

ONTARIO CIVILIAN POLICE COMMISSION

REASONS FOR DECISION

CONSTABLE NICK CHEUNG AND
CONSTABLE SEAN MCGRATH

Appellants

TORONTO POLICE SERVICE AND
PAUL JOSEPH HOLMES

Respondents

Presiding Members:

Murray Chitra, Chair
Hyacinthe Miller, Member

Appearances:

David Butt, Counsel for the Appellants
Robert Fredericks, Counsel for the Respondent Toronto Police
Service
Paul Holmes, Self Represented

Hearing Date: February 25, 2010

On May 28, 2009, Constables Nick Cheung and Sean McGrath served this Commission with a Notice of Appeal pursuant to section 70(1) of the Police Services Act R.S.O. 1990, c. P.15 as amended (the "Act").

That appeal was with respect to convictions against both officers for one count of discreditable conduct contrary to section

2(1)(a)(xi) of the Code of Conduct found at Ontario Regulation 123/98 (the "Code") by Superintendent Jane Wilcox (the "Hearing Officer") on October 10, 2008.

As well, Constables Cheung and McGrath appealed the penalty of forfeiture of 3 days or 24 hours off imposed against them by the Hearing Officer on April 30, 2009.

Prior to this appeal being heard, Constable Sean McGrath unfortunately passed away. Further, Constable Cheung has chosen not to continue with his appeal against penalty.

Accordingly, this appeal is with respect to Constable Cheung's conviction only.

Background:

The essential facts of this case are straightforward. However, there are different interpretations of some aspects of what took place.

In 2006, Mr. Holmes rented a basement apartment in Scarborough, a neighborhood of Toronto. His landlady, Ms. K.A.¹, lived on the main floor.

On August 15, 2006, she visited Mr. Holmes' basement apartment to ask about the rent which had been due on the first of the month. Mr. Holmes closed the door in her face and refused to talk to her. K.A. then called the Toronto Police Service's (the "Service") non-emergency number requesting that officers attend and talk to Mr. Holmes about why he would not speak to her and his non payment of rent.

Constables McGrath and Cheung responded to the radio call. They spoke to K.A. upstairs. They then accompanied her to an entrance to the basement. She opened the door and escorted the officers down some stairs. She noted a laundry room on the right that she

¹ Name modified.

shared with Mr. Holmes. The rest of the basement was his private dwelling.

K.A. pointed to a closed door directly at the end of a short hallway. Constable McGrath knocked on that door a few times. When there was no response, the officers turned to leave.

As they were doing so, the officers looked through an open doorway to their left and noticed Mr. Holmes sitting in a chair in the middle of a room at the end of a short passageway. Constable McGrath called out to Mr. Holmes, identifying himself as a police officer and stating that they wanted to speak with him. Mr. Holmes chose not to respond.

Constables McGrath and Cheung entered the room where Mr. Holmes was sitting. Mr. Holmes stood and walked towards the officers. He was upset and wanted them to leave. A brief conversation took place.

According to Mr. Holmes, he tried to walk past Constable McGrath to get to a telephone to call the police station to find out why the officers were in his living room. On his way past, Constable McGrath "bumped" him with his stomach.

According to Constable McGrath, Mr. Holmes "pushed" him with two hands to his chest, screamed at him to get out of his house and then tried to walk past him.

Whatever occurred, Mr. Holmes was arrested, handcuffed and charged with assaulting Constable McGrath. He was taken to the police cruiser and while he was being placed in the rear seat, he is alleged to have deliberately bumped his left shoulder into Constable Cheung. Mr. Holmes was charged with a second count of Assault Police. At the station, he was searched and later released on his own recognizance.

At Mr. Holmes' criminal trial in May of 2007, the charges against him were dismissed. In his decision, the Trial Judge, the

Honorable Justice J.P. Kerr, made a number of comments critical of the conduct of the officers.

