



ONTARIO POLICE ARBITRATION AND ADJUDICATION COMMISSION

IN THE MATTER OF
THE HALTON REGIONAL POLICE SERVICE
AND
CONSTABLE JASON COOPER

Pursuant to SECTION 202 of the *COMMUNITY SAFETY AND POLICING ACT* and *Ontario Regulation. 404/23: ADJUDICATION HEARINGS* under the *Community Safety and Policing Act, 2019*, S.O. 2019, c. 1, Sched. 1. related to charges under *Ontario Regulation 407/23: CODE OF CONDUCT FOR POLICE OFFICERS*

RULING ON MOTION

Before:	Superintendent (ret) Lisa Taylor
Counsel for the Prosecution:	Mr. Alex Sinclair
Counsel for the Defence:	Mr. Philip Wright
Motion Date:	April 16 & May 7, 2025
Ruling on Motion:	June 5, 2025

This decision is parsed into the following parts:

PART I: OVERVIEW;

PART II: THE MOTION HEARING;

PART III: ANALYSIS and

PART IV: RULING ON MOTION

PART I: OVERVIEW

This decision is in response to a motion brought forth on April 16, 2025 and May 7, 2025, by the Halton Regional Police Service (The “Service” or HRPS) in the matter of Constable (Cst.) Jason Cooper # 8166.

Cst. Cooper, who is employed with the Service, is facing three counts of misconduct under the *Community Safety and Policing Act*. The misconduct is in respect to allegations of sexual harassment against G.D., a court clerk.

In the course of the related Professional Standards Bureau (PSB) investigation, a witness interview of Ms. Dorothy Srokowski, a colleague of G.D., was conducted by Staff Sergeant (S/Sgt) Craig¹. Ms. Srokowski subsequently died in December 2024. In that audio taped interview of Ms. Srokowski, she provided information that may corroborate the account of G.D.

Parties to this motion and order sought

Mr. Sinclair as counsel for the Service (hereafter referred to as the Applicant) sought an Order admitting the PSB audio interview of Ms. Srokowski into evidence at the merits hearing or such relief as the Adjudicator deemed just.

Mr. Wright, representing Cst. Cooper (hereafter referred to as the Respondent), opposed the motion.

This ruling is in response to the Applicant’s motion.

Allegations of Misconduct

Allegation 1

Between October 1, 2023, and July 31, 2024, Cst. Cooper, while on duty and in a position of authority, engaged in a course of inappropriate comments and unprofessional conduct towards a Burlington court clerk, G.D.

¹ S/Sgt Craig is referred to, within the Respondent’s factum, as Detective Sergeant Craig, a rank he held within PSB at the time of Ms. Srokowski’s interview

Cst. Cooper conducted himself in a manner that undermined or was likely to undermine public trust in policing in violation of section 10 of O. Reg. 407/23: CODE OF CONDUCT FOR POLICE OFFICERS under Community Safety and Policing Act, 2019, S.O. 2019, c. 1, Sched. 1.

Allegation 2

Between October 1, 2023, and July 31, 2024, Cst. Cooper, while on duty and in a position of authority, engaged in a course of vexatious comment and/or conduct against a Burlington court clerk, G.D., that Cst. Cooper knew or ought to have known was unwelcome.

Cst. Cooper failed to comply with HRPS Policy – HRS-022 - Respect, Anti-Harassment, and Discrimination Policy.

Cst. Cooper failed to comply with the procedures established by his chief of police in violation of section 27 of O. Reg. 407/23: CODE OF CONDUCT FOR POLICE OFFICERS under Community Safety and Policing Act, 2019, S.O. 2019, c. 1, Sched. 1.

Allegation 3

Between October 1, 2023, and July 31, 2024, Cst. Cooper engaged in a course of vexatious comment and/or conduct against a Burlington court clerk, G.D., while on duty and in a position of authority that he knew or ought to have known was unwelcome.

Cst. Cooper engaged in workplace harassment in violation of section 30 of O. Reg. 407/23: CODE OF CONDUCT FOR POLICE OFFICERS under Community Safety and Policing Act, 2019, S.O. 2019, c. 1, Sched. 1.

Ruling on Motion

For reasons articulated in Part III, the Applicant's motion is granted. I order the audio statement of Ms. Srokowski's evidence admitted at the merits hearing.

PART II: THE MOTION HEARING

Exhibits

In advance of this proceeding, the Applicant and the Respondent provided factums and books of authorities², all filed as exhibits (see Appendix A). The submissions of counsel,

² See Appendix A

along with the filed exhibits, assisted me in reaching my decision.

Background

The motion hearing was held and recorded via a virtual platform (*Zoom*) on April 16, 2025, and May 7, 2025. S/Sgt Craig, formerly of the Professional Standards Bureau (PSB), was the sole witness for the motion, prior to counsel outlining their submissions.

Testimony at Motion Hearing

Testimony of S/Sgt Craig

S/Sgt Craig was affirmed, before providing testimony commencing with examination in chief by the Respondent. S/Sgt Craig outlined the circumstances of his interview of Dorothy Srokowski on August 27, 2024, as captured in an audio recording³ that was provided to me along with the associated transcript⁴.

S/Sgt Craig testified that phone interviews are common practice and not every phone interview is recorded. When questioned by the Respondent about whether a normal process would include a date, with a start and an end time, S/Sgt Craig stated that was not necessarily the case.

S/Sgt Craig agreed with the Respondent that it was normally the case that an officer would introduce oneself and others, but that was not done in this case. S/Sgt Craig testified that although he could not describe Ms. Srokowski and it had been 20 years since he dealt with her in the courts, he was expecting her call, and she had a very distinctive voice.

S/Sgt Craig agreed with the Respondent that although Ms. Srokowski had said she was in her office, he could not tell whether there was anyone there nor if Ms. Srokowski was prompted in any way. S/Sgt Craig agreed that he did not caution nor administer any oath to Ms. Srokowski and that the interview had taken place five (5) months after the alleged event. When S/Sgt Craig was asked about whether he was aware that Ms. Srokowski was compelled to attend and provide a statement as part of her duties, S/Sgt Craig advised he was not aware of that.

The Applicant made inquiries of S/Sgt Craig to further explain the circumstances of the interview. S/Sgt Craig testified that he had sent an email to Ms. Srokowski and then he received a phone call from her, not knowing when she was going to call. Given this, S/Sgt

³ Exhibit 8a – Audio recording of Dorothy Srokowski interview

⁴ Exhibit 8b – Transcript associated to Dorothy Srokowski interview

Craig explained that he was unable to set up the recording in time, so after a brief 30 seconds, he activated the recorder and made notes about when the call was received and when it ended, specifically, the call occurred on August 27, 2024 at 1:11 pm and concluded at 1:25. Further, S/Sgt Craig clarified that he recognized Ms. Srokowski's voice as she was one of few court clerks when he was working there but also that she had a raspy, smokers voice.

Submissions

Counsel submissions as outlined below are not wholly comprehensive but are meant to capture the essence of the arguments presented. I have captured submissions as outlined in the written material but also as presented in the oral submissions.

Applicant's Submission (summary)

The Applicant submitted that the audio recording of the PSB interview of Ms. Srokowski (now deceased) should be admitted as it is relevant to several core issues of this proceeding. Further, it was submitted that the Adjudicator has discretion under s.15 of the *Statutory Powers Procedure Act* to admit the statement into evidence.

The Applicant outlined the issues as follows:

- a. *The test for admission of evidence in police disciplinary proceedings; and*
- b. *The audio recording of Ms. Srokowski's PSB interview should be admitted.*

The Applicant referenced Ontario Regulation 404/23 s.3, which states that the *Statutory Powers Procedure Act* applies except for certain exemptions which do not apply in this matter. It was submitted that this is a labour relations matter, and it is designed to be expeditious.

The Applicant submitted that police disciplinary proceedings are of a labour relations nature; they are not criminal nor quasi-criminal in nature. Therefore, they are not subject to the same rules of evidence as criminal matters. The Ontario Civilian Police Commission (the Commission) outlined this principle in *Stone v Toronto Police Service*⁵

Police disciplinary proceedings are labour relations matters of an administrative law nature. They are governed by the provisions of the Act, the *Statutory Powers Procedure Act* and principles of procedural fairness.

The Applicant highlighted that the Commission in *Hall*⁶ makes the same point including:

⁵ Exhibit 4, Tab 1: *Stone v. Toronto Police Service*, 2007 ONCPC 11, page 11

⁶ Exhibit 4, Tab 2: *Hall v. Ottawa Police Service*, 2007 ONCPC 17, page 12

The procedures to be followed in such hearings are prescribed in the Act, the Statutory Powers Procedure Act R.S.O. 1990, c. S.22 as amended and common law principles of fairness.

Police disciplinary hearings are not subject to the same rules of disclosure and evidence as criminal proceedings. Section 69(5) of the Act states:

- (1) Before the hearing, the police officer shall be given an opportunity to examine any physical or documentary evidence that will be produced or any report whose contents will be given in evidence.

