ONTARIO CIVILIAN POLICE COMMISSION

IN THE MATTER OF THE POLICE SERVICES ACT, R.S.O. 1990, C. P.15, AS AMENDED

BETWEEN:

PROVINCIAL CONSTABLE D.B. VOGELZANG

APPELLANT

-and-

ONTARIO PROVINCIAL POLICE

RESPONDENT

-and-

ROBERT FRANCIS

PUBLIC COMPLAINANT

DECISION

Panel:	Zahra Dhanani, Member Hyacinthe Miller, Member
Hearing Date:	October 5th, 2012
Hearing Location:	Toronto, Ontario

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Appearances

Katherine M. Nelson, Counsel for the Appellant
Christopher Diana, Counsel for the Ontario Provincial Police
Robert Francis, Self-Represented Public Complainant

Introduction

1. On April 14th, 2011 Const. David Vogelzang (the "Appellant") was charged with one count of unlawful or unnecessary exercise of authority contrary to s. 2 (1)(g)(i) of the Code of Conduct (the “Code”) set out in Ontario Regulation 268/10, as amended, and therefore contrary to s. 80 (1) of the *Police Services Act*, R.S.O. 1990, c.P.15, as amended (the "Act").

2. It was alleged that on November 14th, 2010, Const. Vogelzang unlawfully or unnecessarily arrested Robert Francis (“RF”, or “Mr. Francis”).

3. The hearing into the allegation occurred on November 28 and 29, 2011, before Supt. Robin D. McElary-Downer (the "Hearing Officer"). The Appellant pled not guilty to the charge.

4. On January 5th, 2012, in a decision released electronically, the Hearing Officer found Const. Vogelzang guilty of unlawful or unnecessary exercise of authority.

5. On January 12, 2012 the Hearing Officer heard submissions from all parties as to penalty. On February 9, 2012 the Hearing Officer imposed a penalty of forfeiture of 24 hours of work or three days.

6. Constable Vogelzang appeals both the conviction and the penalty. He has requested that we overturn the conviction and substitute a finding of not guilty. In the alternative, if the conviction is not overturned, Const. Vogelzang requests a

decrease in penalty from forfeiture of 24 hours to a reprimand.

Summary Decision

7. For the reasons set out below, we dismiss the appeal.

Background

8. The matter before us originated as a complaint lodged with the Office of the Independent Review Director ("OIPRD") in 2010 by Mr. Francis.

9. Const. Vogelzang joined the OPP in 1999. For most of his career, the Appellant has been assigned to traffic units, often leading the Highway Enforcement Team ("HET"). He has also served as a coach officer and a Pipeline and Radar Instructor.

10. On November 14th, 2010 at about 2:20 p.m., Const. Vogelzang and another officer, Const. Ian McKinnon, were parked beside each other facing north in the centre turnaround of Highway 401 near Prescott. They were visiting and decided to head into Prescott for lunch.

11. At around the same time, Mr. Francis was driving home from Montreal on Hwy 401, when he passed the two parked police cruisers. He slowed to approximately 85 km/hr. and watched in his rear view mirror as the cruisers pulled out and began travelling in the same direction.

12. He weaved within his lane, crossed into the right lane twice then eventually switched lanes, to allow the cruisers to pass. The Appellant signalled for Mr. Francis to stop. He pulled to the right shoulder. Both police vehicles stopped behind him.

13. Const. McKinnon approached the passenger side window and requested Mr. Francis' licence and registration. At 2:27 p.m. Const. Vogelzang, who remained in his vehicle, conducted a

CPIC licence number check and a Criminal Record check of the registered driver. The searches revealed that Mr. Francis had no criminal record.

14. Mr. Francis asked Const. McKinnon why he was being stopped. He was told that it was because he was “all over the road”. Mr. Francis argued loudly that he was within his lane at all times.

15. Const. Vogelzang opened the driver’s door and advised Mr. Francis to surrender his documents or he would be arrested. Mr. Francis complied by handing over his documentation in a slow and deliberate manner. The officers returned to the police vehicles and discussed the situation.

16. Mr. Francis activated the ‘record’ function on his iPhone. The two officers returned to his car. The iPhone recording includes a portion of the conversation pre-and post-arrest and the questions posed by the Appellant. They included:

> “Have you been arrested before?”
>
> “What is your problem with the police?”
>
> “You are now on the highway in the Province of Ontario, I can arrest you for anything.”
>
> “It’s not because of any race, colour or anything.”

