

Subject Officer: *CST. GRUS*

Exhibit Number: *13*

Date: *APRIL 28, 2023*

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

Signature: [REDACTED]

B E T W E E N :

THE OTTAWA POLICE SERVICES

Chief's Complaint

- and -

CST. HELEN GRUS (#1631)

Respondent/Applicant

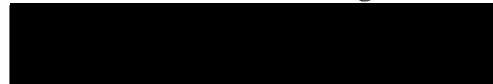
---

**CONSOLIDATED MOTION**

---

APRIL 17, 2023

**Loberg Ector**  
2525 Encor Place  
645 – 7th Avenue SW Calgary  
AB T2P 4G8  
T: +1 (825) 540-8447  
**Bath-Sheba van den Berg**



**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

Chief's Complaint

- and -

CST. HELEN GRUS (#1631)

Respondent/Applicant

---

**NOTICE OF MOTION**

---

**TAKE NOTICE THAT** the Applicant, Constable, now Detective, Helen Grus ("Applicant") will make a motion to the Ottawa Police Service on April 28, 2023 at 474 Elgin Street Ottawa, ON K2P 2J6 virtually or in person by way of a hybrid appearance, to be decided on the basis of written and oral submissions.

**THE CONSOLIDATED MOTION IS FOR:**

1. A Decision from the Tribunal for 3<sup>rd</sup> Party Records to be produced; for the Discreditable Conduct Charge be amended, sufficiently particularised, or dropped; and for the subpoena of a certain witnesses to testify.

**GROUND FOR MOTION**

2. In light of its Ruling delivered on January 31, 2023 in response to the Applicant's Motion for Disclosure, the Tribunal has granted leave to consolidate three separate applications into one consolidated motion.
3. This Consolidation Motion consolidates three separate Applications:
  - i. Application for 3rd Party Records;
  - ii. Application for sufficient particulars of the discreditable conduct charge; and

- iii. Application for a summons to compel certain witnesses to testify.

**THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:**

4. The Written Representations contained herein;
5. Oral Submissions, including Reply on April 28, 2023; and
6. Such further and other evidence as counsel may advise and the Hearing Officer may admit.

Date: **April 17, 2023**

[Redacted Signature]

---

**Bath-Sheba van den Berg**  
**Loberg Ector LLP**  
Counsel for the Applicant

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

[Redacted Address]

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

Chief's Complaint

- and -

CST. HELEN GRUS (#1631)

Respondent/Applicant

---

**WRITTEN REPRESENTATIONS – CONSOLIDATED MOTION**

---

## **PART I – OVERVIEW AND SUMMARY OF FACTS**

1. This Consolidated Motion adopts all content as per the Applicant's Motion Regarding Disclosure dated December 29, 2022 ("Disclosure Motion") and the Applicants' Reply Written Submissions Motions Regarding Disclosure dated January 23, 2023 ("Reply Motion").
2. This Consolidation Motion consolidates three separate Applications:
  - i. Application for 3<sup>rd</sup> Party Records;
  - ii. Application for sufficient particulars of the discreditable conduct charge; and
  - iii. Application for a summons to compel certain witnesses to testify.
3. On January 31, 2023, the Hearing Officer, Superintendent (Retired) Chris Renwick (the "Tribunal") issued a Ruling on the Applicant's Disclosure Motion (the "Ruling").
4. The Tribunal in its Ruling dismissed the Applicant's request for disclosure of coronary or pathologist reports pertaining to the infant death(s) that is material to the Discreditable Conduct Charge against Det. Grus.
5. The Tribunal in its Ruling dismissed the Applicant's requests for disclosure pertaining to media leaks.
6. The Tribunal in its Ruling stated that the Discreditable Conduct Charge is sufficiently particularised.
7. The Tribunal in its Ruling took notice of the Applicant's submissions concerning abuse of process.
8. The Tribunal in its Ruling agreed with the Applicant that the overriding principle is that of procedural fairness and will be adhered to.

