

ONTARIO POLICE ARBITRATION AND ADJUDICATION COMMISSION

**In The Matter of a Hearing held in accordance with Section 210(10)(a) of the
*Community Safety and Policing Act (CSPA), 2019 and Regulation 404/23***

Between:

Cst. K. Oehm

and

**Chief Jim MacSween,
York Regional Police Service**

Appeal of Suspension Without Pay

Decision and Order

Adjudicator: Lawrence Feldman

Counsel for the Applicant: Lawrence Gridin

Counsel for the Respondent: Jason Fraser

Merits Hearing Date: March 27, 2026

Decision Date: June 15, 2026

Overview

[1] The applicant, Constable K. Oehm, is charged under the *Criminal Code of Canada* with several indictable off-duty offences, including criminal harassment of a female co-worker through a third party, trespass by night, and personation. The complainant is a police officer with York Regional Police Service (“YRPS”) who worked in the same division as the applicant. The YRPS is responsible for a large jurisdiction served by 1,851 police officers and covering five district police stations.

[2] Following his arrest, the applicant was granted judicial interim release with conditions that he not communicate with the complainant, that he remain 500 metres away from where he knows her to be, and that he not be in possession of any weapons, including firearms.

[3] Under the bail release provisions of the *Criminal Code* (s. 515(4.1)), a weapons prohibition order is mandatory for individuals charged with criminal harassment or an offence in the commission of which violence against a person is used, threatened, or attempted. The prohibition order is required under this section even for a single, minor act of assault. As a practical matter, a bail variation in this latter circumstance would invariably lead to deletion of this condition, often on consent, where risk of harm or reoffence is minimal.

[4] In this case, the Chief of Police (“the Chief”) of the YRPS initially suspended the applicant without pay, pursuant to paragraph 2 of [section 210\(1\) of the *Community Safety and Policing Act*](#) (“CSPA” or the “Act”) on the statutory basis that these bail conditions would “substantially interfere with the officer’s ability to perform the duties of a police officer”.¹

¹ Section 210(1) reads: “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:

ii. 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”.

[5] On a bail review, the Crown consented to variations that would permit the applicant to have both contact and communication with the complainant with the prior authorization of the Chief and to possess weapons if authorized in advance by the Chief. Despite these judicial changes, the respondent has not allowed the applicant to attend a YRPS facility where the applicant knows his co-worker to be employed, nor has he permitted the applicant to possess a weapon in the course of his duties. In the result, the applicant's suspension without pay did not end in accordance with paragraph 2 of s. 210(1).

[6] The applicant applies under *CSPA* s. 210(10)(a)² for an order under s. 210(15)³ overturning the Chief's decision to impose the suspension without pay on the basis that the applicant "has shown on the balance of probabilities that the criteria for imposing the suspension without pay were not met." He does not challenge the suspension, only the withholding of pay.

[7] In the alternative, the applicant submits that the subsequently varied bail conditions suggest judicial recognition of low risk is a signal to the Chief that the changed circumstances warrant reconsideration of his without-pay status. He does not challenge the Chief's broad power to suspend.

[8] The respondent submits that the applicant has not met his onus in this regard. He says that once the Chief did not exercise his discretion to authorize the applicant to possess weapons at work, he was effectively unemployable and caught by paragraph 2 of s. 210(1). He suggests there is a hierarchy of duties of a police officer. He says front-line duties to maintain public safety and order are at the core of police service, so that a weapons prohibition would substantially interfere with this officer's ability to perform his police duties.

² s. 210(10) A police officer may apply to the Commission Chair to appoint an adjudicator to hold a hearing respecting a decision to impose a suspension without pay if,
(a) the suspension is under paragraph 2 of subsection 1 and the officer believes that the conditions of judicial interim release to which he or she is subject do not substantially interfere with his or her ability to perform the duties of a police officer.

³ s. 210(15) The adjudicator may make an order overturning the decision to impose the suspension without pay if the adjudicator determines that the police officer has shown, on the balance of probabilities, that the criteria for imposing the suspension without pay were not met.

Legislative History of Suspension Without Pay

[9] Under the *Police Services Act* (“PSA”), 1990, suspension without pay was limited to situations in which an officer was both convicted of a criminal offence and incarcerated. The Ontario Association of Chiefs of Police lobbied the provincial government to broaden their authority to withhold pay in individual cases, citing their responsibility for the operation of the police service, the maintenance of police morale and discipline, and enhancing public trust of the police⁴.

