



ONTARIO POLICE ARBITRATION AND ADJUDICATION COMMISSION

IN THE MATTER OF proceedings under Part XII of the Community Safety and Policing Act (CSPA), 2019, S.O. 2019, c. 1, Sched. 1, as amended,

BETWEEN:

CST. GUANGNAN 'GARRY' SUN #2944 (Appellant/Applicant)

AND

YORK REGIONAL POLICE SERVICE (Respondent/ Chief of Police)

RULING/DECISION ON APPEAL OF SUSPENSION WITHOUT PAY

Before: Detective Superintendent (retired) K.M. (Mike) Bickerton

Counsel for the Police Service: Mr. Jason Fraser

Counsel for the Applicant: Ms. Bath-Sheba van den Berg

Date of Oral Submissions: April 2, 2026

Decision Delivered: April 29, 2026 (via email as agreed)

NOTICE:

Some of the material provided by the parties in support of their positions contains personal medical information and includes what appear to be home addresses of involved persons. Great care must be taken to protect against the improper release of personal information within the bounds of the law and in respect of privacy considerations. Should the information be considered for release, any personal details including addresses must be redacted before they are made publicly available.

This decision is parsed into the following sections:

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PART I: OVERVIEW/BACKGROUND.

PART II: SUBMISSIONS.

PART III: ISSUES AND ANALYSIS

PART IV: CONCLUSION/DECISION

PART I: OVERVIEW/BACKGROUND

This matter concerns an appeal brought forth by PC Sun of a decision by the York Regional Police Service (YRP) to suspend him without pay under the *Ontario Community Safety and Policing Act, 2019 (CSPA)*. PC Sun, the Applicant, seeks relief from the suspension without pay, to be suspended with pay, and to be remunerated for pay that has been withheld in the interim.

In October of 2023, the York Regional Police commenced an investigation of PC Sun concerning allegations he was using confidential police databases to conduct queries for illegitimate purposes.

At the conclusion of this investigation, PC Sun was charged with:

- a. Unauthorized Use of Computer, contrary to section 342.1(1) of the Criminal Code, (multiple Counts)
- b. Breach of Trust by Public Officer, contrary to section 122 of the Criminal Code
2 Counts;
- c. Obstructing Justice, contrary to section 139(2) of the Criminal Code.

It is further alleged that PC SUN shared confidential police information with members of criminal organizations and others who were engaged unlawful activities.

PC SUN was arrested on January 15, 2025 and released on an undertaking with

conditions that included a condition not to communicate with named individuals.

In January, 2025, PC SUN is alleged to have communicated with two of the named individuals. He was re-arrested on March 5, 2025, charged with two counts of failing to comply with his undertaking contrary to section 145(4)(a) of the Criminal Code and released on a recognizance of bail.

Following his arrest, PC Sun was served with notices of investigation in connection with the alleged misconduct. PC Sun was also suspended with pay at that time.

On June 24, 2025, the Crown elected to proceed with Criminal Prosecutions by indictment against the PC Sun.

On July 8, 2025, the PC SUN was notified by the York Regional Police that he was being suspended without pay under section 210(1)3. of the CSPA.

PC Sun opposes the suspension for reasons to be outlined below.

This Tribunal notes that PC Sun is presumed innocent of all unproven criminal charges and misconduct allegations and is to be regarded as such unless and until those matters are determined through criminal proceedings and/or a disciplinary process.

Exhibits

In advance of this proceeding, the Applicant and the Respondent provided factums and books of authorities¹, additional ²jurisprudence and materials, are all filed as exhibits (see Appendix A). The submissions of counsel, along with the filed exhibits, assisted me in reaching my decision.

DECISION

Having considered the evidence and submissions, I find that the York Regional Police Service has met the statutory requirements for suspension without pay under the *Community Safety and Policing Act*. Accordingly, the appeal is dismissed. The suspension without pay remains in effect.

¹ See Appendix A

² Exhibit 6, Additional Jurisprudence submitted by counsel for the Applicant

PART 2. SUBMISSIONS/POSITIONS OF THE PARTIES

The parties submitted their respective positions in writing including referenced authorities³ in advance of making oral, in-person, submissions. Further material and Jurisprudence were referenced during oral submissions and can be found in the exhibit list (Appendix "A"). Additional jurisprudence was imbedded in written submissions and via email. I have read and considered all submission and will attempt to address applicable proposals as is reasonable, however, this decision may not necessarily specifically address all written, case law, and/or oral submissions of the parties.

Defence Counsel Submissions on behalf of PC Sun

Defence Counsel's written submissions are found in exhibit 2. Oral line of reasoning put forth are consolidated to:

- A commonsense approach to consider is that one cannot access a police data base unless they are on duty as a police officer. The allegations occurred while PC Sun was on duty. He accessed data bases, based on police granted authority. The power to do so is available when an officer is in their role. PC Sun was in his role as a Police Officer when the allegations occurred.
- The power to suspend without pay is conditional and not automatic upon the laying of charges.
- Suspension without pay is an extraordinarily punitive action to take when there has been no finding of guilt.
- Where a statutory precondition is not met, the decision-maker lacks authority to invoke the power. The suspension without pay is therefore *ultra vires (beyond the powers prescribed)*.
- The Alleged Criminal Offences were committed in relation to the performance of police duties.
- No Termination Proceedings were commenced or Intended (no notice was given to PC Sun).
- Termination Is Not the "Likely Outcome" of the misconduct allegations.
- There was no evidence that failure to Suspend Without Pay would bring discredit to the Police Service.

³ Exhibit 2, Defence Outline of Submissions. Exhibit 3, Defence Book of Records. Exhibit 4, YRP Responding materials. Exhibit 5 YRP Affidavit of Senior Counsel

- A lack of procedural fairness exists because PC Sun had an illness or disability.
- Section 210(1)3 of the *CSPA* as applied, infringes on the *Canadian Charter of Rights and Freedoms* (Charter) and cannot be justified.
- PC Sun's rights under section 7 (and others) of the Charter were violated.
- Section 11(d) of the Charter guarantees that any person charged with an offence has the right to be presumed innocent until proven guilty. PC Sun has not been found guilty of any criminal offence or misconduct but is being subjected to punitive measures.
- The affidavit submitted by C. Valente's (YRP Senior Counsel), specifically paragraphs 2, 3, 4, 6, 7 & 8 should be given no weight as there was prejudice to Constable Sun. The allegations have not been adjudicated and their weight is minimal.
- Additional concern was expressed that the affiant was not available to testify and to be cross examined. (referred to *Kane and BD of Governors of UBC 1980*, analysis below)
- Paragraph 6 of the affidavit states the officer shared police information with members of organized crime and is prejudicial and should be excluded.
- Paragraph 4 stated a comprehensive audit of the Applicants' activities had occurred. This is prejudicial and has no value.
- Counsel for the Applicant referenced case law (*Kane* analysis below) arguing this tribunal could observe the effect on natural justice in PC Sun not being able to cross examine the affiant. No weight should therefore be given to the paragraphs identified.
- Further, with respect to the affidavit; it referenced an internal complaint regarding PC Sun dated October 2023. The complaint form is dated but not signed. Notice was withheld from the officer, there was no lawful ability to withhold that. Served with criminal investigation and suspension with pay. July 8, 2025, after the Crown elected to proceed by indictment.
- No policy provided governing the internal complaint policy and inclusion of this internal complaint is prejudicial to these proceedings.
- Jurisdiction is another issue. The notice of investigation started in 2022 into Constable Sun and there is significant delay and the YRP have lost jurisdiction to even proceed with alleged misconduct charges. Cited the *Police Services Act (PSA)* and investigative delay.
- No notice of hearing has been served, therefore there should be loss of jurisdiction.
- No evidence submitted that a termination would be likely and that a suspension without pay in regards to Constable Sun is arbitrary. *Baker and Bavelov* cases.

