

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

Constable Chris Hansson

Appellant

and

Durham Regional Police Service

Respondent

DECISION

Panel: Colin Osterberg
Laura Hodgson
Ian Anderson

Participants:

For the appellant A. McKay, Counsel

For the respondent A. Sinclair, Counsel

Held by videoconference: October 1, 2025

BACKGROUND

1. In a decision dated June 12, 2024 (“Misconduct Decision”), the Hearing Officer, Superintendent (Retired) Greg Walton (“Hearing Officer”), found Constable Chris Hansson (the “appellant”), guilty of insubordination contrary to Part V, clause 80(1)(a) of the *Police Services Act*, R.S.O. 1990, c. P15 (the “Act”) and s. 30 clause 2(1)(b)(ii) of the Code of Conduct under the Act which is set out in O. Reg. 268/10 as amended (“Code of Conduct”).
2. In a decision dated November 19, 2024 the Hearing Officer ordered that the appellant be demoted for a term of three months from first-class constable to second class constable pursuant to s. 85(1)(c) of the Act. At the conclusion of that period of demotion, the appellant was to be reinstated to his former rank of first-class.
3. The appellant appealed the Misconduct Decision pursuant to s. 216(4) of the *Community Safety and Policing Act*, 2019, S.O. 2019, c.1, Sched. 1 (“CSP Act”). This panel was appointed to exercise the powers and perform the duties of the Ontario Civilian Police Commission in relation to the appeal as provided for by that section.
4. The basis for the Hearing Officer’s finding that the appellant committed insubordination is that the appellant received a lawful order to respond to the question of whether he made a monetary donation to the “Freedom Convoy” organization. The “Freedom Convoy” related to vehicles from across Canada attending downtown Ottawa in a protest related to the COVID -19 pandemic. The question was posed to the appellant on August 4, 2022, during his compelled interview with the Durham Regional Police Service (“DRPS”) Professional Standards Unit (“Professional Standards”). The Hearing Officer found that, without lawful excuse, he disobeyed, omitted, or neglected to carry out the order by refusing to answer the questions posed to him.
5. According to the appellant’s submissions the appeal of the Misconduct Decision is on the following grounds:

- a) The Hearing Officer committed an error of law in failing to consider the factors in subsection 80(2) of the Act in his analysis of whether the appellant committed misconduct while in an off-duty capacity; and
- b) The Hearing Officer's decision was unreasonable as: he applied the incorrect legal test by failing to take into consideration s. 80(2); there was insufficient evidence on the clear and convincing standard to find the appellant guilty of insubordination, when properly considering s. 80(2); and the Hearing Officer severely restricted the appellant's counsel's ability to cross examine the prosecution's only witness particularly as it related to the factors as set out in section 80(2) of the *Act* which affected his ability to make full answer and defence.

STANDARD OF REVIEW

6. The standard of review to be applied on an appeal from a decision of a Hearing Officer under the *Act* is reasonableness on questions of fact, and correctness on questions of law: *Ottawa Police Service v. Diafwila*, 2016 ONCA 627. Questions as to whether facts satisfy a legal test are questions of mixed fact or law which are also to be reviewed on the standard of reasonableness unless there is an extricable question of law involved: *Jeremiah Johnson v. Durham Regional Police Service*, 2020 ONCPC 3; *Dunsmuir v. New Brunswick*, 2008 SCC 9 at para. 53.
7. In *Imperial Oil Limited v. Haseeb*, 2023 ONCA 364, the Ontario Court of Appeal stated that:

In applying the reasonableness standard, the focus is “on the decision actually made by the decision maker, including both the decision maker’s reasoning and the outcome.” In addition, the reviewing court is not to hold the reasons up to a standard of perfection or conduct a “line-by-line treasure hunt for error”. [Citations omitted]

