

OCCPS INQ # 07-01

INQUIRY INTO THE CONDUCT AND PERFORMANCE OF DUTIES OF DAVID
ASPDEN OF THE BARRIE POLICE SERVICES BOARD

Presiding OCCPS Members:

Garth Goodhew, Member

David Edwards, Member

Appearances:

D. Thomas Bell, Counsel for Ontario Civilian Commission on Police Services

Morris Manning, Q.C. and Timothy J. Riddell, Counsel for David Aspden

Heard:

December 4 and 5, 2007

Date of Decision:

December 12, 2007

MISCONDUCT - Board members - Chair of Police Services Board wrote letter of support for police officer during officer's disciplinary hearing - Violation of s. 2 of Code of Conduct for board members - Joint submission as to penalty accepted.

OPERATIONAL INTERFERENCE - Board chair violating s. 2 of Code of Conduct for board members - Improper for board member to write character letter for use in police officer's disciplinary hearing - Actions crossing the statutory line between duties of chiefs and boards - No role for board members in disciplinary process - Writing of letter constituting misconduct - Joint submission as to penalty accepted.

PENALTIES - Board members - Board member violating Code of Conduct by writing letter of support for police officer who was in the midst of a disciplinary proceeding - Appearance of interference evident to general public - Joint submission on penalty accepted - Time-served suspension from board duties - Board member also ordered to undergo training.

Summary of Reasons for Decision

A member of the Barrie Police Services Board wrote to the Commission, asking the Commission to investigate whether or not Board Chair David Aspden was in breach of s. 2 of the Code of Conduct for members of police services boards. Section 2 of O. Reg. 421/97 stated that board members "...shall not interfere with the police force's operational decisions and responsibilities or with the day-to-day operation of the police force, including the recruitment and promotion of police officers."

The Commission decided on its own motion to investigate, pursuant to s. 25 of the *Police Services Act*. David Aspden was suspended pending the outcome of the investigation. The panel members who presided at this inquiry hearing did not participate in the investigation or subsequent decision to proceed to a hearing.

The hearing was adjourned so that the parties could pursue settlement discussions. The next day the parties presented an agreed statement of fact and a joint submission. The agreed facts included Mayor Aspden's admission that at the request of counsel for the police officer he had provided a character reference for use in the penalty phase of the officer's disciplinary hearing. The Mayor further admitted that in providing the letter he had unintentionally contravened s. 2 of the Code of Conduct. The Hearing Officer had admitted the letter but did not rely on it. The Barrie Police Services Board had no policy in place at the time with respect to the propriety of submitting such letters. The parties jointly recommended a penalty of time-served suspension.

Held, Breach of s. 2 established; joint submission as to penalty accepted with further order to undergo training.

Board members had no role in disciplinary proceedings against police officers. Writing a letter of support in the midst of a disciplinary proceeding crossed the statutory line dividing the duties of chiefs and boards. The public perception of interference was obvious; and it was self-evident that such interference by a board member in police operational matters amounted to misconduct, which might explain the absence of any precedent decisions by the Commission on point.

Although the letter had no impact on the Hearing Officer's decision, the fact that the interference might not be successful was not a determinant when assessing the seriousness of the misconduct. However, in this case the misconduct could be described as not of a serious nature by virtue of Mr. Aspden's acknowledgement that he unintentionally contravened the regulation.

Panel members accepted the parties' joint submission as to penalty - that is, the time served suspension from board duties, approximately eight months. In addition, they ordered Mr. Aspden to attend board governance training offered by the Ontario Association of Police Services Boards. There was no legal impediment to Mr. Aspden resuming his role as Chair of the Board; subject to the wishes of the Board, he was free to do so, but the panel made no order to that effect.

Statutes cited

Police Services Act R.S.O. 1990, c.P.15 as amended, s. 25
O. Reg. 421/97, s. 2