

SUPERINTENDENT STACY CLARKE
Appellant

And

TORONTO POLICE SERVICE
Respondent

Adjudicators:

Emily Morton, Michael O'Brien, Graeme Turl

Appearances:

R. Pillay, for the appellant

S. Hutchison, for the respondent

Heard:

August 14, 2025

Date of decision:

November 12, 2025

Length of decision: 22 pp.

Statutory citations:

Police Services Act, R.S.O. 1990, c.P. 15 (repealed), s. 87

O. Reg. 268/10 (repealed), ss. 2(1)(e)(i), 2(1)(a)(xi), 2(1)(b)(ii)

Community Safety and Policing Act, 2019, S.O. 2019, c.1., Sched. 1, s. 216

DISCIPLINARY PENALTIES - Demotion - Appeal from penalty decision of hearing officer - Appellant challenged length of demotion and requirement to reapply for promotion - Hearing officer found appellant's integrity-related misconduct very serious and absent mitigating factors, actions could warrant dismissal - Hearing officer found tangible evidence of unsuitability for automatic return to rank - Decision of hearing officer reasonable - Appeal dismissed.

DISCIPLINARY PENALTIES - Grounds for intervention - Role of appeal panel on review of penalty decision - Role of panel to determine whether decision of hearing officer reasonable - Panel will not interfere with penalty unless decision contains error in principle or relevant factors were ignored - No reviewable errors in decision of hearing officer - Appeal dismissed.

HEARING OFFICERS - Decision of hearing officer - Standard of review - Deference owed to hearing officer's findings of fact and weighing of dispositional factors - Role of panel on appeal not to second guess decision of hearing officer - No reviewable errors in decision of hearing officer - Hearing officer's reasons provided transparent, intelligible line of reasoning in terms of weight assigned to various sentencing factors - Decision reasonable.

Summary of Reasons for Decision

On October 2, 2023 the appellant, Superintendent Clarke, pled guilty to several charges of misconduct in violation of the Code of Conduct, O. Reg. 268/10, enacted under the now-repealed *Police Services Act*: three counts of breach of confidence, contrary to s. 2(1)(e)(i), three counts of discreditable conduct, contrary to s. 2(1)(a)(xi), and one count of insubordination, contrary to s. 2(1)(b)(ii). On August 28, 2024 the hearing officer imposed a penalty of demotion for 24 months to the rank of Inspector. At the end of the demotion, the appellant would be eligible to reapply for promotion. The appellant appealed the length of the demotion and the requirement to reapply for her rank. She requested that the appeal panel vary the penalty to a 12-month demotion, with reinstatement to the rank of Superintendent at the end of the 12-month period.

The appellant was an extremely well-regarded member of the Toronto Police Service and the first Black female to attain the rank of Superintendent within the TPS. The charges of misconduct arose from her decision to share and discuss interview questions with a group of six constables under her mentorship. The promotional process was conducted between November 29 to December 7, 2021. On four of those dates, the appellant served on a panel of three senior officers. Despite a clear direction to cease mentoring by November 25, 2021 the appellant surreptitiously photographed and shared with mentees confidential interview questions, and she instructed one of them to delete his photographs. She also conducted three additional mentoring sessions with one constable, who was a family friend, and met with him in person to coach him on the interview process, including a mock interview. Later, she served on this candidate's interview panel, without disclosing the conflict of interest. This candidate pled guilty to discreditable conduct and received a six-month demotion. The other five candidate mentees received unit level discipline of between 10 to 20 days without pay.

At the discipline hearing the appellant called a large, complex volume of evidence regarding the role of systemic anti-Black racism within the TPS and its promotional process, and the impact of this systemic racism on her actions. Included in this evidence was the testimony of retired Chief Mark Saunders, who testified about the appellant's outstanding contributions as an officer and a leader, and her work with respect to improving the service's relations with Black communities. He believed the misconduct was out of character and the appellant would continue to serve the public and the TPS if returned to her rank. Another witness was retired Supt. D. McLeod, who testified about his professional relationship with the appellant and their shared concerns about the inequities that Black officers faced in the promotional process; he, too, viewed the appellant's conduct as an aberration caused by her frustration with systemic inaction by the service in terms of fulfilling commitments to equity. The president of the Jamaican Canadian Association testified about her work with the appellant on the "PACER" advisory committee; she believed that returning the appellant to her former rank was key to forging bonds of trust between the service and the Black community. An expert in anti-Black racism in the legal profession gave evidence, and a forensic psychiatrist prepared two reports. The evidence of both of these experts focused on the personal toll exacted by dealing with systemic racism, and the frustration resulting from efforts to overcome the challenges and barriers faced by Black officers within the TPS. The psychiatrist opined that these challenges played a significant contributory role in the

appellant's misconduct. The appellant, who testified at her penalty hearing, shared this view; she characterized her actions as "borne out of a sense of injustice, disillusionment, and frustration with the Service's failure to implement its own reforms" [*per* appeal factum].

A central issue in the penalty hearing, therefore, was the role played by systemic racism in the appellant's actions, and the extent to which this mitigated her misconduct. The hearing officer structured her analysis around relevant aggravating and mitigating factors, as established in the case law.