## **PART II – ISSUES**

9. The issues in this Consolidated Motion are as per paragraphs 4 to 6 above.

## PART III – SUBMISSIONS

### *I. Law & Analysis*

10. The Applicant disagrees with the Tribunal's application of the *West Park* test to this disciplinary proceeding as it places a reverse onus of the burden of proof from Prosecutor to Respondent and is procedurally unfair.
11. The Applicant has not argued 'contested disclosure' as stated on page 5 of the Ruling. The Applicant argues that disclosure provided so far is incomplete and insufficient and that lack of full and complete disclosure undermines the procedural fairness of this disciplinary hearing. 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.<sup>1</sup>
12. The Tribunal has denied several of the Applicant's requests for disclosure on the basis of a 4-part test per *West Park Hospital v Ontario Nurses' Assn.*, [1993] OLAA No 12 4. The Tribunal highlighted that for each request for disclosure, the following criteria must be met: The information must be relevant; it must be particularized; it is not being requested as a fishing expedition and there must be clear nexus between the information being request and the position in dispute. The Applicant submits that the Tribunal's approach in fact shifts the burden of proof from the Prosecutor onto the Respondent/Applicant, which is an abuse of process and procedurally unfair.
13. The *West Park* case involves a labour arbitration regarding the termination of a Registered Nurse in the course of employment due to having been found incompetent – failing to meet the professional standards of a Registered Nurse as set down by the College of Nurses. It is not a disciplinary proceedings matter. The employer, West Park Hospital requested for disclosure, specifically for the personal medical records of the grievor, the nurse, who had been terminated by the hospital. The employer in *West Park* is the equivalent of the Ottawa Police Service ("OPS") in this disciplinary proceeding insofar as the OPS is the employer. It is not the OPS or the Prosecutor that is seeking for personal and confidential documents belonging to the

---

<sup>1</sup> *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.

Respondent/Applicant; it is the Respondent/Applicant that has requested for full and complete disclosure of records that are in possession of the Prosecutor and OPS and that are material and relevant to the Discreditable Conduct Charge that the OPS has made against the Respondent/Applicant. The two situations are completely different.

14. In *West Park*, the association for the grievor contested the disclosure of the grievor's personal medical records. *West Park* was a contested disclosure application where the grievor contested the disclosure request of the employer who had terminated her employment. *West Park* is not applicable to this disciplinary proceeding and to hold that the legal test for contested disclosure per *West Park* is applicable in these proceedings is bad law. This disciplinary proceeding is not a contested disclosure request, and moreover, it is the Respondent/Applicant, who has been charged by her employer, that is seeking full and complete disclosure from her employer with regards to that charge.
15. The Board in *West Park* outlines factors to consider which form the basis of the legal test that the Tribunal adopted in its Ruling. These factors are to be considered when disclosure is contested, which is not the case at hand and where in *West Park* was centered on not providing the nurse's medical records to the employer who had terminated her employment. It would make sense to have a strict 4-factor test in a situation such as *West Park* where the request for disclosure of personal records stems from the employer who caused the termination.
16. Ultimately, the Board in *West Park* held that it has not been satisfied that ordering the disclosure of personal, medical information should be disclosed at the employer's request.
17. The Tribunal should re-consider its application of *West Park* in this disciplinary proceeding in order to fully adhere to the principles of procedural fairness.

## *II. Application for 3<sup>rd</sup> Party Records*

18. The Tribunal in its Ruling dismissed the Applicant's motion for copies of the preliminary and final autopsy reports for 2021 infant deaths.
19. On August 30, 2022, the Prosecutor disclosed several email correspondences with Coroners & Pathologist. These emails are from Sgt Arbuthnot addressed to Coroners & Pathologists with the following text:

The Ottawa Police Service has opened a conduct investigation into allegations Detective Helen Grus of the Sexual Assault and Abuse Unit accessed several infant death reports without authorization in order to ascertain the mother's COVID vaccination status. You are listed as the coroner on one of these reports.

