

FORM 5

Ontario Civilian Police Commission

Police Services Act

- Notice of Appeal -

Police officer(s): Constable Adam Lourenco (99971) & Constable Scharnil Pais (9706)
(both of the Toronto Police Service)

Complainant(s): B.A., M.M., Y.B.

Prosecutor: Superintendent Domenic Sinopoli

Dates of decision being appealed:

- December 14, 2020 (decision date regarding verdict)
- January 15, 2021 (written reasons provided regarding verdict)
- April 30, 2021 (decision date regarding penalty; leave to appeal being sought separately)

Decisions (please find attached):

- Findings of guilt and acquittals:
 - o Cst. Lourenco guilty of unlawful or unnecessary arrest of M.M. and Y.B. (count one);
 - o Cst. Lourenco acquitted of unlawful or unnecessary arrest of B.A. (count one);
 - o Cst. Lourenco acquitted of discreditable conduct [pointing firearm at M.M. and Y.B.] (count two);
 - o Cst. Lourenco guilty of discreditable conduct [punching B.A.] (count three);
 - o Cst. Pais guilty of unlawful or unnecessary arrest of M.M. and Y.B. (count one);
 - o Cst. Pais acquitted of unlawful or unnecessary arrest of B.A. (count one).
- Penalty:
 - o Cst. Lourenco: forfeiture of 12 days;
 - o Cst. Pais: forfeiture of 3 days.

Date of appellant receiving written notice of decision being appealed:

December 14, 2020 (verdict)

May 3, 2021 (penalty decision)

I, hereby appeal to the Ontario Civilian Police Commission under subsection 87(1) of the *Police Services Act*, in respect of the following matter(s):

(Check one or more boxes that apply)

- The finding of misconduct or unsatisfactory work performance.
- The penalty imposed. [*Leave to appeal penalty sought separately*]
- The finding that misconduct or unsatisfactory work performance was not proved on clear and convincing evidence.

1. The grounds for my appeal are as follows:

- a. The hearing officer misinterpreted the law regarding race, racial profiling, and racial animus;
- b. The hearing officer misapprehended the evidence regarding race, racial profiling, and racial animus;
- c. The hearing officer erred in finding that race did not play a factor in the detention and treatment of the public complainants;
- d. The hearing officer misapprehended the evidence regarding whether the public complainants were detained prior to B.A. being grabbed by Cst. Lourenco;
- e. The hearing officer erred by not finding that the public complainants were detained prior to B.A. being grabbed by Cst. Lourenco;
- f. The hearing officer erred by not finding that the detention of the public complainants was arbitrary, and that race, as well as their other intersecting identities, played a role in this arbitrary detention;
- g. The hearing officer's decision that both officers were not guilty of unlawfully or unnecessarily arresting B.A. amounted to error because:
 - i. The hearing officer improperly placed a burden on the prosecution to prove on clear and convincing evidence that B.A. did not spit at Cst. Lourenco even though the only direct evidence of B.A. spitting came from Cst. Lourenco's evidence, which the hearing officer found he could not rely on;

- ii. The hearing officer erred in law by finding that if B.A. did spit in the circumstances of this case it would not amount to self-defence;
 - iii. The hearing officer erred in law by finding that if B.A. had spit at Cst. Lourenco this would have amounted to a fresh assault and would have returned Cst. Lourenco to the lawful execution of his duties;
 - iv. The hearing officer's assessment of whether Cst. Lourenco would have been returned to the lawful execution of his duties at the moment that the alleged spitting occurred was also undermined by the error, noted earlier, that the hearing officer had failed to find that racial animus informed the entire encounter;
 - v. But for these errors, Cst. Pais would also have been found guilty of unlawful or unnecessary arrest of B.A.;
- h. The hearing officer's decision that Cst. Lourenco was not guilty of discreditable conduct for pointing his firearm at Y.B. and M.M. amounted to error because:
- i. The hearing officer applied the wrong test in reaching his conclusion on this issue, *i.e.* he, *inter alia*, focused on whether Cst. Lourenco had a reasonable belief that he needed to protect himself and whether Cst. Lourenco had intentionally selected a use of force option that was inappropriate or unlawful;
 - ii. The hearing officer failed to consider the relevant statutory and regulatory authorities that governed this situation, such as: *Equipment and Use of Force*, RRO 1990, Reg 926, s. 9; and ss. 25, 27, 35, 37 of the *Criminal Code* (as it existed in November 2011);
 - iii. The hearing officer failed to consider the reasonableness of Cst. Lourenco's conduct in the context of the unreasonable force that he had just used on B.A., and in the broader context of the unlawfulness of the whole interaction, but instead adopted an improper 'freeze-frame' approach;
 - iv. The hearing officer's assessment of whether Cst. Lourenco's conduct was reasonable was also undermined by the error, noted earlier, that the hearing officer had failed to find that racial animus informed the entire encounter.


