

**Windsor Police Service Discipline Hearing**  
**In the Matter of Ontario Regulation 268/10**  
**Made Under the Police Services Act, R.S.O. 1997**

**And Amendments thereto:**

**And**

**In The Matter Of**  
**The Windsor Police Service**

**And**

**Constable Michael Brisco #15255**

**Charge: Discreditable Conduct**

**Before:**

**Superintendent (Retired) M.P.B. Elbers**  
**Ontario Provincial Police Adjudicator**

**Appearances:**

**Counsel for the Prosecution: Mr. David Amyot**  
**Windsor Police Service**

**Counsel for the Defense: Mr. Shane Miles**  
**(Representing Constable Brisco)**

## **Penalty Decision with Reasons:**

### **The Hearing:**

Constable Michael Brisco # 15255 was found guilty of One Count of Discreditable Conduct pursuant to Section 2 (1) (a) (xi) of the Code of Conduct contained in Schedule to Ontario Regulation 268/10 as amended on March 24, 2023 in Windsor, Ontario.

The charge pertains to a monetary donation made by Constable Brisco on February 08, 2022 to support the illegal protests and occupations resulting from the Freedom Convoy movement in both Ottawa and Windsor.

This action was completed while Constable Brisco was on unpaid leave from the Windsor Police Service.

A one (1) day disposition Hearing was conducted in Windsor, Ontario on May 04, 2023.

Mr. Amyot representing the Windsor Police Service has requested a penalty of one hundred and forty hours (140) forfeiture of time and Mr. Miles has requested a forty (40) hour forfeiture of time for this officer as a reasonable penalty.

In considering a proper disposition the Tribunal must consider a number of issues. The Disposition should agree with the purpose of affecting a proper discipline process where it meets the standard for the Service in employing discipline in the workplace and the responsibility to treat the respondent officer fairly

The overall purpose of the discipline process is to apply corrective measures to correct improper behaviour according to the standards of the discipline process and that of the affected Police Service in accordance with their policies and procedures that all officers are to adhere to in their policing duties.

Through disciplinary jurisprudence, a number of mitigating and aggravating considerations have emerged that affect disposition.

These include:

- Public interest.
- Seriousness of misconduct.
- Recognition of the seriousness of the misconduct.
- Handicap or other relevant personal circumstances.
- Provocation.
- Procedural fairness considerations.
- Employment history.
- Potential to reform or rehabilitate the police officer.

- Effect on police officer and police officer's family.
- Consistency of disposition.
- Specific and general deterrence.
- Employer approach to misconduct in question.
- Damage to the reputation of the police force.

Not all of these factors are relevant to the present case before the Tribunal.

Many of these factors stem from the decision of Williams and Ontario Provincial Police (1995), 2 O.P.R. 1047 (OCCPS)

### **Aggravating Factors**

- a. **Public Interest-** It is common knowledge that the public holds police officers in a position of high trust and accountability. Constable Brisco is a police officer and as such the public expects him to obey the Policies and procedures of the Windsor Police Service. General Orders of the Service are expected to be adhered to forthwith as policy dictates. A general order was enacted for the Service for the betterment of the Police Service employees and the general public who attend the station. Those that chose not to be vaccinated were given direction. It was obvious by Constable Brisco's actions he did not believe in this direction. This type of behavior displayed by Constable Brisco was deemed not tolerable by the Service.*
- b. **Seriousness of the Misconduct-** Unacceptable behavior displayed by a police officer in any Service is extremely serious. This situation is compounded when the member is expected to be trusted by the community and his fellow officers. Constable Brisco betrayed the trust of his fellow officers, the community and the Windsor Police Service.*
- c. **Need for Deterrence-** The Windsor Police Service must send the message to all members of this organization that officers of this Service will act professionally, conduct themselves appropriately when off or on duty and will adhere to the Policies and Procedures of the Service with whom they are employed. Further, there must also be specific deterrence for Constable Brisco to send the message that this type of behavior is unacceptable. The donation which was made was in total opposition to the hardworking police officers from across the province who worked day and night to keep the peace in Ottawa and Windsor specifically and elsewhere in this country.*

- d. **Damage to the Reputation of the Police Service-** *The credibility of the Windsor Police Service as police agency is of paramount importance. The credibility of officers that conduct investigations, traffic stops and worked the details that were assigned to them in relation to the protests can have an adverse effect on the officer working these details and those in attendance. Further, this incident was reported in the media, resulting in the embarrassment to the Windsor Police Service*
  
- e. **Management Approach to Misconduct-** *The Windsor Police Service is a professional, disciplined organization. The Service considers the actions of Constable Brisco to be serious.*

### **Mitigating Factors**

- f. **Recognition of Seriousness of Misconduct-** *Constable Brisco through this Hearing has recognized and I believe has accepted responsibility for his behavior.*
  
- g. **Employment History-** *To date Constable Brisco has no previous disciplinary record. Constable Brisco has been a hardworking and diligent officer throughout his career and has been an asset to the Service. He possesses many specialist positions in the Service and performs them to a high standard.*
  