These included:

- ... McGrath struck me as the type of man that would perhaps be a little overly aggressive, perhaps even to the point of being a bully. In the opinion of the Court he [Constable McGrath] had no business being in that apartment and challenging this man [Mr. Holmes].²
- It is so easy in a situation like this, if the police are upset at the attitude of a man, to conjure up in their minds an assault which may or may not have occurred. I am far from convinced. I would have difficulty deciding this case on the balance of probabilities. There is a lot of doubt in the Court's mind about the truthfulness of McGrath and Cheung with respect to these alleged assaults, which were of the most minor nature... I am far from convinced that the evidence of McGrath and Cheung is correct, when it comes to the incident in the home in the basement, and I am even less with respect to the assault at the car door ...³

On November 21, 2007 both officers were charged with the disciplinary offence of discreditable conduct. The Statement of Particulars read:

Being a member of the Toronto Police Service, attached to number 41 Division, on Tuesday, August 15, 2006, you were on duty.

At approximately 10:15 a.m., you responded to a residence on Brimley Road, in the City of Toronto, in relation to a landlord and tenant dispute. You entered the apartment of Mr. P.H. without his consent or lawful authority.

² Transcript of Trial Proceedings, Her Majesty the Queen v. Paul Holmes, May 23, 2007 at pages 285 to 286.

³ Ibid., pages 287 to 288.

In so doing, you committed misconduct in that you did act in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the Police Service.

Notices of Hearing were served on the officers on November 23, 2007.

The Hearing:

The disciplinary hearing for Constables Cheung and McGrath began on July 22, 2008. Mr. Holmes participated as a party. Both officers pled not guilty.

Over the course of two days several witnesses testified. This included K.A. and Mr. Holmes. As well, Constable Cheung, Constable McGrath, Constable Bennett and Superintendent Qualtrough gave evidence for the Defence.

A number of items were entered as exhibits. These included a transcript of the police investigator's interview with K.A., the notes of the two officers, a transcript of the criminal trial, a scale diagram of the basement apartment, photographs, a transcript of the initial telephone call made by K.A. and Service Procedures for Arrest and Landlord and Tenant Disputes.

Submissions were received from all parties. As noted earlier, on October 10, 2008 the Hearing Officer found both Constables Cheung and McGrath guilty of discreditable conduct.

A Defence motion to admit expert evidence at the penalty phase of the hearing was argued on January 29, 2009. The Hearing Officer rendered a decision on February 10, 2009, denying that motion.

Submissions on penalty were heard on March 10, 2009. The penalty decision was released on April 30, 2009.

Preliminary Motion:

Prior to the commencement of this appeal, Mr. Holmes brought a motion.

Mr. Holmes observed that he is a party to the appeal. However, he pointed out that, contrary to the Commission's Rules of Practice ("Rules") Mr. Butt had failed to serve him with a Notice of Appeal and related documentation in a timely manner.

He noted that he only discovered that an appeal had been commenced when the Commission's Registrar copied him correspondence relating to a request from Mr. Butt for an extension of time to deliver his factum.

Mr. Holmes suggested that all of the above was a deliberate strategy to impede his right to make full objection and response to the appeal. He argued that the appeal was invalid because of these procedural breaches.

As well, Mr. Holmes stated that he had not received full disclosure of transcripts (i.e. the January 29, 2009 Defence motion to admit expert evidence at the penalty phase of the hearing).

He argued that the disciplinary process under the Act is flawed, as all of those involved are either members of, or working on behalf of, the Service. In his view, the officers should have been both criminally charged and assessed a serious disciplinary penalty.

By way of remedy, Mr. Holmes requested that we:

- quash the appeal: or,
- order a new hearing with both the prosecutor and hearing officer appointed by the Law Society of Upper Canada; or
- substitute a punishment of dismissal; or
- order that all the hearing transcripts be provided to him and that he be allowed an adjournment to prepare.

Decision on the Motion:

Section 69(3) of the Act ⁴ reads:

69(3) The parties to the hearing are the prosecutor, the police officer who is the subject of the hearing and, if the complaint was made by a member of the public, the complainant.

It is clear that the parties to the disciplinary hearing that took place in July of 2008 and January and March of 2009 included Constables Cheung and McGrath and Mr. Holmes.

Section 70(1) of the Act states:

70(1) A police officer or complainant may, within 30 days of receiving notice of the decision made after a hearing held by the chief of police under subsection 64(7) ... appeal the decision to the Commission by serving the Commission a written notice stating the grounds on which the appeal is based.

It is clear that Constables Cheung and McGrath and Mr. Holmes had a statutory right to appeal the decision of the Hearing Officer.

Constables Cheung and McGrath chose to exercise that right. Mr. Holmes did not.

