

OPAAC ADJ# 26-015

CST. GUANGNAN “GARRY” SUN  
Applicant

And

YORK REGIONAL POLICE SERVICE  
Respondent

Adjudicator:

Detective Superintendent (retired) K.M. Bickerton

Appearances:

B.-S. van den Berg, for the applicant

J. Fraser, for the respondent

Heard:

April 2, 2026

Date of decision:

April 29, 2026

Length of decision:

40 pp.

Statutory citations:

*Community Safety and Policing Act, 2019*, S.O. 2019, c. Sched. 1, s. 210(1)3

O. Reg. 406/23, s. 2 – definition of “serious offence”

*Police Services Act*, R.S.O. 1990, c. P. 15 (repealed)

*Criminal Code*, R.S.C. 1985, c. C-46, ss. 122, 139(2), 145 (4)(a), 342.1(1)

*Canadian Charter of Rights and Freedoms*, ss. 7, 11(d), 15

**SUSPENSION WITHOUT PAY - Criteria** - Legislated conditions for suspension without pay under s. 210(1)3 of *Community Safety and Policing Act* - Where officer charged with a serious offence, police service required to demonstrate that alleged conduct did not fall within lawful execution of duties, service is seeking termination, termination the likely outcome if charges proven, and failing to suspend officer without pay would bring discredit to reputation of the service - Criteria met - Suspension without pay confirmed.

**SUSPENSION WITHOUT PAY** - Applicant suspended without pay following investigation into allegations he used confidential police databases to conduct queries for illegitimate purposes - Applicant facing criminal and disciplinary charges - Criteria for suspension without pay under s. 210(1)3 of *Community Safety and Policing Act* - Respondent met statutory four-part test for suspension without pay - Suspension without pay confirmed.

**DISCIPLINARY ACTION - Administrative action distinguished** - Suspension without pay - Pursuant to s. 210(1)3 of *Community Safety and Policing Act*, suspension without pay an administrative rather than a disciplinary measure - Purpose of suspension without pay to manage risk, protect public confidence, and maintain integrity of policing while criminal and disciplinary proceedings ongoing.

**CHARTER OF RIGHTS AND FREEDOMS - Legal rights** - Suspension without pay pursuant to s. 210(1)3 of *Community Safety and Policing Act* - Suspension without pay not a deprivation of liberty but rather an administrative measure imposed under an employment relationship - Officer's presumption of innocence remained fully intact - Suspension without pay not violating s. 7 or s. 11(d) of *Charter of Rights and Freedoms*.

**CHARTER OF RIGHTS AND FREEDOMS - Equality rights** - Suspension without pay pursuant to s. 210(1)3 of *Community Safety and Policing Act* - No evidence that respondent police service discriminated against applicant due to illness or disability - Suspension without pay not violating applicant's rights under s. 15 of *Charter of Rights and Freedoms*.

### Summary of Reasons for Decision

On July 8, 2025 the applicant, Cst. Sun, was notified by the respondent, York Regional Police, that he was suspended without pay, pursuant to s. 210(1)3 of the *Community Safety and Policing Act*. He applied to the Ontario Police Arbitration and Adjudication Commission for relief, seeking an order that the suspension be converted to a suspension with pay, with compensation for salary withheld since July 8, 2025.

In October 2023 the York Regional Police began an investigation into allegations that Cst. Sun was using confidential police databases to conduct queries for illegitimate purposes. At the end of the investigation, he was charged with various criminal offences: multiple counts of unauthorized use of computer, in violation of s. 342.1(1) of the *Criminal Code*, two counts of breach of trust by public officer, contrary to s. 122, and obstructing justice, contrary to s. 139(2). Constable Sun was alleged to have shared confidential police information with members of criminal organizations. He was arrested on January 15, 2025, released on conditions including a direction not to communicate with named individuals, and re-arrested on March 5, 2025, for allegedly communicating with two of those individuals. Charged with two counts of failing to comply with an undertaking, contrary to s. 145(4)(a) of the *Criminal Code*, he was released on recognizance of bail.

