

Subject Officer: CSI GRUS

Exhibit Number: 14.

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

Date: April 28, 2023

Signature: [Redacted]

Case No. 22-0063

BETWEEN

OTTAWA POLICE SERVICE

Respondent/Prosecutor

- and -

CONSTABLE HELEN GRUS (# 1631)

Applicant/Subject Officer

RESPONDENT OTTAWA POLICE SERVICE FACTUM
Response to Applicant's Consolidated Motion

April 26, 2023

Angela Stewart
Legal Counsel
Ottawa Police Service

[Redacted]
Counsel for the Respondent
Ottawa Police Service

PART I – STATEMENT OF FACTS

1. The Respondent Ottawa Police Service (“OPS”) accepts as substantially correct, for the purposes of this consolidated motion, the facts as set out by the Applicant in her factum.

PART II – ISSUES

- a. Has the Applicant properly brought a third-party records application for infant autopsy reports?
- b. Has the Applicant demonstrated that the Notice of Hearing is deficient?
- c. Has the Applicant demonstrated the potential relevance of Shaamini Yogaretnam’s testimony?

PART III – LAW & ANALYSIS

A. The tribunal has already ruled on the request for infant autopsy reports, these reports are not third-party records, and the Applicant has not met the O’Connor test.

2. The Applicant requests copies of all autopsy records of the nine deceased infant files queried by Cst. Grus. The Applicant has framed these records as third-party records.
3. This request has already been disposed of following a Motion for first party disclosure. The Applicant is not entitled to re-litigate the issue by framing the records sought as third-party records.
4. Even if these records were properly characterized as third-party records, the standard for disclosure is governed by procedural fairness, the *Police Services Act (PSA)*, and the *Statutory Powers Procedure Act (SPPA)*. The criminal law *O’Connor* regime is not applicable. However, if this tribunal is inclined to revisit its previous ruling and determines the *O’Connor* regime is applicable, the Applicant has failed to meet that standard.
5. The Applicant previously brought a Motion for Disclosure for 27 additional items of disclosure. This Motion was addressed by way of written submissions. This tribunal has already ruled on this portion of the Application in its Ruling on Motion for Disclosure of January 31, 2023. The Applicant’s request for “copies of the

preliminary and final autopsy reports for 2021 infant deaths” was dismissed.

Ruling on Motion for Disclosure of January 31, 2023, page 6.

6. These proceedings are governed by the *Statutory Powers Procedure Act*. The *Act* sets out that a tribunal may review its own order, provided it has set out rules that govern this scenario:

Power to review

21.2 (1) A tribunal may, if it considers it advisable and if its rules made under section 25.1 deal with the matter, review all or part of its own decision or order, and may confirm, vary, suspend or cancel the decision or order. 1997, c. 23, s. 13 (20).

Statutory Powers Procedure Act, R.S.O. 1990, c. S.22

7. This Tribunal has not developed its own rules over and above those set out in the SPPA. Thus, the Tribunal does not have the ability to review its own decision or order. Once these proceedings are complete, the applicable review mechanism is a statutory right of appeal to the Ontario Civilian Police Commission.
8. This tribunal, in its previous ruling, agreed that that criminal disclosure law principles of disclosure, including *Stinchcombe*, “are not binding or applicable to PSA disciplinary hearings”. This inapplicability has been well-accepted by police law tribunals and the Ontario Civilian Police Commission.

Ruling on Motion for Disclosure of January 31, 2023, page 5.

9. It logically flows that if *Stinchcombe* does not govern, then neither does *O'Connor*. However, if this tribunal wishes to revisit its previous ruling and determines that the *O'Connor* regime applies, the OPS submits that the Applicant has failed to meet the test.
10. The OPS agrees with the Applicant that she is not required, pursuant to *O'Connor*, to demonstrate the specific use of the records. However, if the *O'Connor* standard is applied, the Applicant is required to demonstrate likely relevance.

“Evidence is relevant where it has some tendency as a matter of logic and human experience to make the propositions for which it is advanced more likely than that proposition would appear to be in the absence of that evidence. To identify logically irrelevant evidence, ask, “Does the evidence assist in proving the fact that the party calling that evidence is trying

to prove?” There is no legal test for identifying relevant evidence. Relevance is a matter of logic, based on inferences drawn from everyday experience and common sense.”

R v Jackson, 2015 ONCA 832, at paras. 119-123.

11. This tribunal, in its previous ruling, noted that “Relevance and a direct nexus to the misconduct noted in the Notice of Hearing will have to be firmly demonstrated for me to consider such an application.”