- Decision of the Chief fails to consider any evidence and produces an outcome of similarly situated officers.
- Defence counsel asked this tribunal to take judicial notice of recent events in Ontario since the CSPA was enacted:
 - Project South. Officers were charged with serious criminal code offences. Not all were suspended without pay. This demonstrates that the mere factor of criminal charges does not justify suspension without pay.
 - The Toronto Police Service have charged Officers with sexual assault and other offences committed off duty who were suspended with pay. The Windsor Police similarly charged Officers with serious offences yet suspended with pay as have the London Police.
- Counsel for the Applicant submitted that the decision of the Chief does not meet the 4 stipulated criteria (in the CSPA) and the decision of the Chief was arbitrary.
- As this is new legislation there is a risk that there will be an undermining of public confidence that there will not be the same criteria given to all officers and all situations. There will be different outcomes for different officers. The legislation and the decision to suspend PC Sun without pay was inconsistent with *Charter* values and represented a unilateral change in the contract.
- Procedural fairness is owed to the Applicant. Paragraph 2 of the affidavit references Workplace Harassment alleged by Constable Sun which was unsubstantiated. No report or investigation has been produced or the investigative process with respect to the grievance. This raises procedural fairness concerns. Procedural fairness owed to the Applicant and it has not been upheld.
- The Suspension without pay was discriminatory and an attack on Constable Sun's disability. Principles of equity and duty to accommodate is independent of workplace decisions. The decision to suspend without pay shows no evidence of the consideration of PC Sun's disabilities.
- Even if the tribunal were to find they conditions were met, these conditions infringe on charter rights and cannot be justified. Section 7 *Charter*: PC Sun was deprived of livelihood which exacerbates health situation. Section 11(d): PC Sun is entitled to the presumption of innocence. Suspension without pay relies on assumptions. Section 15: PC Sun is disabled and YRP did not consider which this therefore it is discriminatory.
- The unprecedented contractual change (in the CSPA) has not been tested. The test to suspend without pay itself raises charter violations.

- The conditions to suspend without pay have not been met. The suspension without pay relies on assumption instead of evidence and relies on allegations instead of facts.
- The York Regional Police failed to establish the conditions and the authority to hand out suspension without pay.
- The *Reasonable Person Test* does not apply here as it refers only to discreditable conduct charge.
- In conclusion defence counsel suggested the conditions to suspend without pay have not been met. The conditions in the *CSPA* rely on assumption instead of evidence and rely on allegations instead of facts. The York Regional Police failed to establish the conditions and the authority to hand out suspension without pay and the test is not met. Defence Counsel respectfully requested this tribunal to set aside the decision of the Chief of Police and order suspension with pay with all loss of wages being remunerated to PC Sun.

YRP Submissions

Written reply submissions of the YRP can be found in exhibit 4. During the hearing, YRP counsel submitted (not necessarily all submissions are outlined):

- There is a distinct difference between being on duty and a performance of duties
- Agreed the allegations are unproven. Suggested the intent of this provision (in the *CSPA*) it is what are we to do with this officer pending charges.
- This is not a disciplinary decision although it will have negative impact on the Officer. This is an administrative matter and not a decision to discipline the officer.
- We are not here to determine guilt or innocence. The question is; has the chief met the test. Onus is on Applicant to prove the test was not met.
- *(some of the earlier alleged behaviour occurred under the Police Services Act)* Most alleged offences are post *CSPA* but if we have to run two hearings (*i.e. one under the CSPA and one Under the PSA*) then we will. To serve a notice of hearing it doesn't speak to jurisdiction of this matter and doesn't speak to any future proceedings.
- Raised an objection regarding considering other cases that did not result in suspension without pay. This does not offer guidance or context. The task is to look at this matter and determine if the preconditions were met regarding suspension without pay.

- In other cases, to meet the threshold the Crown needs to proceed by indictment, or the definition of serious offence perhaps cannot be met. The other officers in the media do not assist us.
- I am not suggesting that the *Charter* is a collateral issue, this organization has an obligation to uphold charter principals.
- The YRP are content we were consistent with *Charter* values when the Chief made his decision and that is the limit. We do not have constitution or the scope of this investigation.
- The *Charter* is a collateral issue. Section 1 is baked into the *CSPA*. Test whether this tribunal has jurisdiction re *Charter* and law. Content if this tribunal determines if *Charter* values are adhered to but striking legislation is not within the jurisdiction of this tribunal. (cited *Regina and Conway*⁴).
- Section 210 is very restrictive. Its ability is found in paragraph 1.
- Paragraph 3 – serious offence. Outlined preconditions in terms of performance of duties.
- Addressed section 208 of the *CSPA* by submitting the moment YRP started to investigate this officer; they were seeking termination. This section specifically contemplates the events to be true, we are not here to determine whether the officer will be convicted. Our decision is purely what happens to the officer in the interim.
- The language will be conceded that likely or will bring can give the service more weight. It is looking towards the future; we will only know when the proceedings are complete but legislation states “would”. The objective test – would bring to the service vs. has brought. Objectively it does bring discredit to the service if the officer is not suspended without pay.
- Suggested the crux is legislated in the *CSPA* which provides us both with the test and the onus is on the Applicant to dispute it. The YRP are not deciding if the Officer is suspended; the issue is with or without pay.
- Conceded that no pay is the exception and suspended with pay is the rule.
- The *CSPA* expands the scope of when an organization can suspend without pay in circumstances of pretrial and pre conviction. The language of the act is “would be and “if”
- Administrative suspensions without pay are rare and not punitive. We are not here to determine if PC Sun is guilty. It is similar to determining pretrial custody when allegations are read to the court. In this case, we are to determine if the allegations warrant suspension without pay.
- Referenced and read Regulation 406, 23 section 2

⁴ *R v Conway*, [2010] 1 S.C.R. 765, 2010 SCC 22 Exhibit 2

- In this case, the officer has been charged with multiple counts (23) of unauthorized use of computer, breach of trust, and obstruct and that he shared information with members of organized crime. The Officer is alleged to have breached his release and communicated with persons he was instructed not to.
- The Crown has proceeded by a preferred indictment.
- The Chief initiated this complaint in October 2023. Notice was withheld from the officer and had a lawful ability to withhold due to the possibility of jeopardizing or prejudicing an ongoing investigation.
- The Officer was served with notice of a criminal investigation and suspension with pay.
- The suspension without pay notice was served following the Crown electing to proceed by indictment.
- This situation amounts to misconduct within the duties of being a police officer but this is not a performance of duties matter. There is a broad distinction between allegations of officers committing a crime while on duty vs being on shift and not conducting lawful police work. The officer is alleged to have been querying people on Police data bases and sharing the information gleaned in a manner not within the scope of his duties. This is not related to the Officers' duties. The breaches of his release conditions were unrelated to his duties.
- There would be no accountability for integrity-based misconduct under any circumstances if we went by the Applicant's position.
- The Applicant asserts the Chief has not provided lawful notice. Proceedings were commenced when the investigation began. The affidavit states this as does the suspension documents.
- The Police function and have authorities with the consent of the community. Serious allegations of crime while being a police officer result in the community wanting to see the organization is acting in good faith.
- A reasonable person, reasonably informed, would they feel the allegations would bring discredit upon the YRP. The conduct of the officer is judged by the community and reasonable expectations.
- Ultimately, being aware of these allegations, a reasonable person would be offended if the YRP did not suspend Constable Sun without pay.
- Under the *PSA* this was not a possibility. Under these circumstances the community would be expect the Officer to be suspended without pay. If the Officer were not suspended without pay it would give the community the perception the service is not taking these allegations seriously and this will cause harm to the service.
- Regarding the Charter and presumption of innocence. This tribunal is determining whether the officer gets paid during suspension. The statute is explicit in this regard; the assumption is the allegations are true. The decision to

suspend and suspend without pay and are administrative or risk management decisions pending the outcome but is not an expression of the outcome.

- With respect to Human Rights and Disability; the YRP appreciates that we have a duty to accommodate but there is no nexus between the officer's disability and this tribunal.
- To say an officer has some form of disability which lead to criminality; there is no evidence to support this. Disability is not included in the 4 preconditions the Chief has to consider under the CSPA.
- The past allegation of workplace harassment is irrelevant. A grievance can be brought forth in terms of the Harassment complaint filed but that is not what is before this tribunal in this matter.

PART III; ISSUES/ANALYSIS

For context regarding analysis, I offer the following;

I am a retired Detective Superintendent, a senior leadership position, with the Ontario Provincial Police (OPP) having retired in June of 2025. My retirement followed 40 years of service with the OPP and Peel Regional Police. Over two decades of my career was spent in investigative roles at various rank levels including as a Major Case Manager with the designation of multi-jurisdictional Major Case Manager. Upon retirement, I was the Officer in charge (Detective Superintendent) of the Financial Crime Services Section in the Investigation and Organized Crime Command. This encompassed the Ontario Serious Fraud Office, The Anti- Rackets Branch, the Canadian Anti-Fraud Centre (in partnership) and included the cyber enabled fraud section.