- h. **Ability to Reform or Rehabilitate the Officer-** *It is expected that Constable Brisco will be able to rehabilitate himself and will continue to be a useful member of the Service.*
  
- i. **Effect on the Police Officer and his Family-** *There is no doubt that Constable Brisco and his family will suffer from the penalty position to be imposed. A penalty such as dismissal, demotion or forfeiture of hours will have a significant impact on Constable Brisco and his family.*

## **Findings**

Mr. Amyot has submitted Exhibit #1, Brief of Documents containing five (5) media articles relating to the counts that Brisco is facing before the Tribunal as an example of the coverage this Tribunal has received in the Windsor area. He also tendered Exhibit #2 which is a Brief of Authorities which contains nine (9) cases for reference to assist the Tribunal in reaching a just and fair disposition.

In his submission to the Tribunal Mr. Amyot was critical of the actions of Constable Brisco. He submitted that Brisco donated to the Freedom Convoy. He did this after the protest was deemed unlawful. He reminded the Tribunal the donation was made after the Ambassador Bridge was blockaded. He reminded the Tribunal that the officers working the blockade were working long hours.

Amyot submitted that the penalty must be severe. Police are held to a higher standard than the public. The headlines in relation to the blockage of the Ambassador Bridge made international headlines with many news media organizations. He submitted the donation enabled those engaged in illegal or unlawful activities. He submitted that Brisco was a consumer of news media and he clearly knew what was happening in Ontario and throughout Canada.

Amyot submitted that Brisco`s duty as a police officer superseded his belief in the Convoy.

Amyot referenced the Neilson case from Ottawa. This officer made two donations to the Convoy and pled guilty at a Hearing in Ottawa. A joint submission was tendered by Counsel and an Agreed Statement of Facts was filed. Neilson received forty (40) hours forfeiture of hours and had to participate in a Restorative Justice process in the City of Ottawa. Amyot argues the guilty plea acts as recognition of the seriousness of the charge. He states this option is not open to Brisco as Brisco had a Hearing.

Mr. Amyot closes his submission that the Neilson case is similar to this case however the Brisco case lacks the guilty plea and the joint submission.

The other cases offer guidance for the Tribunal in the decision making process however are very dissimilar to the Brisco file.

Mr. Miles has tendered Exhibit 3 to the Tribunal which contains a personal conduct sheet containing accolades for this officer. There were seven in total commencing on June 24, 2011 to September 26, 2022. At Tab 2 of this exhibit there were fourteen (14) character reference letters. This document can be seen as a mitigating factor to consider in the decision making process for this officer.

Miles submits that Constable Brisco chose not to be vaccinated. He properly utilized his Charter of Rights. It caused Brisco hardship as he had to look for another job. He indicated this was the first time in history a situation like this occurred.

He stated that Brisco was not accommodated as other Police Services were doing with non-vaccinated personnel. He stated Brisco wanted his story told and that he had many supporters.

Miles submitted that Brisco was consumed with the news media on the protests. He submitted that 50% of people supported this protest. He stated Brisco was firm on his position and that he gives back to the community.

He argued that the protest was supported globally and stated what damage was caused by this donation. He questioned: Was the damage quantifiable?

He stated that Constable Brisco is a fifteen (15) year member of the Service, is well respected and is highly trained. He stated that Brisco was remorseful after the decision of guilty was rendered.

In considering a proper disposition the Tribunal must consider a number of issues. The Disposition should agree with the purpose of affecting a proper discipline process where it meets the standard for the Service in employing discipline in the workplace and the responsibility to treat the respondent officer fairly and also the actions incurred if a public complainant is involved to assist in their reconciliation of the matter.

The overall purpose of the discipline process is to apply corrective measures to correct improper behaviour according to the standards of the discipline process and that of the affected Police Service in accordance with their policies and procedures that all officers are to adhere to in their policing duties.

In Williams and the Ontario Provincial Police, the Commission identified three key elements a Hearing Officer must take into account when imposing a penalty. These include: the nature of the seriousness of the misconduct, the ability to reform or rehabilitate the officer, and the damage for the reputation of the police force that would occur if this officer remained on the Force.

Accountability, ethical behaviour and conduct are at a standard much higher than the public we serve. It is generally known and an accepted fact that the law requires a higher standard of conduct with Police Officers in their private lives than the ordinary citizen.

Credibility, honesty, integrity are characteristics that are earned. As one elevates him / herself through the ranks of this proud organization, those characteristics are more revered and treasured. It helps to create the professional image and excellence that the Windsor Police officers strive to maintain.

The public must be confident that the police will strive to set the example for those in the community. Anything short of this will be seen as a contradiction and serve no other purpose but to undermine the efforts of all serving officers and the explicit goals of the Windsor Police Service.

You are accountable for your actions and any deviance from those actions, the Windsor Police Service will hold you accountable. This is what the public expects of the management of this Police Service.

Counsel has made commendable arguments for their clients.