The Applicant further submitted that the *Statutory Powers Procedure Act* permits a flexible approach to receiving hearsay evidence contrary to the principled approach to hearsay applied in criminal matters. The *Statutory Powers Procedure Act* s.15 outlines:

What is admissible in evidence at a hearing

15 (1) Subject to subsections (2) and (3), a tribunal may admit as evidence at a hearing, whether or not given or proven under oath or affirmation or admissible as evidence in a court,
(a) any oral testimony; and
(b) any document or other thing,
relevant to the subject-matter of the proceeding and may act on such evidence, but the tribunal may exclude anything unduly repetitious.

Citing the *Canadian Union of Public Employees*,⁷ the Applicant outlined that “there is a strong presumption in favour of administrative decision-makers admitting all relevant evidence, including hearsay evidence, to enable parties to present their case in a full and complete manner” and that:

In relation to the admission of evidence, there is case law to support the proposition that an arbitrator ought to make her decision on the basis of all relevant evidence available to enable the parties to present their case and to permit the arbitrator to come to a reasonable decision.

Furthermore, there is case law to support the proposition that if an arbitrator determines that she is bound by legal rules regarding the admissibility of evidence or in the belief that prior arbitration awards are binding, that could be found to be a fettering of discretion in the decision making process.

The Applicant has provided two Human Rights Tribunal of Ontario cases, *Pecchini* and *Tilberg* wherein the Human Rights Tribunal of Ontario admitted statements of a Respondent and an Applicant, respectively (in those cases), following the death of those

⁷ Exhibit 4, Tab 5, para 75, 76: *Can. Union of Public Employ Local 79 v. Toronto (City of)*, 2019 ONSC 3006 (Div. Ct.)

individuals. The statements were admitted under s. 15 *Statutory Powers Procedure Act* on the basis they were relevant to the subject matter of the proceedings.

In the Applicant's factum,⁸ it was further submitted that the Human Rights Tribunal of Ontario "held that the *Statutory Powers Procedure Act* permits a tribunal to admit hearsay evidence without the qualification of necessity or reliability, which are conditions of the principled approach to hearsay test applied in criminal proceedings." The Applicant submitted that within the merits hearing the Adjudicator could consider the reliability of the statement when determining what weight to give the evidence in light of other evidence presented.

The Applicant highlighted that Ms. Srokowski "observed several of Cst. Cooper's impugned behaviours, which are central to the issue of whether he engaged in harassment in contravention of the *CSPA* and Code of Conduct thereunder."

The Applicant held that Ms. Srokowski's statement is "central to the issue of whether the officer engaged in harassment in contravention of the *CSPA* and Code of Conduct thereunder." The Applicant submitted that the argument in favour of admitting Ms. Srokowski's statement was even more compelling in this matter than that involved in *Pecchini*. The current matter involves an audio recording made in a call to a police officer whereas in *Pecchini*, a transcript of a statement to a family member was admitted.

Further, citing court cases⁹, the Applicant cautioned that a refusal to admit the statement would contravene binding jurisprudence providing that relevant hearsay is presumed admissible. A 1982 Ontario Court of Appeal case dealing with the dismissal of an employee and the Board in that case denied the admission of an adverse report. The Court noted:

A decision by any board to refuse to admit evidence because it was not admissible in the courts or because the board was bound by decisions of other arbitration boards would constitute an obvious error of law. In addition, the discretion of a board obviously would be improperly exercised if it acted in the belief that these legal rules or prior arbitration decisions were binding upon it. It is beyond question that any board so acting would fetter its discretion.

It is desirable that the Board proceed with the maximum of common sense and the minimum of technicality in addressing this issue... What has happened in this case seems to me to confound the intention of the Legislature, which wisely decided that grievances under collective agreements should not be adjudicated upon by

⁸ Exhibit 3: Applicant's Factum, Para 28

⁹ Exhibit 4, Tab 4: *City of Toronto & Can. Union of Public Employees*; Tab 5 *Can. Union of Public Employees v Toronto (City of)*

the courts. It is obvious that the rigidities and technical rules of court procedure would interfere with the necessarily broad inquiry required.

In 2019, the Divisional Court, in *Canadian Union of Public Employees v City of Toronto* dealt with the dismissal of a City employee and similarly addressed the issue of a Board fettering its discretion citing:

In relation to the admission of evidence, there is case law to support the proposition that an arbitrator ought to make her decision on the basis of all relevant evidence available to enable the parties to present their case and to permit the arbitrator to come to a reasonable decision.¹⁰

The Applicant submitted that the refusal to admit Ms. Srokowski's statement would prevent the Service from presenting its case in a full and complete manner thereby denying procedural fairness. Further, it was submitted that while necessity and reliability are not preconditions to admission of the statement, it is "nonetheless necessary and reliable".

The Applicant submitted that necessity is due to Ms. Srokowski's death and thus she is not able to testify; her evidence is probative, and the reliability factors include that:

- her statement was made to a police officer;
- she had a duty to attend the interview by virtue of her employment;
- she had no apparent motivation to lie and no evidence of collusion exists;
- parts of her statement are corroborated by G.D.

Further, the Applicant reiterated that the reliability of Ms. Srokowski's statement is more appropriately considered at the merits hearing when determining weight to be given.

Respondent's Submission (summary)

The Respondent requested this motion be denied.

The Respondent outlined that S/Sgt Craig carried out the interview of Ms. Srokowski over the phone, providing no opportunity to observe the witness nor her demeanour. Further, it was submitted that the audio portion of the interview had commenced somewhat into the interview; there is no introduction of the officer nor the witness, nor a note of the date and time. The Respondent submitted that Ms. Srokowski was not cautioned by S/Sgt Craig to tell the truth. Noting the reliability assessment on the principled approach as outlined in

¹⁰ Exhibit 4, Tab 5: *Can. Union of Public Employees v Toronto (City of)*, para 75

*MacKinnon*¹¹, the Respondent submitted “the recording lacks the indicia to cross the threshold for the statement to be admitted.”¹²

The Respondent highlighted that Ms. Srokowski gives opinions and speculations that normally would be subject to objections and that, “the admission of the recording would offend the natural justice and procedural fairness due Cst. Cooper.”

The Respondent submitted that the circumstances of the interview, render the admission of the recording prejudicial to Cst. Cooper. “The prejudicial effect outweighs its probative value in this hearing.”¹³ Further, the Respondent submitted although necessity is met when a witness is deceased, there are indicators that other witnesses were available but not put forward by G.D who herself is available to testify.

The definition and jurisprudence as it pertained to “Hearsay” was outlined by the Respondent noting two approaches to addressing the issue by this tribunal. The first relates to the *Statutory Powers Procedure Act* and the second deals with the ‘Principled Approach.’

The Respondent submitted that this tribunal’s discretion, as supported by s. 15, *Statutory Powers Procedure Act*, must not be used when it fails to consider the “overall scheme of the *Statutory Powers Procedure Act* or common law.” It was submitted that s.15 *Statutory Powers Procedure Act* should be read in conjunction with s.10 and s. 23 of that Act noting “s.10.1 provides the Respondent, Cst Cooper, with the right to cross-examine the witnesses and examine the evidence.”¹⁴ The Respondent submitted that s.23 *Statutory Powers Procedure Act* allows an adjudicator to act to prevent an abuse of its own process.¹⁵

In oral submissions, the Respondent, while accepting I had broad discretion in this issue, outlined that I should look at the statute as a whole considering the other sections of the *Statutory Powers Procedure Act* as he outlined.

The Respondent highlighted that the Commission in *Lawrence Stevenson*¹⁶ spoke to this issue of hearsay noting:

In administrative hearings, adjudicators have the discretion of admitting hearsay evidence and assigning an appropriate weight to it, always taking into account that

¹¹ Exhibit 7, Tab 12: *R. v. MacKinnon*, [2022] O.J. No. 5281 (ONCA)

¹² Exhibit 6 : Respondent Factum, para 17

¹³ Exhibit 6: Respondent Factum, para 15

¹⁴ Exhibit 6: Respondent Factum, paras 22, 23

¹⁵ Exhibit 6: Respondent Factum, paras 22, 23

¹⁶ Exhibit 7, Tab1: *Constable Lawrence Stevenson and York Regional Police*, 2013 ONCPC 12 para 135-136

the evidence was not subject to cross-examination and therefore should not be accorded as much weight as firsthand evidence. This discretion is specifically allowed under s. 15(2) of the *Statutory Powers Procedure Act*.

Nevertheless, adjudicators should not admit hearsay evidence where the prejudicial impact of admitting such evidence exceeds any probative value, resulting in a clear denial of natural justice.

In oral submissions, the Respondent brought my attention to the same case which outlines the law of hearsay evidence, unless its receipt is a denial of justice as is his stance. The Respondent highlighted *Stevenson*, outlined it as follows:

In proceedings before most administrative tribunals and labour arbitration boards, hearsay evidence is freely admissible and its weight is a matter for the tribunal or board to decide, unless its receipt would amount to a clear denial of natural justice. So long as such hearsay evidence is relevant, it can serve as the basis for the decision, whether or not it is supported by other evidence which would be admissible in a court of law.