ANALYSIS

8. In view of the arguments advanced by the appellant, it is important to note at the outset that the allegation of misconduct which was before the Hearing Officer was that the appellant committed insubordination when he disobeyed an order from a superior officer to answer a question in a compelled interview. The officer was on-duty at the time of his compelled interview. The compelled interview was in relation to a Complaint by the Chief of the DRPS that the appellant had engaged in a different act of misconduct, specifically discreditable conduct while off-duty by making a monetary donation to the Freedom Convoy. That allegation of discreditable conduct was not before the Hearing Officer.
9. The parties agree that the Hearing Officer correctly stated that, as set out in *Orr v. York Regional Police*, 2001 CanLII 62683 (“Orr”), in order to make a finding of insubordination, there are four questions which have to be answered:
 - a) Did the officer receive an order?
 - b) If so, was the order lawful?
 - c) Did the officer disobey, neglect, or omit to carry out that order?
 - d) If so, did the officer have a lawful excuse for doing so?
10. It is in the Hearing Officer’s answer to the second question, whether the order to answer whether a donation was made to the Freedom Convoy was lawful, that the appellant says an error was made. In particular, the appellant asserts that the Hearing Officer failed to consider the factors set out in s. 80(2) of the *Act* in his analysis of whether the appellant committed discreditable conduct while in an off-duty capacity. The appellant argues that this failure to correctly apply s. 80(2) then resulted in an unreasonable decision because the incorrect legal test was applied, insufficient evidence was presented to establish insubordination, and the appellant’s ability to cross-examine the prosecution’s witness was limited.

11. Section 80(2) of the *Act* provides that “a police officer shall not be found guilty of misconduct under subsection (1) if there is no connection between the conduct and either the occupational requirements for a police officer or the reputation of the police force.”
12. The appellant argues that s. 80(2) of the *Act* requires that, in order to make a finding of insubordination for failing to comply with a lawful order in this case, the Hearing Officer must find on clear and convincing evidence that the making of the donation would affect the reputation of the police force or that there is a connection between the donation and the occupational requirements of the police officer. The appellant argues the Hearing Officer did not address this issue in the Misconduct Decision. The appellant submits that the Hearing Officer only determined that the making of the donation “could possibly” affect the force’s reputation which the appellant says is lower than the requisite standard.
13. The respondent argues that an order to answer questions relating to off-duty conduct in the context of an investigation under s. 76 of the *Act* is lawful. The respondent cites *Re Metropolitan Toronto Board of Commissioners of Police and Metropolitan Toronto Police Association*, 1974 CanLII 702 (Div. Ct.) (“*Metropolitan Toronto*”) for the proposition that an order becomes unlawful if it requires the constable to do an act that would be unlawful or if it is clearly not within the authority of the person issuing it under the regulations governing the force or if it contravenes a specific regulation made under proper authority.
14. The respondent argues that, since s. 76 of the *Act* empowers a Chief of Police to investigate the off-duty conduct of an officer, a police officer has a duty to answer questions regarding their off-duty conduct when ordered to do so by a superior officer: *Orr supra* at 10; *Dave Deboer and Ontario Provincial Police*, 2017 CanLII 40693 (ON CPC) paras. 25-28.
15. The respondent argues that the Hearing Officer was correct when he stated that making a determination on lawfulness only requires establishing that the

allegation giving rise to the order to answer the question posed was so reasonable that it warranted a response from the involved officer. It was unnecessary to determine if the underlying conduct, that is the conduct of making a donation to the Freedom Convoy, itself amounted to discreditable conduct.

16. In our view, and as agreed by the parties, the Hearing Officer correctly set out the four-part legal test to be applied in determining whether the respondent established insubordination. This appears at p. 34 of the Misconduct Decision.
17. The Hearing Officer then analyzed the four components of the test. In his analysis of the question of the lawfulness of the order, the Hearing Officer found that it was not necessary to demonstrate that the allegation of discreditable conduct as it related to the donation could be proven but only that the allegation was so reasonable that it warranted a response to the question posed from the involved officer.
18. This finding is reasonable and correct in our view. The investigating officer assigned by the DRPS is empowered by s. 76 of the *Act* to investigate the off-duty conduct of an officer, and the appellant had a duty to answer questions regarding his off-duty conduct when ordered to do so by a superior officer. Such an order is “lawful” according to the Court in *Metropolitan Toronto* in that it does not require the appellant to do an act that would be unlawful; is not one that is clearly not within the authority of the person issuing it under the regulations governing the force; and does not contravene a specific regulation made under proper authority.
19. In our view, to find that a question is not lawful because the conduct that is the subject of the enquiry cannot yet be proven to amount to discreditable conduct when the question is asked, is not a reasonable interpretation. It would mean that no questions could be ordered to be answered by an officer about alleged misconduct until that misconduct had already been established. We have been presented with no authority to suggest that this is the law. Accordingly, we

