

OPAAC ADJ #26-021

ONTARIO PROVINCIAL POLICE
Applicant

And

CONSTABLE R. VISCONTI
Respondent

Adjudicator:

Leonard Favreau

Appearances:

J. Chan, for the applicant

No one appearing for the respondent

Heard:

Motion and hearing via written submissions

Date of decision:

March 10, 2026 (motion); May 31, 2026 (misconduct hearing)

Length of decision:

5 pp. (motion); 18 pp. (misconduct hearing)

Statutory citations:

Community Safety and Policing Act, 2019, S.O. 2019, c. 1, Sched. 1, ss. 195(a)(1);
200(1), 201(6), 202(1), 202(9)(1)

O. Reg. 407/23, s. 4; O. Reg. 404/23

Criminal Code of Canada, R.S.C. 1985, c. C-46, s. 122

Highway Traffic Act, R.S.O. 1990, c. H. 8

Evidence Act, R.S.O. 1990, c. E. 23, ss. 22.1, 29, 36(1)

Public Service of Ontario Act, S.O. 2006, c. 35, Sched. A

O. Reg. 381/07, ss. 6(1) and 6(2)

Police Services Act, R.S.O. 1990, c. P. 15 (repealed)

O. Reg. 268/10 (repealed), s. 2(1)(a)(ix)

DISCIPLINARY HEARING - Conduct of hearing - Motion for request to proceed in absentia - Respondent not participating in pre-hearing conference or in disciplinary hearing - Refusal to engage in proceedings deliberate - Motion to proceed in absence of respondent allowed - Interlocutory decision.

COMPLIANCE WITH LAWS - Criminal offences - Respondent gave preferential treatment to tow truck operators during course of his highway patrol duties - Respondent pled guilty to

criminal charge of breach of trust, contrary to s. 122 of *Criminal Code* - Clear and convincing evidence that respondent violated s. 4 of Code of Conduct - Misconduct proved.

CRIMINAL OFFENCES - Breach of trust - Respondent found guilty of violating s. 122 of *Criminal Code* - Finding of guilt in criminal proceeding amounted to violation of s. 4 of Code of Conduct - Misconduct proved.

DISCIPLINARY PENALTIES - Dismissal - Conviction on charge of breach of trust, contrary to *Criminal Code* - Conduct leading to criminal and disciplinary charges was prolonged, extremely serious, and disreputable - Dismissal appropriate.

Summary of Reasons for Decision

Interlocutory motion:

On April 30, 2025 the OPP submitted a request for the appointment of an adjudicator pursuant to s. 202(1) of the *Community Safety and Policing Act*, on the basis that the alleged misconduct could lead to demotion or termination of the respondent, Cst. Visconti. A pre-hearing conference adjudicator was appointed, as was the merits adjudicator.

Despite being served with multiple notices of the proceedings, Cst. Visconti failed to respond. The pre-hearing conference adjudicator then issued an order on October 18, 2025, referring the matter to the merits adjudicator.

The prosecution filed a motion to proceed in absentia. The merits adjudicator notified Cst. Visconti of the motion via registered mail; he failed to respond within the established timelines.

Held, interlocutory motion to proceed in absentia allowed.

Under s. 201(6) of the *CSPA* and O. Reg. 404/23, the adjudicator had express authority to proceed with a hearing in the absence of a party who had been given proper notice and who failed to attend. It was appropriate in this case to proceed in absentia, in light of the respondent's pattern of deliberate refusal to engage in the disciplinary proceeding. There was no evidence he was unable to participate; rather, he was unwilling.

Merits:

At the merits hearing, the respondent failed to appear and failed to participate. The OPP sought a finding of guilt, and the penalty of dismissal. The prosecution submitted documentary evidence that included the court record from the criminal proceeding, a certified transcript of the respondent's plea and sentencing hearing, and an Agreed Statement of Facts from the criminal proceeding. There was no requirement to establish the underlying facts in the ASF; the transcript and ASF were accepted as accurate and reliable.

According to the transcript, Cst. Visconti pled guilty to the criminal charge of breach of trust in relation to his duties as a police officer, contrary to s. 122 of the *Criminal Code*. He received a suspended sentence and 12 months of probation. There was no evidence that the conviction had been appealed or challenged.

According to the ASF, Cst. Visconti's primary responsibilities involved investigating and enforcing offences under the *Highway Traffic Act* and the *Criminal Code* occurring on the GTA's 400-series highways. In the period between January 2018 and January 2021, he committed breach of trust by giving preferential treatment to 2 tow truck operators, contrary to O. Reg. 381/07 under the *Public Service of Ontario Act*. The financial benefit received by the 2 companies was \$925,000 in total. The prosecution submitted that this conduct was a serious and marked departure from the standards expected of a police officer; it undermined public trust and damaged the reputation of the OPP; and the only appropriate penalty was dismissal.

