Applicant.
27. October 12, 2022, Counsel for the Applicant submits a 3rd request for outstanding disclosure to the Prosecutor.
28. On December 5, 2002, Counsel for the Applicant submits a 4th request for outstanding disclosure and further disclosure from the Prosecutor.

29. On December 6, 2022, the Applicant attends the fourth appearance of the Disciplinary Hearing and leave is granted by the Hearing Officer for motion in writing to request all disclosure.

Initial Disclosure received August 30, 2022

30. Below is the list of Initial Disclosure received by the applicant on August 30, 2022:

1. Correspondence with Coroners & Pathologists

- a. Email to Dr. Cowan_Redacted
- b. Email to Dr. Creery_Redacted
- c. Email to Dr. Kepron_Redacted
- d. Email to Dr. Kozyra_Redacted
- e. Email to Dr. Mills_Redacted
- f. Email to Dr. Milroy_Redacted
- g. Email to Dr. Walker_Redacted
- h. Email to Dr. Watt_Redacted
- i. Email to Dr. Yu_Redacted

2. Investigating Officers

- a. Notes - Sgt Arbuthnot_Redacted
- b. Notes - Sgt Berube_Redacted

3. Media

- a. 2022 03 28 CBC Article
- b. 2022 03 31 CBC Article
- c. 2022 08 08 Ottawa Citizen Article
- d. 2022 08 10 Epoch Times Article
- e. 2022 08 11 Life Petition Article
- f. 2022 08 16 donaldbest.ca Article
- g. 2022 08 16 donaldbest.ca Article
- h. 2022 08 16 DonaldBest.CA Tweet
- i. 2022 08 17 Ottawa Citizen Article
- j. 2022 08 28 CBC Article

4. Policies

- a. Acceptable Use Policy 6 Mar 19 archive 17Aug20
- b. AUP 2.23 8Jul2021
- c. GO 2013-532 Records Management System Breaches.msg

5. Respondent Officer

- a. 22-0063 Chief's Cst Helen Grus_Redacted
- b. Brothers and Sisters at OPS_Redacted
- c. Chief's Complaint Notice

- d. Direction for interview - Detective Grus
- e. Grus compelled interview_Redacted
- f. Notes - Det Grus Dec & Jan
- g. Notice of Hearing and Increased Penalty
- h. Notice of Hearing Cst Grus
- i. PRIVATE - GRUS - Ev of Grus.Dec.1.21
- j. PRIVATE - GRUS - Ev of Grus.Jan.1.22

6. Witness officers

- a. Detective McMullan signed response pg 2
- b. Detective McMullan signed response pg 1_Redacted
- c. FW_Infant deaths
- d. McDougall PSS signed response_Redacted
- e. PRIVATE - GRUS - Ev of Botchar.Apr.7.22
- f. PRIVATE - GRUS - Ev of Botchar.May.5.22_Redacted
- g. PRIVATE - GRUS - Ev of Dobler.Apr.6.22
- h. PRIVATE - GRUS - Ev of Stewart.Apr.6.22_Redacted
- i. PRIVATE - GRUS- Ev of Guy.Apr.13.22_Redacted
- j. Response - Anderson_Redacted
- k. Response - Colucci_Redacted
- l. Response - McGetrick_Redacted
- m. Response - McMullen_Redacted

31. On September 11, 2022, the 1st disclosure request is made for the following records:

- i. All Performance Reviews of Helen GRUS #1631
- ii. All/any notes of S/Sgt MERKEL
- iii. All audio recordings of interviews; Sgt GUY, Det BOTCHAR, Det STEWART, Det GRUS; S/Sgt ROSSETTI
- iv. SACA Mandate
- v. SIDS questionnaire (blank copy)
- vi. Entire email chain between Helen GRUS and S/Sgt ROSSETTI on 9th/10th September 2021; Subject line "With all due respect, Helen Grus #1631"

32. On September 29, the 2nd disclosure request is made and includes the following records:

- i. All/any notes of S/Sgt ROSSETTI
- ii. All/any notes of S/Sgt DIKAH and Insp O'TOOLE in relation to meeting with Sgt ARBUTHNOT on 7 June 2022 at 1005hrs
- iii. All/any notes of Sgt KHALID and Sgt WOOD
- iv. Email dated 2 February 2022 from S/Sgt ROSETTI to Superintendent LACHINE
- v. Entire email chain between Helen GRUS and S/Sgt ROSSETTI on 9th/10th September 2021; Subject line "With all due respect, Helen Grus #1631"

33. On October 3, 2022, the Prosecutor provides items i, ii, part of iii, iv and v of September 11, 2022 1st disclosure request.

