

**DURHAM REGIONAL POLICE SERVICE DISCIPLINE HEARING
IN THE MATTER OF ONTARIO REGULATION 268/10**

**MADE UNDER THE *POLICE SERVICES ACT*, RSO 1990,
AND AMENDMENTS THERETO;
AND IN THE MATTER OF**

DURHAM REGIONAL POLICE SERVICE

AND

CONSTABLE CHRIS HANSSON #3715

Charge:

INSUBORDINATION

DECISION WITH REASONS

Before: Superintendent (Ret.) Greg Walton
Ontario Provincial Police

Counsel for the Prosecution: Mr. Alex Sinclair

Counsel for the Defence: Mr. Andrew McKay

Hearing Dates: February 28 & March 28, 2024

BACKGROUND

Plea / Representation

Constable Chris Hansson #3715 of the Durham Regional Police Service is alleged to have committed the offence of insubordination. Mr. Andrew McKay represented Constable Hansson who entered a plea of not guilty on February 28, 2024. Mr. Alex Sinclair represented the Durham Regional Police Service as prosecutor.

Allegations of Misconduct (amended)

The allegations of misconduct as noted in the Notice of Hearing reads as follows:

It is alleged that Constable Chris Hansson #3715 of the Durham Regional Police Service committed misconduct in that on August 4, 2022, without lawful excuse, he disobeyed, omitted, or neglected to carry out any lawful order, thereby committing the offence of insubordination, contrary to Part V, clause 80(1)(a) of the *Police Services Act*, and section 30 clause 2(1)(b)(ii) of the Schedule Code of Conduct, Ontario Regulation 268/10 as amended.

Statement of Particulars:

On June 17, 2022, Constable Hansson was served a Notice of Investigation - Request to Submit Duty Statement in regard to Chief's Complaint 22-04-CC022 where he was designated as a subject officer. Constable Hansson was ordered to provide a response to the allegation that he had committed discreditable conduct by making a \$90 donation on February 8, 2022, to the Freedom Convoy that had occupied the city of Ottawa during January and February of 2022.

On July 20, 2022, Constable Hansson's duty statement was submitted to the Professional Standards Unit. In his duty statement, Constable Hansson denied all allegations of wrongdoing and specifically any allegation of discreditable conduct. Furthermore, Constable Hansson stated that he was off duty on the date of the alleged misconduct and as a result, had nothing of note to share or provide with regard to the investigation. Constable Hansson did not explain any potential involvement or state that he had no involvement with the incident that forms the basis of the allegation, as such, Constable Hansson was ordered to submit to an interview regarding the allegation.

On August 4, 2022, Constable Hansson attended the Durham Regional Police Service Professional Standards Unit as he had been ordered. During the interview, Constable Hansson declined to provide answers to multiple questions pertaining

to the allegation. Constable Hansson was cautioned that he could be charged with insubordination if he did not answer the questions posed to him and was ordered to answer the questions.

Nevertheless, Constable Hansson declined to answer questions that he was compelled to answer. Constable Hansson stated he was declining to answer based on his belief that the questions were regarding personal and private information and that he was off duty at the time of the alleged incident.

As a result of his refusal to answer questions posed to him as part of Chief's Complaint 22-04-CC022, Constable Hansson has, without lawful excuse, disobeyed, omitted, or neglected to carry out a lawful order, thereby committing insubordination.

Motion for Adjournment

Prior to the evidentiary hearing, I heard a Motion brought forth by Constable Hansson requesting a stay of proceedings which was denied. A full decision on that matter was composed and delivered to counsel; to follow, is a summary of that decision.

On October 27, 2023, I heard a motion brought forth by Constable Hansson; he sought a stay of the proceedings because of an abuse of process and/or due to *Canadian Charter of Rights and Freedoms* violations. In a decision dated November 6, 2023, in part, I stated:

...I do not find that an abuse of process has occurred, so I need not consider a remedy. I find that proceeding to hearing on the merits of the insubordination allegation is not oppressive or vexatious nor does it violate the fundamental principles of justice essential to the public's sense of fair play and decency. The Applicant [Constable Hansson] has not been prejudiced by the Respondent's [Durham Regional Police Service] actions and I am satisfied that he can have a fair hearing. I am satisfied that the police potentially relying upon a donor list that had been illegally obtained by an unknown person, to inquire about potential misconduct is not behaviour which would violate the conscience of the public or bring the administration of justice into disrepute.

The Applicant submitted that in lieu of finding an abuse of process, the Durham Regional Police Service contravened s. 2(b), s. 7, and s. 8 of the *Charter*. I do not find that the actions of the Respondent in any way violated the Applicant's *Charter* rights. The Durham Regional Police Service came into possession of information which caused them to believe the Applicant may have committed misconduct; they were permitted to make inquiries with him about the alleged misconduct.

The Applicant's motion to have this matter stayed or dismissed due to an abuse of process and/or *Charter* violations is denied.

The Applicant submitted that if this Tribunal does not accept his position, I should order that all outstanding production in relation to the initial discreditable conduct investigation and the insubordination investigation be released and shared with the Applicant. I do not find that further production is required based on the information before the Tribunal.

Motion to Re-Open the Evidentiary Hearing

The hearing was scheduled to be heard over two days, February 28, and February 29, 2024. *Viva Voce* evidence was heard, and the hearing concluded on February 28, 2024. It was agreed that rather than hearing oral submissions that day, counsel would make their submissions in writing with oral submissions to follow on March 28, 2024.

On March 17, 2024, I received a written request from Mr. McKay seeking a motion to re-open the hearing to permit him a further opportunity to conduct cross-examination of the prosecution's lone witness. A video conference call was held on March 20, 2024, at which time Mr. McKay reiterated his request to re-open the hearing. Mr. Sinclair was opposed to the request. Due to time constraints in effect, a written decision in relation to the motion was limited to an email communication which was shared with counsel on March 21, 2024.

On March 21, 2024, at 7:11 a.m., I sent the following correspondence to counsel:

Please see the attached document explaining my reasons for granting Mr. McKay's request to re-open the hearing to continue cross examining Staff Sergeant Samuels. One of the reasons for granting the request is the fact that March 28th is set aside for oral submissions. I expect that date to be used for this purpose so that the delay created as a result of this motion is minimal. I am content proceeding virtually, but I will entertain comments from counsel on that issue. We are scheduled to start at 2 p.m. but perhaps if everyone is available, it makes sense to start at 1 or noon?

Mr. Sinclair, please confirm the availability of Staff Sergeant Samuels as soon as possible and inform the Tribunal accordingly. I would ask counsel once Mr. Sinclair has confirmed Staff Sergeant Samuels' availability, to weigh in on the start time and the matter of proceeding virtually.

The document attached to the above noted email read as follows:

On March 17, 2024, Mr. McKay submitted an email to me and to Mr. Sinclair. Mr. McKay asked that he be provided with an opportunity to file a motion to re-open the evidentiary hearing. Specifically, Mr. McKay indicated he wished to re-call Staff Sergeant Samuels. In his correspondence Mr. McKay attached his motion, stating:

- The Hearing Officer severely restricted the Applicant's right to cross-examine the Prosecution witness by not permitting questions related to the background of the investigation that gave rise to the charge of Insubordination;
- The Applicant was not adequately equipped to proceed with further meaningful cross-examination or calling a defence in light of the Hearing Officer's direction to restrict cross-examination to the narrow issue of Insubordination and prohibiting the Applicant from asking questions relating to the allegation of Discreditable Conduct which gave rise to the charge of Insubordination;
- The Applicant agrees to respect the Hearing Officer's direction to restrict cross-examination to the issue of the insubordination and not ask questions relating to the allegation of discreditable conduct that gave rise to the charge of Insubordination;
- The Rules of Natural Justice warrant the re-opening of the case to allow further and targeted cross examination of the witness.

A video conference was held on March 20, 2024, at which time I asked Mr. McKay what direction the line of questioning would take if he were given the opportunity to cross examine Staff Sergeant Samuels further. He indicated that because I had put a halt to the type of cross examination he had prepared for, he was unprepared to conduct the type of cross examination needed. Mr. McKay informed me that he now wished to ask Staff Sergeant Samuels more questions about the lawfulness of the order and Constable Hansson's obligation to respond. Mr. McKay submitted that if it were determined that the questions posed were lawful, then his inquiry would lead to the area of the obligation of Constable Hansson to answer what the tribunal would say was the lawful authority of the question.

Mr. Sinclair was opposed to Mr. McKay's Motion. Mr. Sinclair stated that he had already submitted his closing arguments in writing to this Tribunal and to Mr. McKay; to grant Mr. McKay an opportunity to re-call Staff Sergeant Samuels would be prejudicial. Mr. Sinclair stated the areas of evidence that Mr. McKay is seeking to address could have been visited during the original cross examination; the lawfulness of the order and Constable Hansson's lawfulness to provide an answer have always been in issue.

Mr. Sinclair submitted the matters raised by Mr. McKay deal with the law and Staff Sergeant Samuels would not be in a position to assist the Tribunal. He noted that the evidence included the audio recording of the interview between Staff Sergeant Samuels and Constable Hansson, and questioned how that can now be in dispute. Mr. Sinclair also expressed concern about the additional delay that would be incurred if the request were granted. I informed counsel that because any delay that would be incurred if the request were granted would be brief, I would not be impacted by this factor.

Mr. McKay discussed the fact that it is how Constable Hansson would be prejudiced if the request is not granted that ought to be considered, not that the Durham Regional Police Service might be prejudiced if the request were granted. Mr. McKay noted that any prejudice in relation to Mr. Sinclair's closing submission could be remedied by allowing him to amend and re-submit them following the conclusion of Staff Sergeant Samuel's testimony.

Mr. Sinclair submitted his closing written arguments to this Tribunal on March 8, 2024. Mr. McKay agreed to submit his written arguments to the Tribunal no later than March 22, and oral submissions in support of the written material is scheduled for March 28, 2024. As a result of the strict timelines, at the conclusion of the video conference I informed counsel I would take the day to consider the matter and respond by way of email as soon as possible; hence this correspondence.

The hearing was scheduled for two days, February 28 and 29. It started on schedule and at 12:43 p.m. the evidentiary component of the hearing had concluded. We broke for lunch with the understanding that closing submissions would be heard at or near 2 p.m. During the lunch hour, Mr. McKay approached Mr. Sinclair and this Tribunal suggesting that we proceed by way of written submissions. Mr. Sinclair agreed and I approved the request.

I appreciate Mr. McKay's cross examination may have been disrupted by me limiting his area of questioning. However, if troubled or surprised in the evidentiary hearing, there was nothing preventing Mr. McKay at that time from seeking a brief adjournment to reconsider his position. As noted, the entire afternoon was available on February 28, and the following day was also set aside. Instead of using February 28 and/or February 29, to continue with cross examination or to make oral submissions, Mr. McKay requested we vacate the remaining hearing dates and that counsel be permitted to make written submissions.