disagree with the appellant's argument that before making a finding of insubordination, the Hearing Officer would have to find on clear and convincing evidence and in accordance with s. 80(2) of the *Act* that the making of the donation would likely affect the reputation of the police force or that there is likely a connection between the donation and the occupational requirements of the police officer.

20. In our view, the Hearing Officer's analysis as to the applicability of s. 80(2) as it applies to the issue of the lawfulness of the order made to the appellant was reasonable. Specifically, the Hearing Officer concluded that the requirements set out in s. 80(2) as they relate to whether the appellant was guilty of discreditable conduct by making a donation to the Freedom Convoy were not relevant to the Misconduct Decision since the appellant was not charged with discreditable conduct and that charge was not before the Hearing Officer.
21. The Hearing Officer set out his analysis of the impact of s. 80(2) of the *Act* on the issue of the lawfulness of the question ordered to be answered at p. 36-38 of the Misconduct Decision. It is clear from the Misconduct Decision, that the Hearing Officer understood and considered that the questions which could be the subject of a lawful order must be with respect to conduct which has some nexus to an officer's occupational requirements or the reputation of the police force. The Hearing Officer found that it was open to the respondent to take the position that a donation made to the Freedom Convoy may have brought discredit to its reputation if it had become public knowledge. The appellant does not dispute this, and we see no error in this finding. The Hearing Officer found that contributing to the Freedom Convoy could possibly be deemed discreditable conduct because so doing could potentially be viewed as having the ability to adversely affect the reputation of the police service. Consequently, the Hearing Officer found the respondent was permitted to investigate the possibility that the applicant had committed misconduct and to ask the questions that are the subject of the insubordination charges. In our view, this is reasonable and in fact correct.

22. The appellant argues, as he did at the hearing before the Hearing Officer, that the Divisional Court in *Mulligan v. Ontario Civilian Police Commission*, 2020 ONSC 2030 (“*Mulligan*”) stands for the proposition that a police officer cannot be found guilty of insubordination if there is no connection between that conduct and either the occupational requirements for a police officer or the reputation of the police force, and that a failure to consider s. 80(2) of the *Act* renders a decision unreasonable. The appellant argues that in order to establish a connection with the reputation of the police force it is necessary to establish that the conduct is likely to bring discredit upon the police force and it is not sufficient for the prosecutor to establish that this was a mere possibility.
23. The appellant submits that the Hearing Officer, by finding that the donation to the Freedom Convoy could possibly be deemed misconduct because so doing could potentially be viewed as having the ability to adversely affect the reputation of the police service, did not use the correct standard of proof as set out in *Mulligan*.
24. In our view, the *Mulligan* decision does not support the appellant’s position. In that case, a police officer was originally found guilty of both discreditable conduct and insubordination for attending and speaking at a cannabis conference despite being ordered not to do so. On appeal, the Ontario Civilian Police Commission found that the appellant’s conduct did not amount to discreditable conduct because it did not harm the reputation of the police service, but upheld the charge of insubordination for failing to comply with the order not to speak at the conference. The Divisional Court set aside the insubordination charge as well since the officer’s conduct at the conference did not harm the reputation of the police service and so could not amount to misconduct according to s. 80(2), the reasoning being that an order that requires an officer to refrain from an activity which would not amount to misconduct is not a lawful order and cannot result in an insubordination finding.
25. In the present case, the appellant refused to answer a lawful question at a