17. When he was asked if he had a “problem with police”, Mr. Francis became agitated. He accused the officers of intimidating and harassing him.

18. He was arrested for breach of the peace, pursuant to section 30 of the *Criminal Code of Canada* and was placed in the back of a cruiser for approximately 10 minutes. While Const. Vogelzang conducted a quick search of his vehicle, Mr.

Francis continued to loudly vocalize his objections to what he considered an illegal search.

19. Following the search, Const. Vogelzang released Mr. Francis unconditionally. No traffic infractions were documented; however, Mr. Francis was warned about an illegal licence plate cover and about failing to drive in a marked lane. He immediately drove to the nearest OPP Detachment and spoke via telephone to a call-taker in the Police Communications Centre (the "PCC") about filing a complaint about the officers' conduct. The next day, he lodged a complaint with the OIPRD.

20. D/Sgt. Allison of the Professional Services Bureau (the "PSB") was assigned to investigate three allegations contained in the complaint, namely: 1) Exercise of Authority - Improper Arrest, 2) Harassment, and 3) Exercise of Authority - Improper Search.

21. D/Sgt. Allison concluded that the allegations of Improper Arrest and Improper Search were substantiated. The Notice of Hearing, dated April 14th, 2011, was served on the Appellant.

Disciplinary Hearing

22. At the hearing there were four witnesses, including Mr. Francis and Const. McKinnon. Const. Vogelzang testified on his own behalf.

23. A total of seventeen exhibits were filed, including the iPhone recording, the written complaint submitted to the OIPRD, transcripts of the PSB investigation interviews, the PSB investigator's report, the report completed after the arrest and the recording and transcript of Mr. Francis' call to the PCC.

24. The Hearing Officer in her decision concluded that there was clear and convincing evidence to support the finding that the Appellant was guilty of unlawful or unnecessary arrest.

25. At the penalty hearing on January 12, 2012, the Hearing Officer reviewed the evidence, which included numerous commendations from the Appellant's personal file.

Submissions of the Appellant

26. Ms. Nelson, counsel for the Appellant, submitted that the Hearing Officer misapprehended the evidence before her and failed to give the testimony of Const. Vogelzang and Const. McKinnon sufficient weight.

27. The Hearing Officer failed to apply the appropriate legal analysis. The delineation between the statutory and the common law was not the issue to be determined; rather, the analysis should have been guided by the officers' stated belief about the imminent danger of a breach of the peace.

28. Counsel argued that there is a two-part test for determining if a police officer has the legal authority to arrest a person without warrant: (1) where there is a reasonable and honest belief that a breach of the peace may occur in the immediate future: see Terrio v. VanRuyen (1994), 2 P.L.R. 328 (Ont. Bd. Inq.) and (2) that the risk of a breach is substantial, and that there is a requirement to prevent future foreseeable harm: see Brown v. Durham (Regional Municipality) Police Force [1998] O.J. No. 5274 (C.A.).

29. Counsel submitted that the test for reasonable belief that further harm will occur, has to go beyond "being belligerent, loud and uncooperative" to justify being placed under arrest: see R. v. Januska [1996] O.J. No. 2883 (Ct. J. (Gen. Div.).

30. Ms. Nelson asserted that this case is distinguished from Januska, supra, because both Const. Vogelzang and Const.

McKinnon testified that they believed Mr. Francis was about to become assaultive. Further, the Hearing Officer erred in finding that Const. Vogelzang did not have reasonable grounds to make a lawful arrest based on a mischaracterization of his belief as a "mere suspicion" or "gut feeling" or "concern". She argued that this finding contradicts the Appellant's evidence that Mr. Francis was "the most aggressive driver" he had ever encountered.

31. Counsel stated that where there is no risk of personal injury or property damage, vehement or emotional verbal expression of disagreement with police does not constitute a breach of the peace: see Pozniak v. Sault. St. Marie (City) Police Services Board [1999] O.J. No. 3408 (S.C.J.).

32. Ms. Nelson asserted that the Hearing Officer misunderstood the principles above, as this was not a clear-cut situation involving improper conduct.

33. It was argued that the evidence should have been weighed differently. The recorded iPhone conversation lasted only 40 seconds. The Appellant's concerns over his safety and that of Mr. Francis were supported by Const. McKinnon's evidence, which should have been accorded considerable deference.