The rationale for shying away from strict adherence to the hearsay rule, and the rules of evidence generally, is that administrative proceedings are not normally as adversarial as criminal and civil cases. Moreover, policy and social issues are often considered in such proceedings. Evidence with respect to these issues by its nature contains a hearsay component which cannot be separated out.¹⁷

The Respondent stressed this was important in the matter at hand, as administrative tribunals are not normally adversarial. When one looks at the above paragraphs and applies them to the *CSPA*, it was submitted that to admit the evidence and assign appropriate weight, when the prejudicial impact exceeds any probative value then that is a clear denial of natural justice and procedural fairness.

The Respondent asserted that to admit Ms. Srokowski's statement which "the Applicant seeks to adduce for the truth of its contents, is a denial of Cst. Cooper's procedural fairness and natural justice and is an abuse of the tribunal's process."

The Respondent outlined that the Applicant's objective to terminate Cst. Cooper is clear. Further, citing *CR v Schneder National Carriers*,¹⁸ the Respondent submitted that the courts "have recognized dismissal from employment as the capital punishment of the employment relationship."

¹⁷ Exhibit 7, Tab 1: *Constable Lawrence Stevenson and York Regional Police*, 2013 ONCPC 12, Para 106

¹⁸ Exhibit 7, Tab 2: *CR v. Schneder National Carriers, Inc.* 2006 CanLII 532 (ONSC)

The Respondent provided *Kaye*,¹⁹ *Gottschalk*²⁰ and *Mussani*²¹ highlighting that there remains a debate about the categorization of quasi-criminal in professional discipline cases, specifically police discipline cases, despite assertions of the Applicant that the matter at hand is of a labour relations nature.

The Respondent, in oral submissions, outlined the ongoing debate of whether administrative tribunals are quasi-criminal including the court's comments in *Mussani* (College of Physicians and Surgeons matter). The Respondent submitted the fact the issue of classification of "quasi-criminal" was "left hanging" in *Mussani*, does not matter. It is the fact there remains a debate and Cst. Cooper deserves a higher standard of procedural fairness and natural justice.

The Respondent cited *Jackson*²², wherein the Court concluded that it was not necessary to show that prejudice did work against the Respondent [doctor involved in the misconduct matter] only that it may have worked to have done so.

The Respondent submitted that as in *Kane*,²³ a high standard of justice is required when one's profession is at stake, noting the case here is not about suspension as in *Kane* but about termination. The Respondent discussed the Human Rights Tribunal of Ontario cases submitted by the Applicant noting that *Peccini* dealt with the issue of the tribunal not failing to admit but failing to consider which is the wrong attitude; it was pre-determined. The Respondent urged me to consider the dangers of admitting the evidence.

The Respondent provided two cases, with facts distinguishable from those in this matter but that highlighted the right to procedural fairness and natural justice. In *Gilbert*,²⁴ and *B and Catholic Children's Aid Society*,²⁵ the Divisional Court found that the inability to cross-examine a complainant amounted to a denial of natural justice.

Highlighting fairness in the context of admission of hearsay evidence in a police discipline matter, the Respondent provided *Lee*²⁶. The Prosecution in that matter sought to introduce three audio statements of witnesses who were unavailable to testify and could not be found. The Respondent noted that the principals in *Lee* remain the same despite the difference from the current matter with the witness being deceased. In *Lee*, the Adjudicator declined to admit the hearsay concluding:

I find to admit the transcribed statements into evidence for the truth of their contents would, in this very narrow instance where the defence is denied the right

¹⁹ Exhibit 7, Tab 3: *Carlyle Kaye and Metropolitan Toronto Police Forces*, 1986 CanLII 4300, para 1-10

²⁰ Exhibit 7, Tab 4: *Superintendent Gottschalk and Toronto Police Service*, 2003 CanLII 75465 (ONCPC), para 39

²¹ Exhibit 7, Tab 4: *Mussani v College of Physicians and Surgeons*, paras 90-94

²² Exhibit 7, Tab 9: *Jackson v. Region 2 Hospital Corp.* [1994] N.B.J. NO. 64

²³ Exhibit 7, Tab 6: *Kane v. University of British Columbia*, [1980] 1 SCR, 1105 (SCC), para 3

²⁴ Exhibit 7, Tab 7: *Gilbert v. Ontario (Prov Police)*, [1999] O.J. No. 4784 (ONSC), aff'd 2000 CanLII 16843 (ONCA)

²⁵ Exhibit 7, Tab 8: *B and Catholic Children's Aid Society of Metropolitan Toronto*, 59 O.R. (2d) 417 (Div Ct)

²⁶ Exhibit 7, Tab 10: *Constable Christopher Lee and the Toronto Police Service*, 18th Dec 2009 (Unreported), p.9

to cross examine and test the truth of the statements as to the understanding of the communication by the witness, amount to a denial of natural justice.

The Respondent submitted that the “inability to cross-examine the witness is only one aspect of the prejudicial effect on Cst. Cooper.” The Respondent submitted that, if a witness is deceased, the necessity test is clear, but S/Sgt Craig had options that were not used in this case, such as an oath and to admit the statement is blatantly unfair. The Respondent highlighted the reliability issues that were outlined in his factum.

The Respondent outlined the other prejudicial effects flowing from the Applicant seeking to admit Ms. Srokowski’s statement for the truth of its contents including:

- (i) Opinions that the conduct was inappropriate or met the interviewee's definition of impropriety without explaining that definition.
- (ii) Character evidence that it was not Cst. Cooper's "first rodeo."
- (iii) Alleging that Cst. Cooper spent inappropriate amounts of time in courts, without descriptions of where or when or what occurred.
- (iv) Making various comments about what the witness allegedly said to Cst. Cooper, which, apart from one occasion, has no timeline or context.
- (v) Describing an incident which is not part of the initial complaint of G.D. and ascribing to it misconduct which, on its face, does not cross any threshold or 'line'.
- (vi) Speculates that it was possible that Cst. Cooper conducted himself in a manner described by D/Sergeant Craig as part of the complaint he was investigating.
- (vii) Contemplates that there could be "more" [impugned conduct], but the witness was not able to provide any details of such conduct.
- (viii) Makes confusing statements about when and where she allegedly approached Cst. Cooper and told him to "knock it off" or stop.
- (ix) Speculates that she has been moved because of the investigation.

Given these points outlined above, which the Respondent described as “vague, opinionated, speculative on occasions and somewhat biased”, it was submitted that to allow the statement will have a severe prejudicial effect. Without the ability to test the statement, the Respondent submitted that the probative value is greatly outweighed by the prejudice to him.

The Respondent outlined tribunals that have opted to use the “principled approach” despite having discretion under s. 15(1) of the *Statutory Powers Procedure Act*. The Respondent urged me to read the transcript very carefully, to consider the opinions and words of Ms. Srokowski that could be taken in a way other than as the Applicant suggests, specifically that she is friendly towards the Respondent. The Respondent reminded me that I have discretion to admit the statement, the *Statutory Powers Procedure Act* does

not say I *shall*. It was submitted that it is incumbent on me to ensure procedural fairness, and I should not admit the statement.

Referring to *Ontario Teachers (the College) v Reid*²⁷ wherein the tribunal sought independent counsel in relation to consideration of admission of hearsay evidence. In that case, someone who had captured mistreatment of a child on video, refused to testify and the College wanted to introduce that evidence through the child's mother. The independent counsel noted that although the tribunal could admit the evidence, necessity and reliability of the evidence should be considered. In oral submissions, the Respondent highlighted paragraph 60 of this case:

The Committee had concerns about the reliability of Ms. Cleveland's hearsay evidence. Admission of the hearsay evidence despite those concerns would have an unduly prejudicial effect on the Member. The Committee's most significant concern is that the Member will be unable to cross-examine Ms. Cleveland in order to test the reliability of her evidence.

The Respondent stated that when livelihood is at stake, stringent procedural protection is required. The overall reliability concerns and the fact the statement occurred after a passage of time of five (5) months is an issue.

Citing *Khelawon*²⁸ the Respondent submitted that “although the element of necessity is met when the deponent is deceased, the evidence should not be admitted unless the statement can be tested in an alternative manner to cross-examination or the statement's content is determined to be sufficiently trustworthy.”

The Respondent urged the tribunal to review the framework of the principled approach to admitting hearsay evidence outlined in *MacKinnon*²⁹. The Respondent outlined the law in respect to “threshold reliability” which was summarized by the Court of Appeal in *MacKinnon* including:

- i. adequate substitutes for testing the truth and accuracy of the statement (procedural reliability);
- ii. circumstantial or evidentiary guarantees that the statement is inherently trustworthy (substantive reliability); or
- iii. a combination of elements of both procedural and substantive reliability: *Bradshaw*, at paras. 27, 30 and 40; *McMorris*, at paras. 26-27.