compelled interview which was required in furtherance of an investigation of potential misconduct. The present case did not involve an order that the officer refrain from making a donation to the Freedom Convoy. (If it had, it might be analogous to the circumstances in *Mulligan* if it was later found that the activity of making a donation did not amount to misconduct.) The conduct in this case is the refusal to answer a lawful question in the context of an investigation into the possible misconduct of the appellant. That conduct, i.e. refusing to answer a question posed in the course of a lawful investigation after being ordered to do so, is clearly connected to the occupational requirements for a police officer or the reputation of the police force in that it impedes the conduct of a lawful investigation.

26. In other words, in *Mulligan* the issue was whether an order to refrain from an activity that could not amount to discreditable conduct is a lawful order for the purposes of an insubordination charge. In the present case, the issue is whether an order to answer a question about off-duty conduct which may amount to discreditable conduct is a lawful order. *Mulligan* does not, in our view, stand for the proposition that a chief or their designate may not order an officer to answer a question about off-duty conduct unless it is proven on clear and convincing evidence that the off-duty conduct in question does amount to discreditable conduct.

27. At page 35, the Hearing Officer stated, in our view correctly:

To make out the offence of insubordination, the prosecution is obligated to prove (based on the standard of clear and convincing evidence) that the order delivered to Constable Hansson that he respond to questions posed to him during his compelled interview, was lawful. To achieve that standard, it is not necessary to demonstrate the allegation of discreditable conduct could be proven; it is only necessary to show that the allegation that gave rise to the order to answer the questions posed was so reasonable that it warranted a response from the involved officer.

28. At the hearing before the Hearing Officer, and at the hearing of the appeal, the appellant does not suggest that there was no connection between his refusal to comply with the order to answer questions and either the occupational requirements for a police officer or the reputation of the police force. Rather, he argues that the questions he refused to answer were related to conduct that was not proven to be so connected. In our view, this imports into the inquiry into the lawfulness of the order, a requirement which is not there. We agree with the Hearing Officer's determination that the questions that were asked were lawful in that they related to an investigation into conduct which could possibly amount to misconduct, keeping the requirements of s. 80(2) in mind. Specifically, the Hearing Officer stated (at p. 35):

It is clear that to prove its case, the prosecution must demonstrate that the order was lawful. To make out the offence of insubordination, the prosecution is obligated to prove (based on the standard of clear and convincing evidence) that the order delivered to Constable Hansson that he respond to questions posed to him during his compelled interview, was lawful. To achieve that standard, it is not necessary to demonstrate the allegation of discreditable conduct could be proven; it is only necessary to show that the allegation that gave rise to the order to answer the questions posed was so reasonable that it warranted a response from the involved officer.

The Hearing Officer then quoted from his abuse of process motion decision dated November 6, 2023, in which he expressly referenced s. 80(2). In that decision he stated:

I do not find that the nature of the discreditable conduct investigation was so obviously irrelevant to the reputation of the Durham Regional Police Service that the officer was permitted to decide the order was unlawful.

....

I am satisfied that contributing to the Freedom Convoy could possibly be deemed misconduct because in [sic] so doing could potentially be viewed as having the ability to adversely affect the reputation of the police service. Consequently, the Durham Regional Police Service was permitted to investigate the possibility that the Applicant had committed misconduct.

29. The Hearing Officer supported his conclusion that the appellant's underlying conduct of contributing to the Freedom Convoy could amount to misconduct by referencing *Briscoe v. Windsor Police Service*, 2024 ONCPC (CanLII) ("*Briscoe*") where an officer was found guilty of misconduct for making a contribution to the Freedom Convoy. On page 37 of the Misconduct Decision, the Hearing Officer fairly noted that he was not finding that the appellant committed discreditable conduct, but that he was citing *Briscoe* only in support of his finding that it was reasonable for the DRPS to suspect that the appellant may have committed the offence of discreditable conduct.
30. Further, at page 37 of the Misconduct Decision, the Hearing Officer reasonably stated that, when conducting the discreditable conduct investigation, the DRPS is not required to first prove the elements of that offence before ordering the appellant to answer questions related to that investigation, which is effectively the appellant's position both at the hearing and on appeal. We agree with the respondent's submission that the appellant has conflated the DRPS' authority to investigate alleged misconduct, in this case the alleged discreditable conduct, with the prosecution's requirement to prove the elements of that misconduct on clear and convincing evidence if it were to proceed to trial.
31. Finally, at page 38 of the Misconduct Decision, the Hearing Officer concluded as follows:

