



**HEARING DECISION**  
***MOTION***

**Name:** Matthew MCCARTNEY

**Rank:** Police Constable

**Badge Number:** 10174

**Case Number:** 2012.35

**Hearing Date:** 2015.06.01

**Hearing Officer:** The Hon. Judge W. GONET

**Prosecutor:** Stockwoods

**Defence Counsel:** Mr. Harry BLACK  
**Or Representative**

IN THE MATTER OF THE  
POLICE SERVICES ACT, R.S.O. 1990, c.P.15, as amended

**B E T W E E N:**

**TORONTO POLICE SERVICE**

**Respondent**

and

**POLICE CONSTABLE MATTHEW MCCARTNEY #10174**

**Applicant**

and

**ANNA GRYCHTCHENKO**

**Complainant**

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**ORDER**

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Part I: Overview

1. The complainant, Anna Grychtchenko (hereinafter called A.G.), attended on June 26, 2010, the G20 Summit proceedings giving rise to her complaint that unnecessary force was used against her by the applicant thereby causing certain physical injuries.
2. This complaint was received on August 25, 2010, by the Office of the Independent Police Review Director (hereinafter called the OIPRD), for further investigation and determination if a complaint has been substantiated.
3. On December 20, 2011, approximately 16 months after the receipt of the complaint, the OIPRD determined that the claim was substantiated and referred the matter to the Chief of Police to hold a hearing as to the alleged misconduct of the applicant pursuant to the provisions of the *Police Services Act*, R.S.O. 1990, c.P.15, as amended.
4. As more than six months had elapsed since the day on which the OIPRD had retained the complaint, the Chief of Police was required to make an application pursuant to section 83(17) of the *Police Services Act* to the Toronto Police Services Board for the Board to determine, in the opinion of the Board, whether it was reasonable under the circumstances to delay serving the Notice of Hearing on the applicant and if the Board determined that the delay was reasonable to approve service of the attached Notice of Hearing on the applicant.

**Part II: Notice of Hearing**

5. Disciplinary hearings are held pursuant to Part V of the *Police Services Act* and must be conducted in accordance with the *Statutory Powers Procedure Act*, R.S.O. 1990 c.S.22. The *Police Services Act* provides a mandatory statutory time period for the institution of proceedings under the *Police Services Act* against a police officer. Section 83(17) of the *Police Services Act* provides as follows:

If six months have elapsed since the day described in subsection (18) [the day on which the complaint was retained by the Independent Police Review Director] no notice of hearing shall be served unless the board, in the case of a municipal police officer, or the Commissioner, in the case of a member of the Ontario Provincial Police, is of the opinion that it was reasonable, under the circumstances to delay serving the notice of hearing.

6. In this matter, the time period between the date of retention, ie. December 20, 2011, and the date of preparation of the "Delay Application" to the Toronto Police Services Board, being March 13, 2012, was in excess of 6 months.
7. The "delay application" was served upon the applicant with the recommendation that the Board approve the service of the attached "Notice of Hearing" against the applicant in accordance with section 83(17) of the *Police Services Act*. In support of this application, material was filed to explain the delay together with a copy of the proposed Notice of Hearing which read as follows:

Notice of Hearing  
Police Services Act, R.S.O. 1990, c.P.15, as amended

TO: Police Constable Matthew McCartney (10174)

YOU ARE ALLEGED TO HAVE COMMITTED MISCONDUCT IN THAT YOU DID USE ANY UNNECESSARY FORCE AGAINST A PRISONER OR OTHER PERSON CONTACTED IN THE EXECUTION OF DUTY, contrary to Section 2(1)(g)(ii) of the Schedule Code of Conduct of Ontario Regulation 123/98 and therefore, contrary to Section 80(1)(a) of the Police Services Act, R.S.O. 1990, as amended.

STATEMENT OF PARTICULARS

Being a member of the Toronto Police Service and assigned to number 13 Division, you were assigned uniform duties.

On Saturday June 26, 2010, you were on duty and assigned to the G20 Summit detail. You came in contact with A.G. in the area near Queens Park and used unnecessary force by striking A.G..