I was also a full time Hearing Officer (Adjudicator) under the Police Services Act for approximately 5 years and part-time for an additional 2 years. I co-chaired the Ontario Association of Chiefs of Police (OACP) hearing Officer committee and am a member of the Society of Ontario Adjudicators and Regulators (SOAR).

I hold a Bachelor's degree in Justice Studies. I am not a lawyer nor am I otherwise specifically legally trained to practice law. From this perspective, I am a layperson. This information is provided for insight should I refer, directly or indirectly, to past training and experience in the decision that follows.

The Applicant faces allegations that are unproven in Criminal Court or in disciplinary proceedings. He is, without question, considered innocent and has the absolute right to put forth a defence to all allegations. This tribunal is not deciding whether the officer is guilty, but whether, given what is known, the suspension is a reasonable and fair interim step and within the statutory framework.

Legislation CSPA Suspension without Pay:

⁵210 (1) A chief of police may suspend a police officer who is a member of the chief's police service, other than a deputy chief of police, without pay in the following circumstances:

- 1. The police officer is convicted of an offence and sentenced to a term of imprisonment, even if the conviction or sentence is under appeal.*
- 2. The police officer is in custody or is subject to conditions of judicial interim release, or conditions of an undertaking given to a peace officer upon release under section 498 or 499 of the Criminal Code (Canada), that substantially interfere with the officer's ability to perform the duties of a police officer.*
- 3. The police officer is charged with a serious offence, as defined in the regulations, under a law of Canada and,
 - i. the alleged offence was not committed in relation to the performance of the officer's duties,*
 - ii. the chief of police,
 - A. has commenced proceedings to seek termination of the police officer's employment in relation to the events that led to the charges, or*
 - B. has given notice to the police officer that the chief intends to commence such proceedings but is prevented from doing so by section 208,**
 - iii. the likely outcome of the proceedings would be, if the events leading to the charges were proven, that the officer's employment would be terminated or the officer would resign in accordance with an order under paragraph 2 of subsection 202 (9), and*
 - iv. a failure to suspend the officer without pay would bring discredit to the reputation of the police service. 2019, c. 1, Sched. 1, s. 210 (1); 2025, c. 6, Sched. 4, s. 9.**

Community Safety and Policing Act, 2019 ONTARIO REGULATION 406/23

⁵ *Community Safety and Policing Act, 2019, S.O. 2019, c. 1, Sched. 1.* <https://www.ontario.ca/laws/statute/19c01>

Definition of serious offence:

2. For the purpose of paragraph 3 of subsection 210 (1) of the Act,

“serious offence” means any indictable offence under the Criminal Code (Canada), the Controlled Drugs and Substances Act (Canada) or the Cannabis Act (Canada) or any hybrid offence under those statutes for which the Crown elects to proceed by indictment.

As suggested by both the Applicant and the Respondent, I will consider the legislated conditions to be the *test for suspension without pay*.

The “Test” For Suspension without pay:

1. Are the charges serious?
(Indictable or treated as serious by the Crown)
2. Is this conduct outside normal police duties?
(Not part of legitimate police work/lawful execution of duties)
3. If proven, would the officer likely be dismissed/terminated, or directed to resign?
(Is termination the expected outcome)
4. Would keeping the officer on paid suspension harm public confidence?
(Would it bring discredit to the police service)

Issue

The Applicant submitted the alleged offences were committed in relation to the performance of duties therefore the statutory requirement was not met.

Analysis

Accessing Police data bases including CPIC (Canadian Police Information Centre) are tools, powers, and privileges granted to Officers to conduct their lawfully assigned duties.

Police powers in Ontario are derived from a combination of statute, common law, and internal policy, and must be exercised within clearly defined legal limits. The primary framework is prescribed in the *Community Safety and Policing Act, 2019*, along with the *Criminal Code*, the *Charter of Rights*, and other Provincial legislation, which set out the authority for actions such investigation, arrest, detention, search, use of force and the like. In addition to statute, police powers are informed by *common law* principles, including, the acknowledgement that police may act where they are performing a legitimate duty and their actions are reasonably necessary. Although YRP policies were

not exhaustively addressed in submissions, I am aware through past roles, experience, and training Police Service policies and procedures further guide how those powers are exercised. Policies do not themselves create legal authorities but they help define expected standards of conduct and may be relevant in assessing whether an officer's actions were reasonable. In fairness, in this case I cannot address specific YRP policies although I am confident, within a service of the size of the YRP, they exist.

I consider an Officer to be acting in the lawful execution of their duties where they are engaged in a recognized policing function and their actions are authorized by law, necessary in the circumstances, proportionate, and undertaken for a proper legitimate policing purpose. This would essentially include accessing police resources and data bases for authentic and explicable investigative or police duty related purposes.

I do not consider an Officer to be acting in the lawful execution of their duties where there is no legal authority for the action, or where the purpose is improper, such as acting for personal reasons or engaging in conduct that is criminal in nature as is alleged against the Applicant.

The mere fact that an officer is "on duty" does not render their actions lawful. To illustrate with a hypothetical; if an officer were to, for example, commit a robbery using issued use of force equipment while "on duty," would they be absolved of certain aspects of accountability? The answer is clearly no.

Police authority flows from and must remain within the bounds of the law, not from employment status of being "on duty." Where an officer acts outside the bounds of legal authority or reasonableness, in my view, they can no longer be considered to be acting in the lawful execution of their duties and may be subject to consequences.

The allegations against the Applicant indicate the conduct fell outside the scope of lawful authority because it lacked a valid legal purpose and were not connected to the performance of their duties. Indeed, the allegations, though unproven, suggest a more nefarious purposes of providing the information to criminals and those who may be members of criminal organizations. The concept of lawful execution of duty requires not only that the officer be on duty, but that their actions be grounded in recognized legal authority and carried out in a manner that is reasonable and proportionate from the perspective of the employer and from the communities they serve.

Improper database access would constitute a stark abuse of entrusted powers. In such cases an Officer cannot rely on their duty status or employment to justify or excuse the

conduct. The misuse of Police data bases represents an exercise of police powers for an improper purpose and therefore falls outside the lawful execution of duty.

I find the allegations against the Applicant outline circumstances that were not for a legitimate, lawful, or prescribed purpose and cannot be considered to have been in the performance of a Police Officer's duties.

The Test found in section 210 (1) 3 (i) of the CSPA was met by the York Regional Police.

Issue(s)

No Termination Proceedings Were Commenced or Intended (no notice)

The Applicant submitted he has received no notice that termination proceedings have been commenced, nor notice of an intention to commence such proceedings.

Analysis

The Respondent (YRP) has provided documents⁶ served on the Applicant. In October 2023 the Applicant was served with a Chief's complaint form outlining the substance and nature of allegations against the Officer at that time. The document was or appears to have been signed by the recipient. In January 2025 a notice of investigation was served in connection with the alleged misconduct under the *PSA* and the *CSPA* Notice that the Officer was the subject of a criminal investigation and notice of suspension with pay were included. The document was or appears to have been signed by the recipient. On July 8, 2025, a document marked "hand delivered" was served outlining the substance of allegations against the respondent, that termination was being sought and the Officer was being suspended without pay etc.

I have reviewed the documents. The notice included a statement that the suspension without pay was being imposed under the auspices of the *CSPA*. The notice also specified termination of employment was being sought. This matter and related investigation took place over a considerable period. I consider the documents served from the commencement of the investigation are not isolated and all contained the substance of allegations and intentions that were fair and reasonable. I also noted the YRP notified the Officer of his rights and supports available to him throughout the process.

⁶ Attachments within exhibit 5

I do not find any reason that the York Regional Police was required to provide extensive detail in the Notices. YRP counsel suggested that to have done so may have jeopardized on going investigations. Notwithstanding ongoing investigations, it is not necessary to lay all facts and evidence to bare at this stage of the disciplinary process. Full and fair disclosure or production with specific details and evidence are required by law. Generally, as required by law, this typically should occur in due course in a timely fashion, sufficient to allow the Applicant or defendant to properly prepare for proceedings. This does not usually occur at the notification stage for a variety of reasons.

I am satisfied that the documents served by the YRP met the statutory requirements of what was fair and reasonable. The materials identify the authority under which the actions were taken, set out the relevant allegations in sufficient detail, linking to the decisions to suspend without pay and to initiate dismissal proceedings. Although the reasons may be viewed a scant by some, I find no requirement for the YRP to have done otherwise. The documents from the onset of the investigation in 2023 adequately inform the officer of the nature of the case, the possible potential consequences, and the available procedural rights. I find that the officer was provided with sufficient notice and information to comprehend the decisions and to meaningfully respond, thereby satisfying the requirements of procedural fairness.