34. On October 12, 2022, the 3rd disclosure request is submitted to the Prosecutor and includes outstanding records not yet provided:
- i. All/any notes of S/Sgt ROSSETTI as she spoke with/was interviewed by Sgt ARBUTHNOT as per Sgt ARBUTHNOT's notes on 21 March 2022 at 1330hrs.
 - ii. All/any notes of S/Sgt DIKAH and Insp O'TOOLE in relation to meeting with Sgt ARBUTHNOT on 7 June 2022 at 1005hrs
 - iii. All/any notes of Sgt KHALID and Sgt WOOD
 - iv. Email dated 2 February 2022 from S/Sgt ROSETTI to Superintendent LACHINE
 - v. Entire email chain between Helen GRUS and S/Sgt ROSSETTI on 9th/10th September 2021; Subject line "With all due respect, Helen Grus #1631"
35. On October 17, 2022, the Prosecutor provides records; Notes of Sgt KHALID and Sgt. WOOD; and Email dated February 2, 2022, from S/Sgt ROSSETTI to Superintendent LACHINE.
36. The Prosecutor refuses to provide the other requested disclosure at items i, ii, and v for reasons: "[t]he Ottawa Police will not disclose this".
37. On December 5, 2022, a 4th request for outstanding and further disclosure is made to the Prosecutor for the following records:
- i. All/any notes of S/Sgt ROSSETTI as she spoke with/was interviewed by Sgt ARBUTHNOT as per Sgt ARBUTHNOT's notes on 21 March 2022 at 1330hrs
 - ii. All/any notes of S/Sgt DIKAH and Insp O'TOOLE in relation to meeting with Sgt ARBUTHNOT on 7 June 2022 at 1005hrs
 - iii. Offline RMS search of Detective Grus's queries in relation to the nine child and/or infant deaths. Report should itemize the date, times and length of each query Det Grus access said Reports
 - iv. Copies of the preliminary and final autopsy reports for 2021 infant deaths.
38. On December 13, 2022, the Prosecutor provided the following disclosure only: "Offline RMS search of Detective Grus's queries in relation to the nine child and/or infant deaths."
39. With regards to items i, ii, and iv, the Prosecutor wrote that "these will not be disclosed".
40. To date the following records for disclosure have been requested by the Applicant and denied by the Prosecutor:
- i. All/any notes of S/Sgt ROSSETTI as she spoke with/was interviewed by Sgt ARBUTHNOT as per Sgt ARBUTHNOT's notes on 21 March 2022 at 1330hrs
 - ii. All/any notes of S/Sgt DIKAH and Insp O'TOOLE in relation to meeting with Sgt ARBUTHNOT on 7 June 2022 at 1005hrs
 - iii. In relation to disclosed email attached (FW_ Infant deaths), copies of the preliminary and final autopsy reports for 2021 infant deaths

- iv. Audio recording or notes of interview with S/Sgt ROSSETTI and only handwritten notes from Sgt ARBUTHNOT from his interview with S/Sgt ROSSETTI on March 21, 2021 at 1330hrs
- v. Entire email chain between Helen GRUS and S/Sgt ROSSETTI on 9th/10th September 2021; Subject line "With all due respect, Helen Grus #1631"

41. The Applicant seeks relief from the Hearing Officer for a Decision ordering the Prosecutor to provide the outstanding and denied requested disclosure to the Applicant.