²⁷ Exhibit 7, Tab 11: *Ontario College of Teachers v. Reid*, 2019 LNONCTD 67, 2019 ONOCT 62

²⁸ Exhibit 7, Tab 16: *R v. Khelawon* [2006] SCJ No. 57, 2006 SCC 57

²⁹ Exhibit 7, Tab 12: *R. v. MacKinnon*, [2022] O.J. No. 5281 (ONCA)

In oral submissions, the Respondent outlined the issues in *MacKinnon* wherein the court allowed a statement into evidence when it should not have been. The Respondent detailed the law of “threshold reliability” as outlined above, and cautioned about the dangers of hearsay referred to by the court including³⁰:

If the hearsay danger relates to the declarant's sincerity, truthfulness will be the issue; if the hearsay danger is memory, narration, or perception, accuracy will be the issue: *Bradshaw*, at para. 44. The trial judge must be able to rule out any plausible alternative explanations for the hearsay statement on a balance of probabilities: *Bradshaw*, at para. 49.

The statement must be "so reliable that contemporaneous cross-examination of the declarant would add little if anything to the process": *Bradshaw*, at para. 31, citing *Khelawon*, at para. 49.

The Respondent highlighted the same issues [of procedural and substantive reliability] were examined by the court in *Wilsdon*³¹ bringing my attention to paragraph 23 outlining the need for substitutes must provide a satisfactory basis for the trier of fact to “rationally evaluate the truth and accuracy of the hearsay statement” and:

Substantive reliability is established where the hearsay statement is inherently trustworthy. To determine whether the statement is inherently trustworthy, a trial judge considers the circumstances in which the statement was made and any evidence that corroborates or conflicts with the statement: *Bradshaw*, at para. 30. The standard for substantive reliability is high: the judge must be satisfied that the statement is so reliable that contemporaneous cross-examination on it would add little if anything to the process:

In oral submissions, the Respondent highlighted *Toronto Hospitality Employees Union*³², a labour board decision case wherein the presiding Board referenced “substantive reliability”, specifically citing *MacKinnon*.

Citing *Khelawon* again, the Respondent submitted that it was incumbent on the Adjudicator to identify specific concerns and how those can be addressed “and determine if the hearsay is sufficiently reliable to overcome the fact that it cannot be sufficiently tested in the traditional and accepted manner.”

³⁰ Exhibit 7, Tab 12: *R. v. MacKinnon*, [2022] O.J. No. 5281 (ONCA), para 55-56

³¹ Exhibit 7 Tab 14: *R.v. Wilsdon*, [2024] O.J. No. 3951 (ONCJ)

³² Exhibit 7, Tab 15: *Toronto Hospitality Employees Union-CSN (THEU-CSN v. Fairmount Royal York*, [2024] .

The Respondent stressed that other recognized substitutes that would allow this tribunal to evaluate the truth or accuracy of the statement/ recording are absent. It was submitted that S/Sgt Craig could have taken steps such as recorded the “statement over Zoom, administered an oath and issued a warning of the consequences of providing false information,” which would have increased the inherent trustworthiness of the statement. The Respondent submitted that the phone interview did not permit S/Sgt Craig to confirm the witness’s identity, to observe the demeanour of the witness or whether others were present to influence her. Further, the audio recording commenced at some point after the interview had already commenced.

The Respondent submitted substantive reliability is lacking in the statement in question, noting it was taken at least five (5) months following the alleged events. There was no mention of contemporaneous notes by Ms. Srokowski, nor any disclosure of potential interviews conducted internally by the court staff. The Respondent alleged that Ms. Srokowski had memory and accuracy issues.

The Respondent outlined that while the Applicant “asserts there is no reason for the witness to lie”, the audio raises concerns about a bias of the witness towards the complainant in this matter. Without an opportunity for cross examination there is no ability to explore such a bias.

In oral submissions, the Respondent addressed some of the Applicant’s cases, including *City of Toronto*.³³ In that matter, the Respondent highlighted, the Board did not have the case, but had the facts behind it and the “inquiry conducted by Judge Moore took 29 hearing days.” The Respondent submitted that the *City of Toronto* involved less prejudice than in the matter before me. While there may be little question of relevance, as in the current matter, the Board in that case noted:

There may be cases where prejudice to an employee will so far outweigh the evidentiary value of a report that it should not be admitted.

The Respondent referenced the Applicant’s case, *Crane*³⁴ wherein the tribunal outlined:

There would appear, then, to be three possible approaches under the *Ontario Human Rights Code* to accept hearsay evidence. First, one might attempt to apply the reasoning of cases such as *R. v. Khan, supra*, by analogy. The tribunal would consider whether the evidence is necessary to the proceeding and given in circumstances suggesting its reliability. Secondly, a tribunal could exercise its discretion invariably in favour of admission, assuming relevance, subject to being weighed appropriately for its probative value at the conclusion of the proceeding. Thirdly, a tribunal could follow the approach suggested in *Re City of Toronto*,

³³ Exhibit 4, Tab 4: *City of Toronto and Can. Union of Public Employ. Local 79, 1982 (ONCA)*

³⁴ Exhibit 4, Tab 6 :*Crane v. McDonnell Douglas Canada Ltd.*, 1993 CanLII 16506 (ON HRT),para 34

supra, by refusing to accept evidence in unusual circumstances where the prejudicial effect of accepting the evidence far outweighs its potential probative value.

The Respondent submitted that given the nature of jeopardy in this matter then my decision to admit the evidence should involve the principled approach. The Respondent noted that the Board in *Crane* at paragraph 39, discussed evidence related to a deceased's opinion and that:

... the facts taken into account by Mr. Cieslik in reaching his opinion will not be made known in the evidence of these witnesses means that neither the respondents nor the Board of Inquiry will be in a position to evaluate the soundness of Mr. Cieslik's inferences and opinions.

The Board of Inquiry in *Crane*, rejected the opinion evidence based on the above excerpt and the Respondent submitted that was clearly the issue in this matter and it is highly prejudicial on a critical issue.

The Respondent outlined issues in relying on *Pecchini* ³⁵, a 2023 Human Rights Tribunal of Ontario case dealing with compensation of a self-represented, not legally trained Applicant and where there was the opportunity for corroboration from other sources. Some reliability assessment did take place by the Human Rights Tribunal of Ontario.

The Respondent addressed *Tilberg* noting that it was a weak case and I was not bound by it; it was submitted it was a 2002 Human Rights Tribunal of Ontario case, and the *Statutory Powers Procedure Act* requires a higher level of procedural fairness. The Respondent submitted that the witness would be more predisposed towards the complainant (G.D) than Cst. Cooper.

Further, the Respondent summed up his concerns about Ms. Srokowski's statement that he had outlined in his written factum at paragraph 40, adding that although S/Sgt Craig said he recognized her voice, that was from 20 years prior. It was submitted that Ms. Srokowski made confusing statements about when and where she told the Respondent to "knock it off" and there was also the question of "knock what off?" Further, Ms. Srokowski contemplates that there may be more incidents but cannot provide details. She gives opinion evidence and confusing statements that are very prejudicial to the Respondent.

The Respondent summed up S/Sgt Craig's evidence and that the call came to him, it was unexpected, and the interview was underway before he could start the recording. It was submitted that S/Sgt Craig could not see the witness, observe her demeanour nor see whether she was prompted. There were no indicia on the recording; S/Sgt Craig said that

³⁵ Exhibit 4, Tab 7 : *Pecchini v. Alpha Eagle Group*, 2023 HRT0 352

he recognized her voice but that was from 20 years ago and the Respondent suggested it was a “poor attempt to rescue a deficiency.”

Referencing *Jackson*³⁶ and *Kane*³⁷, the Respondent outlined those cases highlight that it was not that it *will*, but that it *might* prejudice the Respondent. While highlighting the Applicant’s submission about comments of the witness will go to weight, the Respondent submitted it goes to fairness and the officer is entitled to a very high level of procedural fairness and the statement should not be admitted.

Applicant’s Redirect (summary)

The Applicant did not provide written submissions in reply but addressed several issues within the motion hearing itself and these are summarized below.

The Applicant submitted that the Human Rights Tribunal of Ontario cases, wherein the *Statutory Powers Procedure Act* also applies, are more relevant for my analysis than the criminal cases provided by the Respondent.

It was submitted that in the matter at hand, there is an audio recording that is inherently reliable. Further, in the Human Rights Tribunal of Ontario cases, *Tilberg*³⁸ and *Pecchini*³⁹, there were no audio recorded statements and yet they were found to be reliable. The Applicant submitted that there is no necessity to take every statement by video, and it was common for interviews to be conducted over the phone.

The Applicant addressed issues of reliability and submitted that the identity of Ms. Srokowski is verified. In terms of being alone, the Applicant submitted that “you cannot hear anyone” and her “responses are organic”; there is no reason to suspect she was not alone or was being coached. The Applicant refuted the assertions of the Respondent that Ms. Srokowski gave vague assertions or opinions but rather outlined specific interactions. There was no indication of bias towards G.D.