20. One email in particular, entitled 'Email to Dr. Yu\_Redacted' makes reference to 'autopsy results,' that is, an autopsy report of one of the infant deaths.
21. The Applicant requests for a copy of the autopsy results of 2021-151796 as referred to the email at paragraph 20.
22. All other coronary or pathologist records pertaining to the 9 infant deaths that the Respondent/Applicant allegedly investigated, should also be disclosed, as mentioned in emails to the Coroners and Pathologists and part of the Discreditable Conduct Charge.
23. The legal test for requesting for 3<sup>rd</sup> Party Records is: *R v O'Connor* [1995] 4 SCR 411 and is a two-staged test:
  1. Are the records likely relevant, and
  2. Are the records necessary in the interest of justice.
24. 'Likely relevance' is satisfied where the Tribunal is "satisfied that there is a reasonable possibility that the information is logically probative to an issue at the Hearing."<sup>2</sup> Likely relevance also relates to the credibility of a witness and to the reliability of other evidence in the case.
25. This Tribunal should bear in mind that the threshold of production is not high because it is an administrative tribunal.
26. The Applicant is not required to demonstrate the specific use of records that they have not seen.
27. The second stage asks for the Tribunal to balancing privacy concerns against defendant's interest in making full answer and defence. Privacy concerns have been understood to stem from sexual assault proceedings. The Supreme Court in *R v O'Connor*<sup>3</sup> stated that:

In *Dagenais*, the Court assessed proportionality by examining and weighing the salutary and deleterious effects of the rights infringements in question. I believe that such a process was

---

<sup>2</sup> *R v O'Connor* [1995] 4 SCR 411, para 22.

<sup>3</sup> *Ibid*, para 156.

already implicit in *S. (S.)*, in which this Court sought to achieve a measure of proportionality between the right to privacy and the right to a fair trial. In my view, an analogous approach is appropriate in the disclosure context. Once a court has reviewed the records, production should only be ordered in respect of those records, or parts of records, that have significant probative value that is not substantially outweighed by the danger of prejudice to the proper administration of justice or by the harm to the privacy rights of the witness or to the privileged relation.

28. The autopsy records do not need to reveal confidential information. Each infant death has been assigned a serial number and no personal details are disclosable. Therefore, there are no privacy concerns.

*III. Application for sufficient particulars of the discreditable conduct charge*

29. The Tribunal states in the Ruling on page 8, that “The particulars of the Discreditable Conduct charge are very specific: The Respondent is charged with one Count of Discreditable Conduct in that she is alleged to have self-initiated an unauthorized project, accessed nine child and/or infant death cases where she had no investigative role/responsibility, and failed to record her involvement or finding in the files. Further, the Applicant is alleged to have 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.”
30. At page 11 of the Ruling, the Tribunal states that the Applicant is “not being accused of unauthorized access to reports and information contained within the RMS system. The issue is what she did with the information that formed the allegation of misconduct. OPS policy and General Orders permits the accessing of the RMS system for official inquiries during an officer’s duties. I see no correlation between access RMS data and the particulars of the Applicant’s PSA charge.”
31. A discipline panel such as the Tribunal, is not entitled to deference on a determination as to whether a charge has been sufficiently particularised.<sup>4</sup>

---

<sup>4</sup> *Katsoulakos v Association of Professional Engineers of Ontario*, 2014 ONSC 5440 at paras 23-24.

32. On February 3, 2022, the Respondent/Applicant received a Chief's Complaint stating 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 10<sup>th</sup> and January 28<sup>th</sup>, 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."

33. The next day, on February 4, 2022, the Respondent/Applicant was notified by Sgt Arbuthnot of a Suspensions for Insubordination.

34. The Insubordination Charge was dropped on July 6, 2022 due to insufficient evidence.

35. Then, on July 26, 2022, the Respondent/Applicant received a Notice of Disciplinary Hearing relating to the Discreditable Conduct Charge stating the following:

"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 30<sup>th</sup>, 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 I of the Code of Conduct, Ontario Regulation 268/10, as amended, and is thereby contrary to section 80(1) of the *Police Services Act*."