[10] This sentiment in favour of additional criteria providing for suspension without pay was reflected in the *Safer Ontario Act*, 2018 that was passed but never implemented. In its discipline provisions, officers would be suspended without pay where they were charged with a serious federal offence (on or off duty) or released on bail conditions that substantially interfered with their ability to perform their duties.

[11] The *PSA* was repealed and replaced by the *CSPA*, 2019. This legislation set out enhanced criteria for suspension without pay in s. 210(1), including conviction of an offence and incarceration, as in the former *PSA* (para. 1); arrest and release on bail conditions that substantially interfere with an officer’s ability to perform their police duties (para. 2); and serious off-duty charges that would likely lead to administrative termination (para. 3). An indictable offence is considered serious.

[12] The drafters of the legislation did not provide guidance to the Chiefs about the scope or meaning of ‘substantial interference’ in paragraph 2, nor factors to be weighed in its application in the Chief’s exercise of discretion to withhold pay. It is, in my view, in the interest of police morale and public trust that the discretion exercised, affecting an officer’s livelihood, must be fair, principled, and understandable, and not routinely imposed without adherence to these considerations.

The Meaning of ‘Substantial Interference’

⁴ Suspension Without Pay in Policing, A White Paper Update of the Ontario Association of Chiefs of Police, Suspension Without Pay Working Group February 2010; see contained within the White Paper Update, an OACP White Paper, at pp. 10-11

[13] The parties agree that "substantial interference", as interpreted in prior authority, contemplates significant impairment⁵ to a degree that "seriously undercuts or undermines"⁶ an officer's ability to perform or execute the substance or core of their duties.

[14] The parties also agree that this wording must be interpreted in a purposive and contextual manner⁷ that is harmonious with the scheme and object of the Act and the Legislature's intention⁸. The application of that wording in this context is one that is limited and exceptional.

[15] The statutory authority to suspend without pay in the former *PSA* was extremely limited. And as noted, it was expanded in s. 210(1) of the *CSPA* to include two additional situations that involved serious off-duty offences, detention or incarceration and likely termination of employment.

[16] The applicant asserts that a narrow, restrictive approach to the statutory interpretation of s. 210(1) is consistent with the Act's history and the Legislature's intent. He observes that paragraph 2 is set between two paragraphs involving quite serious factual situations that in relation to unpaid suspensions are narrowly construed so as not to become automatic, nor applied other than to the most serious of cases.

[17] In the exercise of discretion regarding suspension of pay, the Chief may take some guidance from previous authority on the factors he should consider in reaching his conclusion⁹. The decision should be made on an individualized and exceptional basis. It is an administrative, not punitive act. The presumption of innocence is an important factor. And while the decision maker should not weigh the allegations, I would suggest that their gravity reflects risk and questions of character that may be considered in the balance.

⁵ *Ontario (Attorney General) v. Fraser*, 2011 SCC 20, at para. 42

⁶ *Health Services and Support – Facilities Subsector Bargaining Association v. British Columbia*, 2007 SCC 27, at para. 92

⁷ *Oakville (Town) v. Clublink Corporation ULC*, 2019 ONCA 826, at paras.37-42

⁸ *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC), at para. 21; *Bell Express Vu Limited Partnership v. Rex*, 2002 SCC 42

⁹ *Halifax (Regional Municipality) v. Nova Scotia Police Review Board*, 2019 NSSC 91, at para. 34; *Snelgrove v. Newfoundland and Labrador (Justice and Public Safety)*, 2020 NLSC 75, at para. 40

Application to this Case

[18] The codified duties of a police officer are set out in the *CSPA* s. 82(1) and include: (a) preserving the peace; (b) preventing crimes and other offences and assisting others in prevention; (c) assisting victims of crime; (d) apprehending criminals and other offenders and others who may lawfully be taken into custody; (e) laying charges and participating in prosecutions; (f) executing warrants and related duties; (g) performing lawful duties assigned by the chief; (h) completing required training, complying with the prescribed code of conduct; and (j) performing other duties assigned under the *CSPA* or any other Act, including prescribed duties.

[19] The four principal duties of a police officer at common law are, as well, codified in the *CSPA* in s. 82(3). They include: the duty to preserve the peace; the duty to prevent offences; the duty to protect life, safety, and property; and the duty to investigate crimes¹⁰.