The Commission has developed Rules to assist in the orderly management of appeals. Rule 8.1 ⁵ reads:

8.1 A police officer or complainant who appeals to the Commission under s. 70(1) of the Act shall deliver upon the other parties and the Commission, a Notice of Appeal, together with a copy of the Notice of Decision,

⁴ As the Act read at the time of the disciplinary hearing.

⁵ As it read at the time of the appeal.

within thirty days of receiving notice of the decision which is the subject of appeal.

Mr. Butt, on behalf of Constables Cheung and McGrath properly served the Commission and Service with a Notice of Appeal in a timely manner. However, he did not serve the other party, Mr. Holmes, as required by Rule 8.1. This failure was subsequently remedied.

The question for us, is whether or not this delay warrants (or even permits) us to "quash" this appeal. We think not.

We are concerned about Mr. Butt's acknowledged failure to comply with our Rules. However, Constable Cheung has a statutory right to appeal the decision of the Hearing Officer. The failure of his counsel to comply with procedural rules does not void such a right.

Further we note that, while the process timelines in this case may have varied from the norm, Mr. Holmes was eventually provided with the necessary materials to respond to the appeal. He has had the opportunity to provide us with written submissions and appear at this appeal. Given the above, we cannot find that his right to participate in this process as a party has been prejudiced.

Mr. Holmes also specifically expressed concerns that he was not provided with copies of the transcript relating to the motion heard on January 29, 2009 at the penalty phase of the disciplinary hearing. Rule 10.3 states:

10.3 The appellant to a proceeding shall provide the Commission and all other parties with a copy of those portions of the transcript, if any, of the disciplinary hearing upon which the appellant intends to rely ...

We would make two observations. First, the motion in question was decided in favor of both the Prosecution and Mr. Holmes. Second, Constable Cheung does not appeal that ruling or in

anyway rely upon it. Accordingly, a copy of the transcript relating to that motion was neither required, nor necessary.

Mr. Holmes has also requested that we dismiss Constable Cheung. However, Mr. Holmes did not exercise his statutory right to appeal the penalty imposed by the Hearing Officer. He cannot at this late date, do indirectly, that which he chose not to do directly.

Further, Constable Cheung has chosen not to proceed with his penalty appeal. Accordingly, penalty is not even before us.

Mr. Holmes requested that we order a new hearing. However, since his public complaint pre-dated the October 19, 2009 amendments to the Act, our authority is limited to the remedies set out in former section 70(6). This does not include ordering a new hearing.

Finally, Mr. Holmes requests an adjournment. We observe that this matter has been outstanding for several months. All parties have had the required appeal material for some time. The date of this hearing was set with the agreement of all parties.

Further, in correspondence dated December 18, 2009 from the Commission, Mr. Holmes was notified that "all matters" were to be dealt with today.

For these reasons, Mr. Holmes' motion is denied.

Appellant's Position:

Mr. Butt, on behalf of Constable Cheung, argued that the Hearing Officer failed to apply the correct legal test for discreditable conduct. Specifically, he asserted that the Hearing Officer failed to take into account Constable Cheung's 'good faith' and 'good intentions'.

Mr. Butt asserted that the Hearing Officer misstated the law. Further, she failed to view what occurred in the broader

circumstances of the case before her. Girard v. Delaney (1995), 2 P.L.R. 337 (Ont. Bd. Inq.)

He argued that these errors established a strong case for us to interfere with the Hearing Officer's finding.

To this end, he highlighted certain aspects of the evidence. He noted that Constable McGrath and Constable Cheung had been dispatched in response to K.A.'s call. She was upset and 'scared' by the strange behavior of her tenant. The officers entered a mixed-use area of a private home where the property lines were ambiguous.

They knocked on what they thought was the door to the tenant's residence. When they turned to leave, they saw Mr. Holmes through an open doorway, within earshot. They called out to him and received no response. Receiving no answer, they were concerned Mr. Holmes could be ill or under the influence of drugs or alcohol.

Mr. Butt acknowledged that Constable Cheung technically may have committed trespass by crossing the threshold into Mr. Holmes' apartment, but suggested that this was a 'good faith' error that in the circumstances would not bring discredit to the reputation of the Service in the eyes of a reasonable member of the public.

Mr. Butt suggested that if the Hearing Officer felt otherwise, she owed it to the parties to detail why she did not take into account all of the extant factors in reaching a determination that misconduct had occurred.