During the video conference call Mr. Sinclair referred to two cases, *Varco Canada Limited and Pason Systems*, 2011 FC 467 CanLII and *McKenzie v. Morgan*, 2023 ONSC 1457. I recognize *Varco* is a civil matter, but I find the Court's comments assistive:

The first point and an overarching aspect is that reopening is a matter of broad discretion but one which should be exercised sparingly and cautiously. Finality of a trial is a critical concept in our justice system – no one appreciates that concept more than a trial judge who is faced with the generally unpleasant task of reopening a case on which he or she has commenced writing.

While the discretion is broad, there are some factors which should be considered. The decision in *671122 Ontario Ltd. v Sagaz Industries Canada Inc.*, 2001 SCC 59, [2001] 2 SCR 983 has set out the questions a court should consider:

1. Would the evidence, if presented at trial, have changed the result?
2. Could the evidence have been obtained before trial by the exercise of reasonable diligence?

The *Sagaz* decision is not strictly applicable here because it dealt with a motion to reopen after judgment had been rendered. On the first test the situation is quite different where the Court has not yet reached its final conclusion. In the current situation it is more appropriate to ask – could the evidence, if it had been presented, have had any influence on the result? This engages an inquiry as to materiality/relevance.

The second branch of the *Sagaz* test can be more easily imported into the situation of new evidence before decision where it is a factor for consideration but not necessarily determinative of the issue.

The judicial policy captured by the two-prong test is well described in *Risorto v State Farm Mutual Automobile Insurance Co.*, (2009), 70 CPC (6th) 390 (Ont. Div. Ct.), in paragraphs 34-36:

The principles applied by the Supreme Court of Canada in *Sagaz*, supra, are not new. They have been applied by Canadian courts for decades... In all such cases, the test for reopening the matter and permitting the calling of new evidence is the same. The moving party must satisfy the Court that the proposed evidence would probably change the result, and that it could not have been discovered by the exercise of due diligence.

... . There is a strong interest in finality, which should only be departed from in exceptional circumstances...

Added to the two-part test is a consideration of whether these are exceptional circumstances that would justify setting aside the “due diligence” test or at least reducing its overall importance in the exercise of discretion. The danger that a court would be misled is an aspect of the “exceptional” circumstances consideration...

In this Court, Justice Snider had to consider a motion to reopen after the evidence was closed but before argument. Her decision has been inaccurately described as setting a test for reopening based upon whether reopening “would cause more harm than good” (*Sanofi-Aventis Canada Inc. v Apotex Inc.*, 2009 FC 294 at para. 8). That quote is no more than judicial shorthand for acknowledgement of the broad discretion to be exercised sparingly. A fairer analysis of the reasons shows that in that situation the Court addressed five factors: relevance, necessity, reliability, due diligence, and prejudice.

In my view, when all the various factors, tests and considerations are taken together, the importance of the integrity of the trial process – the search for the truth through evidence – is an overarching consideration. To some extent that consideration is addressed in the issue of whether a court would be misled.

In *McKenzie*, the Court stated:

I note that *Sagaz* dealt with a case where judgment had been delivered. However, similar considerations remain. Litigation must end. It is not fair to the other party to permit the filing of evidence after argument unless there is a compelling reason that can be supported by these *Scott/Sagaz* factors.

As noted by the Court, the matter of reopening a hearing is of broad discretion but one which should be exercised sparingly and cautiously. I must consider whether the evidentiary avenue Mr. McKay seeks to explore could have been attained by the exercise of reasonable diligence during the hearing. I am reminded that Mr. McKay seeks to ask Staff Sergeant Samuels more questions about the lawfulness of the order and Constable Hansson’s obligation to respond. This is not a new issue. The charge is that of insubordination where the lawfulness of the order is at issue. In fact, Mr. McKay did pose some questions to Staff Sergeant Samuels in cross examination in relation to this very issue.

As noted by the Court, Mr. McKay must satisfy me that the proposed evidence would probably change the result and that it could not have been discovered by the exercise of due diligence. I am not satisfied that Mr. McKay did not have ample opportunity to explore this avenue of questioning during the hearing. The Court stated there is a strong interest in finality, which should only be departed from in exceptional circumstances. I do not find the circumstances that exist in this instance to be exceptional, but they are unique. It was clear that Mr. McKay was taken aback by my ruling to limit his area of cross examination during the hearing.

The Court in *McKenzie* stated it is unfair to the other party permit the filing of evidence after argument unless there is a compelling reason. The difference being that in this instance, the “other party” is the Durham Regional Police Service. The purpose of this hearing is to determine whether an employee of the Durham Regional Police Service has committed misconduct. It would seem to me that any employer would want to be very certain that the result of an employer/employee disciplinary hearing is sound.

Despite the above noted reasons which do not support the granting of Mr. McKay’s request, I am mindful of the fact that the delay which will occur if it were granted would be minimal; oral submissions are scheduled to be heard on March 28. That date can be used to re-open cross-examination of Staff Sergeant Samuels. Mr. McKay estimated that he would require approximately one hour to complete the cross examination.

Of note, I have not yet received written submissions from Mr. McKay with oral submissions scheduled for next week. Consequently, I have yet to commence writing my analysis; this is a significant factor in my consideration to grant Mr. McKay’s request.

The prejudice that will occur to the Durham Regional Police Service is minimal, Mr. Sinclair will have the opportunity to ask questions in reply and to re-submit his written arguments. Instead of oral submissions being heard March 28, they will be only slightly delayed, a reasonable consequence for ensuring that the Tribunal hears all relevant evidence.

The nature of the inquiry to be conducted by Mr. McKay relates to the lawfulness of the order which is crucial to the issue of insubordination. Consequently, I suspect the questions to be posed to Staff Sergeant Samules will be relevant, and the evidence will be reliable. The prejudice caused by granting the request to re-open the hearing to the Durham Regional Police Service and to the public who

expect an expeditious hearing process is minimal. I find that the integrity of the hearing process would not be tainted if the cross examination of Staff Sergeant Samuels is granted. Therefore, Mr. McKay's request to re-open the hearing for the sole purpose of extending the testimony of Staff Sergeant Samuels is granted. The caveat being, that this matter proceed on the date scheduled, March 28, 2024, either in-person or virtually, subject to the availability of Staff Sergeant Samuels. If an additional delay is required, I reserve the right to revisit this decision.

The hearing continued virtually on March 28, 2024. Mr. McKay conducted another cross examination of Staff Sergeant Samuels. Mr. Sinclair did not have questions in re-examination. Counsel agreed to proceed with written submissions only. Mr. Sinclair was content to rely upon the written submissions he had already tendered to the Tribunal. Mr. McKay's written submissions were received on April 12, 2024, and Mr. Sinclair's reply submissions were received on May 3, 2024.

Finding

Based on the standard of clear, convincing, and cogent evidence, I find Constable Hansson guilty of insubordination.

THE HEARING

Evidence

Sean Samuels is a Staff Sergeant with the Durham Regional Police Service. At the time of this incident, he held the rank of sergeant but in this decision, I will refer to him at his current rank. Staff Sergeant Samuels was assigned to the Professional Standards Unit and was the lead investigator for this matter.

Exhibit #9 is the Prosecution's Book of Documents. At tab 1 is a copy of the Notice of Hearing. At tab 2 is an email from Staff Sergeant Samuels addressed to Don Reid of the Ontario Provincial Police dated April 14, 2022, at 2:18 p.m. which reads as follows:

Attached is the list of active DRPS members for comparison with the names on the GiveSendGo list. Please let me know if you require anything else.

At tab 3 is the response from Mr. Reid dated April 14, 2022, at 3:24 p.m. which in part, states:

By way of explanation, I matched solely on last name and first name, from the donation list to the employee list, and eliminated all non-Ontario donations. I flagged and highlighted two members in yellow where the postal code from the

donation site matches the member's postal code. I have included other members on the list where the names match and the donation postal code is in Ontario; some of these are possible matches....

At tab 4 is another e-mail thread. In part, Don Reid noted:

All the records should have dates in the attached - I have re-attached, but specifically for the highlighted records these are; Hansson Chris 3715 L9L 0B1 (e-mail address) 08/02/22 13:25 90 visa.

Tab 5 is a spreadsheet containing particulars associated to two individuals; the remainder of the document had been completely blacked out. The name of the second individual is not associated to this file and was redacted by me from the exhibit with the consent of counsel.

At tab 6 is a Chief's Complaint Form alleging Constable Hansson committed the offence of discreditable conduct by making a monetary donation while off duty to the Freedom Convoy via the GiveSendGo website.

At tab 7 is Constable Hansson's compelled Duty statement where in part, he stated:

... it appears that this matter has been initiated by the illegal hacking, and without judicial authorization, of my personal information and identifiers...

Any disclosure of my personal information without judicial authorization is inappropriate. In response to the allegation laid out in Chiefs Complaint 22-04-CC022, I deny all allegations of wrongdoing whatsoever, and specifically any allegation of discreditable conduct.

I Chris Hansson, a police constable with the Durham Regional Police Service, have no duty notes, nor report, with regard to an alleged incident on February 8th, 2022, at 13:25 hours for which I am being investigated for discreditable conduct under the *Police Services Act* of Ontario. I was off duty on this date and time and thus have nothing of note to share or provide with regard to this investigation.

At tab 8 is the Durham Regional Police Service Officer's Notification of Investigation – Interview Form dated August 2, 2022, ordering that Constable Hansson attend for an in-person interview in relation to the ongoing investigation. Found at tab 9 is a summary of the interview held August 4, 2022. Exhibit #10 is a USB drive containing an audio recording of the said interview between Constable Hansson and Staff Sergeant Samuels.

At tab 10 of Exhibit #9 is a Chief of Police Complaint Form alleging that Constable Hansson committed the offence of insubordination consistent with the wording found in the Notice of Hearing.

Mr. Sinclair produced one witness while Mr. McKay did not call *viva voce* evidence.

Testimony of Sean Samuels – Examination in Chief

Staff Sergeant Samuels has 18 years of policing experience, all with the Durham Regional Police Service. As a member of the Professional Standards Unit, Staff Sergeant Samuels was assigned to investigate whether members of the Durham Regional Police Service had made monetary donations to the GiveSendGo fundraiser site in relation to the Freedom Convoy.