Subsequently, Cst. Sun was served with notices of investigation into alleged misconduct. Initially he was suspended with pay. On June 24, 2025, the Crown elected to proceed by indictment. On July 8, 2025, he was notified by YRP that he was suspended without pay under s. 210(1)3 of the *CSPA*.

The issue before the adjudicator was not whether Cst. Sun was guilty of either the criminal or disciplinary charges, but whether the conditions set out in s. 210(1)3 were met. That subsection

states that a chief of police may impose a suspension without pay where an officer is charged with a “serious offence”, and

- i. The alleged offence was not committed in relation to the performance of the officer’s duties,
- ii. The chief of police has commenced proceedings to seek termination or given notice of an intention to commence proceedings to terminate,
- iii. If charges were proven, termination would be the likely outcome, and
- iv. A failure to suspend without pay would bring discredit to the reputation of the police service.

“Serious offence”, in turn, is defined in O. Reg. 406/23, s. 2 as “any indictable offence under the Criminal Code (Canada), the Controlled Drugs and Substances Act (Canada) or any hybrid offence under those statutes for which the Crown elects to proceed by indictment.”

*Held*, suspension without pay confirmed.

There was no question that the charges in this case were serious. Nevertheless, the applicant raised several issues in arguing that his suspension should be with pay. The respondent’s position was that all four criteria in s. 210 (1)3 were met, and the suspension should continue without pay.

#### Statutory test

The applicant argued that the alleged offences were committed in the lawful execution of duties, because the database queries were made while he was on duty, and, as a police officer, he had the necessary authority to access police databases, including CPIC (Canadian Police Information Centre). However, the mere fact that an officer was on duty did not render their actions lawful. Misuse of police databases represented an abuse of police powers for an improper purpose. The conduct in question fell outside the lawful execution of police duties. Therefore, the first component of the test, s. 210(1)3(i), was satisfied.

The second component of the test, s. 210(1)3(ii), required that termination is being sought; and the applicant alleged that he received no notice that termination proceedings had been commenced, and no notice of an intention to commence proceedings. However, the documents provided to the applicant included a statement that termination was being sought and that the suspension without pay was imposed under the *CSPA*. There was no requirement to include full particulars at the initial notification stage. The applicant was provided with sufficient notice and information to understand the allegations and to respond in a meaningful way. The second step of the statutory test was met.

As to the third component, the applicant submitted that there was no indication that termination would be the likely outcome, if the charges were proven. The misconduct in question was so incompatible with the role of a police officer that continued employment was an unrealistic outcome. In addition, in this case the Crown had advised they would be seeking a significant term of incarceration, if the applicant was convicted – a possibility which further reduced any prospect of continued employment. The third component of the test, s 210(1)3(iii), was met.

With respect to the fourth component, s. 210(1)3(iv), the applicant submitted that there was no evidence that a failure to suspend without pay would bring discredit upon the YRP. Where a police officer was alleged to have provided confidential police information to criminals, and if the police service failed to suspend that officer with pay, the negative reputational impact would be both immediate and obvious. To suspend with pay would send a signal that the service was not taking the allegations seriously, which would erode trust in the ability of the service to police its own members. In short, the failure to suspend without pay would bring discredit upon the service.

Accordingly, the respondent satisfied all four criteria under the test for suspension without pay.

#### Other grounds

In addition to asserting the test under s. 210(1)3 had not been met, the appellant challenged the decision to suspend without pay on several other grounds.

#### *Arbitrary decision*

The applicant characterized the decision to suspend without pay as arbitrary, because other officers charged with serious offences elsewhere in Ontario were paid while suspended. Under the *CSPA*, a chief now had the option to impose a suspension without pay but the discretion to do so was constrained by the statutory criteria. These criteria acted as built-in safeguards which prevented random, arbitrary or unsupported decision-making. Under the *CSPA*, a suspension without pay could not be arbitrary because it had to be based on defined legal criteria, supported by evidence, logically explained, and carried out through a fair process. In this case, there was no evidence which would support a conclusion that the applicant's suspension without pay was arbitrary.