The Applicant cited *Tilberg*:

Finally, the Board is not convinced that by admitting the impugned statements, there is any prejudice to the Respondent. The Board is satisfied, however, that if there is any prejudicial effect at all to the Respondent because of their inability to cross-examine the Decedent, that will not be substantially prejudicial to the Respondent’s ability or right to make full answer and defence. ... any prejudicial

³⁶ Exhibit 7, Tab 9: *Jackson v. Region 2 Hospital Corp.* [1994] N.B.J. NO. 64

³⁷ Exhibit 7, Tab 6: *Kane v. University of British Columbia*, [1980] 1 SCR, 1105 (SCC)

³⁸ Exhibit 4, Tab 8: *Tilberg v. McKenzie Forest Products Inc.*, 2002

³⁹ Exhibit 4, Tab 7: *Pecchini v. Alpha Eagle Group*, 2023 HRT0 352

effect might be minimized further by assigning the appropriate weight to that evidence within the context of all the evidence in this matter.

The Applicant outlined the misconduct allegations against Cst. Cooper, and the evidence of Ms. Srokowski outlines her observations about specific interactions between G.D. and Cst. Cooper. Her interview corroborates some aspects of the allegations.

The Applicant stressed the cases he provided demonstrate the strong presumption in favour of admitting all relevant evidence; hearsay should generally be admitted and should only be rejected if it is highly prejudicial. The weight to be given to the evidence is distinct from the threshold reliability.

The Applicant briefly addressed the cases provided by the Respondent, noting each and how they were distinct from the matter at hand, and many do not apply to the *Statutory Powers Procedure Act*, s. 15.

The Applicant highlighted that there was no serious dispute that it was Ms. Srokowski from whom the statement was taken. While he understood the Respondent wishing to keep the statement from being admitted, the Respondent urged maximum common sense and minimum technicality.

PART III: ANALYSIS

I will explore my authorities, and any principles related to the admission of hearsay evidence and how they apply in terms of the issue to be decided in this motion.

Issue: The test for admission of evidence in police disciplinary proceedings

This proceeding is governed by the *Community Safety and Policing Act, Regulation 404 23* which outlines the *Statutory Powers Procedure Act* applies to an adjudicator appointed under the *CSPA*:

Application of Statutory Powers Procedure Act

3. (1) For the purposes of this Regulation, a reference in the *Statutory Powers Procedure Act* to a tribunal or the members of a tribunal shall be read as a reference to an adjudicator appointed under the *Community Safety and Policing Act, 2019*.

I will commence my analysis with the *Statutory Powers Procedure Act*, s.15 which states:

What is admissible in evidence at a hearing

15 (1) Subject to subsections (2) and (3), a tribunal may admit as evidence at a hearing, whether or not given or proven under oath or affirmation or admissible as evidence in a court,
(a) any oral testimony; and
(b) any document or other thing,
relevant to the subject-matter of the proceeding and may act on such evidence, but the tribunal may exclude anything unduly repetitious.

Both the Applicant and Respondent agree that s.15 of the *Statutory Powers Procedure Act* provides this tribunal with a broad discretion to admit hearsay evidence subject to assigning it appropriate weight. The Respondent however argued that s.15 should be read in conjunction with s.10 and s.23 of that legislation.

The *Statutory Powers Procedure Act* s.10 specifies:

10.1 A party to a proceeding may, at an oral or electronic hearing,
(a) call and examine witnesses and present evidence and submissions; and
(b) conduct cross-examinations of witnesses at the hearing reasonably required for a full and fair disclosure of all matters relevant to the issues in the proceeding.

Further, under the *Statutory Powers Procedure Act* s.23 (1):

A tribunal may make such orders or give such directions in proceedings before it as it considers proper to prevent abuse of its processes.

It is clear that my role as an Adjudicator is governed by the authorities outlined in the *CSPA* and *Statutory Powers Procedure Act*, as well as the common-law rules of procedural fairness and natural justice. The principles of natural justice and procedural fairness, as well as the intent of the legislation, guide my decision-making in every facet of the proceeding.

O. Reg. 404/23, section 3, states that the *Statutory Powers Procedure Act* applies except for certain exemptions as outlined in s.3 (2). I have reviewed all those exceptions and agree they are not relevant to the issue in question.

The Applicant submitted that this is a labour-relations matter, and it is designed to be expeditious, and I agree. The Commission,⁴⁰ has long clarified that police disciplinary matters are labour relations matters of an administrative law nature⁴¹ governed by the provisions of the Act (*Police Services Act (PSA)* and now *CSPA*), the *Statutory Powers*

⁴⁰ Exhibit 4, Tab 2: *Hall v. Ottawa Police Service*, 2007 ONCPC 17, page 12

⁴¹ Exhibit 5, Tab 1: *Stone v. Toronto Police Service*, 2007 ONCPC 11, page 11

Procedure Act and procedural fairness. These proceedings are not subject to the same rules of evidence as criminal matters.

I find police disciplinary matters held pursuant to the *PSA*, given the similar intent of the legislation outlined in the *CSPA*, as well as the similar reference to following procedures outlined in the *Statutory Powers Procedure Act*, these procedures are relevant to the matter at hand and assist me in my analysis.

I am guided by the words of the Commission in *Hall v Ottawa Police Service*,⁴² also echoed in *Correa v Toronto Police Service*⁴³ outlining that:

Police disciplinary hearings are administrative law proceedings of a labour relations nature.

Police disciplinary hearings are not subject to the same rules of disclosure and evidence as criminal proceedings.

The Court, in *City of Toronto*⁴⁴, a labour relations case, noted:

A decision by a board to refuse to admit evidence because it was not admissible in courts, or because other arbitration boards had held such evidence to be inadmissible, is to fetter its own discretion and to commit an obvious error of law. Nothing in the record disclosed any prejudice to the union by the employer's procedural tactic. Public confidence in the arbitration process would suffer if boards ignored reports of a properly constituted inquiry containing the evidence on which the employer acted.

It is desirable that the Board proceed with the maximum of common sense and the minimum of technicality in addressing this issue. What has happened in this case seems to me to confound the intention of the Legislature, which wisely decided that grievances under collective agreements should not be adjudicated upon by the courts. It is obvious that the rigidities and technical rules of court procedure would interfere with the necessarily broad inquiry required.

The excerpts above highlight the importance of considering natural justice in relation to *both* parties while also considering any potential prejudice to the Respondent. A commonsense approach balancing fairness to the officer with the public interest, keeping in mind the intent of the legislation, is required. I keep these tenets in mind as I consider whether the audio statement in question should be admitted.

I agree with the Applicant that as labour relations matters, police disciplinary matters, are

⁴² Exhibit 4 Tab 2: *Hall v. Ottawa Police Service*, 2007 ONCPC 17

⁴³ Exhibit 4 Tab 3: *Correa v. Toronto Police Service*, 2009 ONCPC 1

⁴⁴ Exhibit 4, Tab 4: *Re City of Toronto and Can. Union of Public Employ. Local 79*, 1982 (ONCA)

more akin to the Human Rights Tribunal of Ontario tribunals than criminal matters. Both *CSPA* and Human Rights Tribunal of Ontario matters are governed by the *Statutory Powers Procedure Act* as well as the principles of procedural fairness and natural justice. The Applicant submitted that there is no liberty at stake in this case and it was akin to the compensation in *Peccini*; the Respondent disagreed. While I concur that a demotion or dismissal is a more significant than the Applicant in that case seeking compensation for a job he did not acquire, this does not preclude me from considering the principles applied within that tribunal.

The Commission in *Kaye*, a 1986 case, outlined some debate in relation to the term “quasi-criminal” but as I read it, it focused on the burden of proof not specifically on the issue of the admission of hearsay evidence. In *Gottschalk* (a 2002 decision), the term quasi-criminal was referenced only in submissions and in fact, in their findings, the Commission clearly stated⁴⁵:

Police disciplinary proceedings are labour relations matters and, as such, the same strict standards with respect to the treatment of witnesses and evidence in criminal proceedings are not always relevant.

This clarifies in my mind that there is no current debate about police disciplinary hearings being categorized as quasi-criminal. I find this is an administrative tribunal of a labour relations nature. That is not to say any decision rendered by me about admission of evidence, abuse of process or any other issue of debate, does not require careful consideration, taking all the unique factors of this case into account. In fact, I concur with the Respondent that at times, keeping in mind a high standard of natural justice and procedural fairness, there may be times a tribunal should refrain from exercising discretion under the *Statutory Powers Procedure Act*, s. 15. The Respondent is facing a demotion or termination, and he is entitled to a high level of procedural fairness. Procedural fairness and natural justice are important principles I apply in *any* police disciplinary matter before me.

*Khelawon*⁴⁶ and *MacKinnon*⁴⁷ are both in relation to criminal court matters and which outline the principle of reliability and the need to find alternatives to test the truth and/or the statement; and to ensure it is “inherently trustworthy” before it should be admitted as hearsay. While I find there are principles from criminal case law that may be binding or that can be applied, in the issue at hand, both these cases are not relevant to the current *CSPA* misconduct matter.

The Respondent, citing *MacKinnon*, submitted that under “the principled approach, hearsay evidence may be admitted if sufficient indicia of necessity and threshold reliability.”⁴⁸ I have reviewed the framework of the principled approach to admitting

⁴⁵ Exhibit 7, Tab 4: *Superintendent Gottschalk and Toronto Police Service*, 2003 CanLII 75465 (ONCPC), para 71

⁴⁶ Exhibit 7, Tab 16: *R. v. Khelawon*, [2006] S.C.J. No. 57, 2006 SCC 57 (CanLII) (SCC).

