

OCCPS Decision # 08-06

CONSTABLE SCOTT HAMPEL  
Appellant

AND

TORONTO POLICE SERVICE  
Respondent

Presiding OCCPS Members:

David Edwards, Member  
Hyacinthe Miller, Member

Appearances:

Harry Black, Q.C., for the Appellant  
Ian Solomon, for the Respondent

Heard:

July 23, 2008

Date of Decision:

August 14, 2008

**INSUBORDINATION - Disobedience of orders** - Appellant performed CPIC searches at the request of his wife to determine whether his ex-wife had undertaken improper CPIC searches - Actions in violation of service rule against use of service equipment for any purpose other than police business - Finding of guilt supported on the evidence - Hearing Officer erred in considering prior discipline - Penalty reduced from 7 days to 3 days.

**INSUBORDINATION - Components - Lawful excuse** - Appellant used CPIC system to determine whether ex-wife had undertaken improper CPIC searches of Appellant's wife - Violation of service rule against use of service equipment for any purpose other than police business - Hearing Officer rejected Appellant's defence that searches were for police business - Evidentiary foundation for Hearing Officer's conclusion that Appellant conducted CPIC searches at his wife's request - Conflict of interest clear - Reasonableness of wife's fear not relevant to issue of guilt - Conviction on charge of insubordination upheld.

**SENTENCING - Disciplinary record** - Prior incidents of discipline factored into Hearing Officer's penalty decision - Incidents fell outside two-year statutory sunset provision - Informal documents deemed to be expunged pursuant to s. 64(16) of *Police Services Act* and should not have been taken into account - Penalty reduced from 7 days to 3 days.

## Summary of Reasons for Decision

Constable Hampel appealed his conviction on one count of insubordination, contrary to s. 2(1)(b)(ii) of the Code of Conduct. He also appealed the penalty imposed, forfeiture of 7 days or 56 hours. Constable Hampel had been employed with the service since 1987.

Constable Hampel was charged with violating service rule 4.13.1, which stated: “All computer and telecommunications equipment owned, leased, loaned or rented by the Service shall be used exclusively for police business.” Constable Hampel admitted conducting CPIC searches but claimed that he did so for the purpose of police business.

Constable Hampel testified that T, his ex-wife, who was also a Toronto police officer, had been conducting improper searches on his current wife, N in order to discover their place of residence. An informal disciplinary record against T was entered into evidence at the disciplinary hearing, establishing a history of T using CPIC to check on Cst. Hampel, his then-girlfriend and his uncle. Constable Hampel testified about an incident in which T appeared at N’s residence in uniform and carrying a firearm, which was perceived as threatening by N. There was also an incident involving a graphic and disturbing bogus 911 call to their former residence. Constable Hampel believed that T was behind the call. He also testified about a suspicious inquiry to Internal Affairs requesting an update of his address.

Thus both Constable Hampel and his wife were fearful about T. At the request of his wife Constable Hampel conducted CPIC searches in an effort to determine whether T had been conducting unauthorized checks on N.

Counsel for the Appellant argued that the Hearing Officer erred in finding that Cst. Hampel’s defence was based on securing his wife’s peace of mind; instead, his defence was that the checks were done for police business and were therefore lawful. Counsel argued that the Hearing Officer ignored evidence, particularly Cst. Hampel’s stated intention of reporting any CPIC violations found through his searches. Counsel asserted that the Hearing Officer erred in law with respect to the penalty he imposed, since he took into account stale-dated discipline. In counsel’s submission the penalty was excessive having regard to the circumstances, Cst. Hampel’s prior work record and comparator cases.

Counsel for the Respondent pointed out that the Appellant admitted that he was subject to a lawful order, rule 4.13.1, he had conducted the CPIC searches, and he had disclosed the results to a third party, his wife. Thus the necessary elements of the offence of insubordination had been proved. The Hearing Officer had identified certain “complicating factors”: the unauthorized use occurred on two separate occasions; this was Cst. Hampel’s second discipline for misuse of service technology; and his failure to appreciate that CPIC use for personal purposes was totally prohibited. Having regard to these factors, as well as the seriousness of the misconduct and the need for both general and specific deterrence, the penalty was appropriate.

*Held*, Conviction upheld; penalty reduced from 7 days to 3 days.

A clear conflict of interest arose whenever a police officer pursued, in his or her capacity as a police officer, any matter in which he or she had a personal interest.

The Hearing Officer concluded that the Appellant had used the CPIC system to determine whether T had been conducting improper inquiries. His actions were found to have been motivated by his wife's fear that T might have located their address. The reasonableness of N's fear was irrelevant to the issue of guilt. The evidence supported the Hearing Officer's conclusion that the Appellant had violated the direction that police equipment be used exclusively for police business. The fact that he shared the confidential results of his searches with his wife aggravated the misconduct. Accordingly the appeal against the conviction for insubordination was dismissed.

However, with respect to penalty the Hearing Officer erred when he took into account two prior informal disciplinary documentations on Cst. Hampel's record. Section 64(16) of the *Police Services Act* provided for a two-year sunset clause with respect to disciplinary entries; that is, entries were to be expunged two years after they were made if there were no further entries. The statutory time clock ran from the date when the complaint or allegation was proved on clear and convincing evidence; in other words, the date when the Hearing Officer found Cst. Hampel guilty of insubordination. Since the prior discipline was beyond the two-year limit it was deemed to be expunged and should not have factored into the penalty decision. In light of this error it was appropriate to revoke the penalty and replace it with a forfeiture of 3 days or 24 hours.

#### Statutes cited

*Police Services Act* R.S.O. 1990, c.P.15 as amended, ss. 64(16) and 68(9)  
O. Reg. 123/98 s. 2(1)(b)(ii)

#### Authorities cited

**Williams and Ontario Provincial Police** (1995), 2 O.P.R. 1047 (OCCPS)  
**Wilson and Ontario Provincial Police** (Nov. 20, 2006, OCCPS #06-11)  
**Coon and Toronto Police Service** (April 10, 2003, OCCPS #03-09)  
**Galassi v. Hamilton (City) Police Service** [2005] O.J. No. 2301 (Ont. Div. Ct.) (OCCPS JR #03-20)  
**Wildeboer and Toronto Police Service** (Nov. 7, 2006, OCCPS #06-10)  
**Carson and Pembroke Police Service** (March 9, 2006, OCCPS #06-02)  
**Thomas v. Ontario (Police Complaints Commissioner)** [1994] O.J. No. 2731 (Ont. Ct. Jus.)

[Further authorities as submitted by the parties may be found at pp. 5-9 of the decision.]