In the matter of an Appeal from a Decision of a Hearing Officer dated January 22, 2024 and an Appeal from the Disposition of a Hearing Officer dated March 21, 2024 pursuant to s. 87 of the *Police Services Act* and s. 216 of the *Community Safety and Policing Act, 2019*.

Constable Pierre Fournier

Appellant

and

Ottawa Police Service

Respondent

DECISION AND ORDER

Panel:	Colin Osterberg Leonard Favreau Kumail Karimjee
Participants:	
For the Appellant:	Self-represented
For the Respondent:	S. Ceroux, counsel
Reporter:	Megan Herasimenko

Held by Videoconference: April 11, 2025

INTRODUCTION

[1] In a decision dated January 22, 2024 ("Misconduct Decision"), the Hearing Officer, Superintendent (Retired) C. Renwick ("Hearing Officer"), found the Constable Pierre Fournier (the "appellant"), guilty of discreditable conduct contrary to the Code of Conduct under the *Police Services Act* (the "PSA").

[2] In the penalty disposition dated March 21, 2024 ("Penalty Decision"), the Hearing Officer ordered the appellant to forfeit 10 days (80 hours).

[3] The appellant appealed from the Misconduct Decision and the Penalty Decision. The appeals were commenced before the Ontario Police Arbitration and Adjudication Commission (the "Commission") pursuant to s. 216(4) of the *Community Safety and Policing Act, 2019*, S.O. 2019, c. 1, Sched. 1 (the "Act").

[4] On November 20, 2025, the Commission ordered that, if the appellant did not provide proof that he had ordered the transcript of the misconduct hearing within 30 days, the Commission would order that the appeal of the Misconduct Decision be dismissed and the appeal of the Penalty Decision would proceed on the basis that the factual findings made by the Hearing Officer are accurate.

[5] A pre-hearing conference was conducted on January 7, 2025. At the pre-hearing conference, the parties confirmed that the appellant had not ordered the transcript and understood that the appeal of the Misconduct Decision would be dismissed and the appeal of the Penalty Decision would proceed on the basis that the factual findings made by the Hearing Officer are accurate. The Commission dismissed the appeal of the Misconduct Decision and ordered that the appeal of the Penalty Decision would proceed on the basis that the factual findings made by the Hearing Officer are accurate.

OVERVIEW

[6] This factual overview is based on the factual findings of the Hearings Officer. The discipline proceedings arose out of an incident which took place on April 24, 2023. At that time, the appellant was off work on extended medical leave. The appellant and his brother encountered seven youths operating motocross bikes on land owned by an acquaintance of the appellant. The appellant confronted the youths and there followed a verbal altercation and a physical altercation. The physical altercation included pushing and strikes. During the altercation, the appellant used aggressive and mocking language toward the youths, including swearing at them.

[7] The Hearing Officer found that the appellant identified himself as a police officer during the incident.

[8] After the physical altercation, the appellant called 911 and the responding patrol constables and sergeant arrived shortly thereafter.

[9] The Hearing Officer found that the appellant's actions amounted to police actions, thus placing him on-duty to exercise his authority as a police officer. The Hearing Officer found that the appellant therefore had an obligation to make notes, complete an investigative action report, and to conduct himself to the standard required and demanded by the Ottawa Police Service (the "OPS"), which the appellant did not do.

[10] The Hearing Officer also found that the appellant breached the rights of one of the youths under the *Canadian Charter of Rights and Freedoms* ("Charter") by not providing him with his rights to counsel.

[11] The Hearing Officer found that the OPS proved, on clear and convincing evidence, that the appellant was guilty of one count of Discreditable Conduct. The appeal of that determination was dismissed by the Commission as set out above.

[12] On March 21, 2024, the Hearing Officer released his penalty decision, ordering forfeiture of 10 days (80 hours). The appellant appeals the Penalty Decision.