34. With respect to penalty, the Hearing Officer placed too great an emphasis on the seriousness of the offence and failed to conduct a proper analysis of the facts, leaving it unclear how she reached her conclusions. She failed to consider the common law authority to make an arrest and the practical differences of powers of arrest in the context of an already occurring event.

35. Counsel argued that, even if we accept that Const. Vogelzang did not have the requisite grounds to make a lawful arrest, he was in a dangerous situation and responded accordingly when face-to-face with an individual who was yelling, had

clenched fists and was in an aggressive state on the side of a busy highway.

36. The Hearing Officer's decision sets a dangerous precedent, in that it is inconsistent with a clear interpretation of lawfulness under the common law and implies that police officers may not rely on good and reasonable subjective grounds.

37. The Appellant requested that we overturn the finding of misconduct. In the alternative, it was requested that the appeal of the penalty be granted and the penalty decreased to a reprimand.

Submissions of the Respondent

38. Counsel for the Respondent submitted that police officers are held to a high standard when exercising their power to arrest. Depriving an individual of their liberty, even for a brief period of time, is considered a significant infringement of their rights.

39. Mr. Diana stated that the 40-second iPhone recording of the interaction between Mr. Francis and the Appellant, clearly demonstrated that Const. Vogelzang did not have reasonable grounds to arrest Mr. Francis. The Hearing Officer's findings on this are unequivocal. In assessing credibility regarding what happened immediately prior to the arrest, the Hearing Officer accepted Mr. Francis' evidence.

40. The Respondent submitted that the Hearing Officer's findings of credibility are reasonable, supported by the evidence and the law. Improper exercise of an officer's arrest authority constitutes misconduct.

41. With respect to the officer's "concerns", Mr. Diana submitted that the Appellant is six feet nine inches tall and weighs 330 pounds. At the time of the vehicle stop, he was equipped with pepper spray, a baton, handcuffs and his service

firearm. Mr. Francis was five feet eleven inches and weighed 225 pounds. Mr. Diana asserted that, while both officers testified that they were concerned about Mr. Francis' behaviour, they also both testified that he was neither verbally threatening nor did he make any effort to exit his vehicle.

42. Mr. Diana submitted that Mr. Francis' demeanour was calm and polite when he attended at the OPP detachment to file his complaint shortly after the encounter with the Appellant.

43. Mr. Diana asserted that the Hearing Officer made clear findings about the credibility of the main witnesses. She found Mr. Francis to be truthful, specifically about the incidents pre and post arrest. She found that his evidence was corroborated by the iPhone recording, the complaint to the OIPRD, the transcripts of his conversation with the OPP dispatch and his interview with the PSB.

44. In response to the Appellant's argument that he was exercising his common law authority to arrest Mr. Francis, the Respondent submitted that a breach of the peace does not include conduct which might objectively be seen as offensive, disturbing or even vaguely threatening. A breach of the peace contemplates an act or actions which result in actual or threatened harm: see Brown, supra.

45. Mr. Diana submitted that case law confirms that being loud, obnoxious, belligerent, uncooperative and demanding to know what one has done wrong, does not justify an individual's arrest: see Januska, supra, and Pozniak, supra. The Hearing Officer acknowledged the officers' "concern" but found that this was not sufficient to meet the test of reasonable grounds to arrest.

46. He asserted that only in extraordinary circumstances should the Commission interfere with the findings of the Hearing Officer and that the evidentiary and credibility findings of the

Hearing Officer should be accorded considerable deference: see McCormick v. Greater Sudbury Police Service (2010), ONSC 270 (Ont. Div. Ct.).

47. Mr. Diana noted that the standard of review with respect to the interpretation and application of the law is correctness. The standard of review with respect to findings of fact and credibility is reasonableness: see McPhee v. Brantford Police (August 3, 2012, OCPC) and Burrows v. Ontario Provincial Police (August 13, 2012, OCPC). It was submitted that this is an appeal of factual findings and the standard of review to be applied is reasonableness.

48. Counsel argued that hearing officers are not legally trained. The Commission must not focus on mistakes that do not affect the decision as a whole or be overly critical of the language used by the hearing officer: see McPhee, supra.

49. Mr. Diana argued that the Hearing Officer appropriately analysed and weighed the evidence. She wrote extensive reasons that are tenable and support the conclusions reached. She applied the legal tests correctly. The finding that the Appellant committed misconduct is based on clear and cogent evidence.

50. He requested that the Commission dismiss the appeal.

Reasons for Decision

51. The standard of review for this Commission with respect to factual findings is reasonableness: see Dunsmuir v. New Brunswick [2008] S.C.J. No. 9.