The York Regional Police have met the test as outlined in applicable sections of the CSPA.

Issue

Termination Is Not the “Likely Outcome”

The Applicant submitted there was no indication or evidence that termination would be the likely outcome should the officer be found guilty.

Analysis

I will begin by identifying the way I am applying the word *likely*. The dictionary defines the word as meaning: ⁷*having a high probability of occurring or being true: very probable*.

I consider *likely*, further to the dictionary definition, to represent a probability that is more possible than not that a particular disposition will occur should an officer be found guilty of the misconduct alleged in this case. As used in the CSPA, it implies a significant chance

⁷ <https://www.merriam-webster.com/dictionary/likely>

requiring a reasonable and informed person tasked with considering the facts to believe it is the most probable outcome.

If a police officer were to be found guilty of giving confidential police information to criminals, it strikes at the very core principles of what policing is built on; trust, integrity, and the lawful exercise of authority. Under the *CSPA* and in keeping with community expectations, policing is not just about performing tasks; it is about being trustworthy with sensitive information that can affect public safety. If an officer is found guilty of having shared police information with criminals, it is not a minor mistake or poor judgment. It is a fundamental breach of trust, certainly in the colloquial sense and possibly the legal sense.

If the allegations are proven, it would be very difficult, if not impossible, for the officer to continue working as a police officer. Other officers, the courts, and the public must be able to rely on that officer's honesty and judgment. An officer who has misused confidential information in this way would likely no longer be considered reliable, trustworthy, or credible, particularly when giving evidence in court or handling investigations. That loss of credibility alone can make it impossible for the officer to perform essential duties.

Allowing an officer who has shared police information with criminals to remain employed would seriously damage public confidence in the police service. Members of the public expect that sensitive information will be protected, and certainly not used to assist criminal activity. If the police service were to continue employing an officer in those circumstances, it could reasonably be seen as abiding, tolerating or minimizing serious misconduct.

For these reasons, it is recognized that, where the allegations involve this kind of conduct, the "likely outcome" of disciplinary proceedings, if the allegations are proven is termination. This does not mean the officer is presumed guilty. Rather, it reflects a commonsense assessment; if the misconduct is ultimately established, it is so serious and so incompatible with the role of a police officer that continued employment would not be a realistic outcome.

Counsel for the Respondent indicated, should the Applicant be found guilty in criminal Court, The Crown has indicated they will be seeking a significant term of incarceration. There is much to occur before that ultimate determination is made, however, given the nature of the offences and possibly other aggravating factors being exposed, it is certainly plausible that a person facing similar convictions would be incarcerated for a period more significant than a *short sharp* sentence. It is hard to imagine many scenarios where an officer's employment could continue if this were to occur.

A reasonable, informed member of the public who understands the role of police and the importance of safeguarding confidential information would expect that police officers use sensitive data only for legitimate law enforcement purposes. If that same reasonable person were told that an officer provided police information to criminals, they would view that conduct as a serious betrayal of trust and a misuse of authority that goes beyond acceptable policing conduct. From that perspective, the reasonable person would likely conclude that such behaviour is fundamentally incompatible with continued employment as a police officer. They would question whether the officer could ever again be trusted with confidential information, relied upon in investigations, or believed when giving evidence in court. They would also expect that the police service would take decisive action to protect its integrity and maintain public confidence. In those circumstances, the reasonable person would view termination as the appropriate and expected outcome if the allegations are established as true.

Should the officer be found guilty in criminal proceedings and/or a disciplinary hearing he would be faced with several, possibly weighty aggravating considerations with respect to commonly held ⁸*Williams* disposition factors in misconduct proceedings. In addition, the officer will have revealed a significant character flaw that would be difficult to overcome.

I find that, should the Applicant be found guilty of the allegations, termination from employment with the York Regional Police is the *likely* outcome.

Issue

No Evidence That Failure to Suspend Without Pay Would Bring Discredit

The Applicant submitted there was no evidence failure to suspend without pay would bring discredit upon the YRP.

Analysis

Where a police officer is alleged to have provided confidential police information to criminals, the potential impact on the reputation of the police service is immediate and significant. Policing depends on the public's confidence that officers will safeguard sensitive information and use it only for lawful purposes. If a police service were to continue paying and arguably endorsing an officer in those circumstances pending the outcome of what could be lengthy Criminal and disciplinary proceedings, it could reasonably be seen as minimizing or tolerating conduct that directly assists criminal

⁸ *Williams and Metropolitan Toronto Police Force* (1979), 21 O.R. (2d) 656

activity. That perception risks undermining the credibility of the service, particularly in the eyes of victims, witnesses, and the courts, all of whom rely on police integrity.

Viewed through the lens of the reasonable person, an informed member of the public would expect a decisive response where an officer is accused of sharing police information with criminals. That same reasonable person would likely conclude that allowing the officer to continue being paid, when the option of suspension without pay existed, suggests a failure to take the allegations seriously and reflects poorly on the standards of the organization. In those circumstances, the failure to impose a suspension without pay would bring discredit to the police service because it would erode trust in its ability to police its own members and to protect the public interest.

Accordingly, in my view, a suspension without pay serves not as punishment, but as a necessary administrative step to maintain public confidence while the allegations are addressed by the Courts and the *CSPA* discipline process. The criminal and disciplinary processes and potential appeals could take years. The reasonable person would not find it tenable for an officer to be paid with a substantial amount of public funds only for the officer to be terminated at the conclusion of these processes.

I find the York Regional Police have met the test under the *CSPA* in establishing that failure to suspend the Applicant without pay would bring discredit upon the service.

Issue

The Applicant argued that failing to provide a report regarding a workplace harassment report related to a complaint initiated by the Applicant was procedurally unfair.

Analysis

As I view it, procedural fairness is about ensuring the Officer knows the case to be met and has a fair opportunity to respond. In a suspension without pay matter that means the officer must understand the serious allegations being relied on, the basis for the suspension, (e.g. charges, likely termination, public confidence concerns), and have an opportunity to make submissions.

There was no direct link drawn between the harassment complaint made by the Applicant and the matter before this tribunal. I noted that the ⁹submitted material contained a letter from the YRP to the Applicant dated May 2025. The letter offers a summary of

⁹ Exhibit 5, Affidavit of C. Valente

investigative findings and conclusion of “unsubstantiated”. The letter also included an invitation for the Applicant to contact the author if they had any question. It is not known if the Applicant accepted the offer and followed up with the author. The Applicant cannot assert or imply that they did not receive or were not afforded the opportunity to have received further information. There is no evidence the Applicant was procedurally owed a “report” per sae.

There is no evidence upon which I could conclude or infer the non-existence of or not providing a harassment report has meaningfully affected the Applicant’s ability to respond to the suspension without pay decision being considered by this tribunal. There is no evidence this undermined procedural fairness.

Issue

Suspension Without Pay is Not Automatic

The Applicant raised the issue that suspension without pay is not automatic. They submitted a number of cases in Ontario where officers were charged with serious offences but continued to be paid. The Applicant suggested the York Regional Police decision to suspend without pay was arbitrary.

Analysis

Other misconduct cases are not determinative in this matter because each suspension without pay decision must be made on its own facts and circumstances under the *Community Safety and Policing Act*.

Even if other officers in different services were treated differently, those cases may involve different allegations, evidence, timing, or risks to public confidence. Suspension without pay is not based on what happened elsewhere; it depends on whether the specific statutory test is met in the case at hand.

Other cases can provide context, but they do not decide the outcome. As in merit misconduct hearings, each case must be considered on its own based on its facts, context, and whether legal tests are met.

The *CSPA* suspension without pay provisions come with very stringent and defined guidelines that are considered *the test*. In my experience, cases that would meet the rigid thresholds in the *CSPA* to suspend without pay rarely occur. The legislation, in my view, was specifically written to safeguard against automatic or arbitrary decisions.

The test to suspend an officer without pay, clearly delineated in law, will be applied in this decision. A decision to suspend an officer without pay cannot be arbitrary because the statute sets out specific, and I suggest, objective conditions that must be met before the power can be exercised. The Chief of Police does not have free or unfettered discretion to suspend without pay simply because it seems appropriate or be used to punish an officer. The decision must fall within clearly defined avenues such as conviction and imprisonment, custody or restrictive release conditions, or the existence of serious criminal charges combined with additional requirements like a likely termination outcome and risk to the reputation of the service. These statutory criteria act as built-in safeguards that prevent random, arbitrary, or unsupported decision making.