THE STANDARD OF REVIEW

[13] In *Karklins v. Toronto (City) Police Service*, 2010 ONSC 747 ("*Karklins*") at paragraph 10, the Divisional Court confirmed the role of the Ontario Civilian Police Commission ("OCPC") on a penalty appeal, noting the following:

> The role of the Commission on a penalty is well established. Our function is not to second guess the Hearing Officer or substitute our opinion. Rather, it is to assess whether or not the Hearing Officer fairly and impartially applied the relevant dispositional principles to the case before him or her. We can only vary a penalty decision where there is a clear error in

principle or relevant material facts are not considered. That is not something done lightly.

[14] Pursuant to s. 216(4) of the Act, this Commission is mandated to exercise the powers and perform the duties of the OCPC. We are therefore bound by the penalty appeal standard set out in *Karklins* and the case law defining the role of the OCPC in relation to penalty appeals.

[15] Even if the Commission would have come to a different conclusion on penalty, it will not interfere with the Penalty Decision unless there has been an error in principle or relevant factors have been ignored. The Commission's role is to determine whether the Hearing Officer's decision was reasonable in the circumstances: *Kobayashi and Waterloo Regional Police Service*, 2015 ONCPC 12 (CanLII) at paragraph 33; *Gould v. Toronto Police*, 2018 ONSC 4074 (CanLII) (Div. Ct.) at paragraph 6.

ISSUES ON APPEAL

[16] In his factum, and in oral argument, the appellant raises several grounds of appeal and within those grounds multiple sub-issues are raised. Though this is an appeal proceeding on the basis of factual findings made and not currently subject to review, the appellant ultimately maintains that he did nothing wrong and that he does not accept the outcome of the merits hearing. However, the Commission's role is to deal with grounds of appeal and not to revisit the factual determinations below. As such, we have fully reviewed and considered the errors alleged by the appellant as potential grounds of appeal. We do not find that any of the appellent's arguments would change the result. The appellant's grounds of appeal can be summarized as follows:

i. Did the Hearing Officer err in failing to give more weight to the prosecutor's error in requesting a 40-day forfeiture not allowed by statute?

ii. Did the Hearing Officer err in not allowing the appellant to read more than 4 letters of support into the record at the hearing?

iii. Did the Hearing Officer fail to adequately consider the appellant's past service record when determining penalty?

iv. Did the Hearing Officer err by placing too much weight on the fact that the complainants were youths in determining the proper penalty?

v. Did the Hearing Officer err by imposing a penalty which is not consistent with past penalties imposed in similar circumstances?

ANALYSIS

[17] At the disposition hearing before the Hearing Officer, the respondent sought forfeiture of 40 days (320) hours. In his Penalty Decision, the Hearing Officer reviewed the five foundational principles that govern the process of arriving at a fair and appropriate disposition: that the disposition should fully accord with the purposes of the police discipline process (the employer's interests, the rights of the police officer, the public's interests, and involved members of the public interests); a corrective disposition should take precedence over a punitive disposition; the presumption of the least onerous disposition; proportionality with other similar cases; and the principle that police officers are held to a higher standard than other employees.

[18] The Hearing Officer then notes that the respondent raised seven of the 14 commonly cited dispositional factors of public interest, seriousness of misconduct, employment history, effect on police officer and police officer's family, consistency of disposition, specific and general deterrence, and damage to reputation of services: *Krug* v. *Ottawa Police Service*, 2003 CanLII 85816 (ON CPC) at para. 69.

[19] The Hearing Officer reviewed the appellant's submissions which raised concerns with respect to the criminal behaviour of young people and their lack of accountability, and that the appellant was being unjustly treated by his employer, the respondent, and the Hearing Officer. Although not specifically raised by the

appellant, the Hearing Officer also considered two additional factors of recognition of the seriousness of the misconduct and provocation.

[20] The Hearing Officer then considered each factor and assigned the weight he found appropriate and determined whether the evidence going to each factor constituted an aggravating or mitigating factor and imposed a disposition which was within the range of his statutory authority.