#### *Unfair decision*

The applicant made several arguments in support of his position that the decision to suspend without pay was unfair, both procedurally and substantively.

The applicant had initiated a harassment complaint. He argued that he had never been provided with a report about his complaint, and that this was procedurally unfair. There was no direct link between the harassment complaint and the matter before the tribunal. In any event, a letter from the YRP to the applicant dated May 2025 summarized the findings of the workplace harassment investigation along with the conclusion that the complaint was unsubstantiated.

The applicant also argued that a suspension without pay was unfair and could result in financial and reputational damage. While these were relevant considerations, they had to be balanced against the equally serious consequences for the police service and for the public interest. The possibility of financial and reputational damage to the officer should not prevent the chief from

imposing an unpaid suspension, provided the statutory criteria were met. Instead, the significant personal consequences reinforced the need for

- an evidentiary foundation for the suspension without pay
- a rational connection between the facts and the decision
- a proportionate response – ensuring the measure was necessary
- procedural fairness, including notice and the opportunity to respond

The *CSPA* allowed for ongoing assessment and review if circumstances change; and lost salary could be recovered through an order for compensation.

The applicant asserted that the decision was procedurally unfair because the YRP failed to provide reasons, explaining how each statutory condition under s. 210(1)3 was met. Counsel for both parties submitted caselaw on the content of the duty of procedural fairness and the purpose of reasons. Reading these authorities and applying them in the context of an administrative decision to impose a suspension without pay, it was apparent that procedural fairness did not require a comprehensive checklist or detailed explanation at the notice stage. The notice to the officer should contain the basis for the decision – conveying the key facts such as the nature of the criminal charge, the intention to pursue termination proceedings, the seriousness of the alleged conduct, and concerns for public confidence. Where, as here, the notices contained these elements, the requirements of procedural fairness were met.

### *Charter violations*

Counsel for the applicant submitted that s. 210(1)3 was contrary to the *Charter of Rights and Freedoms* insofar as it permitted unpaid suspension based solely upon criminal charges. Specifically, this was said to violate ss. 7 and 11(d) – s. 7, because a deprivation of livelihood, and the attendant stress and destabilization, threatened security of the person; s. 11(d), because the suspension without pay offended the presumption of innocence. In addition, the applicant asserted that he was suspended without pay without regard for his disability-related vulnerability and accommodation needs, contrary to s. 15 of the *Charter*.

In *R. v. Conway*, the Supreme Court of Canada held that administrative tribunals, in making their decisions, have the power to apply *Charter* rights; however, they do not have the power to strike down legislative provisions. *Conway* reinforced the adjudicator's authority to consider alleged violations of the *Charter*, while reiterating that the primary focus of the tribunal must remain on whether the impugned decision/measure fits within the law which the tribunal is tasked with applying – in this case, the *CSPA*.

The right to security of the person under s. 7 of the *Charter* was not engaged by an employment-related decision to suspend an officer without pay. Suspension without pay was not a deprivation of liberty. While an unpaid suspension could cause stress and financial hardship, it did not threaten personal freedom. The process for imposing a suspension without pay under the *CSPA* was distinct from the criminal process; it did not determine guilt or impose punishment; rather, it

was a temporary administrative measure to manage risk and protect public confidence. The decision to suspend without pay did not violate s. 7.

Similarly, because the tribunal was dealing with an administrative workplace decision, not determining guilt or imposing a criminal penalty, this proceeding was not part of the criminal process. The presumption of innocence was not displaced by a s. 210(1)3 hearing; the officer remained innocent until proven guilty in criminal proceedings, as well as misconduct proceedings. There was no violation of s. 11(d) of the *Charter*.

As to the s. 15 claim, s. 15 of the *Charter* provided a right to equal treatment on enumerated grounds, including disability. The argument here was that the suspension without pay had a greater impact on the applicant because of his disability, and the chief should have taken this into account. The dearth of evidence adduced on this subject did not permit the tribunal to identify a nexus between a suggested disability or medical condition and the alleged behaviours leading to the criminal and misconduct allegations. There was no violation of s. 15 of the *Charter*.