Ruling on Motion for Disclosure of January 31, 2023, page 7.

12. The applicant has provided no rationale demonstrating any relevance of these autopsy reports – because there is no relevance to these records.

B. The Applicant has not demonstrated any specific deficiency in the Notice of Hearing or a basis upon which to provide further particulars

13. The Applicant’s second Motion is for sufficient particulars of the single charge of Discreditable Conduct be provided to her. Though the Applicant has not notified the Tribunal of a further Motion, nor has she brought a further Motion, she further requests that the charge be dismissed on the basis of bias and abuse of process.

Applicant’s factum, para. 43.

Abuse of process

14. The Applicant has not brought a Motion for a ruling on abuse of process but indicates that “it is an abuse of process to drop one charge due to 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”.

Applicant’s factum, para. 38.

15. The process for a Chief’s complaint is set out in s. 76 of the *Police Services Act*.

76 (9) Subject to subsection (10), 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 or unsatisfactory work performance, he or she shall hold a hearing into the matter.

Police Services Act, R.S.O. 1990, c. P.15

16. No charges were “dropped”. An investigation was completed, a charge was substantiated by the investigator and a Notice of Hearing laid based on the conclusions of the investigator.
17. The Applicant has not brought forth any substantial argument regarding a potential abuse of process and the OPS submits this should be rejected.

Reasonable apprehension of bias

18. The Applicant submits, at paragraph 43 of her factum, “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”. However, the Applicant has not brought a motion with respect to bias.
19. An allegation of bias in a *Police Service Act* hearing centers on the impartiality of the hearing officer. It is unclear on what basis the Applicant is making this claim and for what purpose. Further, she has offered no evidence in support of this notion.

Charge particulars

20. The *Police Services Act* speaks to Notices of Hearing:

Notice and right to representation
(4) The parties to the hearing shall be given reasonable notice of the hearing, and each party may be represented by a person authorized under the Law Society Act to represent the party.

Police Services Act, R.S.O. 1990, c. P.15, s. 83(4).

21. As the Commission has indicated: “The purpose of a Notice of Hearing is to commence the disciplinary proceeding and provides parties with notice. The Notice of Hearing particulars are an outline of the alleged facts, that have yet to be proven by the prosecutor. The Notice need only be reasonably sufficient to allow the officer charged with misconduct to know the allegations against him. A hearing officer is not obligated to accept the alleged facts as true.”

Rollins v. Pinkerton, 2020 ONCPC 7 (CanLII) para. 13. C.

22. The Police Chief has the discretion to determine the wording of a Notice of Hearing, including the particularization of allegations of misconduct.

Grychtchenko v. McCartney, 2016 CanLII 81396 (ON CPC) para 63.

23. The Applicant has not pointed to any specific deficiency in the charge wording. The OPS submits that sufficient particulars have been provided in the Notice of Hearing. Moreover, the prosecutor bears the onus of proving the charge as wording on a standard of clear and convincing evidence, and this is an issue for the hearing proper.

C. The Applicant has not demonstrated the potential relevance of Shaamini Yogaretnam's testimony

24. This issue has, in essence, already been addressed by the Tribunal. The Applicant previously sought three items of disclosure related to Shaamini Yogaretnam, a CBC reporter, in her December 29, 2022 Motion for Disclosure.

Applicant's Motion Regarding Disclosure, 29 December 2022 paragraph 42.

25. This request was dismissed by the Tribunal in its January 13, 2023 Ruling.

Ruling on Motion for Disclosure, January 13, 2023, page 7.

26. A summons for Ms. Yogaretnam is simply an attempt to circumvent the previous ruling of this tribunal and should be denied for the same reasons as set out in paragraphs 6-9 of this factum.

27. The SPPA sets out rules for the examination of witnesses:

10.1 A party to a proceeding may, at an oral or electronic hearing,
 (a) call and examine witnesses and present evidence and submissions; and
 (b) conduct cross-examinations of witnesses at the hearing reasonably required for a full and fair disclosure of all matters **relevant** to the issues in the proceeding.

Statutory Powers Procedure Act, R.S.O. 1990, c. S.22

28. The Applicant was unable to demonstrate any possible relevance to the documents sought in her previous disclosure motion and she has offered no additional information regarding the relevance of Ms. Yogaretnam's potential testimony.

PART V – ORDER REQUESTED

29. The Respondent requests that the Applicant's Motion be dismissed in its entirety.

ALL OF WHICH is respectfully submitted by:

Angela Stewart
Prosecutor
Ottawa Police Service

Dated at Ottawa, this 26th day of April 2023