Held, misconduct proved; penalty of dismissal imposed.

Pursuant to s. 22.1 of the *Evidence Act*, in the absence of evidence to the contrary, a criminal conviction was admissible in subsequent proceedings as *prima facie* proof that the alleged act was committed. In this case, there was no indication of an appeal, and thus the conviction had conclusive effect. In light of this unrefuted evidence, there was clear and convincing evidence that Cst. Visconti engaged in misconduct, contrary to s. 4 of the Code of Conduct, in that he was "found guilty of an offence under the *Criminal Code*."

In cases where the prosecution sought dismissal, three factors were key determinants: nature and seriousness of the misconduct; ability to reform or rehabilitate the officer; and damage to the reputation of the police service. These three factors were also referred to in the case law as the "usefulness test". Under the usefulness test, the question was whether the conduct was so disreputable that the police officer was no longer of any use to the service or would cause irreparable damage to its reputation.

In this case, the public interest was a significant concern. The respondent was found guilty of committing a criminal offence in the course of performing his duties. This conduct undermined public trust in him and in policing in general. Given his position of trust as a police officer, the respondent's offence represented a serious abuse of power, contrary to his oath of office and duties as a police officer. Moreover, the misconduct was not an isolated incident; instead, it occurred repeatedly over the course of three years. His preferential treatment enriched 2 towing companies by some \$925,000; and he engaged in this conduct while on duty. All of these features meant that the misconduct was very serious; it was a marked departure from the standards expected of him in his position.

Constable Visconti's guilty plea in the criminal proceeding indicated acceptance of some responsibility. Nevertheless, the mitigating effect of the guilty plea was diminished by his failure to engage in the disciplinary proceedings. Moreover, there was no evidence of remorse apart from the guilty plea, and no acknowledgment of the impact of his actions on colleagues, the police service, and the public.

Constable Visconti had no prior disciplinary record and favourable performance assessments. However, his good employment record was offset by the lengthy duration of his repeated behaviours and the significant monetary value involved. In addition, the later positive evaluations were performed during the period of misconduct, when that conduct was unknown to the service – a factor which undermined the weight which would otherwise be ascribed to these evaluations.

General deterrence was a cogent factor in this case. It was important to send a clear, unequivocal message to all police officers that this kind of misconduct would not be tolerated. A significant penalty was warranted to uphold professional standards and to restore public confidence in the service.

In this case, there was little evidence of rehabilitative potential; instead, the evidence pointed in the opposite direction – an extended pattern of serious, repetitive, mendacious conduct which cast profound doubt on the respondent’s reliability, trustworthiness, and honesty. His refusal to participate in the disciplinary proceedings, together with his efforts to obstruct service of documents, signalled an unwillingness to engage in meaningful reform or rehabilitation. He never explained his absence or his lack of engagement; and although he was under no obligation to do so, the adjudicator was left with no indication that Cst. Visconti had any real insight into his misconduct.

There was no question that dismissal was within the range of available penalties. The respondent’s conduct was so serious, prolonged, and disreputable, that permitting him to continue serving as a police officer would undermine public trust and cause irreparable damage to the reputation of the service. Accordingly, the only reasonable penalty was dismissal.

Authorities cited

Penner v. Niagara Regional Police Services Board, 2013 SCC 19

Jacobs v. Ottawa Police Service, 2016 ONCA 345

Johnson v. Sault Ste. Marie Police Service, 2024 ONCPC

Toronto (City) v. CUPE, Local 79, 2003 SCC 63

Ceyssens, Paul. Ontario Police Services Act, Fully Annotated; Legal Aspects of Policing (Earlscourt)

Krug v. Ottawa Police Service, 2003 CanLII 85816 (ONCPC)

Cudney v. St. Thomas Police Service, 2021 ONCPC 15; aff’d 2023 ONSC 3443 (Div. Ct.)

Guenette and Ottawa-Carleton Regional Police Service, 1998 CanLII 27136 (ONCPC)

Ontario Provincial Police v. Cst. R.T. Tamminga (Oct. 17, 2019)

Shorey v. Belleville Police Service, 2017 CanLII 53072 (ONCPC)

Nelles v. Cobourg Police Service, 2007 ONCPC 4

Husseini v. York Regional Police Service, 2017 CanLII 4791