Staff Sergeant Samuels testified that the Ontario Provincial Police were in possession of a list of names who had made donations to the GiveSendGo website, referred to as the “donator list.” Staff Sergeant Samuels provided Don Reid of the Ontario Provincial Police a list of names of the members of the Durham Regional Police Service along with corresponding residential postal codes. The Ontario Provincial Police compared that information with the donator list and as noted in Exhibit #9, Mr. Reid sent information identifying two members whose names and postal codes matched that from the donator list. Staff Sergeant Samuels stated he confirmed that Chris Hansson’s name and postal code on file matched what was provided by the Ontario Provincial Police.

A Chief’s Complaint alleging Constable Hansson committed discreditable conduct was initiated. Constable Hansson was ordered to provide a duty statement and a copy of his notes. Staff Sergeant Samuels testified Constable Hansson’s duty statement did not comply with his order because it did not provide the answer to the basis of the Chief’s complaint. Therefore, Staff Sergeant Samuels ordered Constable Hansson to appear for an in-person interview.

Staff Sergeant Samuels testified Constable Hansson attended for the interview on August 4, 2022, accompanied by Durham Regional Police Service Association Vice-President Brad Durst. Constable Hansson’s counsel Mr. McKay, participated via conference call (the audio recording of the interview was played for the benefit of the Tribunal).

Staff Sergeant Samuels testified that during the interview he cautioned Constable Hansson he could be charged with insubordination if he did not comply with his order to respond directly as to whether he made a monetary donation to the Freedom Convoy via the GiveSendGo site.

Staff Sergeant Samuels testified that by the end of the interview he concluded Constable Hansson had not complied with his order and a Chief's Complaint alleging insubordination was initiated.

Testimony of Sean Samuels – Cross Examination

NOTE: The cross examination of Staff Sergeant Samuels was limited by my rulings. Mr. McKay sought to question Staff Sergeant Samuels about the specifics of the discreditable conduct investigation and to explore the *Charter of Rights and Freedoms*, specifically, the right to freedom of speech. I did not permit these lines of questioning other than at a general level.

Staff Sergeant Samuels agreed that the Durham Regional Police Service protects and values the *Charter of Rights and Freedoms*, specifically the freedom of expression and an individual's right to express their own views. Staff Sergeant Samuels agreed that the Durham Regional Police Service must be impartial. Exhibit #11 is a copy of an email dated November 11, 2023, addressed to all members of the Durham Regional Police Service sent by Chief of Police Peter Moreira. Staff Sergeant Samuels read the correspondence into the record. The Chief addressed an e-bulletin announcing an event supporting an International Palestinian solidarity day by stating in part:

Some could view today's post as picking sides, so I want to be clear that's not our position. Our role is to respect the *Charter of Rights and Freedoms* even when the views of others clash with our own beliefs...

Staff Sergeant Samuels stated that to the best of his knowledge, there was not a similar memorandum disseminated by the Chief in relation to making donations to the Freedom Convoy at or near the date of the alleged misconduct.

Staff Sergeant Samuels conceded that although the e-mail dated April 14, 2022, at 2:18 p.m. found at tab 2 of Exhibit #9 is the first email in the thread contained in the exhibit, it may not have been the very first email exchanged between he and the Ontario Provincial Police. Staff Sergeant Samuels explained that he believed Don Reid was a civilian member of the Ontario Provincial Police and was the person responsible for conducting the comparisons between the donator list and the names of the Durham Regional Police Service he provided.

[Mr. McKay noted that Staff Sergeant Samuels' first notebook entry provided by the prosecution in production is dated August 15, 2022, but according to Staff Sergeant Samuels' testimony, his first notebook entry is March 11, 2022. I denied Mr. McKay's request to obtain additional notes of Staff Sergeant Samuels because the notes sought

were in relation to the original discreditable conduct investigation, not the insubordination investigation and were therefore not relevant.]

In response to being asked about his authority to order Constable Hansson to provide a direct answer about an alleged monetary donation to the Freedom Convoy, Staff Sergeant Samuels stated the authority came from his supervisor who directed him to conduct the investigation. Staff Sergeant Samuels testified that he sent the list of member's names and postal codes to the Ontario Provincial Police that he was provided on the direction of his supervisor in the Professional Standards Unit. Staff Sergeant Samuels testified that he could not be certain if the list of names he was given included every member of the Durham Regional Police Service. Staff Sergeant Samuels stated that the list of names did not include that of the executive command team (comprised of the chief, deputy chiefs, and the chief administrative officer) but he was not certain why that was so.

Staff Sergeant Samuels stated the Ontario Provincial Police informed him that there were two members of the Durham Regional Police Service whose names and postal codes matched those contained in the donator list as noted in the spreadsheet found at tab 5 of Exhibit #9. He noted that although the spreadsheet is redacted in the exhibit, the version he received was not redacted. The redacted names are those of other members whose names and/or postal codes did not match to the same degree as the two highlighted individuals, which included Constable Hansson. Staff Sergeant Samuels stated that the only steps taken to verify the information matched was him confirming that the names and the postal codes matched; he did not obtain a judicial authorization of any type.

Staff Sergeant Samuels testified that in his compelled interview, Constable Hansson answered some questions but there were numerous others that were not answered. He concluded that although Constable Hansson responded to questions, he did not answer whether he donated to the Freedom Convoy. Staff Sergeant Samuels agreed that at this time he is still unaware if Constable Hansson donated to the Freedom Convoy. Staff Sergeant Samuels testified that he was not concerned that Constable Hansson indicated he did not have a notebook entry about the potential donation.

Staff Sergeant Samuels agreed that an officer compelled to attend an interview would not necessarily be compelled to answer questions unrelated to the investigation at hand.

Staff Sergeant Samuels testified that the Chief's Complaint was his authority for making a lawful order that Constable Hansson answer whether he made a monetary donation to the Freedom Convoy.

Testimony of Sean Samuels – Reply

Staff Sergeant Samuels stated that he was not certain what “Pcode Match” meant as denoted in the spreadsheet at tab 5 of Exhibit #9 but it was likely short for postal code match. Staff Sergeant Samuels reiterated that the names contained in the vetted-out section of the spreadsheet did not have matching postal codes.

Testimony of Sean Samuels – Re-Cross Examination (March 28, 2024)

Staff Sergeant Samuels agreed that the *Police Services Act* applies to all members of a Police Service and agreed the *Police Services Act* and Sections of the Ontario Regulation 268/10 provide the requisite authority for one officer to provide an order to a subordinate officer.

Staff Sergeant Samuels agreed that he had earlier testified that a specific order prohibiting members donating to the Freedom Convoy had not been issued. Staff Sergeant Samuels agreed that occasionally an off-duty member is obligated to put themselves on-duty by engaging in a police response to an act or issue. Staff Sergeant Samuels agreed some off-duty conduct has the potential to bring the reputation of a police service into disrepute. Staff Sergeant Samuels agreed in those situations, if an officer was at a compelled interview resulting from a Chief’s Complaint, they would only be required to respond to questions in relation to the issue at hand.

Staff Sergeant Samuels testified that during the compelled interview of Constable Hansson there were questions Constable Hansson did not respond to, but he could not be certain if all of them were in relation to whether he had donated money to the Freedom Convoy. Staff Sergeant Samuels agreed that Constable Hansson did answer some questions pertaining to the Freedom Convoy.

Mr. McKay cited Sections 11 and 12 of Ontario Regulation 268/10. Staff Sergeant Samuels testified that he did not turn his mind to Section 12 when conducting the insubordination investigation.

Staff Sergeant Samuels noted Constable Hansson was not suspended from duty because of the insubordination investigation.

Compelled Interview of Constable Hansson

As noted, Exhibit #10 is a USB drive containing an audio recording of Constable Hansson's compelled interview dated August 4, 2022. Durham Regional Police Service Association Vice-President Brad Durst was in attendance and Mr. McKay participated via conference call. The interview commenced at 10:03 a.m.

Staff Sergeant Samuels informed Constable Hansson that he had been designated as a subject officer in relation to an internal complaint in relation to non-criminal allegations. Constable Hansson indicated he was aware of the specific allegation; that as a result of making a financial contribution to the Freedom Convoy he had committed the offence of discreditable conduct. During the initial overview and introduction, Constable Hansson was informed and indicated he understood that he could be charged with insubordination if he refused to answer questions.

Before questions about the specific allegations were posed to Constable Hansson, Mr. McKay informed Staff Sergeant Samuels:

I can advise that Constable Hansson and I have had conversations. We understand the *Police Services Act* and their authority and jurisdiction. As indicated earlier Constable Hansson will not, will respectfully decline any answers that are in relation to his private and personal affairs such as his banking information under the assumption of the allegations that he may have disclosed certain funding, that's the allegation again that's a, that's personal and private information and if the Service does not have judicial authorization where they've obtained that information, Constable Hansson will be and also it's not relevant in Constable Hansson and the Police Association's position that these are relevant to any Police Act matter. Subject any questions you may have Sergeant Samuels that's the position of Constable Hansson.

Constable Hansson declined the opportunity to consult further in private with Mr. McKay at that time. Constable Hansson provided a brief overview of his time as an officer with the Toronto Police Service and also with the Durham Regional Police Service.

Staff Sergeant Samuels asked Constable Hansson if he had made the donation noted in the Chief's Complaint on the date noted. Before Constable Hansson responded, Mr. McKay stated:

And on the advice of Counsel, Constable Hansson is respectfully going to decline that uh, that to answer that particular question as that is his personal financial and private financial information that he does not need to disclose.

I transcribed the following conversation to the best of my ability; although I made every effort to ensure the transcript is verbatim, it may not be 100 percent precise, but I am confident the core substance of the conversation has been accurately reproduced:

Samuels: Okay. So, do you decline to answer that question?

Hansson: I respectfully decline, yes.

Samuels: Okay, all right. I am ordering you to provide an answer to that question.

McKay: And the answer to the question and Constable Hansson can repeat the answer to the question, based on the illegally obtained information from a third party that has ended up in the hands of Durham Regional Police without judicial authorization, Constable Hansson is respectfully declining to answer the question as it is in relation to his personal and private affairs and not subject to any *Police Services Act* jurisdiction.

Samuels: Okay, I am asking you the question, what is your response?

Hansson: I decline to answer that question.

Samuels: Okay, all right. As I mentioned upfront, the expectation is that you are forthright, truthful and that you're compelled to respond to these questions and if you don't respond to them you may be charged with insubordination. And I just need you know that.

Hansson: I understand.

Samuels: Okay. All right.

McKay: Just for the record, I don't mean to interrupt but Constable Hansson has responded to the question and has answered the question by saying he respectfully declines to answer that question based on it is his personal and private affairs it is not of not in the Service's jurisdiction to pry into, especially when it's as we understand it, unlawfully obtained information and it is about his personal banking information done, allegedly done, while he was off duty and not identifying himself as a police officer so Constable Hansson if you just want to answer, sort of repeat what I said just so it's your answer on the record.