42. Further, on review of the disclosure provided so far, the Applicant requests the following disclosure be made and any and all disclosure in relation to the Discreditable Misconduct Charge:

- 1) Witness list and summaries of witness anticipated evidence from the Prosecutor;
- 2) All investigation notes that are material and relevant;
- 3) Professional Standards Expert Evidence;
- 4) Any information as to media leaks or communications to Yogaretnam and other media;
- 5) Decision to not investigate media leaks to Yogaretnam and other media;
- 6) Decision to close any and all OPS investigations into any media leaks;
- 7) A copy of the General Occurrence Report 22-7482 and investigation notes including evidence of printing;
- 8) Investigation notes of Acting S/Sgt Mireille CLEMENT PSU and S/Sgt Mazen DIKAH;
- 9) Email dated January 21, 2022 from Det Renee STEWART to Sgt Julie DOBLER;
- 10) Email dated February 2, 2022 from det STEWART to Sgt Marc-Andre GUY;
- 11) All notes and emails of Sgt Marc-Andre GUY pertaining the Chief's Complaint;
- 12) OPS Information General User Acknowledgement Form;
- 13) Authorizations to Intercept Private Communications, namely decision to wiretap the Applicant;
- 14) Information and notes as to OPS Professional Standards refusal on April 7, 2022 to grant request by Grus that PSU investigate the leaks;
- 15) Email from PSU to Grus stating there would be no investigation;
- 16) The full statement to news media 'sent March 15, at 4:06pm' including the writer's name and the recipients;
- 17) Details (including but not limited to dates and attendees) of meetings / communications between personnel from the Public Health Agency of Canada

- (“PHAC”) and OPS personnel - whether involving other agencies or not - that occurred between November 1, 2019 and the current date;
- 18) From January 1, 2020 to the current date produce information showing how many times OPS personnel accessed reports on the RMS where they were not the reporting officer or assigned to the case mentioned in the report;
 - 19) From January 1, 2020 to the current date produce information showing how many times OPS personnel accessed reports on the RMS where they were not the reporting officer or assigned to the case mentioned in the report and worked with a different unit than the reporting officer or officer in command of the case;
 - 20) From January 1, 2020 to the current date produce information showing how many RMS reports were locked to prevent general access without special authorization or assignment, including the OPS units that imposed access controls;
 - 21) From January 1, 2020 to the current date produce information showing how many RMS reports contain alerts to notify the report creator or officer in charge of a case that another officer had examined the report / record;
 - 22) Copy of the OPS Computer Forensics Unit Report on Detective Grus’ workstation hard drive;
 - 23) Copy of the Forensics Investigator(s) notes and draft reports;
 - 24) Copies of internal communications between any OPS Unit or Officer and the Computer Forensics Unit and assigned investigators - relating to the Grus case;
 - 25) All communications, emails, reports, notes of any kind between the Information and Privacy Commission (IPC) and the Ottawa Police Service relating to the Grus case;
 - 26) An anonymized report on OPS Personnel who have reported Vaccine Adverse Events since January 1, 2020 - showing details of the types of adverse events, types and doses of vaccines, dates of injections, reporting date, and time off work if any; and
 - 27) PSU File No. 22-0063 all records, notes et cetera.

PART II – ISSUES

43. There is one issue that must be decided, and that is on ordering the OPS to disclose all requested disclosure and to act in good faith in providing the Applicant with full and complete disclosure.

PART III – SUBMISSIONS

Law & Analysis

44. As it stands now, the Applicant’s procedural rights to a fair hearing is prejudiced by the OPS’s lack of and incomplete disclosure. In the *May v. Ferndale*¹ Decision, the Supreme Court of Canada stipulated that “in the administrative context, the duty of procedural fairness generally requires that the decision-maker discloses the information he or she relied upon. The requirement is that the individual must know the case he or she has to meet. If the decision-maker fails to provide sufficient information, his or her decision is void for lack of jurisdiction.”
45. The OPS has a duty to provide all of the information that was considered in the OPS taking the decision to charge the Applicant with Discreditable Conduct and in relation to the Chief’s Complaints.
46. Full and complete disclosure includes all disclosure including relevant disclosure that is anything that is clearly not irrelevant and includes evidence that the prosecution does not intend to call as part of its case.²
47. Disciplinary Hearings should disclose all information relevant to the conduct of the case, whether it be damaging to or supportive of the Applicant’s position, and in a timely manner. In *Markendy v Ontario*, the Court held that “[m]inimally, this should include copies of all witness statements and notes of the investigators. [...]. The absence of a request for disclosure, whether it be for additional disclosure or otherwise, is of no significance. The obligation to make disclosure is a continuing one. [...] The failure to make proper disclosure impacts significantly on the appearances of justice and the fairness of the hearing itself. Seldom will relief not be granted for a failure to make proper disclosure.”³
48. Regarding the absence of a witness list and summaries of anticipated evidence of witnesses, where it is not clear from the disclosure that evidence of certain witnesses is anticipated, then the

