OPAAC ADJ #25-017

HALTON REGIONAL POLICE SERVICE
Applicant

And

CONSTABLE JASON COOPER
Respondent

Adjudicator:
Superintendent (ret'd) Lisa Taylor

Appearances:
A. Sinclair, for the applicant
P. Wright, for the respondent

Heard:
April 16 and May 7, 2025

Date of decision:
June 5, 2025

Length of decision:
36 pp.

Statutory citations:
Community Safety and Policing Act, 2019, S.O. 2019, c. Sched. 1, s. 202
O. Reg. 404/23, s. 3
O. Reg. 407/23
Statutory Powers Procedure Act, R.S.O. 1990, c. S. 22, ss. 10, 15, 23

EVIDENCE - Admissibility - Motion to admit hearsay statement of deceased witness - Respondent officer faced three counts of misconduct - Service alleged that respondent sexually harassed a court clerk - Deceased witness interviewed and provided evidence that could corroborate complainant's account - Police disciplinary proceedings are labour relations matters - Pursuant to *Statutory Powers Procedure Act,* adjudicator has broad discretion to admit evidence that may not be admissible in a court - Adjudicator also bound by common law rules of procedural fairness and natural justice - Evidence in question relevant, necessary and reliable - Prejudicial effects not outweighing probative value - Motion upheld - Evidence admitted.

EVIDENCE - Hearsay - Audio recording of interview with deceased witness - Admissibility of hearsay evidence in administrative law proceedings versus criminal proceedings - Not appropriate to transpose approach utilized in criminal cases to disciplinary misconduct proceedings - Fair and balanced approach required - Hearsay criteria of necessity and

reliability satisfied - Evidence relevant to applicant's right to present their case - Prejudicial effects not outweighing probative value - Motion upheld - Evidence admitted.

Summary of Reasons for Decision on Motion

Constable Cooper, a member of the Halton Regional Police Service, was charged with three counts of misconduct under the Code of Conduct, O. Reg. 407/23. The charges stemmed from allegations of sexual harassment against G.D., a court clerk. In the course of the investigation by Professional Standards Branch, S/Sgt. Craig interviewed Ms. Srokowski ("S"), a colleague of G.D. The interview took place 5 months after the alleged event. Subsequently, in December 2024, the witness died. The applicant service sought an order to admit the audio interview into evidence at the merits hearing. The respondent opposed the request. This decision dealt with the applicant's motion.

S/Sgt. Craig testified at the motion hearing. He conducted the interview by telephone – a common practice, in his view. He sent S an email and then he received a phone call from her. He was not prepared for her call because he did not know when she would respond. However, he was able to begin recording approximately 30 seconds into the interview. He testified that although he had not dealt with S in the courts for some 20 years, he recognized her voice, which he described as very distinctive.

The applicant contended that the recording of the interview should be admitted because it was relevant. Counsel pointed out that pursuant to s. 3 of O. Reg. 404/23, the *Statutory Powers Procedure Act* applied to police adjudication proceedings; and under s. 15 of the *SPPA* the adjudicator had discretion to admit the statement in evidence. As a labour relations matter, misconduct hearings were intended to be expeditious, not subject to the same rules of evidence as a criminal matter. Counsel relied on case law in support of the principle that all relevant evidence should be admitted to allow parties to present their case in full. In this case, counsel submitted that S observed some of Cst. Cooper's behaviours and her statement was central to the issue of whether he engaged in harassment. Counsel argued that if S's statement were not admitted, the service would be prevented from presenting its full and complete case, which would amount to a denial of procedural fairness. Moreover, and although these criteria were not preconditions to admission, the evidence met the criteria governing the admission of hearsay evidence in criminal proceedings, viz. necessity and reliability.

The respondent submitted that the evidence lacked the qualities necessary for threshold admission. Counsel asserted there were procedural and substantive flaws that undermined the reliability of the evidence. In terms of procedure, counsel focused on the ways in which the conduct of the interview fell short of standard interview practices: the phone format provided no opportunity to observe the witness; the audio portion did not commence when the interview started; there was no introduction of interviewer or witness, no note of a date and time, and no caution to the witness. In terms of substance, counsel submitted that S offered opinions and speculation, and her evidence was biased in favour of the complainant. Notwithstanding the discretion conferred under s. 15 of the *SPPA,* counsel urged the adjudicator to adopt the "principled approach" utilized in the criminal context. Counsel submitted that cases involving

professional jeopardy – such as this case – warranted the same degree of scrutiny with respect to the reliability criterion. Counsel argued that the respondent was entitled to a very high level of procedural fairness, and admission of this evidence would be very prejudicial.