36. There is significant overlap in substance of the Insubordination Charge and the Discreditable Conduct Charge. The first charge arose from the Chief's Complaint on February 3, 2022 and was dropped on July 6, 2022 and contains the same or similar language as the Discreditable Conduct Charge laid on July 26, 2022.

37. Part of the elements of the Discreditable Conduct Charge have already been dropped due to lack of evidence and therefore should be removed or severed from the Discreditable Conduct Charge.

38. It is an abuse of process to drop one charge due lack of evidence and then to take the same allegations of the dropped charge and further embellish them in order to substantiate a second charge under a different name.
39. The Insubordination Charge at investigation read: “The investigation stems from allegations that between January 10<sup>th</sup> and January 28<sup>th</sup>, 2022, you accessed the Ottawa Police Service’s RMS database for the purpose of researching and collecting information involving the death of children” which is the same substance as the Discreditable Conduct Charge: “wherein it is alleged you committed Discreditable Conduct in that between June 2020 and January 2022, [...], 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.”
40. The essential elements of the conduct that amounts to ‘discreditable misconduct’ must be contained in the charge. Allegations must answer the question: “precisely what is it that Det Grus supposed to have done?”. If this question is not answered with clarity, then particulars are required.<sup>5</sup>
41. OPS must ensure that sufficient particulars are provided to make the Respondent/Applicant aware of the substance of the allegations, or a breach of procedural fairness may be found.<sup>6</sup> The duty of fairness at the investigation stage requires the disclosure of the substance of the individual allegations such that the Respondent/Applicant will be able to respond reasonably.<sup>7</sup>
42. The Respondent/Applicant should not be called on to answer to the Discreditable Conduct Charge at a Hearing without first amending or severing part of the Discreditable Conduct Charge.<sup>8</sup>
43. In the alternative, the Discreditable Conduct Charge should be dismissed for the reason of apprehension of bias and abuse of process during the investigation and charge phase.

---

<sup>5</sup> *R. v. Armour Pharmaceutical Company*, 2006 CanLII 811 (ONt Sup Ct J).

<sup>6</sup> *Gopinath v College of Physicians and Surgeons of Ontario*, 2014 ONSC 3143

<sup>7</sup> *Kuny v College of Registered Nurses of Manitoba*, 2017 MBCA 111 at para 4; The Supreme Court of Canada in *The Queen v Cote* [1978] 1 SCR 8 at 13 stated that “the golden rule is for the accused to be reasonably informed of the transaction alleged against him, thus giving him the possibility of full answer and defence and a fair trial.”

<sup>8</sup> *Sen v College of Physicians and Surgeons of Saskatchewan*, 1969 CanLII 615 (Sask CA); the function of particulars is to lift the allegations from the general to the specific. *R v GR*, 2006 SCC 45.

44. Abuse of process allows the Tribunal to intervene in situations where proceedings are oppressive, or otherwise contrary to the interests of justice. Allowing this disciplinary proceeding to continue would undermine the principles of fairness and natural justice.
45. As for reasonable apprehension of bias, consideration must be given to the fact that the Chief's Complaint may have been improperly investigated and that the Discreditable Conduct Charge may have been issued for improper or collateral purposes.<sup>9</sup>
46. Last, with regards to the allegation that on "on or about January 30<sup>th</sup>, 2022, [Det Grus] 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 Respondent/Applicant submits that due recognition must be afforded to the discretion inherent in police investigation.
47. In *Hill v. Hamilton-Wentworth Police Services Board*, [2007] 3 S.C.R. 129, the Supreme Court of Canada held that:

The police discretionary power has been recognized by this Court as "an essential feature of the criminal justice system": *R. v. Beare*, 1988 CanLII 126 (SCC), [1988] 2 S.C.R. 387, at p. 410. As stated by La Forest J. in that case: "A system that attempted to eliminate discretion would be unworkably complex and rigid."<sup>10</sup>