To me, this means the decision must be grounded in evidence establishing the suspension without pay criteria and tied to the facts of the case of suspending an officer without pay specifically. I am not specifically assessing evidence or proof of the underlying allegations except that they exist or are pending and meet thresholds. The Chief must be able to point to verifiable circumstances such as the laying of charges, the nature of those charges, or the officer's inability to perform duties and, in this case, outline how those facts satisfy the legal test. A suspension cannot be based on speculation, personal views, or general concerns. There must be a clear and logical connection between what is known and the action taken.

Finally, the process must be procedurally fair. The officer must be aware of the basis for the decision. The officer has and will continue to be afforded an opportunity to respond. These fairness requirements further ensure that the decision is not made in an arbitrary or automatic manner.

In my view, a suspension without pay under the *CSPA* cannot be arbitrary because it must be based on defined legal criteria, supported by evidence, logically explained, and carried out through a fair process.

I find there is no evidence upon which I could conclude or even infer the York Regional Police automatically or arbitrarily suspended the Applicant without pay.

Issue

Procedural Fairness.

Counsel for the Applicant raised a number of concerns related to procedural fairness.

A decision to suspend a police officer without pay can have serious financial and reputational consequences for the officer, and those impacts are relevant considerations to me. They are not, on their own, determinative of whether the decision should be made. I am aware and sensitive to the fact that removing an officer's pay and associating them with serious allegations may cause hardship and damage to their reputation. That reality calls for careful, measured consideration, ensuring that the action is justified, supported by evidence, and proportionate to the circumstances.

The reputational and financial damage ought not be considered a means to prevent the Chief from proceeding where the statutory conditions are met. This is an administrative, employee and employer matter. I remain of the opinion that the purpose of suspension without pay is not to punish an officer but to address legitimate concerns such as the officer's ability to perform duties, the integrity of the police service, and public confidence. Where those concerns are significant, particularly in cases involving serious criminal allegations, this tribunal may reasonably conclude that the public interest outweighs the personal impact on the officer. While the consequences are serious and the officer has not been found guilty, they must be balanced against equally serious Police Service and public considerations.

The impact on the officer should, as much as is reasonable, influence how the decision is made, rather than whether it is made. It reinforces the need for:

- an evidentiary foundation under the suspension with out pay provisions of the *CSPA*
- a rational connection between the facts and the decision under the requirements of the *CSPA*
- a proportionate response ensuring the measure is necessary
- procedural fairness, including notice and an opportunity to respond

The law (*CSPA*) outlines the ability for ongoing review and assessment, so that if circumstances change like, hypothetically, should the criminal charges be withdrawn, the suspension can be revisited and pay could be reinstated. There are also avenues and means for missed wages during the suspension to be remunerated to the officer.

I acknowledge the significant personal consequences faced by the Applicant, but I must ultimately determine if the suspension is necessary to protect public confidence and the integrity of policing.

For reasons stated in response to issues raised I find the Applicant's right to procedural fairness was not undermined.

Issue:

The Applicant raised concerns that the decision to suspend without pay lacked procedural fairness in that the decision of the YRP failed to provide reasons explaining how each statutory condition under s.210(1)3. was satisfied. The absence of intelligible reasons prevents meaningful review and renders the decision procedurally unfair and unreasonable.

Analysis

The argument that a decision to suspend without pay is invalid simply because it does not contain a detailed explanation of each element in the applicable sections of the *CSPA*, is not representative of what the law requires in my view. In administrative decision making, the duty or responsibility seems to be to provide adequate, not complete or perfect, reasons. When I read the notices I find they allowed the Applicant to understand why the decision was made and how it connects to the outlined statutory requirements.

It does not appear to me that the legislation intended a Chief of Police be required to recite or label each subparagraph of the law or provide an exhaustive analysis of every element. The notice should convey the basis for the decision. Where the notice, as it does in this case, identifies the key facts such as the nature of the criminal charge, the fact that termination proceedings are intended, the seriousness of the alleged conduct, and concerns for public confidence, the elements can address the statutory requirements.

Concern was raised by counsel for the Applicant that the York Regional Police simply quoted or took the language used in the notice directly from the *CSPA*. Counsel for the Applicant additionally raised concerns about the verb tense used in the notice. I take no issue with the language used or the verb tense it was written in.

Counsel for the Respondent indicated that other, ongoing investigations may have been compromised had extensive information been laid out at or around the point the notice was served. There was an ongoing criminal investigation and matters before the Courts running concurrently with the misconduct process which can also inform what can and cannot be laid out in a disciplinary notice. The information in the notice was not necessarily exhaustive. I find it was sufficient for the officer to have known what they were alleged to have done, what misconduct informed the Chief's decision, that the Police service was suspending the Applicant without pay, the Service had reputational concerns, and that the Service was intending to seek the officer's dismissal as they mirrored the criterion laid out in the *CSPA*.

I consider reasons should be assessed in their full context, not in isolation. The surrounding record such as the notice of allegations, anticipated disclosure provided in the criminal and disciplinary processes, and any prior correspondence can offer additional insight into the basis for the decision. I observe that the officer was aware of the case to be met and had a meaningful opportunity to respond to or inquire about details. The service may or may not have responded. I find, however, the absence of detailed, itemized, extensive reasoning did not result in procedural unfairness. The key question is whether the officer could understand the decision and respond to it, not whether the reasons meet a particular drafting style or standard. Suspension without pay is a novel and substantial change to the police disciplinary process but the new Legislation did not come with a guidebook or standard for completing notices and documentation.

Finally, I recognize that administrative decision-makers, in this case Police Leaders, are entitled to a measure of flexibility in how they express their reasoning. A decision is not unreasonable simply because it could have been more detailed. I suggest it may become problematic only where the reasoning is so unclear that it cannot be followed or assessed. Where the rationale imposed within the applicable sections of the *CSPA* are apparent namely, that serious criminal allegations, coupled with the prospect of termination and reputational harm to the service, the decision to suspend without pay is supported. I consider the notice in the matter before me to have been brief yet fair, intelligible and unambiguous. It is also not lost on me that, through the parallel criminal matters, the Applicant has likely or certainly will in a timely fashion, receive robust disclosure of information and evidence that will allow them to respond to the distinct yet interrelated misconduct matters. The criminal information(s) associated to the Applicant, which the Applicant has by now been privy to, and from which, at least in part, the decision to suspend without pay was derived, provided the Applicant with further details as well.

I find procedural fairness does not require a checklist style comprehensive explanation. It requires that the decision makes sense, is connected to the facts and the law, and can be understood by the officer, his counsel, and a reviewing tribunal. Where that threshold is met, the absence of detailed reasoning should not, on its own, render the decision procedurally unfair or unreasonable. I am unpersuaded that the concerns raised by the Applicant rise to the level of being procedurally unfair.

Counsel for the Applicant cited *Baker v. Canada (Minister of Citizenship and Immigration)* (C.A.), 1996 CanLII 3884 (FCA), [1997] in support of their position.

Analysis

Baker is valuable because it explains that procedural fairness is flexible. There is no single, rigid worksheet that applies to every decision. Instead, the level of fairness required depends on the situation what is at stake, how serious the consequences are, and the type of decision being made. *Baker* supports the notion that the more serious the impact on the officer, the more careful and fair the process must be. In essence I read that fairness is not one-size-fits-all, it is tailored to the facts and situation.

Counsel for the Applicant submitted *Filice v. Complex Services Inc., 2018 ONCA 625* in support of their position.

Analysis

Filice reinforces a straightforward but important principle: that procedural fairness is about giving a person a fair opportunity to know the case against them and to respond before a significant decision affecting them is made. The Court of Appeal recognized that where a decision has serious consequences, particularly financial ones, there is a heightened expectation that the process be fair, transparent, and based on reliable information. *Filice* tells me that when a decision has serious consequences, fairness matters, but fairness does not mean a full inquiry or in this case, disclosure of all facts before initiating a suspension without pay. It means the officer must understand the decision and have a fair chance to respond. I find the Applicant was afforded these opportunities.

Counsel for the Applicant submitted *Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65 (CanLII), [2019] 4 SCR 653*

Analysis

Vavilov is not a case about police discipline, but it provides guidance on what fair and reasonable decision-making looks like in any differing contexts, including a suspension without pay under the *Community Safety and Policing Act*. As an adjudicator, that means I am not looking for perfection in how a decision and corresponding notice is written, but I must be able to see a clear line of reasoning. The officer must also be able to understand why the decision was made and how it affects them. If the reasoning is so unclear that no one can follow it, that raises concerns about fairness. In the Applicant's matter I considered; was the decision and notice made in a way that makes sense, is grounded in the law and evidence, and gives the officer a fair chance to understand and respond? The answer was yes on all points.