[20] A plain reading of these codified duties makes clear that the Act requires the police to undertake responsibility for public safety, crime prevention, investigations, and preserving the peace in the community; duties that, in my view of the police's operational reality, inferentially contemplate reliance on use of force equipment for both safety and enforcement.

The Applicant's Position

[21] It is the position of the applicant that an officer's police work requiring use of force equipment is only a subset of a wide spectrum of duties assigned by the Chief. He points out that the list of discretionary duty assignments is infinite, as indicated by the wording in s. 82(1)(j) that the officer is to perform "such other duties as are assigned to him...under this or any other Act." He says, as well, that the fact the *CSPA* leaves the right of an officer to possess a firearm to the discretion of the Chief, suggests use of force equipment is not essential to the performance of police duties. I would view this

¹⁰ *R. v. Godoy*, 1999 CanLII 709 (SCC), at para. 15

discretion, rather, as one that renders lawful an officer's possession of otherwise prohibited or restricted firearms, and that provides the Chief authority to grant, withhold, or withdraw that privilege when necessary to maintain police safety and discipline, and ensure public trust.

[22] The applicant relies on labour and human rights arbitration cases for his assertion that there are multiple essential policing tasks outside of "front-line patrol" duty. In *Orangeville Police Services Board and Orange Police Association*, the arbitrator concluded that policing duties encompass "a wide spectrum of assignments – from high-risk situations on patrol, to investigative analysis, to community relations, to administrative tasks and so on"¹¹. As well, he makes reference to *Essex Police Services Board v. Essex Police Association*,¹² an accommodation case, in which the arbitrator held that front-line work was only an incidental part of various positions in the service.

[23] These employment cases focus on accommodating officers with disabilities and human rights or religious claims and finding them "useful and productive police employment"¹³ outside of front-line duties. The employment context is remedial and looks to find or develop administrative or supportive investigative responsibilities that will permit the officer to keep working. Unlike in the criminal context, the issues of hierarchy of police duties and questions of suspension with or without pay, play no part in that analysis. The applicant concedes that in this latter context employment accommodation is not available in his case.

The Respondent's Position

[24] It is the position of the respondent that the right of an officer to use firearms is an essential element of policing without which, but for accommodation, he or she will be unable to perform their duties. He says preserving the peace, preventing offences, protecting life, safety, and property, and investigating offences are at the core of a police service's mandate that by implication requires officers, once authorized, to rely on use of force equipment in the execution of their duties. That is not to say that there are not

¹¹ 223 L.A.C. (4th) 96, at p. 111

¹² 2002 CanLII 79002

¹³ Ibid, pp. 52-53

many other investigative and administrative positions, often arising from accommodations, that are essential in supporting the work of front-line officers.

[25] As an example, the respondent referred to the decision in *Saskatoon Board of Police Commissioners v. Saskatoon Police Commissioner*¹⁴, where an arbitration board accommodated an officer, whose religious beliefs prevented her from carrying firearms or other lethal weapons. Of significance, the board expressed the view that “the necessity to carry a firearm is a bona fide occupational requirement of being a member of the Saskatoon Police Service.”

[26] The respondent submits that this principle applies, as well, in this province and that the carrying of a firearm and other use of force equipment is a necessary adjunct to the core duties of officers. The respondent, in that regard relies on the decision in *R. v. Forcillo*¹⁵. There, the Court of Appeal, in discussing a case where a police officer fatally shot a knife-wielding victim, said that in Ontario officers “are required to carry firearms while carrying out their duties to protect the public.” While *obiter*, this statement by the Court has persuasive value.

[27] The respondent builds on this principle of public protection being at the core of operational policing in the York Region by listing the types of duties requiring approved use of force equipment, including, while an officer is on patrol, community-oriented responses, performing paid duties, conducting surveillance, search warrant execution, interacting with victims and witnesses, and investigative or administrative duties while at a YRP facility¹⁶.

Is Use of Force Equipment a Core Element of Operational Policing in Ontario?

[28] The clear inference from a reading of police duties set out in *CSPA* ss. 82(1) and (3) is that a majority of these responsibilities require use of force equipment. I am persuaded by a review of the relevant legislation, the evidence, and counsel’s submissions that this front-line equipment is necessary for an officer to undertake duties

¹⁴ 2018 CanLII 128218 (SK LA), at para. 32

¹⁵ 2018 ONCA 402, at para. 170

¹⁶ General Procedure A1 012/ A1 014, Use of Force, section C23 and Appendix D – Required Use of Force Equipment (Schedule “E”)

that are at the core of operational policing to protect life, safety, and property and to preserve the peace by preventing and investigating crime. The right to possess a firearm and other use of force equipment is, in my view, central to that task, as indicated in *Forcillo*.