⁴⁷ Exhibit 7, Tab 12: *R. v. MacKinnon*, [2022] O.J. No. 5281 (ONCA)

⁴⁸ Exhibit 6, Para 48

hearsay evidence as outlined in *MacKinnon* and concede there are administrative tribunals that have used the principled approach, however I do not find that approach is required in these proceedings. A fair and balanced approach is required.

The Respondent highlighted that the *City of Toronto*⁴⁹ dealt with far less prejudice than what the Respondent is facing in this matter, considering the statement in question. The Respondent submitted that in that case the Board:

...[if it] decides not to admit such a report, it must do so for reasons related to the proceedings. There may be cases where prejudice to an employee will so far outweigh the evidentiary value of a report that it should not be admitted.

City of Toronto dealt with a report not an oral statement of a witness who is no longer available. The Court of Appeal in *City of Toronto* guides me, in that I ought to make my “decision on the basis of all relevant evidence available to enable the parties to present their case and to permit the arbitrator to come to a reasonable decision.”

Ms. Srokowski’s statement admittedly is not subject to cross-examination however specific issues outlined in the Respondent’s factum will be addressed when considering weight after the conclusion of the merits hearing.

I have considered the Respondent’s submission that there are indicators other witnesses were available but not put forward by G.D who herself is available to testify. That proposition may ultimately be made clear in the context of a merits hearing but does not preclude me with considering the admission of Ms. Srokowski’s statement.

Issue: Should the audio statement of Ms. Srokowski be admitted in this proceeding?

I have outlined my analysis below under the headings: *Necessity, Relevance, Reliability and Fairness*.

Necessity

The Applicant and Respondent agree that necessity is made out due to the death of the witness. However, the Respondent submitted that the evidence should not be admitted unless it could be tested in some manner or that it was sufficiently trustworthy.

⁴⁹ Exhibit 4, Tab 4: *City of Toronto and Can. Union of Public Employ. Local 79, 1982 (ONCA)*

Relevance

S.15(1) of the *Statutory Powers Procedure Act* states that a tribunal may admit into evidence at a hearing any document “relevant to the subject-matter of the proceeding and may act on such evidence”. The issue of relevance is discretionary, but it is clear that Ms. Srokowski’s statement, is relevant to the Applicant’s right to present their case.

Reliability

In the matter at hand, Ms. Srokowski is a witness, not a complainant; given her position as a court clerk who worked with both the complainant and the Respondent, she had the opportunity to observe interactions involving those two persons.

The Applicant has provided *Peccini v Alpha Eagle Group*⁵⁰, a Human Rights Tribunal of Ontario case that involved the statement of a witness (later deceased). The tribunal noted it’s broad discretion to admit evidence pursuant to s.15 of the *Statutory Powers Procedure Act*, noting necessity due to death of a witness (A). In *Peccini*, the Human Rights Tribunal of Ontario accepted the transcription of the witness’s words, were “the next best evidence” and “the content of the transcription was corroborated by all of the respondent’s witnesses based on their direct discussions with [Witness A]”.

I concur with the Applicant that the argument to admit the oral statement of Ms. Srokowski is more compelling than that of Witness A in *Pecchini*. The current case involves an oral statement provided to a police officer while *Pecchini* involved only a transcript of a statement made to a family member. Further, I would agree that there is no apparent motive to lie on the part of Ms. Srokowski unlike in *Peccini* wherein Witness A had a vested interest in the outcome.

I have listened through Ms. Srokowski’s statement numerous times and while I agree with the Respondent that she has a clear fondness for G.D. (the complainant), it appears she also has a fondness for the Respondent, calling him by a nickname and indicating she felt like she was “doing him a favour.”⁵¹ Ms.Srokowski specifically stated, “I feel sick to my stomach about this because I work with Cooper.” I find that the overall sense of the statement of Ms. Srokowski does not indicate a bias against the Respondent.

The Respondent submitted that in terms of reliability, Ms. Srokowski’s statement lacked the indicia to cross the threshold. While I agree that S/Sgt Craig could have taken additional steps to administer an oath or advise her of the necessity to tell the truth, I find his testimony credible and fair. Ms. Srokowski provided information to S/Sgt Craig in a spontaneous, albeit a vague manner at times.

S/Sgt Craig had placed a call earlier to Ms. Srokowski and she later returned his call. He testified although he was not prepared in terms of setting up the recording equipment,

⁵⁰ Exhibit 4, Tab 7: *Pecchini v. Alpha Eagle Group*, 2023 Human Rights Tribunal of Ontario 352

⁵¹ Exhibit 8 B : Transcript, page 11

that it was started quickly after he received the call. With respect, S/Sgt Craig, in best practice, should have noted the date, time, identities and captured any conversation that took place prior to the start of the recording. I am satisfied with S/Sgt Craig's evidence that he recognized Ms. Srokowski's distinctive voice from when he was in the courts 20 years prior. I agree with the Respondent that 20 years is a long time to recognize a voice, but the recognition was predicated on a phone call to her and then her returning the call. She does have a distinctive manner of talking that I find would make it recognizable.

I do not find that any speculation by Ms. Srokowski about her being moved due to the allegations before this tribunal, indicative of a bias or motivation to lie. It would appear that her name was just put forth to the investigator on the day the statement was made. While I am not certain of the reason for the delay of her name being put forward as a witness, I find it irrelevant to the issue in question.

Although S/Sgt Craig cannot confirm that Ms. Srokowski was alone and not being prompted, at the time of providing the statement, I find it unlikely to be the case. Certain assertions by Ms. Srokowski about how she herself would handle a particular issue would indicate she was not a person who could easily be influenced. I find Ms. Srokowski's statement was sincere and spontaneous.

I concur with the Respondent that Ms. Srokowski's interview, having occurred some five (5) months after the alleged incident, contained vague and opinionated statements at times, but those issues will be addressed when considering weight to be given. This delay, while not ideal, is not unheard of in cases where there may be delayed reporting. That issue may be further explored or explained within the merits hearing. Regardless, the vagueness of some of Ms. Srokowski's statements may be attributable to the passage of time. I find Ms. Srokowski's statement reliable. To be clear, this tribunal will not rely on any opinion evidence of Ms. Srokowski.

I have taken notice of the Respondent's concerns about *Crane*, and the refusal of the Board to allow opinion evidence noting:

...this particular hearsay evidence is of such a nature that it would be inappropriate to give it significant weight.⁵²

I find this would indicate that a tribunal *could* assess weight to opinion evidence, however in this matter, it is not appropriate given the issues outlined in *Crane* and the significant prejudice to the Respondent.

Fairness

The Applicant requested an order to admit the audio recording of Ms. Srokowski's oral statement, given she had died, and the evidence is relevant to several core issues in this proceeding. The Respondent submitted that the prejudicial effect outweighs its probative

⁵² Exhibit 4, Tab 6: *Crane v. McDonnell Douglas Canada Ltd.*, 1993 CanLII 16506 (ON HRT)

value in this proceeding. Procedural fairness is owed to both the Applicant and the Respondent.

As the Respondent submitted, the Applicant's "objective to terminate Cst. Cooper has been clear." The Respondent provided *CR v Schneder National Carriers*⁵³, a 2006 decision wherein the court stated:

The employer has the onus of demonstrating that cause exists for an employee's summary dismissal, which has been characterized as the "capital punishment" of the employment relationship.

The Respondent has outlined that the need for the level of procedural fairness rises with the potential of a penalty of dismissal. I am aware this is a serious matter to adjudicate with serious potential consequences to the Respondent, and I have carefully weighed the issues of fairness and prejudice.

The *Statutory Powers Procedure Act*, s.15 allows me to admit hearsay evidence but as noted by both parties, it is inadmissible if it is highly prejudicial and of little probative value. There is discretion and flexibility provided by the *Statutory Powers Procedure Act* which is not the principled approach that is used in criminal law. Despite this, given the Respondent has no ability to cross-examine and test the evidence, I need to consider whether it is highly prejudicial to admit the statement. I have considered whether the prejudice to the officer outweighs the probative value, in the analysis that follows.

The Respondent provided *Stevenson v York Regional Police*, a 2013 case wherein the Commission found hearsay should not have been admitted, stating:

...adjudicators should not admit hearsay evidence where the prejudicial impact of admitting such evidence exceeds any probative value, resulting in a clear denial of natural justice.

I find the circumstances in *Stevenson* distinguishable from the current matter as it dealt with evidence of bad character of the witness (Tram) who was not deceased. There is no evidence of bad character in respect to Ms. Srokowski. Regardless, I have heeded the Commission's caution about admitting hearsay evidence.

Further, in reviewing *Stevenson*, I note the passage at paragraph 136 which states:

The Law of Evidence in Canada, supra, which Mr. Fraser quoted in his submissions:

In proceedings before most administrative tribunals and labour arbitration boards, hearsay evidence is freely admissible and its weight is a matter for

⁵³ Exhibit 7, Tab 2: *CR v. Schneder National Carriers, Inc.* 2006 CanLII 532 (ONSC), para 29

the tribunal or board to decide, unless its receipt would amount to a clear denial of natural justice. So long as such hearsay evidence is relevant, it can serve as the basis for the decision, whether or not it is supported by other evidence which would be admissible in a court of law (page 308) [Emphasis added].