Counsel for the respondent submitted *Dunsmuir v. New Brunswick, 2008 SCC 9 (CanLII), [2008] 1 SCR 190* in support of their position.

Analysis

Dunsmuir v New Brunswick is helpful as it highlights the idea that decisions like a suspension without pay must be fair, understandable, and justified, even though they are not court decisions., *Dunsmuir* recognizes that administrative decision makers, like in this case, a Chief of Police, are entitled to some flexibility. They are not expected to produce detailed legal analyses of their decision and reproduce them in notices. That flexibility does not remove the obligation to act fairly. In a suspension without pay context where the consequences to the officer are significant, I would expect a coherent explanation of the decision, a fair opportunity to respond, and a decision that is grounded in the statutory framework found in the *CSPA* and the available evidence.

Counsel for the Applicant submitted *Mulville and Azaryev and York Regional Police Service, 2017 CanLII 19496 (ON CPC)* in support of their position.

Analysis

This case informs me that a police service could suspend an officer with pay, and now, without pay, but the decision must be based on real facts, must be fair to the officer, and must be aimed at managing risk not punishment. The case reinforces that even though police services have the authority to suspend officers with or without pay; they cannot do so casually or without a clear and reasonable basis.

Counsel for the appellant submitted *Crease et al. v. Board of Commissioners of Police of the Municipality of Metropolitan Toronto et al., 1982 CanLII 2054 (ON SC)* for consideration.

Analysis

Crease is a dated case with the behaviours in question occurring pre-*Charter* and under a 1970's *Police Act*. It outlines the idea that a police service cannot take away an officer's pay unless it has clear legal authority and acts fairly. The concern in that case was that removing pay before misconduct is proven can feel like punishment without due process. There was, at that time, an absence of legislative authority to impose such a significant employment consequence under the old legislation. The law has since changed and the *CSPA* now explicitly permits suspension without pay in certain, very restrictive circumstances. The underlying cautionary note from *Crease* still matters in my view. It

reminds Police Leaders that suspension without pay is a serious step and must be handled and considered with extreme care.

Counsel for the Applicant submitted *Putter v. Joey Tomato's (Canada) Inc.*, 2025 BCCRT 545 in support of their position.

Analysis

Putter v. Joey Tomato's (Canada) Inc. again reinforces the idea that applies across administrative and employment decisions. Matters that seriously affect someone must be grounded in evidence, made for a proper purpose, and carried out fairly. *Putter* reflects the principle that decisions must be proportionate and rational. While the case arises outside of policing, the underlying principles are applicable when a Chief of Police is weighing whether to suspend an officer without pay. Regarding procedural fairness, the case emphasizes that people affected by serious decisions must understand what is happening and why. Applied here, an officer facing suspension without pay must be told, for example, what the concern is, what facts are being relied upon, and what the proposed consequences are.

Issue

Counsel for the Applicant submitted *Section 7 of the Canadian Charter of Rights and Freedoms* was breached.

(excerpted) The Applicant ¹⁰asserted their Section 7 of the *Charter*: Security of the Person and Fundamental Justice rights were violated. His counsel suggested a deprivation of livelihood that causes serious psychological stress and destabilization may engage security of *R. v. Conway*, 2010 SCC 22 (CanLII), [2010] 1 SCR 765 16 *Constable David Packer and the Metropolitan Toronto Police Service*, 1990 CanLII 10514 (ON CPC) 12 the person. Further section 7 and section 11 of the *Charter* are to be read together in the context where a person is facing criminal charges, that is section 7 is engaged automatically. 210(1)3. is contrary to principles of fundamental justice as it permits unpaid suspension solely upon criminal charges, without assessment or evidentiary foundation. As such, the Decision is arbitrary and inconsistent with principles of fundamental justice contrary to section 7 of the Charter.

¹⁰ Exhibit 2, Defense Counsel Outline of submissions

Analysis

Section 7 of the Charter of Rights and Freedoms states:

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Suspension without pay is an employment decision, not a *deprivation of liberty* or a direct intrusion on a person's physical or psychological integrity. While it may cause stress or financial hardship, I read section 7 to be aimed at much more serious actions, such as imprisonment or significant interference with personal freedom. It is my view, having reviewed the provided submissions, Courts have generally not treated loss of income or employment, even where difficult personal circumstances result, as violating the Charter.

The argument that section 7 is automatically engaged because unproven criminal charges exist is also unsupported. A suspension without pay under the *Community Safety and Policing Act*, is separate and distinct from the criminal process. It does not determine guilt or impose punishment; it is a temporary, administrative step taken to manage risk and protect public confidence.

Finally, the decision is not arbitrary. It is not based solely on the existence of charges but on specific statutory conditions contained explicitly within the *Act* including the seriousness of the offence, the likelihood of dismissal if misconduct is proven, and the potential impact on the reputation of the police service. Because the decision is tied to these factors and serves a legitimate purpose, it is consistent with *principles of fundamental justice*.

I am aware, anecdotally, suspension without pay, although a recent legislative change governing police in Ontario, is a concept and practice is not unique to policing. Suspension without pay has, for many years, been a workplace response across public and private sectors in Canada when serious employer - employee concerns arise. Employers have placed employees on unpaid leave where there are significant allegations of wrongdoing that prevent the employee from performing their role or that risk the reputation or operations of the organization. It is generally understood as a temporary, administrative measure to manage risk while matters are investigated or resolved, rather than a punishment or finding of wrongdoing.

In *R v Conway*, the Supreme Court of Canada confirmed that tribunals can consider and apply Charter rights when making decisions, but only within the limits of their authority. I

interpret this to mean a tribunal reviewing a suspension without pay can hear arguments about fairness or *Charter* rights, but it must still focus on whether the decision fits within the law it is applying. This tribunal cannot, however, strike down legislation. The case reinforces that a suspension decision must be lawful, reasonable, and within the bounds of this tribunal's role, but it does not prevent administrative steps like suspension without pay from being taken.

In *Constable David Packer v Metropolitan Toronto Police Service*, the focus was on police discipline (under the former legislative regime of the *PSA*) and the authority of a police service to manage its members in response to serious concerns related to misconduct. The case identifies that police employers can take decisions and actions, such as removing/suspending an officer from duty, to protect the integrity of the service and maintain public confidence, even before a final finding of misconduct is made.

I find that the decision of the York Regional Police and resulting suspension without pay of the Applicant does not violate section 7 of the Canadian Charter of Rights and Freedoms.

Issue.

The Applicant raised concerns that section 11(d) of the Charter of Rights was violated:

(Excerpted) Where forfeiture of salary flows directly and automatically from the mere existence of criminal charges, absent conviction, the punitive measures risks functioning as a penalty in advance of adjudication and violates the presumption of innocence, as if there were no charges. A Charter consistent interpretation of 210(1)3 therefore requires strict proof of each statutory condition and assessment supported by evidence, rather than assumption. It is also submitted that section 210(1)3. limits Cst. Sun's Charter right under section 11(d) because it requires an assumption that the alleged criminal offences were 'committed' in relation to performance of duties. This is effect is asking Cst. Sun to provide proof without a criminal trial and with procedural safeguards, including his right to be presumed innocent. 14 Further, the condition requires a reversal of the burden of proof which is on the prosecution in the context of criminal charges.

Section 11(d) of the *Charter* states:

11. Any person charged with an offence has the right:
d. to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;

Analysis

Section 11(d) applies to criminal proceedings, where a person is at risk of being found guilty and punished. A suspension without pay under the *CSPA* is not part of that process. This tribunal does not determine guilt, impose a criminal penalty, or replace a hearing. As outlined elsewhere in this decision, this is an administrative workplace decision made to address risk and protect public confidence while the criminal case proceeds separately.

Counsel for the Applicant submitted the following jurisprudence in support of their position:

In *Bedford*, the key question is whether the law is arbitrary or unfair in a fundamental way. I do not find a suspension without pay decision to be arbitrary or unfair for reasons mentioned elsewhere and because it follows clear statutory conditions and a *legitimate purpose* of maintaining the integrity of policing. It does not treat the Applicant as guilty; it simply responds to the seriousness of the situation.