Hansson: Yes the allegation that's being made against me in the complaint which I understand was, is when I was off duty and therefore really has no relevance.

Samuels: Oaky

Staff Sergeant Samuels informed Constable Hansson and Mr. McKay that he required Constable Hansson to provide answers, not Mr. McKay. It was agreed upon by all parties that a break was required to allow Constable Hansson and Mr. McKay the opportunity to consult privately before continuing with the interview. At 10:14 a.m., the interview broke for approximately 12 minutes. The interview reconvened at 12:26 a.m. and after a secondary introduction, the interview continued as follows:

Samuels: At this point I'm going to ask that you respond to the questions and not necessarily have answers provided by counsel and we'll go from there.

Hansson: Yes.

Samuels: So, I've asked you the first question, you've declined to respond to it. I've advised you that you may be charged with insubordination for not responding to my questions.

Hansson: Yes.

Samuels: Or not providing answers to the questions and you still continue to decline is that clear, is that correct?

Hansson: Uh, based on the fact that the questions like pertain to my personal information, my private information, yes.

Samules: Okay, but you're declining is the bottom line.

Hansson: My answer is they're personal and private matters that I'm not willing to discuss.

Samules: Okay, so you are declining.

Hansson: Yes

Samuels: Okay. All right. What was your knowledge of the involvement of Ontario police services in general and the DRPS specifically with respect to the Freedom Convoy in Ottawa in January and February of this year?

(clarification of the question sought and answered)

Hansson: I just know that several were sent.

Samuels: Okay.

Hansson: Or deployed.

Samuels: For what reason, did you have an understanding of that?

Hansson: I assume just to maintain order which is what we do crowd control.

Samuels: Okay. When did you become aware that law enforcement had identified the demonstration as an occupation with reports of acts of violence and other unlawful activity?

Hansson: I didn't.

Samuels: You were never aware of that?

Hansson: No.

Samuels: To this day you're not aware?

Hansson: When it was declared, no.

Samuels: No?

Hansson: No

Samuels: Okay. Do you, are you acknowledging that you understand that it was declared at some point?

Hansson: That it was declared?

Samuels: An occupation with acts of violence and other unlawful activity.

Hansson: Not that I saw no.

Samuels: Okay, not that you saw, were you there?

Hansson: No

Samuels: Okay, what do you mean by “not what you saw?”

Hansson: Just based on media coverage and everything else.

Samuels: Okay. So, you were in tune to the media coverage?

Hansson: I wouldn't say I was in tune; I was aware of it.

Samuels: Okay. All right. So, but you are aware that there were issues at least with police services, Ottawa Police specifically as the home to where the demonstration was that there were issues with the demonstration or occupation?

Hansson: I think there would be issues with any protest or demonstration in general.

Samuels: Okay. All right. Were you aware of the Gofundme fundraiser that was set up in regards to Freedom convoy?

Hansson: I was aware of it, yes.

Samuels: Ya, okay, what was your understanding of that?

Hansson: Just that there was a funding operation I guess you could say, that's my understanding of it.

Samuels: Okay. Were you aware as to why it was shut down?

Hansson: No.

Samuels: No? Okay. Did you make a contribution to Gofundme with regards to the Freedom Convoy?

Hansson: That's personal in nature so I'm going to decline to respond to that, respectfully.

Samuels: Okay, so I am ordering you to respond to that.

Hansson: I'll say it again its personal and private information.

Samuels: Okay.

Hansson: So, I am not willing to discuss that.

Samuels: Okay. With respect to your duty statement you say, it appears that this matter has been initiated by the illegal hacking and without judicial authorization of my personal information and identifiers. What did you mean by that?

Hansson: I just had been aware that there was some sort of hack or leak by somebody.

Samuels: Of what?

Hansson: Of personal information.

Samuels: Okay. Was that your personal information?

Hansson: That's personal again so anything personal related or private information I'm not willing to discuss.

Samuels: You did say of your, of my personal information and identifiers.

Hansson: Well, that's what the what's laid out in the allegation against me.

Samuels: Are you acknowledging that its yours?

Hansson: No.

Samuels: No? Okay, so you're not acknowledging. Is it yours or not?

Hansson: Its personal. Its personal and private information. So, I'm not willing to discuss anything personal.

Samuels: So, you're not willing to answer?

Hansson: No

Samuels: I'm ordering you to answer that question.

Hansson: If its personal and private I'm not willing to discuss it.

Samuels: This specific question, I'm ordering you to respond to.

Hansson: And it is personal in nature, and I decline to respond.

Samuels: So further down you say in response to the allegation laid out in Chiefs Complaint 22-04-CC022, I deny all allegations of wrongdoing whatsoever and specifically any allegation of discreditable conduct. What do you mean by that?

Hansson: It would appear to me that the Durham Regional Police is looking into my personal private information, so I am denying any allegations of wrongdoing. These are personal identifiers and everything else that I don't really agree or consent to have disclosed to the Durham Regional Police Service.

Samuels: Okay, So, but you are denying all allegations of wrongdoing.

Hansson: Yes

Samuels: How does that connect to what you just said?

Hansson: I'm sorry I don't understand what you mean by the question.

Samuels: So, you say I deny all allegations of wrongdoing whatsoever and specifically any allegation of discreditable conduct for what do you mean by that?

Hansson: I've been served with this notice, and I deny any of the allegations that are made in in the in the in the Chief's Complaint.

Samules: Okay. So, are you are denying that you made a contribution to GiveSendGo?

Hansson: It is personal and private information again. I was off duty.

Samuels: You just told me that you were denying what is in the chief complaint. So, are you denying it?

Hansson: I am denying any wrongdoing just as it says or the specifically the allegation of discreditable conduct I'm denying that, yes.

Samuels: Okay. So, you are denying that you did this?

McKay: Sergeant Samules I'm just going to interrupt here for a second. You got his position. He's not answering the question in relation to did he or did he not do it, the allegation is that he committed discreditable conduct he's denied any allegations of wrongdoing but he's not going to give you his personal information.

Samuels: Thank you Sir. I'm not asking him for his personal information. That's not personal information. So. Are you declining to answer that question?

Hansson: I did answer, and I've declined any wrongdoing or specifically the allegation of discreditable conduct.

Samuels: Okay. Have all your answers been truthful and forthright?

Hansson: Yes

Samules: You have declined to answer several of my questions though, correct?

Hansson: You're telling me that I've declined, but I answered and just let you know that.

Samuels: I'm. Hey, this is for the record.

Hansson: Yeah.

Samules: You've declined to answer several of my questions. Correct?

Hansson: Well, can I finish answering that question that you just posed to me? The thing is you, I'm not necessarily declining I've given you an answer the answer is that I'm not willing to discuss my personal or private affairs.

Samules: Yeah.

Hansson: That's my answer.

Samuels: You've given a response, yes.

Hansson: Okay.

Samules: But you haven't answered questions. Are there any changes or clarifications that you'd like to make at this time?

Hansson: No

Samuels: Is there anything that we haven't discussed that you feel is important to mention?

Hansson: No

Samuels: Okay, so as this is an ongoing investigation, I'm ordering that you do not discuss the content or details of this interview with anyone else other than your association representative or counsel. This is in order to protect the integrity of the investigation. Do you understand?

Hansson: I understand.

Samules: Okay. The time right now is 10:36 so I'm going to conclude the interview.

Submissions

As noted, evidence was heard in person on February 28, and virtually on March 28, 2024. At the request of counsel, final submissions were made in writing. Mr. Sinclair's written submissions were received on March 8, 2024, several weeks prior to Staff Sergeant Samuels' second cross examination. Mr. Sinclair declined the opportunity to re-submit his written submission indicating he was content with the original material submitted. Mr. McKay made his written submissions to the Tribunal on April 12, 2024. Mr. Sinclair submitted his reply in writing on May 3, 2024. Counsel agreed oral submissions were not required.

Prosecution Written Submissions

Mr. Sinclair submitted that on August 4, 2022, Constable Hansson received a lawful order from a superior officer to answer a question during a compelled interview. Although Constable Hansson did not have a lawful excuse, he disobeyed the order thereby committing the offence of insubordination.

Mr. Sinclair noted the Chief of Police signed a Chief of Police Complaint Form relating to one count of discreditable conduct. Constable Hansson was ordered by the Chief to submit a duty statement regarding his involvement in the incident. Constable Hansson submitted a duty statement which did not address his involvement in the incident set out in the Chief's Complaint. Consequently, Constable Hansson was ordered to attend a compelled interview on August 4, 2022.

Mr. Sinclair acknowledged Constable Hansson attended as directed. During the interview Staff Sergeant Samuels ordered Constable Hansson to respond as to whether he made a \$90.00 donation to GiveSendGo in support of the Freedom Convoy. Mr. Sinclair submitted Constable Hansson refused to answer this question on multiple occasions. This refusal continued even after Staff Sergeant Samuels specifically cautioned Constable Hansson that he was compelled to respond to the question and that if he did not respond he could be charged with insubordination.

Mr. Sinclair noted that the standard of proof for this Tribunal is that of clear and convincing evidence which has been described as meaning "there is weighty, cogent, reliable evidence upon which the trier of fact, acting with care and caution can come to a reasonable conclusion that the officer is guilty of misconduct." Mr. Sinclair submitted the evidence in this case clearly meets that standard. He noted that the audio recording provides indisputable evidence indicating Constable Hansson was issued an order during his compelled interview and then refused to comply.

Mr. Sinclair noted Constable Hansson is charged with one count of insubordination alleging that without lawful excuse, he disobeyed, omitted, or neglected to carry out a lawful order. Mr. Sinclair submitted Constable Hansson received an order which was lawful, objected to the lawfulness of the order, and without lawful excuse, disobeyed, neglected, or omitted to carry out the order.

Mr. Sinclair submitted the leading case with respect to the lawfulness of an order is *Re Metropolitan Toronto Board of Commissioners of Police and Metropolitan Toronto Police Association*, 1974 CanLII 702 (Div. Ct) wherein the Divisional Court held as follows:

An order of the police chief or other superior officer does not become unlawful merely because a collective agreement is entered into, or an arbitration award is made defining and prescribing certain conditions of work. An order is unlawful if it requires the constable to do an act that would be unlawful, such as to enter premises without a search warrant, to assault a citizen and the like. It would also be an unlawful order if it is clearly not within the authority of the person issuing it under the Regulations governing the force, or if it contravenes a specific Regulation made under proper authority. An order does not become unlawful by reason only that it is in breach of a provision in the collective agreement. When given such an order, the constable must obey it and if he considers the circumstances warrant it, his recourse is to take advantage of the grievance procedure and such other relief as the collective agreement prescribes.