2. The evidence I will rely upon is as follows:

- a. The transcript of the proceedings;
- b. The exhibits tendered.

3. The order which I seek from the Commission is:

- a. Revoke all acquittals and substitute with findings of guilt;
- b. Vary the penalty in accordance with the Commission's findings.

Date: May 27, 2021



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Proposed counsel (pending funding)
for the public complainants M.M.
and B.A.



TORONTO POLICE SERVICE DISCIPLINE HEARING
IN THE MATTER OF ONTARIO REGULATION 268/10
MADE UNDER THE POLICE SERVICES ACT, RSO 1990,
AND AMENDMENTS THERETO:

AND IN THE MATTER OF THE
THE TORONTO POLICE SERVICE

AND PUBLIC COMPLAINANTS

B.A.

M.M.

Y.B.

AND CONSTABLE ADAM LOURENCO (99971)

Charges: 1) Unlawful or Unnecessary Arrest
2) Discreditable Conduct
3) Discreditable Conduct

AND CONSTABLE SCHARNIL PAIS (9706)

Charges: 1) Unlawful or Unnecessary Arrest

HEARING DECISION

Hearing Officer: Inspector Richard Hegedus (Ret'd)
Toronto Police Service

Prosecutor: Superintendent Domenic Sinopoli
Toronto Police Service

FORM 4

Ontario Civilian Police Commission

Police Services Act

Complainant(s): B.A., M.M., Y.B.

Police officer(s): Constable Adam Lourenco (99971) & Constable Scharnil Pais (9706)
(both of the Toronto Police Service)

Prosecutor: Superintendent Domenic Sinopoli

Penalty sought to be appealed (attached):

- April 30, 2021: Cst. Lourenco, 12 day forfeiture

Date proposed appellant received notice of the penalty decision:

- May 3, 2021 (penalty decision)

- Request for leave to appeal a disciplinary penalty -

I am seeking leave to appeal to the Commission under section 87(4) of the *Police Services Act* in respect of the penalty imposed by the Decision.

1. The grounds for my proposed appeal are:

- a. The hearing officer failed to consider the race of the complainants (as well as their intersecting identities such as being young and living in social housing) in respect of the relevant penalty factors (*e.g.*, the public interest; the seriousness of the misconduct; damage to the reputation of the police; and general deterrence) when determining the appropriate penalty, and instead only considered their age in isolation from any other aspect of their identities;
- b. The hearing officer erred in his analysis of whether race played a role in the interaction between the subject officers and the public complainants and this error meant that what should have been an aggravating factor on penalty was not considered. [*This has been pleaded on the notice of appeal as well.*]

2. The reasons leave to appeal should be granted:

- a. The matter of systemic anti-Black racism raised in the proposed penalty appeal is of significant importance to the policing profession as a whole and to the community at large.

3. The evidence I rely on is:

- a. The exhibits tendered at the penalty hearing;
- b. The written reasons in support of the verdict;
- c. The decision on penalty.

Date: May 27, 2021



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TORONTO POLICE SERVICE DISCIPLINE HEARING

IN THE MATTER OF ONTARIO REGULATION 268/10
MADE UNDER THE POLICE SERVICES ACT, RSO 1990,
AND AMENDMENTS THERETO:

AND IN THE MATTER OF THE

THE TORONTO POLICE SERVICE

AND PUBLIC COMPLAINANTS

B.A.

M.M.

Y.B.

AND CONSTABLE ADAM LOURENCO (99971)

Charges:

- 1) Unlawful or Unnecessary Arrest
- 2) Discreditable Conduct (Not Guilty)
- 3) Discreditable Conduct

AND CONSTABLE SCHARNIL PAIS (9706)

Charges:

- 1) Unlawful or Unnecessary Arrest

PENALTY DECISION

Hearing Officer:

Inspector Richard Hegedus (Ret'd)