Similarly, *LeBlanc* reinforces that not every serious consequence amounts to a *Charter* breach. Even though a suspension without pay can be difficult, it does not change the officer's status in the criminal case. The officer remains fully presumed innocent. In the criminal case the Crown must still prove the charges beyond a reasonable doubt. In the disciplinary proceedings, the Police Service must still prove misconduct on clear and convincing evidence.

As I read them, neither *Bedford* nor *LeBlanc* support the argument that a suspension without pay violates section 11(d) of the *Canadian Charter of Rights and Freedoms*, as there is no question that the criminal and misconduct proceedings are unproven, unresolved, and the Applicant remains innocent in both proceedings unless proven otherwise by the established standards of proof.

Section 210(1)3 *CSPA* does not assume guilt, shift the burden of proof, or replace a criminal trial. It simply allows a workplace decision to be made based on serious allegations, while the officer's presumption of innocence remains fully intact.

Complying with the *Charter* in consideration of suspension without pay, in my view, does not require "strict proof," of the substance of allegations but does call for reasonable decision making. It should be distinguished that, in cases of suspension without pay, the evidence to be considered is for one example, the mere existence of

serious criminal charges. The evidence in support of the charges or misconduct is not at issue or otherwise to be extensively contemplated before this tribunal.

I find a suspension without pay does not violate section 11(d) because it does not decide guilt or punish the officer for the alleged offence. I acknowledge it may feel that way to the Applicant. It is a temporary administrative step taken while the criminal process and the discipline process continue independently. The Applicant's rights under 11(d) were not violated by the decision to suspend them without pay.

Issue

Counsel for the Applicant submitted:

(Excerpted) Section 15 of the Charter: Equality and Disability. Section 15(1) of the Charter guarantees equal protection and equal benefit of the law without discrimination, including on the basis of mental or physical disability. Mental health conditions constitute disability for purposes of s.15 of the Charter. Section 210(1)3. has been applied without regard to disability-related vulnerability or accommodation needs, and in these circumstances, wherein YRP has knowledge of Cst. Sun's disability disproportionately burdens him and engages equality concerns. Accordingly, the Chief has failed to consider and balance section 15 of the Charter.

Analysis

Section 15 of the Charter states:

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

(2) Section (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Analysis

Section 15 of the *Canadian Charter of Rights and Freedoms* is about treating people fairly and not discriminating, including on the basis of disability such as mental health conditions. The argument being made is that suspending the officer without pay had a

greater impact on him because of his disability, and that the Chief should have taken that into account.

The information available in ¹¹documents submitted is that in May of 2025 a letter from a psychiatrist requesting that the Applicant not be required to drive from his residence to the York Regional Police office in Newmarket. There is no diagnosis and very little additional information in the letter.

A second letter was provided by a psychologist in February of 2026. The author indicated the Applicant was undiagnosed and that he did not participate in a full evaluation. The bulk of the contents of the letter were summarizing the Applicant's self disclosure of stress related symptoms he had been experienced related to his work as a police officer. The letter provided minimal, if any, insight into how the Applicant's reported medical challenges related to or might inform or impact these proceedings.

There was no other evidence called before or introduced to this tribunal. I am sensitive to the Applicant's health challenges. With that said, it is difficult to put much weight on the extent of the Applicant's disability with the sparse information available. There was no nexus drawn between how the medical condition was directly linked to these proceedings in any way that could mitigate outcomes. There was no nexus suggested or identified to any of the alleged behaviours of the Applicant leading to the criminal and misconduct allegations. There was no evidence the York Regional Police discriminated against the Applicant due to his illness or suggested disability.

Should the York Regional Police be only aware of the information before this tribunal, it is hard to speculate how that would have informed or changed their position regarding the decision to suspend without pay. There was a dearth of evidence presented for this tribunal to consider regarding a disability.

I find there is no violation of the Applicant's Section 15 Charter Rights.

Issue:

The request by the Applicant's counsel to cross examine the ¹²affiant and issues raised regarding the affidavit.

On the afternoon before the hearing was to commence, counsel for the Applicant requested the affiant be present at the hearing to be cross examined on the contents of affidavit. The affiant was not available. The Applicant identified a number of paragraphs

¹¹ Exhibit 3, Appeal Book of Records

¹² Exhibit 5, Affidavit of C. Valente, YRP Senior Counsel

(2,3,4,6,7,8) that should be given no weight and suggested they information therein had no value.

Analysis:

Senior Counsel for the York Regional Police Service provided an affidavit setting out what amounted to a timeline or overview of events, including the criminal charges, related misconduct issues, and other background materials. This type of affidavit is occasionally used in tribunal proceedings to present factual context. The Applicant had the affidavit well in advance of the hearing and was aware of its contents, including the specific paragraphs identified.

Despite having the materials in advance, the request to have the affiant attend for cross-examination was made only on the afternoon before the hearing, leaving no practical opportunity to secure the witness's attendance. The affiant was not available, which is not surprising given the absence of timely notice. Tribunal processes are designed to ensure fairness to both parties, and that includes giving adequate notice when a witness is to be requested. A last-minute request of this nature does not allow the opposing party to prepare the witness, arrange attendance, or respond properly, and risks delaying or disrupting the hearing.

This tribunal operates under rules designed to ensure orderly, efficient, and fair hearings. Those rules typically require that if a party wants to call or cross-examine a witness, they must give advance notice, explain why the evidence is necessary, and allow the other side time to prepare or, in some cases, oppose the request. This ensures that both sides know the case they have to meet and are not taken by surprise. A request made at the last minute does not allow for that preparation and can disrupt the hearing process. It must also be clear that, had the request for the affiant to testify been opposed by the York Regional Police, it is not a sure thing that this tribunal would have authorized compelling the witness; subject to respective arguments put forth by the parties.

In this situation, the affidavit from senior counsel was already provided to outline the investigative timeline, the existence of criminal charges, and allegations. If the Applicant intended to challenge that evidence through cross-examination, that intention should have been raised in advance. Waiting until the eve of the hearing creates an element of surprise which should generally be avoided.

From a fairness perspective, the Applicant's position was not left unheard. Counsel for the Applicant identified specific paragraphs (2, 3, 4, 6, 7, 8) and argued that they should be given little or no weight due to a lack of probative value. By legislative design within

the *CSPA* this proceeding is not a forum for determining the truth of the underlying allegations or making findings of misconduct. My purpose is limited to assessing whether the statutory requirements for suspension without pay under the *CSPA* have been met. In that context, the affidavit is relied upon for background and to establish the existence of statutorily required information and nature of the proceedings, not as proof of the allegations themselves. Accordingly, the challenged portions do not require a detailed weight analysis for the purposes of this hearing, and the affidavit served its intended function. No weight was attributed to any particular paragraph.

Counsel for the Applicant submitted *Kane v. Bd. of Governors of U.B.C., 1980 CanLII 10 (SCC), [1980] 1 SCR 1105* in support of their position.

Kane requires a fair opportunity to respond but not a guaranteed right to cross examine every witness, especially where the request is late and the evidence is already known and can be challenged through submissions.

The request to cross examine the affiant came too late to be fair, feasible, or meaningfully considered. The Applicant still had the opportunity to challenge the affidavit by arguing about its weight, and the tribunal dealt with those concerns without, in any event, needing witness testimony.

Issue:

Counsel for the Applicant raised the issue (paraphrased) that suspension without pay offends the principle of the presumption of innocence (addressed elsewhere) and amounts to a contractual change and constructive dismissal.

Analysis:

In my view the argument that a suspension without pay amounts to constructive dismissal does not fit well within the statutory scheme under the *Community Safety and Policing Act*.

My understanding as a layperson is that constructive dismissal is a concept from employment law outside of policing. I understand it applies when an employer for example, makes a change to the terms of employment such as cutting pay, hours of work, or duties in a way that could have the effect of forcing an employee to quit. However, that concept assumes a standard employment relationship governed by generally applicable employment laws outside of the policing context. One distinct difference between the applicable laws is that employees, governed by employment law

other than the *CSPA*, or previously the *PSA*, can be terminated without cause. This is a concept and practice that has been and remains absent from policing.

Policing is different as it has, for decades, been governed by specific legislation. Under the *CSPA*, the employment relationship is regulated, and not purely by collective agreements or contracts, formal or implicit. The legislation specifically authorizes certain actions like suspension without pay in defined exceptional circumstances. When a Police Service exercises a power that is expressly permitted by statute, it does not seem to me to be acting outside the employment relationship or breaching it. In that sense, the suspension is not a change imposed without authority, but a lawful step built into the legislation.