*IV. Application for a summons to compel certain witnesses to testify*

48. On May 12, 2022, a month and a half after the CBC articles were published, the Respondent/Applicant was notified by OPS that there would be a charge of Discreditable Conduct as a result of the public attention garnered by the CBC articles.
49. The Hearing Officer at paragraphs 5,6,7,8, and 9 of the Ruling dismissed the Applicant's following requests for disclosure relating to the media leaks per CBC articles:
- a) The Applicant's motion for any information as to media leaks or communications to Ms. Yogaretnam and other media;
  - b) The Applicant's motion for decision to close any and all OPS investigations into any media leaks;
  - c) The Applicant's motion for information and notes as to OPS Professional Standards refusal on April 7, 2022 to grant request by Cst. Grus that PSU investigate the leaks; and

---

<sup>9</sup> *Yee v. Chartered Professional Accountants of Alberta* 2020 CarswellAlta 445, 2020 ABCA 98, [2020], para 78.

<sup>10</sup> *Hill v. Hamilton-Wentworth Police Services Board*, [2007] 3 S.C.R. 129, para 150.

- d) The Applicant's motion for the full statement to news media sent March 15, 2020 at 4:06 p.m., including the writer's name and the recipients.

50. The Tribunal did not provide specific explanations for dismissing the Applicant's requests for disclosure regarding the media leaks. However, at page 8-9 of the Ruling, the Tribunal specifies that the Hearing Officer "fail[s] to see the relevancy of investigative material in the leak [...] to the misconduct charge before this Tribunal."

51. The Applicant requests for the Tribunal to subpoena Shaamini Yogaretnam.

52. The Supreme Court of Canada in *R. v. Vice Media Canada Inc.*, [2018] SCC 53 allowed for a production order with regards to seeking information from the press and information communicated to a reporter.

53. It is submitted that the Tribunal must subpoena Shaamini Yogaretnam in order to provide the Respondent/Applicant with the possibility of full answer and defence and a fair trial, and in order to uphold principles of fairness and natural justice.

#### **PART IV – ORDERS SOUGHT**

54. The Applicant seeks the following relief:

- a. A Decision granting the application for 3<sup>rd</sup> Party Records with notice to the custodians of the 3<sup>rd</sup> Party Records; and a *subpoena duces tecum* to attend the Hearing and to bring the relevant documents;
- b. A Decision to sever or amend parts of, or dismiss the Discreditable Conduct Charge;
- c. A Decision to subpoena Shaamini Yogaretnam;
- d. A Decision to hear this Consolidated Motion by way of hybrid appearance both in person and virtually; and
- e. Such other relief as the Hearing Officer may deem appropriate and necessary.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 17<sup>th</sup> DAY OF APRIL 2023**

## TABLE OF AUTHORITIES

*Gopinath v College of Physicians and Surgeons of Ontario*, 2014 ONSC 3143  
*Hill v Hamilton-Wentworth Police Services Board*  
*Katsoulakos v Association of Professional Engineers of Ontario*, 2014 ONSC 5440  
*Kuny v College of Registered Nurses of Manitoba*, 2017 MBCA 111  
*Law Society of Upper Canada v Savone*, 2016 ONSC 3378  
*R. v. Armour Pharmaceutical Company*, 2006 CanLII 811 (ONt Sup Ct J)  
*R v GR*, 2006 SCC 45  
*R v O'Connor* [1995] 4 SCR 411  
*R v Stinchcombe*, [1991] 3 SCR 326  
*R. v. Vice Media Canada Inc.*, [2018] SCC 53  
*Sen v College of Physicians and Surgeons of Saskatchewan*, 1969 CanLII 615 (Sask CA)  
*The Queen v Cote* [1978] 1 SCR 8  
*West Park Hospital v Ontario Nurses' Assn.*, [1993] OLAA No 12 4  
*Yee v. Chartered Professional Accountants of Alberta* 2020 CarswellAlta 445, 2020 ABCA 98, [2020]