#### *Constructive dismissal*

Counsel for the applicant argued that suspension without pay amounted to constructive dismissal. The concept of constructive dismissal had application in non-unionized employment sectors but did not apply to the employment of police officers, which, in Ontario, was governed by a specific statute – currently, the *Community Safety and Policing Act*, which replaced the *Police Services Act*. Under the *CSPA*, the employment relationship of police officers was not regulated solely by collective agreements or contracts; certain matters were regulated directly by the statute. In addition, constructive dismissal implied the end of an employment relationship, whereas under the *CSPA*, and depending on the outcome of criminal and disciplinary proceedings, the applicant could return to work and receive lost salary. Finally, the purpose of a suspension without pay was not to force an officer out of employment but rather to manage risk, protect public confidence, and maintain the integrity of policing.

#### *Procedural and jurisdictional matters*

Senior counsel for YRP provided an affidavit setting out a timeline or overview of events. He was not available to be cross-examined by counsel for the applicant, given the short notice of the request. The applicant identified certain paragraphs in the affidavit which should be given no weight because the affiant was unavailable for cross-examination. However, this proceeding was not a forum for determining the truth of allegations against the applicant or making findings of misconduct. The affidavit was admitted for background, not as proof of the allegations. For purposes of this hearing, it was unnecessary to assign weight to these, or any other, paragraphs.

Counsel for the respondent advised that the Crown was proceeding by way of preferred indictment. While this indicated the allegations were being treated as serious and were supported by a substantial evidentiary foundation, it did not affect the officer's presumption of innocence. The preferred indictment route was a relevant consideration in assessing the seriousness of the

circumstances; and it reinforced the conclusion that suspension without pay was a reasonable response.

Both parties indicated that the alleged conduct began under the *Police Services Act* but continued, for a longer time, under the *CSPA*. There appeared to be some question as to whether the *CSPA* would govern the entire misconduct proceeding. However, that was not a question for this tribunal to resolve.

Finally, the applicant raised an argument about delay, submitting that the YRP lost jurisdiction to proceed with the disciplinary matter because the behaviours began in 2022. However, jurisdiction was not generally determined by when the first allegation arose; if the alleged misconduct was part of a continuing course of behaviours and related investigations, jurisdiction – understood as the authority to act or respond – was not lost.

### *Conclusion*

Suspension without pay was an administrative measure, not a finding of guilt or a form of punishment. This measure was aimed at managing risk, protecting public confidence, and maintaining the integrity of policing while criminal and disciplinary proceedings were ongoing. The introduction of this authority under the *CSPA* reflected a legislative intent to address serious allegations involving police officers in a manner that aligned with public expectations and accountability in policing.

The York Regional Police met each of the four statutory requirements for suspension without pay under the *CSPA*. Accordingly, the suspension remained in effect.

### Authorities cited

*R. v. Conway*, [2010] 1 SCR 765

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

*Baker v. Canada (Minister of Citizenship and Immigration)* (C.A.), 1996 CanLII 3884 (FCA)

*Filice v. Complex Services Inc.*, 2018 ONCA 625

*Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019] 4 SCR 653

*Dunsmuir v. New Brunswick*, [2008] 1 SCR 190

*Mulville and Azaryev and York Regional Police Service*, 2017 CanLII 19496 (ONCPC)

*Crease et al. v. Board of Commissioners of Police of the Municipality of Metropolitan Toronto et al.*, 1982 CanLII 2054 (ONSC)

*Putter v. Joey Tomato's (Canada) Inc.*, 2025 BCCRT 545

*Constable David Packer and Metropolitan Toronto Police Service*, 1990 CanLII 10514 (ONCPC) 12

*Kane v. Bd. of Governors of UBC*, [1980], 1 SCR 1105

*Girard v. Delaney* (1995), 2 PLR 337 (Ont. Bd. Inq.)

*Canada (Attorney General) v. Bedford*, 2013 SCC 72