In so doing, you committed misconduct in that you did use unnecessary force against a prisoner or other person contacted in the execution of duty.

8. This application together with attachments was served on the applicant on March 26, 2012.
9. The Chief of Police recommended that the Board approve the service of the attached Notice of Hearing against the applicant in accordance with section 83(17) of the *Police Services Act*.

10. This delay application before the Toronto Police Services Board was heard at its meeting on May 18, 2012, wherein the Board considered the recommendation of the Chief of Police seeking approval to serve a Notice of Hearing on the applicant. That Notice of Hearing being attached to the "delay application" and the sole Notice of Hearing served upon the applicant.
11. The said Board concluded that assessing all the circumstances, the delay in this matter was reasonable.
12. It was therefore recommended that the Board approve the service of the attached Notice of Hearing against Police Constable Matthew McCartney in accordance with section 83(17) of the *Police Services Act*.
13. On June 29, 2012, a second Notice of Hearing was served upon the applicant. The date of service of this Notice of Hearing was well outside the six month limitation period for service as set out in section 83(17) of the *Police Services Act* and no "delay application" was made to nor granted by the Police Services Board for this Notice of Hearing as served.
14. The second Notice of Hearing contained an amendment to the second paragraph of the Statement of Particulars which read as follows:

On Saturday June 26, 2010, you were on duty and assigned to the G20 Summit detail. You came into contact with A.G. in the area near Queens Park and used unnecessary force on A.G.

15. On July 21, 2014, a hearing was commenced before this Hearing Officer based on the allegations as set forth in the "second" Notice of Hearing. The existence of two Notices of Hearing was not discovered until the time of making final argument being March 19, 2015.

**Part III: Did the Hearing Officer have Jurisdiction to hear the allegations as set out in the Notice of Hearing served upon the applicant on June 29, 2012?**

16. This Hearing Officer was designated by the Chief of Police to hold the hearing pursuant to section 94(1) of the *Police Services Act* and act on behalf of the Chief pursuant to section 68(5) of the said *Act*.

17. The power to discipline an officer comes from the compliance with the conditions in the conferring statute, ie. the *Police Services Act*.

*Reference: Giles and Halton Regional Police Force (1981), 33 O.R. (2d) 666 (Div. Ct.); Henderson v. College of Physicians and Surgeons of Ontario, [2003] O.J. No. 2213 (C.A.); Ramsay v. Toronto (City) Commissioners of Police (1988), 66 O.R. (2d) 99 (Div. Ct.).*

18. The Police Services Board approved service of a Notice of Hearing alleging:

On Saturday, June 26, 2010, you were on duty and assigned to the G20 Summit detail. You came in contact with A.G. in the area near Queens Park and used unnecessary force by striking A.G.

The Board did not approve service of a Notice of Hearing alleging:

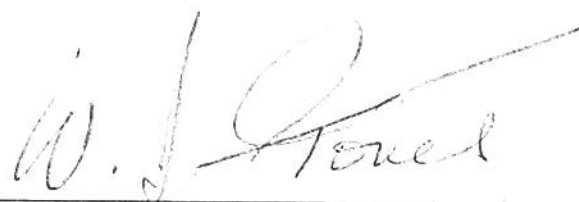
On Saturday, June 26, 2010, you were on duty and assigned to the G20 Summit detail. You came in contact with A.G. in the area near Queens Park and used unnecessary force on A.G.

19. I find that I have no power to amend a Notice of Hearing.

*Reference: Re: Constable Araujo, September 22, 2011, Hearing Officer Byrnes;  
Re: Constable Ribarovic, October 30, 2012, Hearing Officer Breen; Henderson,  
supra para 17.*

20. This Motion will be granted and the proceedings against Constable McCartney will be stayed. There will be no order as to costs.

DATED at Toronto, this 1<sup>st</sup> day of June, 2015.

A handwritten signature in black ink, appearing to read "W. S. Gonet", written over a horizontal line.

Walter S. Gonet  
Hearing Officer