

ONTARIO POLICE ARBITRATION & ADJUDICATION COMMISSION
IN THE MATTER OF a hearing held in accordance with section 202(1) of the
Community Safety and Policing Act, 2019, S.O. 2019, c.1, Sched. 1

BETWEEN:

ONTARIO PROVINCIAL POLICE

Applicant

And

CONSTABLE DAVID ABUWA

Respondent

DECISION ON VENUE

Adjudicator: Ian Nordheimer

Counsel for the applicant: Adrien Iafrate

Counsel for the respondent: James Girvin

Hearing Date: submissions in writing

REASONS

[1] The respondent faces two counts of misconduct under Regulation 407/23 of the *Community Safety and Policing Act, 2019* (the “CSPA”). I am the adjudicator appointed to preside over the merits hearing. I do not consider it necessary to set out the specific allegations involved, other than to note that the applicant seeks the termination of the respondent’s employment as a police officer.

[2] At the initial case conference in this matter, counsel for the respondent raised an issue regarding the appropriate venue for the merits hearing. The O.P.P. has offered a facility at their headquarters in Orillia, or their boardroom at the Mississauga Detachment, for the hearing of this matter, including the provision of a court reporter. The respondent objects to the hearing being held in an O.P.P. facility. He submits that a “neutral” location should be utilized such as, for example, a hotel.

[3] The parties agreed to file written submissions on this issue. I have now received and reviewed those submissions.

[4] The respondent asserts that the CPSA was enacted to ensure that the discipline process for police officers was neutral and independent. He extends this objective to include the location where a discipline hearing is held. The respondent asserts that hearings conducted by the Ontario Police Arbitration and Adjudication Commission (“OPAAC”) “should presumptively be held in neutral premises unless the respondent officer consents to a police facility or the party proposing such a venue demonstrates a case-specific justification”.

[5] The applicant says that the CPSA does not stipulate the location where a hearing under the statute is to be held, nor does it provide guidelines respecting the location to be chosen. The location of the hearing is therefore a matter for the exclusive jurisdiction of the adjudicator exercising his or her discretion.¹ The applicant says that holding a hearing at one of the O.P.P. facilities is consistent with the general principle of holding a hearing where the events occurred, and the witnesses are located. In this case, the events occurred in a location in the Regional Municipality of Peel and the witnesses are all Peel Region police officers.

[6] There is no doubt that the CSPA was enacted, in part, to ensure that the disciplinary process for police officers was independent and objective. I do not accept, however, that that objective requires that the facility where a disciplinary hearing is to be

¹ Section 7(2) of the CSPA stipulates that if a matter is not address by the CSPA or its regulations, then “the adjudicator appointed to hold the proceeding shall determine the process for addressing the issue in such manner as the adjudicator considers to be just.”

conducted cannot be associated with a police service, including the police service who has instigated the prosecution of the offences.

[7] OPAAC does not have hearing rooms of its own. I understand that it is a common practice of the OPAAC to hold its hearings in an appropriate hearing facility, provided by the police service that is involved in the matter, if they have one. I also understand that most of the larger police services have such facilities. I am aware that a common practice does not answer whether the practice is appropriate. I just note it as part of the background to this issue.

[8] The procedure for hearings under the CSPA is governed by Reg. 404/23. Section 8(2) of that Regulation reads:

An appointed adjudicator shall be guided by the following principles:

1. The adjudicator should seek to secure the just, most expeditious and cost-effective determination of every proceeding on its merits.

[9] The respondent's position, if accepted, would require the OPAAC, at public expense, to rent space at a facility to hold a hearing as opposed to using existing available space, for which, I note, the public has already paid. Such a result would not represent the most cost-effective process.

[10] More importantly, I do not accept the respondent's fundamental proposition which is, essentially, that in some fashion an independent objective hearing cannot be held in a facility that is connected to the police service who has instigated the prosecution of the offences. The central problem with that proposition is that facilities do not hold biases, persons do. No person, who commonly uses either of the proposed O.P.P. facilities, is going to be making the decision in this matter. That responsibility falls solely to me.

[11] I note that a logical extension of the respondent's position would call into question the use of provincially supplied facilities for a host of different forms of hearings. By way of example only, in the criminal sphere, the province operates most of the courthouses in Ontario and employs most of the staff who operate those facilities. To my knowledge it has never been concluded that this affects the independence of the judiciary who make the decisions. The same point can be made in the civil context where the Government of

Ontario is often a party. In the same way, the province operates numerous adjudicative tribunals where the Government of Ontario is often a party. Again, I am not aware of any accepted principle that these realities impact on the neutrality or independence of the decision makers involved.

[12] Further, the respondent has not pointed to any facts in relation to his personal situation that would establish that holding a hearing in a facility provided by the O.P.P. would give rise to reasonable concerns about the neutrality or independence of the hearing. Although the respondent has not specifically made this point, I appreciate that the respondent may find it embarrassing to have to attend at O.P.P. headquarters and potentially encounter fellow O.P.P. officers.² That possibility for embarrassment is not a reason to require the hearing to be held in another facility. By way of analogy, many people who are facing criminal charges may feel embarrassed by having to go to a courthouse frequented by members of the public, but I am unaware of that embarrassment ever forming the basis for a proper change of venue application.

[13] Finally, the respondent cites *Valente v. The Queen*, [1985] 2 S.C.R. 673 for the fundamental proposition, stated by Le Dain J. at para. 22:

It is, therefore, important that a tribunal should be perceived as independent, as well as impartial, and that the test for independence should include that perception.

[14] Perception, in that context, is not the perception of any one person, especially the person who is the subject of the matter that is before the tribunal. Rather, it is whether a reasonable person, after viewing the matter realistically and practically, would perceive the tribunal not to be independent and impartial. I cannot see any reasonable person reaching that conclusion based simply on the fact that the hearing is held in a facility provided by a police service.

[15] In the end result, I do not accept the respondent's position. I conclude that it is appropriate to hold the hearing in this matter in either of the facilities offered by the O.P.P.

² I note on that point that the respondent works out of the Ottawa detachment of the O.P.P. and is therefore unlikely to run into direct colleagues of his given that O.P.P. headquarters is located in Orillia, Ontario.

and I would so order. As for which of the two facilities should be used, I leave that to the parties to agree on subject to the availability of those facilities.

A handwritten signature in black ink, appearing to read 'Ian Nordheimer', with a large loop at the beginning and a horizontal line extending from the end.

Ian Nordheimer

March 31, 2026