52. The Supreme Court of Canada described the reasonable standard in Dunsmuir, supra, at para 47:

> Reasonableness is a deferential standard animated by the principle that underlies the development of the

> two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable rational solutions. … In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

See also Newfoundland and Labrador Nurses Union v. Newfoundland and Labrador (Treasury Board), 2011 SCC 62 (CanLII).

53. Past Commission decisions have spoken to our role on an appeal, noting that we are not to second-guess the decision of a hearing officer. Our role is to review the decision to determine whether the conclusions reached are reasonable, reflect a correct understanding and application of the law, are based upon clear and cogent evidence, and are articulated in a logical manner: see Precious and Hamilton Police (2002), 3 O.P.R. 1561 (OCCPS) and Whitney v. Ontario (Provincial Police) [2007] O.J. No. 2668 (Div.Ct.)

54. In certain limited cases it may be open to us to reach a different conclusion from the hearing officer. However, we should only intervene if there has been an error in principle, or relevant facts have been ignored: see Williams, Wilson and Ontario Provincial Police (November 20, 2006, OCCPS), Favretto and Ontario Provincial Police (February 13, 2002, OCCPS) and Karklins and Toronto Police Service (September 25, 2007, OCCPS).

55. An appeal to the Commission is an appeal on the record. Unlike the hearing officer, we do not have the advantage of hearing and observing the witnesses as they testify. Deference must be accorded to a hearing officer's findings, unless an examination of the record shows that the conclusions cannot reasonably be supported by the evidence. Blowes-Aybar and Toronto (City) Police Service, 2004 Carswell Ont 1583 (Div. Ct.).

56. This is an appeal of conviction and penalty. It is based on the Appellant's submission that there was a misapprehension of evidence by the Hearing Officer. The standard of review to be applied is reasonableness: see Dunsmuir, supra.

57. In our view, the issues to be decided on this appeal are:

- Was the Hearing Officer's finding of misconduct reasonable and supported by legally adequate reasons?

- Did the Hearing Officer err in finding that the Appellant's arrest of RF was unlawful or unnecessary?

- Are the Hearing Officer's findings of credibility reasonable?

- If the conviction is upheld, is the penalty imposed reasonable?

Reasonableness of Decisions and Adequacy of Reasons

58. Justification, transparency and intelligibility of reasons are the hallmarks of legally adequate tribunal decisions: see Baker v. Canada (Minister of Citizenship and Immigration), [1999] 2 S.C.R. 817.

59. While deference must be accorded to factual findings, the same cannot be said for interpretations of relevant aspects of the law. Except when the tribunal is interpreting its governing statute, the standard of review for such matters is correctness. Reasons assist the parties in knowing that they experienced a fair assessment of the facts and the law in their case by the decision maker. Procedural fairness requires sufficient reasons so that reviewing bodies are able to review and scrutinise the decision: see Law Society of Upper Canada v. Neinstein (2010), 99 O.R. (3d) 1 Ont. C.A.).

60. It is not necessary for the finder of fact to refer to each and every piece of evidence put before him or her: see Woolaston v. Canada (MMI) [1973] S.C.R. 102. Furthermore, a hearing officer's reasons should be read as a whole, and not be subjected to microscopic examination: see Law Society of New Brunswick v. Ryan [2003] 1 S.C.R. 247.

61. From our examination of the record, we find that the Hearing Officer's findings are reasonable. The reasons, read as a whole, support the Hearing Officer's decision.

62. In her decisions, the Hearing Officer outlined the events leading to the disciplinary charges, she reviewed the evidence in some detail, setting out her analysis of the facts and her findings.

63. The Hearing Officer's decision is supported by the PSB investigation report, which states at page 12:

> Although FRANCIS became upset and argumentative, there was nothing in the recording, notes or duty reports of the officer to indicate that FRANCIS was going to get out of his vehicle and cause any breach of the peace. FRANCIS was compliant, as he provided his identification after he was warned that he could be arrested and answered all questions asked of him by

> the officers politely. RF did not yell, swear or threaten the officers when they approached him to arrest him.

64. There was a clear and direct path to the Hearing Officer's conclusions. We find the reasons well-written and clear, and the decisions reasonable and supported by the evidence and the law.