I have considered whether the admission of Ms. Srokowski's statement would amount to a clear denial of natural justice. Her statement is relevant and reliable. Although I acknowledge her statement was made some five (5) months after the alleged incident unlike the timelier statement in *Tilberg*, I find *Tilberg* helpful in that any prejudicial effect might be minimized by assigning the appropriate weight to that evidence within the context of all the evidence in this matter. The Board of Inquiry in *Tilberg* held that "the *Statutory Powers Procedure Act* permits a tribunal to admit hearsay evidence without the qualification of necessity or reliability, which are conditions of the principled approach to hearsay test applied in criminal proceedings."

The Respondent stressed that *Tilberg* is a weak case that I am not bound by it. The Respondent also highlighted that in *Tilberg*, there was a witness that could be called in that matter to speak to the adverse inference statements made by the decedent. In the matter at hand, the officer does not have to give evidence to combat the adverse inference evidence; he is not compelled and there can be no adverse inference drawn by him not giving evidence. I agree with those points made by the Respondent.

Although not binding, like in *Tilberg*, I find any prejudicial effect on the Respondent due to the inability to cross-examine the evidence will not be substantially significant and any prejudicial effect may be minimized in the context of the merits hearing. It may be that other evidence within the merits hearing will serve to refute or bolster the statement in question.

The issue at question in this motion hearing is not a report as in *City of Toronto*⁵⁴ but rather a witness statement captured via an audio recording of a phone conversation wherein one can hear the words and tone of the witness. This recording is without the requisite identifiers, such as date, time and names of the interviewer and interviewee. I have accepted the evidence of S/Sgt Craig regarding the circumstances of the interview and his confirmation of the identity of Ms. Srokowski. I find that the audio recorded statement in question is relevant to the core issues of this case and to deny its admission would prevent the Service from presenting its case fully and completely. Despite this, I must fully consider the issue of *significant* prejudice to the Respondent and whether that is a breach of procedural fairness and natural justice.

⁵⁴ Exhibit 4, Tab 4: *City of Toronto and Can. Union of Public Employ. Local 79, 1982 (ONCA)*

I have considered *Reid*, a disciplinary hearing matter involving a teacher wherein the tribunal after seeking independent legal advice, refused to allow hearsay evidence. Unlike the current matter, *Reid* involved a parent [of Ms. Cleveland] who refused to testify. The independent counsel went on to advise⁵⁵:

With respect to reliability, the Committee was advised that the inability of the Member to cross-examine Ms. Cleveland is a significant factor, but it is not the only factor to consider. For instance, other evidence corroborating Ms. Cleveland's hearsay evidence might satisfy the Committee that the hearsay evidence is sufficiently reliable. This finding can only arise when the corroborative evidence, considered as a whole and in the circumstances of the case, establishes that the only likely explanation for the hearsay statement is the declarant's truthfulness about the material aspects of the statement.

In *Reid*, the disciplinary board refused to admit the hearsay evidence despite having the authority to do so, stating: "that it would be inappropriate to admit this hearsay evidence given the circumstances of this case." *Reid* does not support precluding the hearsay evidence that is subject of this motion but supports that the circumstances of the case matter.

Although I find the statement in question sufficiently reliable, other independent evidence at the merits hearing may corroborate or refute the evidence of Ms. Srokowski. I find it is incumbent on me, like in *Reid*, to complete or perhaps adjust my assessment of reliability, when considering any evidence "as a whole and in the circumstances of the case."

At paragraph 71 of *Gottschalk*, the Commission made it clear:

Police disciplinary proceedings are labour relations matters and, as such, the same strict standards with respect to the treatment of witnesses and evidence in criminal proceedings are not always relevant.

The Divisional Court in *Mussani* referenced various authorities either describing or refuting that administrative tribunals as quasi-criminal in nature as in paragraph 91:

... more than one case has referred to professional discipline proceedings as quasi-criminal in nature". The court was not required to, and did not consider the characterization of such proceedings for constitutional/Charter purposes, however.

⁵⁵ Exhibit 7, Tab : *Ontario College of Teachers v. Reid*, 2019 LNONCTD 67, 2019 ONOCT 62, para 56

I agree with the Respondent's characterization as outlined by the Supreme Court in *Kane*⁵⁶ that:

A high standard of justice is required when the right to continue in one's profession or employment is at stake. A disciplinary suspension can have grave and permanent consequences upon a professional career.

S.15 *Statutory Powers Procedure Act*, outlines the discretion of this tribunal to allow hearsay evidence but this discretion should only be employed keeping the "highest standards of justice and procedural fairness."⁵⁷

If I allow the audio statement of Ms. Srokowski, due to necessity after her death, then I must determine, is the statement sufficiently reliable to overcome the fact that it cannot be tested. I am satisfied her statement is sufficiently reliable. In the circumstances before me, I must ask myself if the prejudicial effects to the Respondent override the probative effects for the Applicant to fully present its case.

B and Catholic Children's Aid Society dealt with a child welfare matter wherein the appellant challenged the decision of the hearing officer to allow hearsay evidence that included the evidence of the victim when that victim was not called as a witness and there were other factors such as recantation. Divisional Court overturned the hearing officer's decision to refuse to expunge the name of the appellant from the Child Abuse Registry stating the "admission of the hearsay evidence constituted a denial of natural justice as it precluded the appellant from cross-examining the alleged victim."

Gilbert was a police disciplinary matter stemming from a criminal matter. The criminal court had ordered the therapist's records disclosed as the allegations were in respect to recovered memory. The crown complied but the complainant refused to testify in the criminal matter. The police disciplinary hearing's prosecution brought forward the issue of admitting the preliminary inquiry transcript to the tribunal as without this occurring there would be no case given the complainant had again refused to testify. The court found that⁵⁸:

The introduction of the preliminary hearing transcript, in these unique circumstances, attracts the principle in *Re B. and Catholic Children's Aid Society of Metropolitan Toronto* [above] ... that the admission of hearsay evidence may result in a denial of natural justice if it prevents the subject of the inquiry from cross examining the complainant in respect of vital issues.

⁵⁶ Exhibit 7, Tab 6: *Kane v. University of British Columbia*, [1980] 1 SCR, 1105 (SCC) para 3

⁵⁷ Exhibit 6: Respondent's factum, para 30

⁵⁸ Exhibit 7, Tab 8: *B and Catholic Children's Aid Society of Metro Toronto*, 59 O.R. (2d) 417 (Div Ct), paras 11-12

Because there is in these particular circumstances no opportunity to cross-examine in relation to a fundamental aspect of the alleged misconduct, and a fundamental aspect of the defence, the filing of the transcript amounts to a denial of natural justice resulting in a loss of jurisdiction.

These cases do highlight the importance of assessing each request to allow hearsay evidence, fully and fairly. To do otherwise, could amount to a denial of procedural fairness and natural justice. With respect, the matter before me deals with a witness statement not that of a complainant; the witness is deceased, not refusing to testify and, the oral statement given to S/Sgt Craig does not compare to allowing a preliminary inquiry court transcript in a matter wherein the charges were withdrawn due to the complaint's refusal to testify in the criminal and disciplinary matters. Had this statement been that of the complainant in this matter, then the prejudice would be very clear and there would be a very high hurdle for admission of hearsay evidence.

In *Lee*, the prosecution sought to introduce three audio statements of witnesses who could not be found. The matter before me does not deal with witnesses that may have been evading testimony before the tribunal or simply could not be found. Like the investigators in *Lee*, who did not administer oaths or caution the witness to tell the truth, I agree with the Respondent that S/Sgt Craig had options that were not used in this case and that can impact any weight to be given. *Lee* also dealt with an issue regarding the understanding of English as a language, an issue not present in the current matter.

In the matter at hand, Ms. Srokowski is a witness, not a complainant; given her position as a court clerk who worked with both the complainant and the Respondent, she had the opportunity to observe interactions such as the allegation in respect to "handcuffs".

In oral submissions, the Respondent stressed the requirement of this tribunal to act with a high degree of fairness, citing *Jackson* and *Kane*. *Jackson* involved allegations of mistreatment of a child; statements of four(4) witnesses were taken and submitted and defence was denied the right to cross-examine the witnesses. I agree, as in *Jackson*, the duty of fairness is crucial. *Kane* stands for the proposition that it is not that (to allow hearsay evidence) will prejudice the Respondent but that it might. I have carefully considered prejudice to the Respondent and given what I have outlined in my analysis and how I propose to deal with the statement, I find any prejudice is not significant.

Although *Hall*⁵⁹ is not specific to hearsay, I found the Commission's reliance on the Supreme Court of Canada in *R v Palmer* helpful in my analysis, wherein they stated:

The Act does not set out what factors we are to take into account when attempting

⁵⁹ Exhibit 4, Tab 2: *Hall v. Ottawa Police Service*, 2007 ONCPC 17

to assess whether or not it would be “just” to receive such evidence.