Held, motion granted; evidence admitted.

The parties agreed that s. 15 of the *SPPA* provided the adjudicator with broad discretion to admit hearsay evidence and assign it appropriate weight. The proceeding was governed by the authority outlined in the *CSPA* and the *SPPA*, together with the principles of natural justice and procedural fairness. The hearing of this labour relations matter was intended to be expeditious; the hearing was not subject to the same rules of evidence that governed criminal matters.

Administrative law authorities, including police discipline cases, highlighted the importance of considering natural justice in relation to both parties while also considering potential prejudice. As labour relations matters, police disciplinary proceedings were more akin to human rights tribunal proceedings than criminal proceedings. The respondent, facing demotion or termination, was entitled to a high level of procedural fairness. However, unlike a criminal trial, his liberty was not at stake. Rather than the "principled approach" adopted in criminal trials – in which the demonstration of both necessity and reliability were preconditions to admission – an approach premised on fairness and balancing of interests was required in this proceeding. Therefore, and in contrast to a criminal trial, the fact that other witnesses, including G.D., might be available to testify, did not preclude the adjudicator from considering whether S's evidence should be admitted.

The hearsay statement of S was clearly relevant to the applicant's right to present their case.

The respondent conceded that the criterion of necessity was made out, given the death of the witness. Counsel submitted, however, that the evidence should not be admitted unless it could be tested in some manner or unless it was sufficiently trustworthy.

In terms of reliability, given her position as a court clerk, S had the opportunity to observe the complainant and the respondent. Her statement was made to a police officer, and she had no apparent motive to lie. It was true that S/Sgt. Craig could have taken additional steps to administer an oath or caution S, and best practices were not followed in some respects (omission of date, time, identities). On the other hand, he explained that he was not expecting or prepared for the call from S; and his testimony was credible. Although her evidence contained some vague and at times opinionated statements, these could be disregarded or given no weight; and there was no obvious bias in favour of G.D. Overall, S's evidence was reliable.

Procedural fairness was owed to both the applicant and the respondent. The essential question was whether the prejudice to the officer in admitting the hearsay statement outweighed its probative value. Any prejudicial effect emanating from the inability to cross-examine S could be minimized in the merits hearing through, for example, other evidence which would serve to refute or bolster S's statement. Although the recording lacked identifiers, S/Sgt. Craig's explanation of the circumstances and his confirmation of S's identity were accepted. The recording was probative, reliable, and it was relevant to the core issues in this case; to deny its

admission would be to deny the service the opportunity to present its case fully and completely. Any opinionated or speculative statements made by S would not be considered in the findings-phase of the decision on the merits, nor would a portion of her evidence which contained information about a purported conversation she had with the respondent, since there was no alternative to test this portion. The prejudicial effects of S's interview did not outweigh its probative value. The weight of the statement, if any, would be determined in the merits hearing. Balancing the respective rights of the parties, there was no clear denial of natural justice or procedural fairness in allowing S' statement.

Authorities cited

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R. v. MacKinnon, [2002] O.J. No. 5281 (ONCA)
Cst. Lawrence Stevenson and York Regional Police, 2013 ONCPC 12
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R. v. Wilsdon, [2024] O.J. No. 3951 (ONCJ)
Toronto Hospitality Employees Union-CSN v. Fairmont Royal York, [2024] O.L.R.D. No. 2198
City of Toronto and CUPE, Local 79 1982 (ONCA)
Crane v. McDonnell Douglas Canada Ltd., 1993 CanLII 16506 (ON HRT)
Correa v. Toronto Police Service, 2009 ONCPC 1

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In an addendum to the motion decision, the adjudicator issued a Final Report, noting that the respondent resigned effective June 18, 2025, and as a result, the service was requesting that its application under s. 202(1) of the *CSPA* be withdrawn.