65. Pursuant to s. 31 (1) of the *Criminal Code of Canada*, R.S.C. 1985, c. C-46, Police Officers have the legal authority to arrest an individual without a warrant for breaching the peace. This section states:

> Every officer who witnesses a breach of the peace and everyone who lawfully assists the peace officer is justified in arresting any person whom he finds committing the breach of the peace or who on reasonable grounds, he believes is about to join or renew the breach of the peace.

66. The Hearing Officer reviewed the relevant case law and referenced the similarities and principles established in them. She referenced Pozniak, supra, and Bibby, supra, which detail that "vehement or emotional verbal expression" does not constitute breach of the peace. She noted Brown, supra, and Januska, supra, both of which address the power to arrest for breach of the peace. She found these cases to be supported by Bray v. Ottawa Police Services Board, 2007 CanLII 8629 (ON SC).

67. Her conclusion that "it is patently clear based on the above case law, there has to be the clearest of circumstances to justify an arrest for the breach of peace" was legally correct.

68. As to the imminence of a breach and the perceived level of risk attached to the incident, we note that both officers, when interviewed by the PSB investigator, stated that they did not have to use any level of force to arrest RF and put

him in the cruiser. The Appellant stated in his interview that he used “zero” force.

69. It was within the scope of the facts heard by the Hearing Officer to conclude that, “outside of Vogelzang and McKinnon’s subjective concern, no reasonable evidence was present to substantiate the belief that RF was a risk or threat to the motoring public.” She pointed to two key pieces of evidence to support this finding: (1) “RF’s anger was directed to the police officers and not the motoring public” and (2) “Vogelzang missed the fact that RF had already calmed down.”

70. The iPhone recording provides a window into a brief period of the police officers’ interaction with Mr. Francis. It demonstrates that while Mr. Francis was agitated, he was not out of control. He responded to questions succinctly, becoming agitated when the Appellant asked, “What is your problem with the police?”

71. The Hearing Officer, at page 20 of her decision, noted the Appellant’s statement that, “I know you have something on you”, and found it “troubling”. She stated that the Appellant’s comment, “You are now on the highway in the Province of Ontario, I can arrest you for anything,” was, as she notes: “very disturbing as it paints a picture that police operate in a lawless society.”

72. With respect to Ms. Nelson’s arguments about the delineation between common law and statutory law, we find no ‘dangerous precedent’ in the Hearing Officer’s decision. There are two elements of a lawful arrest: 1) the arresting officer must have reasonable and probable grounds, and 2) those grounds must be based on all of the evidence. Const. Vogelzang was not able to convince the Hearing Officer on either of these grounds.

73. At the hearing and in the PSB interviews, Const. Vogelzang and Const. McKinnon state that they were “concerned” that Mr. Francis would become assaultive. At page 13 of the transcript of Const. Vogelzang’s PSB interview, he stated: “I was concerned for my safety”. However, an objective review shows that the evidence does not support this assertion.

74. Section 2 (1) (g) (i) of the Code states that an officer commits misconduct if he or she engages in “unlawful or unnecessary exercise of authority, in that he or she, without good and sufficient cause makes an unlawful or unnecessary arrest.” The Hearing Officer’s finding at page 19 of her decision on guilt, noted that, “An officer needs much more than a mere suspicion or a concern - an officer needs reasonable grounds and I have found that RF’s behaviour did not cross this threshold.” This is consistent with the proper application of case law principles and the Code.

75. We find that the Hearing Officer correctly identified and applied the applicable legal tests. Her findings of fact are supported by the evidence and are reasonable.

Credibility Findings

76. The Hearing Officer heard from four witnesses, only three of whom she considered material: Mr. Francis, Const. McKinnon and Const. Vogelzang.

77. The Hearing Officer found Mr. Francis to be a credible witness, well-spoken and articulate, calling his testimony “truthful” and specific to pre- and post- arrest events.

78. The Hearing Officer accepted that Const. McKinnon was being honest when he testified that he had a concern that Mr. Francis may become assaultive, and that he did not want him driving in that state. However, at page 15, the Hearing Officer “found McKinnon’s concern was what it was - it was a concern.” Similarly, Const. Vogelzang’s testimony that Mr.

Francis was aggressive and that he believed he was going to be assaultive was found to a concern. Neither concern rose to the level of establishing that reasonable grounds existed for an arrest to prevent a breach of the peace.

79. The Appellant's credibility was diminished by his assertion that he tried to calm Mr. Francis, contrasted to his recorded statements, including, "What is your problem with police?", "You are now on the highway in the Province of Ontario, I can arrest you for anything," and, "I know you have something on you." In view of the fact that the Appellant did not realize Mr. Francis had calmed down, the Hearing Officer, at page 16, could not "accept Const. Vogelzang's evidence as entirely credible.