A suspension without pay is, by design, a temporary administrative measure, not a final termination of employment. It does not annul the employment of an officer, and it does not remove the officer's ability to return to work if the underlying issues are resolved in the officer's favour. Constructive dismissal seems to result in situations where the employment relationship has, for all intents and purposes, been extinguished. That is not the case under the *CSPA*, where the relationship continues and is governed by an ongoing legal process. Depending on the criminal trial and discipline proceeding outcomes, the Applicant can return to work and can receive withheld pay.

Finally, the purpose of the suspension matters. Under the *CSPA*, suspension without pay is intended to manage risk, protect public confidence, and maintain the integrity of policing, not to force an Officer out of employment. I find where the decision is made within statutory authority, based on prescribed criteria, and for a legitimate purpose, it does not align with the characteristics of constructive dismissal as I understand them.

Issue:

Counsel for the York Regional Police advised the Crown is proceeding with the criminal charges by preferred indictment

Analysis:

I am aware, through past roles and experience, that, in Ontario, a preferred indictment is a procedure that allows the Crown to move a serious criminal case directly to trial in the Superior Court without holding a preliminary inquiry. This step requires approval from senior *Ministry of the Attorney General* officials (typically the Attorney General or a designee), and by a person who is not the crown conducting the prosecution. Preferred indictment is usually reserved for serious or complex cases where proceeding in this

fashion is warranted. In this case it was apparently the office of the Deputy Attorney General who was the signatory.

From an evidentiary and procedural standpoint, a preferred indictment is not granted lightly. The *Ministry of the Attorney General* must be satisfied that there is a strong, credible evidentiary foundation to support the charges and that there is a reasonable prospect of conviction. This is a high bar in my experience. Typically, disclosure is generally substantially complete, or the case is at least expected to be prepared for disclosure in short order.

Notwithstanding the requirements for a preferred indictment, the policy and practice does not change the presumption of innocence. As pointed out by counsel for the Applicant and Respondent and affirmed by this tribunal, under the *Canadian Charter of Rights and Freedoms*, every accused person is presumed innocent until proven guilty in court as is the Applicant.

The fact that the Crown has proceeded by way of a preferred indictment indicates that the allegations are being treated as serious and are supported by a substantial evidentiary foundation. While this does not affect the officer's presumption of innocence and all allegations are unproven; it is a relevant consideration in assessing the seriousness of the circumstances faced and whether suspension without pay is a reasonable response taken by the York Regional Police Service. I find that it was.

Issue:

The York Regional Police submitted ¹³*Girard v. Delaney* in support of some of their submissions

Although *Girard v. Delaney* predates the current legislation, it supports the new approach under the *CSPA* as follows:

- It reinforces that integrity-based misconduct is among the most serious
- It supports the idea that such conduct, if proven, would likely result in dismissal
- It highlights that police services must act in a way that protects public confidence, even before a final finding is made

Girard v. Delaney confirms, in my mind, that when an officer is accused of serious misconduct especially involving trust divisions or misuse of authority, the police service must take steps to protect its integrity. This supports decisions like suspension without

¹³ Exhibit 4, YRP Responding Materials

pay as a reasonable administrative response until criminal and misconduct matters are being resolved.

Issue:

Both parties identified that the alleged misconduct began under the *Police Services Act* Regime but continued, for a longer time, under the *CSPA* regime.

It is my understanding when alleged misconduct begins under the former *Police Services Act* and continues into the period governed by the *Community Safety and Policing Act*, jurisdiction should be addressed by focusing on when the conduct occurred and whether it forms part of a continuing course of behaviour.

If the misconduct were a single, ongoing pattern that spans both legislative regimes, it could generally be treated as one continuous matter, with the newer legislation (the *CSPA*) governing the proceeding going forward. However, if the conduct can be clearly separated into distinct events some occurring before the *CSPA* and some after then each portion may be addressed under the law that was in force at the time of the conduct.

I suggest the key principle here is fairness. The Officer must not be subject to retroactive application of new rules or penalties for conduct that occurred entirely before the *CSPA* came into force. At the same time, the police service is not prevented from proceeding on newer conduct under the updated legislation. My understanding, in this case, the alleged misconduct began under the *PSA* not long before the *CSPA* was enacted, then continued, with further distinct misconduct allegations for considerably more time under the *CSPA*.

As suggested by the Respondent in the hearing, ongoing misconduct can be handled as one matter under the current law, but earlier conduct might still be judged under the rules that existed at the time under the *PSA*, ensuring fairness and avoiding retroactive punishment.

In any event, this is not an issue to be addressed by this tribunal, at this time, but should be resolved prior to a hearing on the merits of misconduct allegations. I encourage the parties to endeavour to resolve concerns between themselves as they seem to have cordially done to this point. Failing that, the merits adjudicator may intervene with a decision. I am satisfied that the *CSPA* and therefore suspension without pay proceedings are jurisdictionally sound for, at least, most of the allegations of misconduct.

Issue:

Counsel for the Applicant submitted the York Regional Police have lost jurisdiction to proceed with Disciplinary matter as the behaviours began in 2022.

Analysis:

Jurisdiction in a misconduct matter is generally determined by what conduct is being addressed and when it occurred, not simply by when the first allegation arose. If the alleged misconduct is part of a continuing course of behaviours and related inquiries or investigations jurisdiction is not lost.

This proceeding is not determining guilt or imposing discipline for alleged acts of misconduct. It is assessing whether, based on current, serious allegations and ongoing proceedings, the statutory test for suspension without pay is met. The relevant focus is therefore present circumstances, including the existence of charges, the seriousness of the allegations, and the impact on public confidence not when the conduct first began.

I find the fact that the alleged behaviour may have started earlier does not strip jurisdiction. If the conduct continued and forms part of the present allegations, the matter should proceed, and the suspension decision remains properly within jurisdiction.

PART IV; CONCLUSION AND DECISION**Conclusion**

For the reasons set out above, I find that the York Regional Police Service has met each of the statutory requirements for suspension without pay under the *Community Safety and Policing*. The allegations facing the Applicant are serious, fall outside the lawful performance of police duties, and, if proven, would likely result in termination. Further, a failure to suspend without pay in these circumstances would reasonably be viewed by an informed member of the public as bringing discredit to the police service and undermining confidence in its integrity and accountability.

It is important to re-emphasize that suspension without pay is an administrative measure, not a finding of guilt or a form of punishment. It exists to manage risk, protect public confidence, and maintain the integrity of policing while criminal and disciplinary proceedings are ongoing. The introduction of this authority under the *CSPA* reflects a legislative intent to address serious allegations involving police officers in a manner that better aligns with public expectations and accountability in policing.

The Applicant remains presumed innocent of all allegations, and those matters will be determined in the appropriate forums. Should the Applicant ultimately be exonerated of the criminal charges and any related disciplinary allegations, there are mechanisms in place to ensure that lost wages are restored.

Decision.

Having considered the evidence and submissions, I find that the York Regional Police Service has met the statutory requirements for suspension without pay under the Community Safety and Policing Act. Accordingly, the appeal is dismissed. The suspension without pay remains in effect.



April 29, 2026

K.M.(Mike) Bickerton

Adjudicator

Appendix “A” - Exhibits

PC SUN & YRP Appeal of Suspension without Pay Exhibits			
Exhibit #	Submitted By	Date	Description
1	Adjudicator (Bickerton)	02Apr2026	OPAAC Letter of Adj. Appointment
2	Applicant Counsel	23 February 2026 (email)	Outline of Submissions
3	Applicant Counsel	23 February 2026 (email)	Appeal Book of Records
4	Respondent (YRP) Counsel	11 March 2026	SWOP Responding materials
5	Respondent (YRP) Counsel	11 March 2026	Affidavit of YRP Senior Counsel (C. Valente)
6	Applicant Counsel (via Email)	02 April 2026	Additional Jurisprudence
	<p>R. v. Seaboyer; R. v. Gayme, [1991] 2 S.C.R. 577</p> <p>Kane v. Bd. of Governors of U.B.C., 1980 CanLII 10 (SCC), [1980] 1 SCR 1105</p> <p>Gough v. Peel Regional Police Service, 2009 CanLII 12112 (ON SCD)</p> <p>Forestall v. Toronto Police Services Board, 2007 CanLII 31785</p> <p>Canada (Attorney General) v. Bedford, 2013 SCC 72</p> <p>Law Society of British Columbia v. Trinity Western University, 2018 SCC 32 (CanLII), [2018] 2 SCR 293</p>		

	Guelph Police Association Inc. v Guelph Police Services Board, 2025 CanLII 136926 (ON LA)		