

ONTARIO CIVILIAN COMMISSION ON POLICE SERVICES

REASONS FOR DECISION ON PRELIMINARY MOTION

CONSTABLE J.B. PIGEAU

Appellant

ONTARIO PROVINCIAL POLICE

Respondent

CHRISTOPHER TAILLON

Respondent

Presiding Members:

Dave Edwards, Member
Hyacinthe Miller, Member

Appearances:

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

Hearing Date: Friday, February 27, 2009

Constable J.B. Pigeau appeals a finding of guilt for one count of unlawful or unnecessary exercise of authority, contrary to section 2(1)(g)(i) of the Code of Conduct found at Ontario Regulation 123/98 (the "Code") by Superintendent (retired) A. Griffiths (the "Hearing Officer").

As well he appeals the penalty of the loss of two days or sixteen hours off and the direction that he receive in-service training that deals with issues of mental illness and arrest procedures, particularly dealing with schizophrenia and illnesses brought on by diabetic complications.

Background:

The incident giving rise to the disciplinary proceeding occurred on December 10, 2006. Mr. Christopher Taillon, a resident of Kirkland Lake, was detained and arrested by Constable Pigeau and his partner. They were in uniform, driving a marked police cruiser. He was subsequently released at the scene by the officers' supervisor. As a result of issues relating to his arrest, Mr. Taillon filed a complaint with the Ontario Provincial Police ("OPP"). Following the determination by Professional Standards that the officers had not committed misconduct, the complainant appealed to this Commission, requesting a review.

A Panel of Commission members found that there was an air of reality to the complaint and remitted the matter back to the OPP for a hearing.

Preliminary Matter:

Prior to the commencement of oral argument on the appeal, it was drawn to the attention of this Panel that Mr. Taillon had not received a Notice of Appeal nor had he received a copy of the record from the disciplinary hearing, factums or supporting materials. Neither counsel for the Appellant nor the Respondent OPP had served any of its documents upon Mr. Taillon.

Mr. Taillon was a party to the original proceedings. A review of the transcript reveals that throughout the initial phase of the hearing, Mr. Taillon participated, both as a witness and as a party.

Mr. May acknowledged that the failure to serve Mr. Taillon was an error.

He suggested three potential remedies:

1. The appeal could be dismissed;
2. The appeal could proceed without notice to Mr. Taillon; or
3. The matter could be adjourned to allow a representative from Professional Standards to contact Mr. Taillon to determine whether he would like to participate or not.

It is useful to review the law on this issue.

The relevant portion of section 70(1) of the Police Services Act R.S.O. 1990, c. P.15 as amended (the "Act") states:

A police officer ... 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 on the Commission a written notice stating the grounds on which the appeal is based.

The Rules of Practice of the Commission (the "Rules") specify that:

The parties to an appeal hearing include:

- (a) The police officer,
- (b) The prosecutor at the disciplinary hearing appealed from; and
- (c) The complainant, if the complaint was made by a member of the public. 5.1

Section 8 of the Rules describes the steps which a person who wishes to appeal to the Commission must follow. Sections 10 and 11 outline the documentation submission requirements. These include serving the "other parties" with a copy of the record of the disciplinary hearing, the decision appealed from, physical evidence and exhibits, a copy of portions of the transcript upon which the appellant intends to rely, factums and supporting materials.

It is clear that a complainant is a party to an appeal of a disciplinary penalty. A party, by virtue of our Rules, must be served with the Notice of Appeal and all other items referred to in the Commission's Rules of Practice.

Decision:

Mr. Taillon made the complaint and he pursued his complaint through the various steps open to him through the Act. The Prosecutor, the Defence Counsel and Hearing Officer all treated Mr. Taillon as a party to the original proceedings.

Although it would have been preferable if the Hearing Officer had named Mr. Taillon as a party in the style of cause, there is no doubt in our mind that Mr. Taillon's status was clearly understood. Given that he was self-represented, he was given appropriate latitude by all of the participants.

The failure to treat Mr. Taillon as a party to the appeal and the failure to serve him is clearly an error. The question we must address is what consequences flow from this error.

The Act requires that notice of an appeal be filed with the Commission within 30 days. This Commission is bound by the provisions of the Act. It cannot provide relief from those provisions, even it were so inclined. However, the notice given by the Appellant complied with that statutory requirement. In our view a dismissal of this appeal due to an oversight on the part of counsel would unduly prejudice the Appellant.

Our Rules further describe the procedures to be followed on appeal. Mr. Taillon, who is a party, was not served. Our Rules were not followed.

In coming to a conclusion on this matter we are cognizant of the fact that the rights of a complainant are very important and must be protected. Mr. Taillon was self-represented at the hearing. Any decision by this Panel must respect his rights as party during an appeal of a hearing officer's decision arising from the original complaint.

In this particular case, not only did Mr. Taillon make the original complaint, but when it was initially dismissed, he persisted and appealed the matter to this Commission. He also participated at the testimony portion of the hearing as a witness and as a party.

Having said that, whether a complaint chooses to actively participate in a disciplinary hearing or not does not change his or her status as a party.

It would be unfair to any complainant for an appeal to the Commission to proceed without proper notice and service of related documentation.

We cannot agree with the third option presented. The notion that OPP Professional Standards would be asked to contact an individual whose original complaint they found to be without merit, to determine if he wished to accept or decline to exercise his rights without having reviewed appeal documentation, would not be proper.

The impact of our decision on the OPP must also be considered.

Counsel for the OPP also acknowledged her failure to serve Mr. Taillon with her materials. As well, in the circumstances there is no real prejudice to the OPP if this matter is somewhat delayed.

In reaching a decision on this matter we have considered the power conveyed upon this panel by virtue of section 3.4 of our Rules.

The Commission at any time may waive or vary any of these Rules, including time limits set out in these Rules, on such conditions as the Commission considers appropriate.

We are of the view that the rights of all parties are respected by ordering as follows:

1. The Appellant and the Respondent police service shall jointly arrange for the service upon Mr. Taillon of the Notice of Appeal, and all other documents to which he, as a party, is entitled. This shall be accomplished within 21 days.
2. Forthwith, following service of those documents, an Affidavit of Service shall be filed with the Registrar, which affidavit will include the address, and if possible, the phone number of the complainant.
3. Thereafter, the Registrar will deal with the administrative arrangements relating to rescheduling this appeal.

DATED AT TORONTO THIS 5TH DAY OF MARCH 2009.

Dave Edwards
Member, OCCPS

Hyacinthe Miller
Member, OCCPS