

JR # 08-06

Hampel v. Toronto Police Service

Affirmed

Divisional Court (April 3, 2009)

Karakatsanis, Jennings and Wilson JJ.

Court File # 434-08 and 462-08

JUDICIAL REVIEW - Appeal from a finding of misconduct and cross appeal challenging penalty - Commission interpreting its home statute - Standard of reasonableness applied - Decision reasonable - Appeals dismissed.

JUDICIAL REVIEW - Finding of guilt on charge of insubordination upheld by Commission - Appellant admitted he used CPIC system to conduct personal searches at his wife's request - Commission identified potential for conflict of interest when officer uses police resources to pursue matter in which officer has a personal interest - Commission articulating why rule against personal use important on public policy grounds - Commission not creating new standard or assessing conduct against conflict of interest rules - Appeal dismissed.

INSUBORDINATION - Disobedience of orders - Appellant used CPIC system to conduct personal searches - Appellant testified before Hearing Officer that his wife insisted he conduct searches because she was fearful of his ex-wife - Commission not unreasonable in finding there were no compelling safety issues - Commission reasonable in finding there was evidence to support Hearing Officer's conclusion that inquiry was not exclusively for police business - Appeal dismissed.

INSUBORDINATION - Components - Lawful excuse - Appellant used CPIC system to conduct personal searches, contrary to service rule - Appellant's defence that he believed he was advancing a police investigation notwithstanding element of personal interest - Hearing Officer not failing to consider Appellant's defence and not misapprehending evidence relating to defence - Evidence upon which Hearing Officer could reject defence - Decisions of Hearing Officer and Commission reasonable - Appeal dismissed.

SENTENCING - Disciplinary record - Commission varied penalty on the basis that Hearing Officer improperly considered entries on disciplinary record outside two-year statutory sunset provision - "Entry concerning misconduct" within the meaning of s. 64(16) of *Police Services Act* not including the laying of a charge or service of a notice of hearing - Commission's interpretation of s. 64(16) reasonable - Appeal from penalty dismissed.