Mr. Sinclair also relied on the Commission's comments in *Orr v York Regional Police Service*, 2001 CanLII 62683 which stated:

In *Packer and Toronto Police Service* it was established that obeying orders is a particular application of the general duty to preserve peace. Page 863 of that decision read:

It is common ground that the order impugned in this matter was a "lawful" one. The "lawful nature" of the order resides in the fact that it was but a particular application of the general duty at law to preserve the peace effected by the deployment of one particular officer amongst those subject to that duty. The propriety of issuing orders down through a chain of command and the requirements that these be obeyed is "lawful" as an incident of the duties and responsibilities of constables *per se*. The authority to the order, the obligation to obey it, and the disciplinary sanction for failure to do so all arise at law.

Mr. Sinclair submitted the order delivered by Staff Sergeant Samuels was lawful as an incident of the duties and responsibilities of Constable Hansson as well as the Chief of Police. Mr. Sinclair noted Section 80(2) of the *Police Services Act* is clear that off duty conduct may amount to misconduct where there is a connection between an officer's off duty conduct and either the occupational requirements for a police officer or the reputation of the police force.

Mr. Sinclair noted Section 41(1)(b) of the *Police Services Act* imposes a statutory duty on the Chief of Police to ensure that members carry out their duties in accordance with the *Act* and the regulations in a manner that reflects the needs of the community, and that discipline is maintained in the police force. Mr. Sinclair submitted Section 76 of the *Police Services Act* empowers a Chief of Police to investigate the conduct of an officer, including

off duty conduct. Conversely, a police officer has a duty to answer questions regarding their off duty conduct when ordered to do so by a superior officer making the order to answer questions relating to off duty conduct, lawful.

Mr. Sinclair submitted the Commission has held that an order to answer questions relating to off duty conduct is lawful, holding that section 76 of the *Police Services Act* provides the Chief with authority to order an officer to answer questions about their off-duty conduct.

Mr. Sinclair submitted that in at least one other case, an officer was convicted of discreditable conduct for donating to the Freedom Convoy; the same misconduct Constable Hansson was originally investigated for. In *Brisco v. Windsor Police Service*, 2024 ONCPC 24 the Commission upheld the guilty finding suggesting that therefore, Section 76 of the *Police Services Act* provides the Chief of Police with the authority to investigate Constable Hansson and compel him to answer questions relating to information that he may have donated to the Freedom Convoy. Mr. Sinclair submitted the issue in this proceeding is not whether Constable Hansson's alleged off duty donation to the Freedom Convoy constitutes discreditable conduct, but whether his disobeying an order from a superior officer to answer questions regarding his conduct amounts to insubordination.

Mr. Sinclair noted that this Tribunal rejected Constable Hansson's arguments with respect to abuse of process and alleged violations of his rights under the *Canadian Charter of Rights and Freedoms*. Mr. Sinclair submitted that during his interview, Constable Hansson objected to the order on the basis that it related to his personal and private affairs. Mr. Sinclair submitted the Commission has found orders that compel production of personal and private information, including financial information, are lawful.

Mr. Sinclair submitted that in *Leahy v. London Police Service*, 2012 ONCPC 2, the Commission held that an order to produce personal and corporate tax records was lawful. In that case, the subject officer had been found guilty of insubordination after refusing to produce the records during the Service's investigation into his secondary activities. The subject officer argued that the information requested was "personal private information" and therefore the order was not lawful. The Commission found that the order was lawful stating that it was the Chief's responsibility to investigate, and the officer had a responsibility to respond.

Mr. Sinclair submitted Staff Sergeant Samuels' order was issued for the purpose of investigating possible misconduct, consequently, the order to answer a question that related to personal financial information was justified and lawful. Mr. Sinclair submitted

that relying on the advice of counsel does not insulate an officer from being found guilty of insubordination as noted in *Correa v. Toronto Police Service*, 2009 ONCPC 1, where the Commission rejected such an argument.

Defence Written Submissions

Mr. McKay submitted the contribution alleged would have occurred when Constable Hansson was off duty and if it occurred it would have had no nexus to his duties as a police officer, nor was there any suggestion that Constable Hansson identified himself as a police officer. Consequently, Staff Sergeant Samuels' order was unlawful. Mr. McKay submitted if I were to find otherwise and that the order was lawful, Constable Hansson had a lawful excuse to decline to provide answers as the questions were not relevant to the occupational requirements for a police officer or the reputation of the Durham Regional Police Service.

Mr. McKay submitted there was no rule, regulation, policy, procedure, direction, or other communication indicating that members of the Durham Regional Police Service could not contribute or support any political movement or cause. Mr. McKay noted Constable Hansson did not have a notebook entry for a non police related event on his day off. Mr. McKay noted that Constable Hansson answered questions relating to his knowledge of the demonstration but declined to answer questions relating to his personal financial affairs including whether he contributed to the freedom convoy.

Mr. McKay made written submissions relating to the standard of proof in this disciplinary proceeding and the test which I must consider for the offence of insubordination. Mr. McKay conceded that Staff Sergeant Samuels did issue orders to Constable Hansson and that Constable Hansson received those orders as far as the orders were communicated to him. Mr. McKay acknowledged that the Chief of Police has the authority to order an investigation and that Staff Sergeant Samuels as an investigative delegate of the Chief may issue an order to answer a question. At issue is whether the order was lawful. Mr. McKay cited the matter of *Re: Metropolitan Toronto Board of Commissions of Police* where the Divisional Court stated:

An order is unlawful if it requires the constable to do an act that would be unlawful, such as enter premises without a search warrant, to assault a citizen and the like. It would also be an unlawful order if it is clearly not within the authority of the person issuing it under the Regulations governing the force, or if it contravenes a specific Regulation made under proper authority.

Mr. McKay submitted the ability of a Chief and of the Chief's delegates to investigate off duty conduct relies on the establishment of a nexus between the conduct and the

occupational requirements for a police officer or the reputation of the police force. Mr. McKay submitted there is not an absolute authority compelling an officer to answer any and all questions posed by a superior officer as noted in *Deboer and Ontario Provincial Police*, 2017 CanLII 40693 (ON CPC).

Mr. McKay submitted that in the matter of *Leahy v. London Police Service*, the alleged conduct involved secondary activities regarding employment outside of the police service. Mr. McKay noted that in *Leahy*, the Commission stated:

A police officer is obligated to respond to his superior on work related issues that may affect his performance or the performance of the police force.

Mr. McKay submitted that this case can be distinguished because the secondary activities in *Leahy* spoke directly to whether Constable Leahy was complying with his terms of employment. In *Leahy*, the nexus requirement to the off-duty conduct impacting the officer's duties and obligations as a police officer was fulfilled. Consequently, the lawfulness of their respective orders to the officer was rightly determined. Mr. McKay submitted that conversely, in this case, at no point was a nexus established between Constable Hansson's off duty conduct and his professional duties and obligations as a police officer.

Mr. McKay submitted there was no evidence or suggestion that the allegation related to discreditable conduct was work related or that it affected Constable Hansson's work performance. Mr. McKay submitted that consequently, the order must be found to be unlawful and furthermore, the test for insubordination fails at the second part; to establish misconduct liability for Constable Hansson. Mr. McKay submitted it is not clear which question for which constable Hansson respectfully declined to answer relates to the insubordination allegation.

Mr. McKay submitted that should I determine whether the order was lawful, then I must consider whether Constable Hansson disobeyed, neglected, or omitted to carry out a lawful order. Mr. McKay submitted it is clearly evident that Constable Hansson answered each question put to him. In fact, Staff Sergeant Samuels acknowledged that Constable Hansson did in fact respond to questions for which an order was issued. Staff Sergeant Samuels stated those responses did not satisfy his expectations but regardless, an answer was provided.

Mr. McKay submitted there are no particulars offered in the Notice of Hearing establishing whether lawful excuse existed or if an investigation was undertaken to determine if it were to be the case. Mr. McKay cited Ontario Regulation 268/10, section 11, which states:

A municipal police officer may,

- a) vote in an election;
- b) be a member of or hold office in a political party or other organization engaged in political activity;
- c) make contributions of money or goods to,
 - i. a political party or other organization engaged in political activity, or
 - ii. a candidate in an election.

Mr. McKay submitted there is no evidence to suggest that even if Constable Hansson had made a contribution to the Freedom Convoy he would have offended any of the restrictions enumerated in sections 11 or 12 of Ontario Regulation 268/10. Mr. McKay submitted that given the order to answer a question that touches upon protected rights found in the *Police Services Act* and Ontario Regulation 268/10, it should have been incumbent upon Staff Sergeant Samuels to consider that his questions as well as any order to answer those questions strayed beyond the jurisdiction of the Durham Regional Police Service to inquire.

Mr. McKay submitted the insubordination test has not been satisfied. He stated a lawful excuse may exist, but the Durham Regional Police Service failed to conduct its investigation with diligence to the clear and convincing standard required.

Prosecution Written Reply Submissions

Mr. Sinclair submitted Constable Hansson's fundamental argument is that a chief of police has no authority to investigate off-duty conduct unless a nexus between the conduct and the occupational requirements for a police officer is established on clear and convincing evidence. Mr. Sinclair submitted Constable Hansson's argument is flawed in two key respects; there is no legal requirement to prove the elements of an offence to a certain standard before compelling an officer to answer questions with respect to potential misconduct, and discreditable conduct may be proven in the absence of such a nexus where there is a connection between the conduct of the officer and the reputation of the police force.

Mr. Sinclair submitted Constable Hansson failed to establish that he had a lawful excuse for disobeying the lawful order. Mr. Sinclair submitted Constable Hansson was required to either admit or deny donating to the Freedom Convoy when asked. Thereafter, if the Durham Regional Police Service had elected to proceed to a hearing, Constable Hansson would have had the right to make full answer and defence, including advancing the defences to the charge of discreditable conduct he attempted to present to this Tribunal. Mr. Sinclair submitted that disobeying the lawful order by refusing to answer questions posed was not an option; Constable Hansson committed insubordination by doing so.

Mr. Sinclair submitted the *Police Services Act* authorizes a chief of police to make a complaint about an officer's conduct and to cause that complaint to be investigated. The purpose of the investigation is to gather sufficient information to allow a chief of police to determine whether there are reasonable grounds to believe that misconduct occurred. If there are reasonable grounds, the chief must hold a hearing or may attempt an informal resolution if the misconduct is not serious. Conversely, the investigation may not provide reasonable grounds to believe misconduct occurred, in which case, the chief must not take any further action.