¹ *May v. Ferndale Institution*, [2005] 3 S.C.R. 809, paragraph 92.

² *R v Stinchcombe*, [1991] 3 SCR 326; *Law Society of Upper Canada v Savone*, 2016 ONSC 3378; It is generally accepted that *Stinchcombe* applies to discipline proceedings.

³ *Markendy v Ontario (Board of Ophthalmic Dispensers)*, [1994] OJ No 484 (QL) at paragraph 43.

disclosure obligation on the regulator may also include the provision of a summary of anticipated evidence of witness. ⁴ Further as per *Wasman v Ontario Racing Commission*⁵:

“The preparation of a defence necessarily requires knowledge of the essence of the evidence on which the accuser relies: trial by ambush is incompatible with a fair hearing. The provision of a summary of the anticipated evidence of each witness is an essential part of disclosure in a case such as this one. That some of the witnesses’ information is referred to in the investigator’s reports is not an answer to this need, unless it is made clear that the witness will say nothing beyond what is expressly set out in the report.”

49. The Applicant is entitled to ‘such disclosure as will enable her to make full answer and defence’ and to be ‘sufficiently apprised of the case to be met to allow for sufficient time and substance to enable the Applicant to adequately prepare and defend that case.’⁶ In *Waxman v. Ontario Racing Commission*, the Court held that “While the standard for disclosure in administrative law cases generally may be somewhat lesser, in cases involving the loss of one’s livelihood, disclosure cannot be much, if any, below the criminal standard”. Here, the Applicant risks penalties such as loss of employment or demotion which both amount to loss of livelihood first in the form of immediate loss of livelihood, and second in the form of lesser pay and access to livelihood. The Applicant is defending her livelihood and must have the opportunity to know the case and to prepare to defend it.
50. The disclosure obligation includes evidence in the possession of all investigators, including information from other investigations being conducted by the OPS if that information is potentially relevant to the matter under consideration, such as the media leaks, coronary and pathologists reports and any investigations linked to the involvement of PHAC.⁷ In *Law Society of Upper Canada v Savone*, the Court held that “in general, a professional discipline committee, like other administrative tribunals, is the master of its own procedure and, subject to statutory requirements, need not adhere strictly to all the evidentiary and disclosure rules that apply in court proceedings. **But a discipline committee cannot adopt or apply procedures which are contrary to its duty to act in accordance with the requirements of natural justice or to (what in this case amounts to the same thing) its duty to act fairly.** ⁸ [Emphasis added.]

⁴ *Waxman v Ontario Racing Commission*, 2006 CanLII 35617 (Ont Div Ct.).

⁵ *Ibid* at paragraph 10.

⁶ *Ibid*.

⁷ *Law Society of Upper Canada v Savone*, 2016 ONSC 3378

⁸ *Ibid*.

PART IV – ORDERS SOUGHT

51. The Applicant seeks the following relief:

- a. A Decision granting leave and ordering that the OPS to disclose all requested disclosure and to act in good faith in providing the Applicant with full and complete disclosure; and
- b. Such other relief as the Hearing Officer may deem appropriate and necessary.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 29th DAY OF DECEMBER 2022

TABLE OF AUTHORITIES

1. *Law Society of Upper Canada v Savone*, 2016 ONSC 3378
2. *Markendy v Ontario (Board of Ophthalmic Dispensers)* , [1994] OJ No 484 (QL)
3. *May v. Ferndale Institution*, [2005] 3 S.C.R. 809
4. *R v Stinchcombe*, [1991] 3 SCR 326
5. *Waxman v Ontario Racing Commission*, 2006 CanLII 35617 (Ont Div Ct.)