[21] In our view, the Hearing Officer set out the correct test and he fairly considered the relevant dispositional factors. There is no error in principle and no basis for intervention by this Commission.

[22] The following are our findings with respect to the specific issues raised by the appellant on this appeal. Some of the concerns raised by the appellant are not proper considerations with respect to the penalty imposed by the Hearing Officer or on appeal and rather reflect the appellant's sincere belief that his actions on the date in question were justified and were taken with the best interests of the community in mind. While we do not doubt the appellant's sincerity, our role is limited to the consideration of the Penalty Decision in accordance with the standard of review as set out above.

i. The prosecution requested forfeiture of 40 days

[23] Pursuant to subsections 85(1) and 85(7) of the PSA, the maximum forfeiture which could have been imposed on the appellant by the Hearing Officer was 20 days (160 hours). In its submissions to the Hearing Officer on penalty, the prosecutor asked for forfeiture of 40 days (320 hours).

[24] The appellant argues that the prosecutor's request for a penalty in excess of that provided for in the PSA was unfair in that this impacted both the way in which the prosecutor dealt with the appellant's case and indicated bias on the part of the Hearing Officer which should be sufficient for the Commission to grant the appeal.

[25] We find that the Hearing Officer did not err with respect to his findings about the penalty options that were available to him.

[26] On page 9 of the Penalty Decision, the Hearing Officer cites s. 85(1)(f) of the PSA in imposing a penalty of the forfeiture of 10 days. Section 85(1)(f) provides that one of the penalties available in the present circumstances is to direct that the police officer forfeit not more than 20 days or 160 hours. Nowhere in the Penalty Decision does the Hearing Officer suggest that he is under the impression that 40 days' forfeiture is a remedy available to him and nowhere in the Penalty Decision does the Hearing Officer suggest that the penalty is to be imposed on the basis of the prosecutor's submission.

[27] While the prosecutor appears to have been in error in its request for 40-days forfeiture, it is not the function of the Commission to review the parties' submissions for error but to review the Penalty Decision itself.

[28] We are not satisfied that the appellant has established that the Penalty Decision contains a clear error in principle with respect to this ground of appeal.

ii. Letters of support

[29] The appellant alleges that that Hearing Officer erred by refusing to allow him to read into evidence the letters of support provided by 21 members of the community. The Hearing Officer allowed four of those letters to be read into the record but accepted all 21 as written evidence.

[30] While the Hearing Officer only allowed four of the letters to be read, on page six of the Penalty Decision, the Hearing Officer comments that he was impressed with the volume and content of the 21 letters which were submitted in evidence. The Hearing Officer clearly considered all of the letters in evidence and there is no basis for the Commission to conclude that the decision was impacted by the appellant's inability to read them into the record.

iii. Past service record

[31] The appellant's position as argued before the Commission is that his excellent service record should have caused the Hearing Officer to accept his version of the events leading to the charges against him over the version of the youths that he was interacting with, and to impose a penalty which was less severe than the 10 days that were imposed.

[32] In the Penalty Decision, the Hearing Officer was clearly aware of the appellant's excellent service record, the fact that he is respected in his community as well as by his police colleagues and supervisor (p. 6). The Hearing Officer also noted that the youths who were involved were trespassers, defiant, confrontational, and taking serious measures to conceal their identity and avoid consequences (p. 6). The Hearing Officer also noted the longstanding issue of youths operating motocross bikes on private rural property in the community (p. 5 and 7).

[33] As stated above, it is not the Commission's role to re-weigh evidence presented and considered by the Hearing Officer. It is clear from the Penalty Decision that the Hearing Officer was aware of and considered the appellant's service record and the actions of the involved youth in coming to his determination.

[34] We find no error in the Penalty Decision related to this ground of appeal.

iv. The Hearing Officer's treatment of the complainants as youths

[35] The appellant complains that the Hearing Officer treated the complainants differently, and to the appellant's disadvantage, because of their youth and that this amounts to a reversable error.