Mr. Sinclair submitted Staff Sergeant Samuels was designated to investigate a Chief's Complaint alleging that Constable Hansson committed discreditable conduct by contributing to the Freedom Convoy. An officer may be found to have committed discreditable conduct where their off-duty conduct would bring discredit upon the reputation of the police service if the actions were to become public knowledge. To determine whether there were reasonable grounds to believe Constable Hansson committed discreditable conduct, Staff Sergeant Samuels, as the Chief's designate, was statutorily authorized to investigate whether Constable Hansson engaged in the alleged activities, including whether he made the impugned donation to the Freedom Convoy. His orders to Constable Hansson to answer questions with respect to this issue were therefore lawful.

Mr. Sinclair submitted Constable Hansson's argument conflates the Chief's authority to investigate potential misconduct, with the requirement to prove the elements of the offence based on clear and convincing evidence at a hearing. The investigator is not required to prove the elements of an offence, for instance, by establishing a nexus between the conduct and the occupational requirements for an officer, before ordering a subject officer to answer a question as part of the investigation; one of the purposes of the investigation is to determine whether the elements of the offence may be proven.

Mr. Sinclair submitted whether there is a connection between a subject officer's off duty conduct and the occupational requirements for a police officer or the reputation of the police force is a question for the Hearing Officer as the Chief's delegate, not the subject officer. It is an issue that goes to the merits of whether the officer is guilty of discreditable conduct, not whether the Chief has authority to ask about the conduct.

Mr. Sinclair submitted there is no requirement for the Durham Regional Police Service to ultimately prove the elements of a discreditable conduct charge at this hearing. Not having done so is irrelevant. It does not retroactively render the questions asked at the investigation stage unlawful or outside the jurisdiction of the *Police Services Act*. Mr. Sinclair submitted discreditable conduct may also be proven where the conduct impacts

the reputation of the police force. This could clearly be the case if Constable Hansson was proven to have donated to the Freedom Convoy. Mr. Sinclair submitted the Ontario Civilian Police Commission has upheld a police tribunal decision finding that donating to the Freedom Convoy was discreditable on this basis.

Mr. Sinclair submitted Constable Hansson's submissions raise defences that he might have pursued at a hearing with respect to whether he committed discreditable conduct. However, Constable Hansson was not entitled to refuse to answer Staff Sergeant Samuels' questions based on his subjective belief that there was not a nexus between the allegations and the occupational requirements of an officer. The very purpose of the questions was to permit the Chief to make that determination in deciding whether he had reasonable grounds to believe misconduct occurred.

Mr. Sinclair submitted Constable Hansson had a duty to either admit or deny making the donation, it was not open to him to disobey Staff Sergeant Samuel's lawful order and refuse to answer. In doing so, Constable Hansson was insubordinate.

Mr. Sinclair submitted that during the interview, Staff Sergeant Samuels ordered Constable Hansson to answer whether he made a \$90.00 donation to GiveSendGo in support of the Freedom Convoy. Constable Hansson refused to answer this question on multiple occasions. This refusal continued even after Staff Sergeant Samuels specifically cautioned Constable Hansson that he was compelled to respond to the question and that if he did not respond he could be charged with insubordination.

Mr. Sinclair submitted that based on Constable Hansson's logic that in declining to answer in fact constitutes an answer for the purpose of whether he complied with Staff Sergeant Samuels' order, it suggests that a subject officer would be permitted to refuse to provide any information to investigators with total impunity by responding to each question with a statement that they decline to answer.

Mr. Sinclair submitted Constable Hansson announcing that he was declining to respond to the question posed does not constitute an answer. Holding otherwise would render the Chief's authority to order an officer to participate in an interview with respect to a Chief's Complaint meaningless.

Mr. Sinclair submitted the defence of lawful excuse is available to the subject officer in response to allegations of insubordination and neglect of duty. The relevant provisions of the Schedule Code of Conduct Ontario Regulation 268/10 provide:

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

- (b) Insubordination, in that he or she,
 - ii. without lawful excuse, disobeys, omits or neglects to carry out a lawful order;
- (c) Neglect of Duty, in that he or she,
 - i. without lawful excuse, neglects or omits promptly and diligently to perform a duty...

Mr. Sinclair submitted Constable Hansson failed to prove he had a lawful excuse for not adhering to the order. Mr. Sinclair submitted that at paragraph 56 of Constable Hansson's Factum, it states only "that a lawful excuse may exist;" nowhere in his factum does Constable Hansson argue that he in fact had a lawful excuse for disobeying Staff Sergeant Samuels' order or what that excuse might be.

Mr. Sinclair noted that Constable Hansson in his submissions stated that hypothetically, if he had donated to the Freedom Convoy, there is no evidence before the Tribunal that having done so would have offended any of the provisions found in sections 11 or 12 of Ontario Regulation 268/10. Mr. Sinclair submitted whether donating to the Freedom Convoy might have offended Ontario Regulation 268/10 is irrelevant to whether Constable Hansson had a lawful excuse for disobeying Staff Sergeant Samuels' orders in relation to an allegation of discreditable conduct.

Mr. Sinclair noted Constable Hansson did not argue that any of the provisions in Sections 11 or 12 of Ontario Regulation 268/10 provided him with a lawful excuse for refusing to answer Staff Sergeant Samuels' questions. Sections 11 and 12 permit officers to engage in certain political activities, but they do not forbid a chief of police from investigating whether engaging in such activities might also constitute misconduct in certain circumstances. For instance, it could clearly have amounted to misconduct for an officer to have financially supported or voiced support for the Front de liberation du Quebec ("FLQ") when its members were engaging in murder and kidnapping. Such conduct could amount to misconduct notwithstanding that the FLQ was arguably engaged in political activities and sections 11 and 12 provide that an officer may express political views and make donations to organizations engaged in political activities.

Mr. Sinclair submitted that even if a provision found in section 11 or 12 of Ontario Regulation 268/10 might have provided a potential defence to the allegation that Constable Hansson committed discreditable conduct, which is not admitted, raising a potential defence to a charge of misconduct does not provide a subject officer with a lawful excuse for disobeying an order to answer questions in a compelled interview in relation to the alleged misconduct. Rather, a defence provides a means to avoid a conviction at a hearing or potentially avoiding a hearing altogether by leading a chief of

police to conclude that no reasonable grounds exist to believe that misconduct occurred. Mr. Sinclair submitted Constable Hansson was obligated to answer questions posed to him by Staff Sergeant Samuels regarding his alleged conduct and raise potential defences afterwards.

ANALYSIS

Standard of Proof and Test for Insubordination

There is no dispute that the standard of proof in this proceeding is that of clear and convincing evidence. In *Jacobs v. Ottawa Police Service* 2016 ONCA 345 CanLII, the Court relied upon the Supreme Court of Canada ruling in *Penner v. Niagara Regional Police Services Board*, 2013 SCC 19 (CanLII), [2013] 2 SCR 125, stating that to make a finding of guilt, the evidence must be greater than the balance of probabilities; it must be clear, cogent, and convincing. My understanding of clear, cogent, and convincing evidence is that it is greater than a balance of probabilities, but less than the threshold of beyond a reasonable doubt. Therefore, to make a finding of guilt, the evidence must be so clear, so reliable, and so convincing, that I am persuaded the allegations are true and the facts in issue satisfied.

It is alleged that on August 4, 2022, without lawful excuse, Constable Hansson disobeyed, omitted, or neglected to carry out a lawful order, specifically, failing to provide a response when ordered as to whether he made a \$90 donation on February 8, 2022, to the Freedom Convoy. The Notice of Hearing does not allege the misconduct occurred when Constable Hansson submitted his duty report, it specifically states the insubordination occurred on August 4, 2023, when he failed to comply with an order given by a superior officer during his compelled interview.

Based on the standard of clear and convincing evidence, I will consider whether Constable Hansson without lawful excuse, disobeyed, omitted, or neglected to carry out a lawful order. To conduct this analysis, I will rely on the test well established in jurisprudence such as *Amato v. York Regional Police Service*, 2014 ONCPC 16, wherein the Commission stated:

The test to be applied to a question of whether a police officer is guilty of insubordination is well settled. In *Orr v York Regional Police*, supra, it was held that the four key questions to be determined are:

- a) Did the officer receive an order?
- b) If so, was that order lawful?
- c) Did the officer disobey, neglect, or omit to carry out that order?
- d) If so, did the officer have a lawful excuse for doing so?

Did Constable Hansson receive an order?

Constable Hansson attended his compelled interview as instructed by his employer. When Staff Sergeant Samuels was not satisfied with the responses provided by Constable Hansson, he informed him that if he failed to respond to questions posed, he could be charged with the offence of insubordination. Constable Hansson was represented by counsel and fully understood the situation; he was completely informed and knew that he had been ordered to answer the question of whether he made a financial contribution to the Freedom Convoy. Constable Hansson never sought clarity about the nature of the order; there was not any misunderstanding about his employer's position that he had a duty to respond.

I find the evidence clear and convincing that Staff Sergeant Samuels ordered Constable Hansson to provide an answer to the question of whether he made a monetary donation to the Freedom Convoy and that Constable Hansson fully understood that order.

Was Staff Sergeant Samuel's Order to Constable Hansson Lawful?

I limited Mr. McKay's ability to challenge the merit of the discreditable conduct allegation. In my ruling on the Applicant's motion, I noted:

The issue of whether donating to the Freedom Convoy amounts to discreditable conduct is not at issue in this motion. I must not delve into an analysis of whether the order before the Applicant at his compelled interview was lawful; that issue must be considered after all the evidence to be heard is before this Tribunal.

It is clear that to prove its case, the prosecution must demonstrate that the order was lawful. To make out the offence of insubordination, the prosecution is obligated to prove (based on the standard of clear and convincing evidence) that the order delivered to Constable Hansson that he respond to questions posed to him during his compelled interview, was lawful. To achieve that standard, it is not necessary to demonstrate the allegation of discreditable conduct could be proven; it is only necessary to show that the allegation that gave rise to the order to answer the questions posed was so reasonable that it warranted a response from the involved officer. To delve into the minutia of discreditable conduct would be a distraction from the issue at hand. I am satisfied that ordering Constable Hansson to answer whether he donated to the Freedom Convoy was reasonable.

I remain steadfast in the position taken in my ruling of the abuse of process motion decision dated November 6, 2023, where in part, I stated:

Section 80(2) of the *Police Services Act* states that for misconduct to occur, there must be a nexus between the officer's behaviour and his duties as a police officer or the reputation of his employer. The Applicant [Constable Hansson] was served a notice of investigation, so he was well aware of the nature of the questions that he was likely to be asked at his compelled interview. Based on the information before the Tribunal, I do not find that the nature of the discreditable conduct investigation was so obviously irrelevant to the reputation of the Durham Regional Police Service that the officer was permitted to decide the order was unlawful. In fact, I find it was open to the Durham Regional Police Service to take the position that a donation made to the Freedom Convoy on or about February 8, 2022, by one of their members, may have brought discredit to their reputation if it had become public knowledge...