Mr. Butt suggested that we take a 'bird's eye view' of events. Further, it was open to us to revisit the principles of Girard v. Delaney supra and enunciate a new standard.

He asked us to set aside the conviction.

Mr. Holmes' Position:

Mr. Holmes submitted that K.A.'s call to the Service was for non-payment of rent, which is a civil, rather than a police issue. He pointed out that his rent was two weeks in arrears, which was not an urgent situation.

He noted that in the transcript of K.A.'s call to the Service Communications Centre, she indicated that he had 'closed' the door and stated he did not wish to speak with her. When asked if drugs or alcohol were involved, K.A. responded in the negative.

Mr. Holmes advised us that his original public complaint about the conduct of Constables McGrath and Cheung was deemed to be unsubstantiated by the Service. He stated that he had never received an apology for the trespass or the two criminal charges on which he was acquitted.

He drew our attention to the notes of the Professional Standards investigator, who had concerns that Mr. Holmes' Charter rights had been breached. In the transcript of his criminal trial, the presiding judge appeared to agree. He also expressed concerns about the credibility of the police officers' testimony.

Mr. Holmes argued that good faith is not a lawful excuse; police are required to follow the rules for entering a private dwelling. There were no exigent circumstances. He stated that he chose not to speak with the officers. When they entered his apartment he told them to leave.

He reiterated his position that as a self-represented party, he had been disadvantaged because the Act and Rules were not adhered to. He indicated that he has been victimized by individuals who have sworn to uphold the law. He is fearful and strongly distrustful of the police as a result of the confrontation and arrest in his own home.

He argued that Constable Cheung had not been sufficiently charged nor adequately penalized for his misconduct. In his view, rehabilitation was not possible. It was his contention the penalty was too lenient. He urged us to dismiss the appeal and impose a more serious penalty.

Service's Position:

Mr. Fredericks argued that the Hearing Officer had properly applied the test for discreditable conduct, considered all of the relevant circumstances and reached a conclusion that was fully supported by the facts.

While the Hearing Officer could have gone into greater detail about the subjectivity issue, the fact that she did not, does not change the reasonableness of her analysis or the correctness of her decision. R. v. Braich (2002), 162 C.C.C. (3d) 324 (S.C.C.) and R. v. Burns (1994), 89 C.C.C. (3d) 193 (S.C.C.)

Mr. Fredericks accepted that Constable Cheung was attempting to help resolve a Landlord and Tenant dispute. However, there were no allegations of violence. K.A.'s request was for assistance collecting overdue rent. Mr. Fredericks contended these facts diminished any justification for unlawfully entering Mr. Holmes' dwelling and should have informed the officers that caution was advisable.

Mr. Fredericks argued that the test for discredit to the reputation of a police service is nuanced. The officer's intent is a lesser consideration; rather, the conduct should be assessed against an objective standard of reasonableness. Leone v. Catalano (1992), 1 P.L.R. 573 (Ont. Bd. Inq.); Footman v. Davies (14 December, 1984, Police Complaints Board), aff'd, Ont. Div. Ct., 14 October, 1986; Khoury v. Pike (31 October, 1985, Police Complaints Board), aff'd, Ont. Div. Ct., 23 November, 1988; Tran v. Oosterhoff (1993), 1 P.L.R. 414 (Ont. Bd. Inq.); Talha v. Culleton (1993), 1 P.L.R. 252 (Ont. Bd. Inq.); and, Taffesse v. Heron (1993), 1 P.L.R. 471 (Ont. Bd. Inq.)

Mr. Fredericks argued that the objective test for discreditable conduct articulated in Footman v. Davies supra and Khoury v. Pike supra is preferable to the approach described in Girard v. Delaney supra.

Mr. Fredericks argued that it is well established that a police officer has the right to enter private premises without a warrant only in limited circumstance. Turpin and Durham Regional Police Services (20 January, 2000, O.C.C.P.S), aff'd, Ont. Div. Ct. 14 September, 2001; and, Trespass to Property Act R.S.O. 1990, c. T.21 as amended

Mr. Fredericks asserted that the Hearing Officer reasonably concluded that the public properly expects police officers to respect privacy and the law. Failure to do so would clearly bring discredit to the reputation of any police service.