80. This finding of credibility is reasonable and supported by the evidence. Taking the reasons for the Hearing Officer's decision in their entirety, we conclude that there has been no misapprehension of the evidence, no misapplication of law or other manifest error that would justify our intervention.

Penalty

81. The well-established sentencing factors include: general deterrence, specific deterrence, likelihood of rehabilitation, the nature and seriousness of the misconduct, damage to the reputation of the police service, and to the level of public trust with the police service: see Williams and Ontario Provincial Police (December 4, 1995, OCCPS).

82. The Hearing Officer found that Const. Vogelzang's misconduct was serious and therefore worthy of a serious penalty. While there may have been a range of outcomes available to the Hearing Officer, our role is to determine, after a somewhat probing analysis, whether the Hearing Officer's reasons are tenable and support her decision on penalty.

83. With respect to the seriousness of the misconduct the Hearing Officer stated, at page 6 of her penalty decision:

> In this case, RF was deprived of his freedom, handcuffed and placed in the rear of a cruiser. His vehicle was searched incident to arrest on the premise the arrest was lawful and it was not. The intrusiveness of the arrest went beyond RF's person - it extended to his property. Police are afforded significant powers to remove an individual's freedom, and it is for this reason they are expected to exercise their arrest authorities with the greatest due diligence, care and caution. There is little forgiveness in the public sphere when police get this wrong.

84. The Hearing Officer confirmed that the public interest was the leading consideration in the penalty disposition, noting that, "the public must have confidence that the OPP deems matters such as these to be very serious."

Mitigating and Aggravating Factors

85. We find that the Hearing Officer examined the facts and adequately addressed the mitigating and aggravating factors.

86. She acknowledged that there were mitigating factors, which included Const. Vogelzang misinterpreting the law and giving an incorrect warning to Mr. Francis that he would be arrested if he did not identify himself. The Appellant was not "cavalier" during the arrest nor did he seem to be taking advantage of the situation. The Hearing Officer referenced the Appellant's impressive career history and his notable achievements and awards. She noted the statements that demonstrated remorse, including: "I am not perfect, I make mistakes," "I don't think I had an option" and "I thought I was doing the right thing" (p.7).

87. The fact that the Appellant had been found guilty of discreditable conduct relating to an off-duty traffic stop five months prior to the interaction with Mr. Francis was an aggravating factor.

Rehabilitation

88. The Hearing Officer concluded that Const. Vogelzang will not likely commit the same misconduct again. There was no evidence that the Appellant's actions were intentional.

General and Specific Deterrence

89. The Hearing Officer observed that this case should serve as a reminder to all police officers that they must "continually stay abreast of their arrest authorities" (p.8). She found that Const. Vogelzang has been affected by the finding of guilt.

Consistency in Penalty

90. The Hearing Officer considered similar prior tribunal decisions and found that the penalty in similar cases ranged from a reprimand to a forfeiture of 40 hours: see OPP v. Godfrey March 22, 1989, (O.P.C), Edmonton Police Service and Rishi, December 31, 1997, (L.E.R.B.) Toronto Police Service and Blowes-Aybar (March 7, 2003, OCCPS), OPP v. Pfaff, March 31, 2005, (O.P.P.D.H.) and OPP and Taillon (July 15, 2009, OCCPS). Considering the mitigating and aggravating factors and the seriousness of the misconduct, the Hearing Officer determined that a penalty in the middle of the range would be within the range of reasonable outcomes.

91. We find that the Hearing Officer examined the appropriate aspects of the Williams, supra, test and carefully weighed the evidence. She appropriately analysed the evidence and applied the relevant sentencing factors. We can find no manifest error: see Trotter v. College of Nurses (Ontario) [1991] 44 O.A.C. 302 (Ont. C.A.) and Woolaston v. Canada

(Minister of Manpower & Immigration) [1973] S.C.R. 102 (S.C.C.).

Conclusion

92. We are satisfied that the Hearing Officer's decision is reasonable, takes into account the relevant facts and principles and imposes a penalty consistent with similar misconduct.

93. The appeal is dismissed.

DATED AT TORONTO THIS 30TH DAY OF JANUARY 2013

_____	_____
Zahra Dhanani	Hyacinthe Miller
Member (OCPC)	Member (OCPC)