I am satisfied Staff Sergeant Samuels had the authority to order Constable Hansson to attend for a compelled interview and to then order him to

answer questions posed in relation to whether he made a financial donation to the Freedom Convoy. I do not accept the argument that Constable Hansson satisfied his obligation to respond when he stated that he was not required to provide that information because the questions were regarding personal and private information or because he was off duty at the time of the alleged donation. He was obligated to answer the specific question about whether he donated to the Freedom Convoy and if the answer resulted in a discreditable conduct charge, his recourse was to enter a not guilty plea to that charge and to present his defence accordingly.

32. We note that the Hearing Officer rejected the appellant's privacy argument in a November 6, 2023, decision from which no appeal has been pursued.
33. In our view, the Hearing Officer's determination as to the lawfulness of the order in question was reasonable and he did not commit an error of law in his consideration of s. 80(2) of the *Act*. We find that the Hearing Officer set out the law correctly and that his Misconduct Decision based on the law was reasonable.

Was there clear and convincing evidence in support of a finding of insubordination in light of s. 80(2)?

34. The appellant's position with respect to this issue is dependent on our acceptance of his submission that the Hearing Officer failed to properly consider s. 80(2) of the *Act* in his analysis. We have determined that the Hearing Officer did not err with respect to the application of s. 80(2) of the *Act* in the Misconduct Decision and we are not satisfied that the appellant has established this ground of appeal.

Did the Hearing Officer err when he restricted the appellant's ability to cross-examine the prosecution's witness as it related to the factors set out in s. 80(2)?

35. The appellant argues that the Hearing Officer restricted his counsel's ability to ask questions in cross-examination related to the allegation that making the donation to the Freedom Convoy had sufficient connection to the occupational requirements for a police officer or the reputation of the police force in order to satisfy the requirements of s. 80(2) of the *Act*.
36. The appellant does not in his factum or in his oral argument detail this ground of appeal beyond alleging that the Hearing Officer breached procedural fairness when he did not allow cross-examination with respect to the issue of whether the appellant's donation to the Freedom Convoy was likely to result in damage to the reputation of the DRPS for the purposes of s. 80(2) of the *Act*.
37. As noted above, we agree with the Hearing Officer's conclusions with respect to the factors set out in s. 80(2) of the *Act* and we find that the Hearing Officer reasonably limited the appellant's cross examination to issues relevant to the proceedings.

Conclusions

38. We find that the Hearing Officer correctly stated the test required to make a finding of insubordination. We find that the Hearing Officer did a detailed review of the evidence and concluded that every element of the required test was satisfied based on clear and convincing evidence.
39. We find that the Hearing Officer did not err when he determined that the order that the appellant answer the questions related to his donation to the Freedom Convoy was lawful.
40. We find that the Hearing Officer correctly analyzed s. 80(2) of the *Act* and that his application of that section to the facts was reasonable in the circumstances.
41. We find no error in the Hearing Officer's determination to limit the appellant's

cross-examination with respect to s. 80(2) issues relating solely to the issue of allegations of discreditable conduct, an issue that was not before the Hearing Officer.

ORDER

42. Pursuant to s. 87(8)(a) of the PSA, we confirm the Misconduct Decision of the Hearing Officer.

“Colin Osterberg”

Colin Osterberg, Adjudicator

“Laura Hodgson”

Laura Hodgson, Adjudicator

“Ian Anderson”

Ian Anderson, Adjudicator