Further, Mr. Fredericks argued that good intentions neither justify unlawful entry nor diminish any potential discredit. Hudson v. Brantford Police Service (2001), CanLII 8594 (Ont. C.A.), Tran v. Oosterhoff supra, Taffesse v. Heron supra and Cook v. Dick (1995), 2 P.L.R. 379 (AB L.E.)

As well, he noted that the record does not support a 'good intentions' defence. Even if Mr. Holmes' failure to respond to the officers was "strange", it still did not justify them entering his residence without consent. R. v. Machado (1991), 1 P.L.R. 29 (B.C.S.C.)

In summary, Mr. Fredericks submitted the Hearing Officer applied the correct test, her reasoning was correct and her conclusions were correct. He asked us to dismiss the appeal.

Decision:

This is an appeal with respect to a single conviction for discreditable conduct.

Our role in this appeal is not to second-guess the decision of the Hearing Officer in this regard. Rather it is to assess whether or not her conclusions are reasonable given the evidence before her and reflect a proper understanding of the law.

On October 10, 2008 the Hearing Officer found Constable Cheung guilty of one count of discreditable conduct contrary to section 2(1)(a)(xi) of the Code. It states:

- 2(1) Any... police officer commits misconduct if he or she engages in,
 - (a) DISCREDITABLE CONDUCT, in that he or she, ...
 - (xi) acts in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the police force...

Her decision was articulated in 37 pages of reasons.

The Hearing Officer provided a description of the history of the hearing, evidence, submissions and the law. At page 33 she summarized the case before her as follows:

The matter before the Tribunal concerns a charge of Discreditable Conduct in relation to the entry into Mr. Holmes's apartment by Constable McGrath and Constable Cheung. It is the responsibility of the Service prosecutor to prove on clear and convincing evidence, that Constable McGrath and Constable Cheung entered the residence of Mr. Holmes without his consent or lawful authority. And that such conduct, if known to the public, would damage the reputation of the Service. I remind myself that the officers need not prove or

establish any fact; the onus is on the Service prosecutor to prove allegations to a standard of clear and convincing evidence.

This statement accurately describes the relevant burden of proof and onus. It also reflects the Statement of Particulars.

The heart of the Hearing Officer's factual ruling was contained in the following five paragraphs at pages 36 and 37 of her decision:

The case before the Tribunal involves officers entering a private residence with the intent to mediate a Landlord and Tenant dispute. While Constable McGrath and Constable Cheung may have initially thought they were stepping into an extension of the common area when they crossed the threshold towards the kitchen and living room area, they were in fact entering into the private residence of Mr. Holmes.

While it may have been appropriate for the officers to seek to communicate with Mr. Holmes while in the short hallway, there was no lawful authority or implied consent to encroach upon his residence, as per Constable King and Durham Regional Police ...

The case law and legislation presented provided a clear framework and a set of standards against which the actions of Constable McGrath and Constable Cheung could be evaluated.

The entry by the police into a citizen's residence is more distinctly a black and white situation thanks to the decision of the Supreme Court of Canada in R. versus Feeney... That decision essentially has restricted warrantless entries into a private residence to situations where the police are in hot pursuit of a suspect or there are exigent circumstances that would justify a warrantless entry, as quoted in Berketa and Niagara

Regional Police... None of these exemptions or exceptions are applicable to the facts currently before the Tribunal.

Based on clear and convincing evidence, having regard to the totality of the circumstances, case law and legislation, and not withstanding their good intentions, I find that Constable McGrath and Constable Cheung entered the residence of Mr. Holmes without his consent or lawful authority.

This is a reasonable conclusion. Constable Cheung was responding to a low priority call made by a landlord about a late rent payment, which is a civil matter. There was no emergency, nor was there any indication that drugs or alcohol were involved.

The Hearing Officer properly observed at page 35 of her decision: "Mr. Holmes's silence or unresponsiveness cannot be construed as consent, permission or an invitation for officers to enter his residence." Mr. Holmes was under no obligation to speak with anyone.

It is suggested that we take a 'bird's eye view' and consider Constable Cheung's good intentions as either mitigating culpability or discredit.

There are a number of cases that speak to the considerations to be applied when assessing discreditable conduct. It has been described in different ways. The most commonly cited case is Girard v. Delaney supra.