[29] That in no way diminishes the importance of other administrative or investigative positions not requiring use of force equipment that contribute in a significant way to the prevention of crime and the preservation of public safety. As the applicant points out, such tasks might include assignment to supportive roles in the call diversion unit, the general occurrence reader unit or investigations undertaken by the criminal investigation bureau (CIB), although counsel accepts that a CIB placement would not be suitable in this case given the applicant's outstanding criminal charges¹⁷. These essential duties include human rights accommodated positions.

[30] Were I to accede to the applicant's submission that front-line work is only an incidental part of the broad range of statutory duties available to be assigned to police officers, it would, in my view, unreasonably derogate from the inclusion of the word "substantial" in the phrase "substantial interference" in paragraph 2 of s. 210(1) of the *CPSA*. It would, in effect, open up wholesale employment accommodation to officers subject to bail conditions prohibiting their possession of use of force equipment. I do not accept that submission. I conclude that the applicant's bail conditions in this case substantially interfere with his ability to perform his police duties.

[31] But this does not end the matter. While the applicant does not challenge the suspension, he asks for a review of the without-pay status imposed under paragraph 2, particularly after the court, on a bail review, with the consent of the prosecution, permitted the applicant to have contact with the complainant and to possess a firearm, if authorized by the Chief. The conditional easing of bail restrictions was, in my view, a signal by the court that the applicant was at low risk to cause harm or to reoffend, while at the same time deferring to the Chief's discretion in this regard.

¹⁷ *R. v. McNeil*, 2009 SCC 3

Does the Chief’s Exercise of Discretion Require Written Reasons?

[32] The withholding of pay in the statutorily narrow circumstances set out in s. 210(1) is relatively new. It can cost an officer his or her livelihood pending the resolution of their criminal charges. It impacts competing interests of police discipline, morale, and public trust. It is an exceptional administrative act.

[33] Of significance, the wording in paragraph 2 is permissive, in that the Chief “*may* suspend...without pay.” This means that the withholding of pay does not follow automatically upon the suspension of the officer, but, rather, in my view, is to be determined in the exercise of the Chief’s discretion following a consideration of certain factors set out in the common law, referred to in paragraph 17 above, and a weighing of the individual circumstances of the officer. The basis for the Chief’s decision requires transparency to be understood as being fair and principled.

[34] I take the view that the gravity of the alleged crimes has some limited relevance in the sense that a less serious offence of assault or threatening that still mandates a weapons prohibition on bail may be a factor to be considered in the discretion exercised regarding pay or its withholding. As well, I believe that, as in this case, the bail variation on consent regarding conditional weapons possession is a signal from the court that the applicant is at low risk of harm and can be trusted with use of force equipment. The professional history of the officer may also be considered. These are all issues of character and risk that may be weighed, by the Chief in determining the question of pay.

[35] To be clear, I have no authority to trench upon the Chief’s discretion. But I would require the Chief to provide reasons in writing where pay is withheld, so that the applicant and the public will understand the factors he considered and that his exercise of discretion, whatever the result, may be seen as reasonable, objective, and fair-minded. Although s. 210(1) does not require the Chief to provide reasons, in my view, procedural fairness requires he do so¹⁸.

¹⁸ *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 (CanLII) at para. 136

[36] I take my authority to void and remit the Chief’s decision from *Canada (Minister of Citizenship and Immigration) v. Vavilov*¹⁹, a case dealing with the review of administrative decisions on the basis of reasonableness. At para. 141, the Court said: “Giving effect to these principles in the remedial context means that where a decision reviewed by applying the reasonableness standard cannot be upheld, it will most often be appropriate to remit the matter to the decision maker to have it reconsider the decision, this time with the benefit of the court’s reasons. In reconsidering its decision, the decision maker may arrive at the same, or a different outcome....”

Conclusion

[37] In the result, while the suspension is maintained, I would set aside the Chief’s decision on the withholding of pay and remit the matter back to him for reconsideration on the basis of the factors set out in this decision. I would direct him to provide written reasons for his determination to the applicant within 30 days of the date of this decision.

Lawrence Feldman
OPAAC Adjudicator

Dated: June 15, 2026

¹⁹ *Ibid*, at paras. 136-142