[36] The appellant did not fully explain how the Hearing Officer's treatment of the complainants had any impact on the appellant, impacted the fairness of the proceeding, or amounted to an error in principle.

[37] The appellant did not provide any evidence to the Commission which indicated any treatment of the complainants or their testimony which might support that there was a clear error in principle made by the Hearing Officer in the Penalty Decision. Simply stating that the Hearing Officer treated the complainants carefully because of their youth and accepted their evidence at times over the evidence of the appellant, does not amount to grounds for appeal based on procedural fairness.

[38] While the complainants gave their evidence by videoconference, there was nothing presented by the appellant which satisfies us that the appellant's ability to cross-examine those witnesses was impaired in any way or, that the reliability of their evidence was in any way impacted by that accommodation.

[39] The appellant states in his factum and at the hearing, that the Hearing Officer effectively condoned the bad behaviour of the complainants leading up to the subject altercation and that the Hearing Officer went out of his way to accept their evidence over his simply due to their youth.

[40] Although stated with conviction, the appellant provided no evidence to support his allegations in this regard. Moreover, there is nothing in the Penalty Decision which satisfies us that the Hearing Officer unfairly favoured the witnesses' testimony over the appellant's testimony solely on the basis of their youth. The Hearing Officer acknowledges in the Penalty Decision the part that the complainants played giving rise to the altercation which occurred. In any event, the function of the Hearing Officer is not to put the complainants on trial or to judge their behaviour. The Hearing Officer's role is to determine whether the appellant has committed an act of misconduct and to determine the appropriate penalty if such a determination is made.

[41] We are not satisfied that the Hearing Officer acted in any way which can be described as inappropriate with respect to the treatment of the complainants or

their evidence or that such treatment was in any way procedurally unfair to the appellant.

v. Consistency with past penalties

[42] The appellant asserts that the Hearing Officer imposed a disposition which was excessive and inconsistent with previous decisions on penalty. We do not agree. As noted by the Hearing Officer in his reasons, he was provided seven cases for consideration by the respondent and no cases by the appellant. Although the Hearing Officer correctly notes that no two cases are alike, he considered a 2019 decision involving a Constable Mesic to be the most similar to the circumstances involving the appellant. We note that, in that case, the officer was sanctioned with a forfeiture of 15 days pay whereas in the present case the sanction imposed was 10 days. In our view this supports the conclusion that the Hearing Officer considered previous cases, recognized that they were not identical and used them as a guideline for the appropriate penalty in the appellant's circumstances. In our view this is the appropriate approach and we are not satisfied that it requires intervention.

[43] At the oral hearing, the appellant discussed several circumstances which he is aware of anecdotally in which officers who have committed more serious transgressions than the appellant, were given lighter, or no, penalty at all. Those instances are not properly before us, and were not properly before the Hearing Officer, and we are not able to consider them in the context of this appeal. In any event, we find no error in principle in the Hearing Officer's consideration of previous authorities has been proven.

Conclusion

[44] We have reviewed the Hearing Officer's reasons related to penalty, including his assessment and weighing of the evidence and the penalty factors, and find the Hearing Officer's decision and reasons were reasonable. As previously stated,

when deciding whether a decision is reasonable, the Commission does not conduct a line by line "treasure hunt" for errors: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 (CanLII) at para 102. In any event, none of the alleged errors, even if made, would indicate a clear error in principle or one sufficiently central to render the Hearing Officer's decision unreasonable. In our view, the disposition by the Hearing Officer is within the reasonable range of penalties, and the Commission is not entitled to interfere.

ORDER

[45] Pursuant to s. 87(8)(a) of the PSA, the Commission confirms the penalty imposed by the Hearing Officer.

Released: June 6, 2025

Colin Osterberg, OPAAC Adjudicator

Leonard Favreau, OPAAC Adjudicator

Kumail Karimjee, OPAAC Adjudicator