At page 349 that decision the Ontario Board of Inquiry stated:

1. The test is primarily an objective one.
2. The Board must measure the conduct of the officer by the reasonable expectations of the community.
3. In determining the reasonable expectations of the community, the Board may use its own judgment, in

the absence of evidence as to what the reasonable expectations are. The Board must place itself in the position of a reasonable person in the community, dispassionate and fully appraised of the circumstances of the case.

4. In applying this standard the Board should consider not only the immediate facts surrounding the case but also any appropriate rules and regulations in force at that time.
5. Because of the objective nature of the test, the subjective element of good faith (referred to in the *Shockness* case) is an appropriate consideration where the officer is required by the circumstances to exercise his discretion.

On this question, at page 37 of her decision, the Hearing Officer wrote:

I must now assess whether or not the conduct of ... Constable McGrath and Constable Cheung is conduct that offends the reasonable expectations of the public. This is an objective standard where the officers' intent is not a consideration. The public reasonably expects police officers to respect and apply the well-established laws governing police entry into private residences. Constable McGrath and Constable Cheung did not act in accordance with the laws governing police entry into private homes when they crossed the threshold from the short hallway into Mr. Holmes's kitchen area and beyond. Their conduct was such that if it were known to the public, would bring discredit upon the reputation of the Service.

The Hearing Officer's reasoning certainly could have been more detailed. However, we note that she properly identified the test as being primarily objective in nature and addressed the question of the reasonable expectations of the public.

On the latter point, we agree that the public expects police officers to respect private property. When this does not occur, the public has a right to be concerned and discredit to the reputation of a police service may arise. We note that the actions of Constables Cheung and McGrath on August 15, 2006 generated both a public complaint and judicial criticism.

The Hearing Officer also examined the conduct of the officers in light of the existing law and procedure. Her conclusions in this regard are not unreasonable. A trespass occurred.

On the facts of this case, the Hearing Officer appears to have concluded that Constable Cheung's intent was not a relevant consideration.

On this point, we observe that the fifth element as set out in Girard v. Delaney supra (good faith or intent where discretion is being exercised) has not been universally accepted as a relevant factor even by the same tribunal.

For example in Leone v. Catalano the Ontario Board of Inquiry stated at pages 578 and 579:

... the Code of Offences ... include offences which do not require a wrongful intent. For example, under s. 1(i) ... acts which are "likely to bring discredit upon the reputation of the police force" are discreditable conduct. Such an offence clearly does not contain a requirement of wrongful intent. The offence is based on the concept that if an action has the appearance of wrongful conduct, such as the appearance of suppressing evidence or inappropriately failing to act, then it may be held to be misconduct, regardless of the intent, because may bring discredit on the force by virtue of its appearance.

... it is the Board's view that the conduct of the officers should be judged against the standard of

reasonableness ... This is not the highest possible standard ... Nor is it to impose the standard referred to earlier, that a wrongful intent must be found. Rather, it is to impose a standard which requires the officers to act in accordance with the reasonable expectations of society and to judge their conduct against that standard.

Whether intent is factored into the equation or not, we are of the view that it does not assist Constable Cheung.

We agree with the comments of the Honorable Justice J.P. Kerr that the officers had no business being in Mr. Holmes' apartment or challenging him. Further, we accept the Hearing Officer's observation at page 35 that the officers' overall conduct was "indicative of a complacent approach to not only to their own safety but also to the property rights associated to the premises in which they found themselves."

Constable Cheung had the option of disengaging, asking a senior officer for advice or obtaining a warrant. He chose to enter Mr. Holmes' private space and along with his partner engage him in conversation about unpaid rent. As a consequence, in the absence of conditions that would establish the pre-conditions for a warrantless entry, Constable Cheung committed a trespass. His actions were not in compliance with the law or applicable Service policy.

It was within the scope of the Hearing Officer's knowledge and experience as a senior police officer to conclude that the conduct of the two officers was evidence of complacency and failure to apply training, experience and knowledge of the law. We agree that their unauthorized entry onto personal property would offend the reasonable expectations of the public.

We find no manifest error or procedural defect that would require us to interfere in the decision of the Hearing Officer. Accordingly, the appeal is dismissed.

DATED AT TORONTO THIS 23rd DAY OF APRIL 2010.

Murray Chitra
Chair, OCPC

Hyacinthe Miller
Member