The hearing officer found that the nature and seriousness of the misconduct were weighty and aggravating; this, in turn, impacted her findings with respect to damage to the public interest and reputation of the service. She found the appellant's multifaceted misconduct amounted to a breach of trust on the part of a senior officer, which harmed six constables who were her mentees. Further, her conduct contained elements of deception, and she defied a clear command to senior officers to stop mentoring candidates for the interview process. The hearing officer found that absent the mitigating factors, the appellant's conduct could support dismissal.

Turning to those mitigating factors, the hearing officer considered the appellant's employment history, disability, relevant personal circumstances, and potential for rehabilitation. When considering personal circumstances, the hearing officer gave weight to the social context evidence, and evidence concerning the impact of the appellant's lived experiences on her lapse in judgment. She accepted and recognized the psychiatrist's evidence about the cumulative impact of frustration with persistent racism, and how this negatively impacted the appellant's judgment. The hearing officer also highlighted the appellant's exemplary employment history and her demonstrated ability to rehabilitate.

The hearing officer explicitly grappled with the role played by perceived systemic inaction. In the end, she did not give weight to systemic inaction as a mitigating factor. She found the appellant's misconduct was deceptive and covert; and, in her view, there was no demonstrated link between the misconduct and any institutional failure to address inequities in the hiring process in a timely and effective way.

Considering the various factors, the hearing officer found that demotion, rather than dismissal, was fair and proportionate. Regarding return to rank, she found there was tangible evidence of unsuitability for automatic reinstatement to rank: the serious, calculated nature of the misconduct; the breach of trust; the reputational damage and damage to the integrity of the promotional process; the disciplinary fallout from the appellant's poor decisions on junior officers. In her view, these circumstances made the appellant an unsuitable candidate for automatic return to rank, notwithstanding her outstanding leadership record.

The appellant raised several grounds of appeal. She alleged the hearing officer erred by: improperly evaluating/weighing the social context; relying on her personal experience; and finding there was evidence of unsuitability for automatic return to rank.

Held, appeal dismissed.

The standard of review applicable to appeals from disciplinary penalties was well established. Absent an error in principle, or a failure to consider relevant factors, the panel would not interfere with a penalty. A hearing officer's findings of fact, assessment of the evidence, and weighing of factors were entitled to deference. The role of the panel was not to second guess the decision of the hearing officer but rather to determine whether the decision was reasonable in the circumstances.

With respect to the first ground of appeal, the hearing officer did not err in her analysis of the social context evidence. She did not discuss social context evidence when considering each and every dispositional factor. Instead, she focused on evidence about anti-Black racism when she considered the factors of personal circumstances, rehabilitative potential, and systemic/institutional failures as a possible mitigating factor. This approach did not amount to an error in principle. The hearing officer declined to treat as a mitigating factor systemic failure to make progress in addressing inequality in the promotional process. Many of the appellant's arguments suggesting improper and/or underweighting of this evidence amounted to an invitation to re-weigh factors. However, the hearing officer did not disregard the social context evidence. The panel would not engage in a review of her decision for correctness, substituting its own opinion for that of the hearing officer, when there was more than one possible balancing of factors. The hearing officer was alive to the appellant's arguments that systemic failures at the service should lessen the weight given to seriousness of the misconduct; she provided clear and intelligible reasons for declining to so find.

As to the second ground of appeal, it was a settled principle that hearing officers were entitled to draw on their own policing experience in adjudicating police misconduct. The key limitation in this regard was that the experience must not fill a gap in the evidence or form the basis for findings of fact. The hearing officer's references to her personal career experience in a police service did not cross that boundary, however. Reading the decision as a whole, it was not possible to say that she supplanted evidence of the appellant's lived experience with her own. Moreover, her use of examples from her own experience did not drive any key conclusions or change the reasons for disposition.

As to the third ground of appeal, the hearing officer did not err in finding tangible evidence that the appellant was an unsuitable candidate for automatic return to rank. *Ingham* (infra) set out a framework for imposing requalification for return to rank after a demotion, citing factors such as context and duration of the misconduct, and any behaviour intended to hide, mischaracterize or cover up the misconduct. The hearing officer applied *Ingham* and considered the issue of automatic return to rank at the end of the demotion. Contrary to the appellant's argument, the hearing officer did consider mitigating factors at this stage, beyond the appellant's outstanding leadership qualities. She gave full credit to the appellant for her exemplary employment record, her apology, remorse, acceptance of responsibility, her overall rehabilitative potential, and the fact that she was not motivated by personal gain. However, in her view the misconduct was surreptitious, and an abuse of power and position; and it was these aspects which convinced the hearing officer that the appellant should not automatically resume her rank. The hearing officer reviewed both aggravating and mitigating factors just before turning her mind to the issue of automatic reinstatement. Thus, it could not be said that she ignored the mitigating factors in applying *Ingham*. The fact that a different decision-maker might have given more weight to the

mitigating factors at this, and other, stages of the analysis was not the appropriate question under a reasonableness review.

Finally, before turning her attention to the *Ingham* analysis, in the context of addressing employment history, the hearing officer considered whether automatic reinstatement to the rank of Superintendent was appropriate. She was not swayed by the testimony of witnesses who equated a failure to reinstate the appellant with a failure to the Black community. She reasoned that the appellant had held her rank for less than 10 months before she committed misconduct, and most of her achievements through work with the Black community occurred before she was promoted to Superintendent.

There being no basis to interfere with any aspect of the hearing officer's penalty disposition, the penalty imposed by the hearing officer was confirmed.

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