A police service's ability to investigate alleged off-duty misconduct is not limited to behaviour which could be deemed criminal or illegal; it is whether it offends misconduct as found and listed in the Code of Conduct. I do not find that the Professional Standards Unit committed an abuse of process when they demanded that the Applicant answer questions regarding his personal, off-duty conduct... As I have noted, I find that it was open to the Durham Regional Police Service to inquire with the Applicant about potential misconduct. I do not find it necessary to delve into the full scope of the discreditable conduct investigation at the insubordination hearing; it is irrelevant material that distracts from the issue at hand...

I am satisfied that contributing to the Freedom Convoy could possibly be deemed misconduct because in so doing could potentially be viewed as having the ability to adversely affect the reputation of the police service. Consequently, the Durham Regional Police Service was permitted to investigate the possibility that the Applicant had committed misconduct. Simply because they initiated an investigation does not mean that therefore they were obligated to pursue Code of Conduct offence(s)...

The hearing officer in *Windsor Police Service and Briscoe*, March 24, 2023, stated:

It is clear at the time of Constable Briscoe's donation that the protest was unlawful... The donation was in direct contrast to what the officers were attempting to contain in Ottawa. The money enabled the protestors and made it more difficult for the Police being on the opposite side. The money directly opposed what the various Police Services in Ottawa were doing. I understand it was a cause he believed in but this does not render it okay when you are a member of a Police Service and in this case that Service is Windsor. Police Act disciplinary Hearings

are proceedings which make police officers accountable to their respective police agencies. It is employer and employee law. Police officers must follow policies of their respective agencies otherwise a misconduct charge can be filed against the member...

The Commission upheld the hearing officer's finding in *Briscoe v Windsor Police Service*, 2024 ONCPC 24 (CanLII), stating:

Based on these facts, the Hearing Officer concluded it was clear at the time the Appellant made the donation the "protest was unlawful." The Hearing Officer further considered the Appellant's own evidence that he was an avid consumer of media at the time he made the donation. He found as fact the Appellant knew about these statements regarding the illegal nature of protest activity in both Windsor and Ottawa and specifically rejected the Appellant's evidence he was unaware of the bridge blockade in his home town of Windsor as incredible...

The Commission finds there is no basis to interfere with the Hearing Officer's factual finding, based on admissible evidence, that protests arising from the Freedom Convoy movement were "illegal" at the time the Appellant made his donation...

I cite *Briscoe* not to suggest that Constable Hansson committed discreditable conduct, but rather in support my finding that it was reasonable for the Durham Regional Police Service to suspect he may have committed the offence of discreditable conduct. It was reasonable for the Durham Regional Police Service to conclude that making a financial contribution to the Freedom Convoy could have been construed as adversely affecting their reputation from the public's perspective. Therefore it was reasonable for the Durham Regional Police Service to inquire as to whether in fact Constable Hansson did make a financial donation to the Freedom Convoy.

A chief of police has the authority to investigate potential misconduct. When conducting his discreditable conduct investigation, Staff Sergeant Samuels was not required to prove the elements of an offence, for instance, by establishing a nexus between Constable Hansson's off duty conduct and the occupational requirements for an officer before ordering him to answer a question as part of the investigation; one of the purposes of the investigation is to determine whether the elements of the offence may be proven based on clear and convincing evidence at a hearing.

Before laying a charge of discreditable conduct, Staff Sergeant Samuels would have had to consider whether there was a connection between Constable Hansson's off duty conduct and the occupational requirements for a police officer and/or the reputation of the

Durham Regional Police Service, but this was not for Constable Hansson to decide. That would have been an issue that went to the merits of whether he committed the offence of discreditable conduct, not whether the chief had authority to make the inquiry. The purpose of the question was to permit the Chief of Police to determine whether he had reasonable grounds to believe misconduct occurred. I find this reasonable.

As indicated in my ruling, I am satisfied that the Durham Regional Police Service had sufficient information which warranted an investigation into an allegation of discreditable conduct including compelling the officer to respond to the question of whether he contributed financially to the Freedom Convoy.

I am satisfied Staff Sergeant Samuels had the authority to order Constable Hansson to attend for a compelled interview and to then order him to answer questions posed in relation to whether he made a financial donation to the Freedom Convoy. I do not accept the argument that Constable Hansson satisfied his obligation to respond when he stated that he was not required to provide that information because the questions were regarding personal and private information or because he was off duty at the time of the alleged donation. He was obligated to answer the specific question about whether he donated to the Freedom Convoy and if the answer resulted in a discreditable conduct charge, his recourse was to enter a not guilty plea to that charge and to present his defence accordingly.

I find the evidence clear and convincing that the order made by Staff Sergeant Samuels to Constable Hansson that he answer questions related to whether he made a monetary donation to the Freedom Convoy was lawful.

Did Constable Hansson disobey, neglect, or omit to carry out an order?

Separate and apart from his counsel's comments during the compelled interview, Constable Hansson refused to indicate whether he made a financial contribution to the Freedom Convoy approximately 17 times; three times prior to seeking advice from his counsel and on 14 further occasions after conversing with Mr. McKay. At times Constable Hansson indicated he would not answer the question posed while on other occasions he simply reiterated that he would not respond. Despite refusing to provide information in answer to the question repeatedly, I note that essentially it was the same question posed to him repetitively, just worded differently. The specific issue queried by Staff Sergeant Samuels was whether Constable Hansson donated funds to the Freedom Convoy. For reasons articulated by Constable Hansson, he chose not to answer that question.

In his submissions, Mr. McKay acknowledged that “when ordered to answer questions relating to the contribution, Constable Hansson respectfully declined to answer questions regarding his personal and private affairs not related to his duties as a police officer... [Constable Hansson] respectfully declined to answer questions relating to his personal financial affairs and whether or not he contributed to the Freedom Convoy.”

Mr. Sinclair cited the matter of *Fiola v. MacDonald*, 2021 NSSC 262, wherein the Court stated:

In the context of the Rule an answer must be more than a statement prompted by the question though entirely unresponsive to the subject matter of the question. In this context, offering no response or making a statement that no response will be given, is a failure to answer. Providing a response that does not address the subject matter of the question would be a failure to answer.

On more than one occasion during the interview, Constable Hansson indicated in fact he had answered Staff Sergeant Samuels’ question by stating that because he was off duty, and/or because the questions were of a personal nature, he would not discuss the matter. Staff Sergeant Samuels was quite right when he informed Constable Hansson that he had given a response, but he did not answer the question at issue. Explaining why an answer to the question would not be provided does not obviate the need to comply with the order by articulating a response as to whether a monetary donation was made to the Freedom Convoy.

In his duty report and during his interview, Constable Hansson denied any allegations of wrongdoing and denied that he had committed discreditable conduct. I do not accept this is a direct response as to whether he made a financial contribution to the Freedom Convoy, rather his answer insinuates that if he had made a donation as alleged, it would not be an offence because it would have occurred while off-duty and it would have been a personal and private affair. Constable Hansson made it clear during his interview that he would not specifically address the issue of whether he made a financial contribution to the Freedom Convoy.

I find the evidence clear and convincing indicating that Constable Hansson disobeyed, neglected, or omitted to carry out the lawful order of answering the question of whether he made a monetary donation to the Freedom Convoy. The issue then becomes whether he had a lawful reason for not complying with the order delivered.

Did Constable Hansson Have a Lawful Excuse for Failing to Carry out an Order?

Although the Notice of Hearing does not relate to Constable Hansson's duty report, I note that he did indicate therein that "it appears that this matter has been initiated by the illegal hacking, and without judicial authorization, of my personal information and identifiers. As such, I am seeking the following protections..." Constable Hansson did not allude to this specifically during his compelled interview as a reason for not complying with the order, but his counsel Mr. McKay did.

During the course of the hearing, I did not permit Mr. McKay to delve into whether the donator list had been "hacked" or illegally obtained; that may or may not have been an issue for the discreditable conduct hearing had that charge been pursued. I expressed my position on this issue in my ruling of the abuse of process motion where in part, I stated:

For the purpose of this motion I will take the position that there is a likelihood that the police came into possession of the list of donator names after it was hacked by an unknown person and released... I do note that in the timeline the Applicant submitted, he noted that the donor list was shared with the police and the media, thereby becoming a publicly accessible document. It is my position that while it is debatable whether a search warrant would be required to prove the offence of discreditable conduct, it was not needed for the Professional Standards Unit to conduct an inquiry with the officer involved and consequently, it is not an issue for this insubordination hearing.

How the police obtained information that necessitated the compelled interview does not affect the lawfulness of the order; it may or may not affect the admissibility of a statement at a future disciplinary proceeding but the police were not prohibited from making an inquiry about the information they possessed. I do not find that doing so constitutes an abuse of process...

The alleged donation made by the Applicant occurred on February 8, 2022. The specific date would be crucial to the analysis of whether he had committed discreditable conduct; when was the donation made in relation to what was happening at the time and when the protest was deemed illegal. I do not find the date vital to this issue. What is important is that on February 8, 2022, the date that the Applicant allegedly made a monetary donation to the Freedom Convoy, an argument could be made that the act constituted discreditable conduct as was done in the *Briscoe* matter. Consequently, compelling the Applicant to attend and to answer questions about potential misconduct is reasonable...

While the Applicant was off-duty at the time and not in the course of performing official duties, I find the Commission's position useful; considering it was reasonable for the Respondent [Durham Regional Police Service] to view the Applicant's alleged donation to the Freedom Convoy as misconduct, they were permitted to make an inquiry into the matter directly with him. There was a legitimate public purpose in compelling the Applicant to provide clarity about whether he had potentially committed misconduct. The purpose was clear, the Respondent had informed the Applicant that he was being investigated under the *Police Services Act*, specifically, the Code of Conduct offence of discreditable conduct. The Applicant was not being subjected to random questioning, there was a specific, reasonable objective...

As noted, the Applicant presented no evidence that the police came into possession of the donator names by way of it being illegally hacked, it was "purported" that this had occurred. Nonetheless, I have taken the position in this analysis that this was in fact likely. For the reasons previously articulated, I do not find that the Durham Regional Police Service was obligated to obtain a search warrant before compelling the Applicant to answer questions about his actions. It is not necessary to consider whether the Applicant was subjected to an unreasonable search or seizure because there is no evidence that he was subjected to any search or seizure at this time; he has not conceded he made the donation in question so how can I include his *Charter* rights have been breached?

I maintained that position during the hearing. As indicated in my previous ruling, I do not find that the Durham Regional Police Service were prohibited from making an inquiry about this avenue of questioning at the time that they did. They possessed information that one of their members may have contributed financially to an entity that was ultimately deemed an illegal occupation. To initiate a discreditable conduct investigation, the Durham Regional Police Service must have determined that had a member made such a donation, it could have adversely affected their reputation in the community. This was a perfectly acceptable position, one which has been supported by the Commission in *Briscoe*.

