

OCCPS Decision # 09-03

CONSTABLE J.B. PIGEAU
Appellant

AND

ONTARIO PROVINCIAL POLICE
Respondent

AND

CHRISTOPHER TAILLON
Respondent

Presiding OCCPS Members:

Dave Edwards, Member
Hyacinthe Miller, Member

Appearances:

Gavin May, for the Appellant
Jinan Kubursi, for the Respondent OPP

Heard:

February 27, 2009

Date of Decision:

March 5, 2009

PROCEDURAL ISSUES - Notice - Preliminary motion - Appeal of conviction and penalty for one count of unlawful or unnecessary exercise of authority - Neither Appellant nor Respondent OPP serving complainant with notice of appeal or copies of required documentation - Clear that complainant a party to the appeal - Appellant and Respondent police service to jointly arrange for service upon complainant of notice and all other documents - Appeal hearing to be rescheduled.

Summary of Reasons for Decision

Constable Pigeau appealed his conviction on one count of unlawful or unnecessary exercise of authority, contrary to s. 2(1)(g)(i) of the Code of Conduct. He also appealed the penalty imposed, loss of two days or 16 hours plus a direction to undergo in-service training dealing with issues of mental illness and arrest procedures.

Mr. Taillon filed a complaint with the OPP about the circumstances surrounding his arrest by Cst. Pigeau and his partner. Professional Standards determined that the officers had not committed misconduct. Mr. Taillon appealed to the Commission, requesting a review. The Commission then remitted the matter to the OPP for a hearing. Mr. Taillon participated in the disciplinary hearing as a witness and as a party. He was self-represented.

Prior to the commencement of oral argument on the appeal it was discovered that neither the Appellant nor the Respondent OPP had served notice of the appeal or any documents relating thereto upon Mr. Taillon, contrary to the Commission's Rules of Practice. The Commission held that the failure to serve Mr. Taillon was clearly an error. As a complainant he was a full party to the appeal with all the attendant rights to notice and disclosure of documents. The issue was what consequences flowed from the error. Counsel for the Appellant suggested several possible remedies: dismissing the appeal, proceeding without notice to Mr. Taillon, or adjourning to allow Professional Standards to contact Mr. Taillon.

Each of these options, however, entailed some degree of prejudice to one or the other of the parties. The appropriate remedy was to order the Appellant and the Respondent OPP to jointly arrange for service upon Mr. Taillon of the notice of appeal with all other documents to which he was entitled within 21 days. Following the Commission's receipt of an Affidavit of Service, the appeal would be rescheduled.

Statutes cited

Police Services Act R.S.O. 1990, c.P.15 as amended, s. 70(1)
O. Reg. 2(1)(g)(i)