However, in considering such questions the Commission has adopted the four part test set out by the Supreme Court of Canada in *R. v. Palmer* [1980] 1 S.C.R. 759 at page 775:

- (1) The evidence should generally, not be admitted if, by due diligence, it could have been adduced at trial provided that this general principle will not be applied as strictly in criminal cases as in civil cases;
- (2) The evidence must be relevant in the sense that it bears upon a decisive or potentially decisive issue in the trial;
- (3) The evidence must be credible in the sense that it is reasonably capable of belief; and
- (4) It must be such, that if believed, it could reasonably, when taken with the other evidence adduced at trial, be expected to have affected the result.

The Respondent submitted that without the ability to test the statement, the probative value is greatly outweighed by the prejudice to him. I find Ms. Srokowski’s statement does have value in terms of the Applicant’s ability to fully present their case. In considering the points outlined in *R v Hall* above, Ms. Srokowski had direct knowledge of one of the allegations outlined in this misconduct matter. I find the statement relevant, reliable and probative.

The Respondent submitted that the inability to cross-examine the witness is only one aspect of the prejudicial effect on Cst. Cooper and there are other prejudicial effects which stem from the contents of the audio interview. I have listened carefully to the audio statement of Ms. Srokowski to consider the various points raised by the Respondent in terms of other prejudicial effects flowing from the Applicant seeking to admit Ms. Srokowski’s statement for the truth of its contents.

I agree with the Respondent that statements of Ms. Srokowski, at times, were vague and opinionated. However, I did not find there was an obvious bias towards G.D. over the Respondent, in the course of the telephone interview. Apart from any opinions expressed, Ms. Srokowski made particular observations that are relevant in respect to one of the allegations of misconduct. Within the context of a merits hearing, I can discern any opinions from observations. When assessing and weighing any observations, I can accept all, portions or none of the evidence. The lack of inquiry by the investigator leading to some of the vagueness will certainly impact any weight to be given. Opinion evidence of Ms. Srokowski will not be considered in any finding following the merits hearing.

The Respondent asserted that to allow the statement of Ms. Srokowski is “blatantly unfair”, given S/Sgt Craig did not take steps such as administering an oath or a caution to tell the truth. In *Lee*, the core issue of that case, dealt with conversations those three witnesses had with the Respondent officer. While I am not bound by *Lee*, it is another example of each case or issue being decided on the facts particular to that case.

Ms. Srokowski’s interview also contained information regarding a purported conversation with the Respondent. This cannot be classified as potentially corroborating information in respect to the allegations before me and there is no alternative to test this portion of her statement. For these reasons, reference to conversations Ms. Srokowski had with the Respondent will not be relied upon nor given any weight in the merits hearing, considering the potential significant prejudice.

In fairness to the officer, I have considered whether the prejudicial effects of the statement greatly outweigh the probative value. I do not find this is the case. I have set out a fair and balanced approach on how I will address Ms. Srokowski’s opinions and conversation with the Respondent. The weight of the statement, if any, will be determined after considering it within the context of the merits hearing. I find there is no clear denial of natural justice and procedural fairness to allow Ms. Srokowski’s statement.

It is incumbent on me to ensure procedural fairness in this matter. While I agree with the Applicant that the *Statutory Powers Procedure Act* allows for a flexible approach to the admission of hearsay evidence, I have exercised my discretion in good faith considering all of the circumstances in this matter as well as the cases put before me. I have considered the intent of the *Community Safety and Policing Act* and *Statutory Powers Procedure Act* legislation, particularly in terms of the latter s.15 which permits me the discretion to allow for hearsay evidence. I recognize this discretion requires me to conduct a full analysis of this particular issue and consider other relevant sections such as s.10 and s.23 *Statutory Powers Procedure Act*.

In my analysis, I have balanced the rights of the Applicant to fully present their case with the rights of the Respondent to fully test the evidence. Ms. Srokowski is deceased and is not available to testify and be subject to cross-examination. This does not preclude her statement from being admitted. While I find the statement in question may corroborate some aspect of G.D.’s allegations, ultimately without G.D.’s testimony, it is unlikely there is a case to be made.

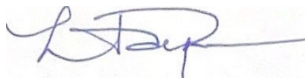
Ms. Srokowski as a court clerk, who worked directly with the complainant (G.D.) and at times with the Respondent, was in a position to make observations in respect to some of the misconduct allegations. Although I find there could have been further cautionary measures such as a virtual appearance, ensuring she was alone at the time, advising her

to tell the truth and/or administering an oath, that may allow the statement of Ms. Srokowski to be given greater reliability, I accept the testimony of S/Sgt Craig.

I find the statement of Ms. Srokowski is necessary, relevant, and reliable. After carefully considering the cases, balancing the rights of both parties, I find that the prejudicial effects to the Respondent do *not* outweigh the probative value for the Applicant to present their case.

PART IV: RULING ON MOTION

The motion is granted. I order the audio statement of Ms. Srokowski's evidence admitted at the merits hearing.



Lisa Taylor
Superintendent (ret)
CSPA Adjudicator

Date electronically delivered: June 5, 2025

Appendix A

The following exhibits were tendered in this matter:

- Exhibit 1: Request for Appointment of Adjudicator by Chief Stephen Tanner dated 21Oct2024 including Schedule A outlining Allegations of Misconduct
- Exhibit 2: Lisa Taylor - Appointment as Merits Adjudicator by Sig M. Walter dated 19Nov2024
- Exhibit 3: Motion Factum – Applicant (the Service)
- Exhibit 4: Motion - Book of Authorities - Applicant
 - Tab 1: *Stone v. Toronto Police Service*, 2007 ONCPC 11
 - Tab 2: *Hall v. Ottawa Police Service*, 2007 ONCPC 17
 - Tab 3: *Correa v. Toronto Police Service*, 2009 ONCPC 1
 - Tab 4: *Re City of Toronto and Can. Union of Public Employ. Local 79*, 1982 (ONCA)
 - Tab 5: *Can. Union of Public Employ. Local 79 Toronto (City)*, 2019 ONSC 3006 (Div. Ct.)
 - Tab 6: *Crane v. McDonnell Douglas Canada Ltd.*, 1993 CanLII 16506 (ON HRT)
 - Tab 7: *Pecchini v. Alpha Eagle Group*, 2023 HRT0 352
 - Tab 8: *Tilberg v. McKenzie Forest Products Inc.*, 2002 CanLII 46501 (ON HRT)
 - Tab 9 : *R. v. Griffin*, 2009 SCC 28
 - Tab 10 : *R. v Goudreau*, 2015 ONSC 5329
- Exhibit 5: Motion Record - Applicant
- Exhibit 6: Respondent Factum
- Exhibit 7: Respondent's Book of Authorities
 - Tab 1: *Constable Lawrence Stevenson and York Regional Police*, 2013 ONCPC 12 (CanLII)
 - Tab 2: *CR v. Schneder National Carriers, Inc.* 2006 CanLII 532 (ONSC)
 - Tab 3: *Constable Carlyle and Metro Toronto Police Force*, 1986 CanLII 4300 (ONCPC)
 - Tab 4: *Superintendent Gottschalk and Toronto Police Service*, 2003 CanLII 75465 (ONCPC),
 - Tab 5: *Mussani v. College of Physicians and Surgeons*, [2004] O.J. No. 5176 (ONCA), 2004
 - Tab 6: *Kane v. University of British Columbia*, [1980] 1 SCR, 1105 (SCC)
 - Tab 7: *Gilbert v. Ontario (Provincial Police)*, [1999] O.J. No. 4784 (ONSC), aff'd 2000 CanLII 16843 (ONCA)
 - Tab 8: *B and Catholic Children's Aid Society of Metro Toronto*, 59 O.R. (2d) 417 (Div Ct)

- Tab 9: *Jackson v. Region 2 Hospital Corp.* [1994] N.B.J. NO. 64 <https://canlii.ca/t/26mvz>
- Tab 10: *Constable Christopher Lee and Toronto Police Service*, 18Dec2009 (Unreported)
- Tab 11: *Ontario College of Teachers v. Reid*, 2019 LNONCTD 67, 2019 ONOCT 62 (CanLII)
- Tab 12: *R. v. MacKinnon*, [2022] O.J. No. 5281 (ONCA) <https://canlii.ca/t/jt67r>
- Tab 13: *R v Bradshaw*, [2017] 1 S.C.R. 865 (SCC) <https://canlii.ca/t/h4jxt>
- Tab 14: *R.v. Wilsdon*, [2024] O.J. No. 3951 (ONCJ) <https://canlii.ca/t/k6v5t>
- Tab 15: *Toronto Hospitality Employees Union-CSN (THEU-CSN v. Fairmount Royal York*, [2024] O.L.R.D. No. 2198
- Tab 16: *R .v. Khelawon*, [2006] S.C.J. No. 57, 2006 SCC 57 (CanLII) (SCC).

Exhibit 8a: Audio recording of Dorothy Srokowski

Exhibit 8b: Transcript of Audio recording of Dorothy Srokowski