During his compelled interview Constable Hansson provided the following reasons for not responding directly as to whether he made the donation as alleged:

- "...based on the fact that the questions like pertain to my personal information, my private information."
- "My answer is they're personal and private matters that I'm not willing to discuss."
- "I was off duty and therefore really has no relevance."
- "That's personal in nature so I'm going to decline to respond to that, respectfully."

- “I’ll say it again its personal and private information.”
- “That’s personal again so anything personal related or private information I’m not willing to discuss.”
- “Its personal. Its personal and private information. So, I’m not willing to discuss anything personal.”
- “If its personal and private I’m not willing to discuss it.”
- “And it is personal in nature, and I decline to respond.”
- “It is personal and private information again. I was off duty.”
- “...the answer is that I’m not willing to discuss my personal or private affairs.”

Essentially, Constable Hansson indicated he was not compelled to answer Staff Sergeant Samuels’ inquiry about whether he donated to the Freedom Convoy because he was off duty and because the request pertained to his personal and private information.

In *Deboer*, the Commission stated:

The Appellant, like all police officers in the province, is not immune from facing charges of misconduct arising from off duty conduct. Section 80(2) of the *Police Services Act* reads:

(2) off duty conduct - a police officer shall not be found guilty of misconduct under subsection (1) if there is no connection between the conduct and either the occupational requirements for a police officer or the reputation of the police force.

The rationale underlying this section is set out in *Horton and Ontario Provincial Police*, 2015 ONCP 16, where the Commission wrote the following:

It is well settled that a police officer is held to a higher standard of conduct than a member of the public not only while being on duty but also when off duty. That is so by reason of the office held, the powers granted and the need to maintain the public trust in and respect for the police service.

Constable Hansson was lawfully ordered to participate in a compelled interview for the alleged misconduct which occurred while off-duty. He complied with that order. Constable Hansson was then lawfully ordered to answer questions about alleged off-duty misconduct, specifically whether he donated to the Freedom Convoy. He did not provide an answer to that question despite being ordered repeatedly and cautioned about insubordination. It was not open to Constable Hansson to not comply based solely on his own opinion that there was no connection between the alleged conduct and either the occupational requirements for a police officer or the reputation of the police force. Those issues were open to be explored during the discreditable conduct hearing had the matter resulted in such a charge; it was not for him to determine at the interview phase.

Constable Hansson asserted he was not obligated to provide a response to the question of whether he donated to the Freedom Convoy because he deemed that to be an inquiry into his “personal related or private information.” I do not accept this logic. Had Staff Sergeant Samuels asked about a bank account or credit card number, that might have aligned with Constable Hansson’s rationale, but the inquiry was general in nature, it was not a probe into specific banking information such as a bank account balance.

The matters of *Leahy* and *Briscoe* are assistive. Similar to Constable Hansson, in *Leahy*, the officer declined to respond to questions pertaining to his off duty conduct because “there was no statutory basis for the request.” Section 41 of the *Police Services Act* states:

- 1) The duties of a chief include,
 - a. in the case of a municipal police force, administrating the police force and overseeing its operation in accordance with the objectives, priorities and policies established by the board under subsection 31(1);
 - b. ensuring that members of the police force carry out their duties in accordance with this Act and the regulations and in a matter that reflects the needs of the community, and that discipline is maintained in the police force;
 - c. ensuring that the police force provides community-oriented police services;
 - d. administering the complaints system in accordance with part V.

In *Leahy*, the Commission stated:

It was the additional personal and corporate tax information that the Appellant submitted is firstly, not relevant, since it would not clarify the number of hours worked at the secondary activity and secondly, was personal private information to which the Chief was not entitled. As a result, the Appellant’s position is that the Order is therefore tainted by adding this requested information, making the entire Order unlawful.

We do not agree. Based upon the evidence of the witnesses, we concur that the Chief was justified in issuing the Order. Bearing in mind the duties and responsibilities of the Chief and the Appellant as a police officer set out in the *Act*, the Chief had the duty, from an operational standpoint, to investigate the issue and the Appellant had a responsibility to respond to a direct Order from his superior. If the Appellant took issue with some of the information requested there were options available to him. He could have provided the requested information to which he did not object and discussed his concern with providing the additional information with the Chief or he could have provided all of the information and filed a grievance. Instead, through his lawyer, he chose to dispute the lawfulness of the Order in its entirety.

Police officers have a duty to comply with the orders and directions of their superior officers. In this case, the Order issued was for the public purpose of investigating whether Constable Leahy was complying with his terms of employment in committing full-time to his policing duties with the Service pursuant to section 49(1) of the *Act*...

Under these circumstances, the Hearing Officer was entitled to find that the Order issued by the Chief was lawful. We do not agree with the submission of the Appellant that it is not the obligation of the officer to parse out those portions of any order that he considers lawful and respond only to those issues. A police officer is obligated to respond to his superior on work related issues that may affect his performance or the performance of the police force. We concur with the finding of the Hearing Officer that the Order was lawful.

In this instance, to comply with section 41 of the *Police Services Act*, the Chief of Police was duty bound to initiate a complaint upon learning that Constable Hansson may have made a monetary donation to the Freedom Convoy assuming the Chief determined that such a contribution could adversely affect the reputation of his police service. Similarly, Constable Hansson was obligated to respond; he was not permitted to dispute the lawfulness of the order because it was clearly a reasonable inquiry. A police officer is obligated to respond to his superior about off-duty conduct which may be deemed prejudicial to discipline or likely to bring discredit upon their reputation of the police force of which the officer is a member.

It is my position that the Durham Regional Police Service was not obligated to obtain judicial authorization before asking Constable Hansson if he had donated to the Freedom Convoy. The need for judicial authorization may have been an issue at the discreditable conduct hearing where the standard of clear and convincing evidence would be required but the Durham Regional Police Service were not prohibited from making an inquiry with the involved officer in advance of seeking judicial authorization. Had Constable Hansson admitted to making the donation (if in fact he had), he would have been provided the opportunity to challenge the validity and admissibility of the donator spreadsheet at his discreditable conduct hearing or perhaps it would have been a matter to be grieved. The point being, before obtaining judicial authorization, the Durham Regional Police Service were permitted to make an inquiry about the possibility that a member had made a monetary donation to the Freedom Convoy.

Mr. McKay submitted it is clear that a lawful excuse may exist, but the Durham Regional Police Service failed to conduct its investigation with diligence to the clear and convincing standard required. It is my position that it is incumbent on the prosecution to establish

evidence to such a standard to result in a finding of guilt, but the investigators were not obligated to investigate to the standard of clear and convincing evidence. Furthermore, it is not clear to me that a lawful excuse may have existed which would have warranted non-compliance with the order.

Mr. McKay submitted there was no rule, regulation, policy, procedure, direction, or other communication indicating that members of the Durham Regional Police Service could not contribute or support any political movement or cause. I accept that was the case, but I do not find that to be relevant. Common sense suggests that a police officer supporting a cause that had been deemed an illegal occupation, one which required extensive police involvement, could be viewed as problematic. A policy is not required to direct police officers not to financially support an illegal entity.

Mr. McKay did not raise this issue, but I do note that in *Correa*, the Commission stated:

We do not accept the Appellant's argument that he was reasonably relying on advice of counsel, or that he honestly or innocently relied on what he felt was reasonable legal advice and he should not be found guilty of insubordination. This was not the case of an uninformed civilian or novice police officer blindly following the advice of counsel. Retaining legal counsel does not shield a police officer from his sworn duty to obey a lawful order. Nor can relying on legal advice cloak or defend his choice to defy a lawful order. Constable Correa was being asked to report for an investigative interview to account for statements attributed to him. The role of a police officer carries considerable authority. With that authority comes accountability. Constable Correa is an experienced police officer with over twenty-four years of service in a number of capacities including Central Command, the Drug and Major Crime Units. According to character evidence, he is competent, popular, a team player and well thought of. He had no previous disciplinary infractions recorded on his personnel file. However, it has been found that he disobeyed five lawful orders with respect to contacting Professional Standards to arrange an interview. We agree that obeying lawful orders is non-negotiable. The community must have confidence in officers sworn to serve and protect.

I find that Constable Hansson did not have a lawful excuse for not complying with the order given by Staff Sergeant Samuels.

Conclusion

To find Constable Hansson guilty of the alleged misconduct, the evidence must be so clear, so reliable, and so convincing, as to persuade me the allegations are true and the facts in issue satisfied.

I am satisfied that Constable Hansson received an order; he was directed to respond as to whether he made a financial contribution to the Freedom Convoy. For that order to be lawful, it was not necessary that the evidence pertaining to the allegation of discreditable conduct was sufficient to result in a guilty finding; only that the order was reasonable based on the assessment that the offence of discreditable could be made out. Consequently, delving further into the matter of discreditable conduct at the hearing was unnecessary. There is a significant difference between an investigation and a disciplinary hearing; the Durham Regional Police Service was not obligated to prove the elements of discreditable conduct to the standard of clear and convincing evidence before compelling Constable Hansson to answer questions with respect to potential misconduct. Whether there was a connection between Constable Hansson's alleged off duty discreditable conduct and his occupational requirements as a police officer or the reputation of his employer was not an issue for him to decide; that was a matter that would go to the merits of whether he might be guilty of discreditable conduct as opposed to whether the Chief had the authority to ask about the alleged conduct.

It would have been open to Constable Hansson to contest a discreditable conduct charge had that been the result of the investigation. There, he could have raised any number of defences such as whether he was aware that the Freedom Convoy had been deemed an illegal occupation at the time a donation was made. However, it was also open to the Durham Regional Police Service to conclude that had a donation been made and the public became aware of it, it may have damaged their reputation as a police service. Therefore it was open to the Durham Regional Police Service to make the inquiry but it was not open for him Constable Hansson to refuse to respond.

The evidence has convinced me Constable Hansson did commit insubordination in that on August 4, 2022, he received the lawful order to respond to the question of whether he made a monetary donation to the Freedom Convoy posed to him during his compelled interview with Professional Standards. Without lawful excuse, Constable Hansson disobeyed, omitted, or neglected to carry out the order by refusing to answer the questions posed to him in relation to whether he made a financial contribution to the Freedom Convoy.

Decision

On August 4, 2022, without lawful excuse, Constable Hansson disobeyed, omitted, or neglected to carry out a lawful order. Consequently, I find Constable Hansson guilty of insubordination.



Greg Walton
Superintendent (Ret.)
Ontario Provincial Police

Date electronically delivered: June 12, 2024