I find that Mr. Amyot submitted issues to the Tribunal that were police related and provided cases to support his argument. Mr. Miles in the other hand argued a number of generalities common to the ordinary citizen which does not apply to this Police Services Act case. This case is centered on the donation made by this officer to the Freedom Convoy protests in Ottawa and Windsor. It was acknowledged by this officer that he made the donation and supported the movement.

I believe it is important to review the findings that were made when the decision of guilty was reached by this Tribunal. There were two issues to decide:

1. *Was Constable Brisco a member of the Windsor Police Service at the time of the donation?*
2. *Was the donation Discreditable Conduct.*

The finding of the Tribunal was in the affirmative on both issues. I believe it is helpful to repeat part of my findings in the decision process which I have copied from the decision.

*Mr. Amyot in his cross examination skillfully dissected the points that Constable Brisco raised in reaching the conclusion he was not a member of the Windsor Police Service.*

*I wish to share these points again:*

*Mr. Amyot began his cross examination of Constable Brisco whether he had received a copy of the Windsor Police Service directive 310-13 which is contained in Exhibit #8 at Tab 2. Brisco acknowledged receipt of the Directive. Amyot had him read the eight page document. Brisco testified he read and understood the Directive.*

*Amyot then questioned Brisco if it stated anywhere in the document that if you were an unvaccinated member you would be terminated. Brisco replied "No". Amyot stated it said an unpaid leave of absence. He commented that you would come back to work and it did not say the leave was indefinite. He had Brisco read section 5.17 of the directive. Brisco acknowledged he read and understood it was an unpaid leave of absence and you are subject to the Police Services Act.*

*Amyot then directed Brisco to Section 6 of the WPS Directive. This Section relates to the request for accommodation/exemption. It outlines the areas that applied. Brisco did not ask for an accommodation.*

*The letter of Chief Mizuno was discussed and Brisco acknowledged receiving this letter. He acknowledged that if you were not vaccinated you would be placed on unpaid leave and it did not say you would be terminated.*

*Amyot then took Brisco to the Chandler email contained in Tab3 of Exhibit #8. Brisco acknowledged receiving a copy of this document and testified he understood the document. He acknowledged once again it does not state termination. At Tab 5 the document outlines the process to continue benefits if you go off on unpaid leave. He testified his wife is an employee of the WPS and she has her benefits. The document also shows how you can purchase your Omer's time. Tab 6 further outlines the Omer program and payments that could be made while on unpaid leave. Termination is not mentioned. The email dated October 14, 2021 at Tab 4 is clear. It states:*

*Your email is not entirely correct when you say that the vaccination is a condition precedent for continued employment; the directive is clear that you will not be terminated, but placed on an unpaid leave if you remain unvaccinated.*

*Amyot referred Brisco to Tabs 8, 10, 11, 12, 13 and 14 which were series of emails between Chandler and Brisco. They were questions about court time, reimbursement for court. Brisco testified he did not have his computer so he was unaware of court. The end result was that he did not attend court while on unpaid leave so this became a non-issue.*

*At Tab 15 the record of employment of Constable Brisco was reviewed by Brisco. He acknowledged on the form that at Box 14 the expected date of recall was marked as "Unknown" and at Box 16 the reason for issuing the ROE was Leave of Absence.*

*At Tab 9 (the second paragraph of this email from Chandler to Brisco outlines Brisco duties upon completing his last shift. It outlines the equipment to be returned to the Service and also states it will be returned when the member is eligible to return to the workplace. He returned to work in mid- May of 2022 and his equipment was returned as was outlined in this email.*

*Brisco testified he had to submit documents of vaccination. He stated he was not sure of his standing but acknowledged he was not on probation.*

*I find that the Windsor Police Service Directive 310-13 is very clear. It would appear from Constable Brisco reading it in the Hearing that it is now clear to him as well. The Service is not forcing any of its officers to get vaccinated. It outlines the procedures what the Windsor Police Service will accept and what it will not. All Services in Ontario may have different or similar directions to its officers. In this case it does not matter. Constable Brisco is a member of the Windsor Police Service and this Directive 310-13 applies to its members.*

*Section 5.11 through Section 5.17 outlines the procedure for unvaccinated members of the WPS. Constable Brisco read this Section as well and agreed he understood. This Section outlines the duties of each member and responsibilities on their last day of work on November 26, 2021 if you were not vaccinated.*



*Constable Brisco turned in more gear than what is outlined in the Directive and that becomes his issue. The last section 5.17 outlines that while on unpaid leave you are still subject to the Police Services Act.*

*As we are aware the Police Services Act applies to a member whether you are on or off duty, in another city or country.*

*I find from the testimony and evidence received in this Hearing that Constable Brisco was a member of the Windsor Police Service. The evidence in my opinion is overwhelming and I do not believe a reasonable person could reach any other conclusion. Let us review the cross examination by Mr. Amyot.*

*Mr. Amyot began his cross examination of Constable Brisco whether he had received a copy of the Windsor Police Service directive 310-13 which is contained in Exhibit #8 at Tab 2. Brisco acknowledged receipt of the Directive. Amyot had him read the eight page document. Brisco testified he read and understood the Directive.*

*Amyot then questioned Brisco if it stated anywhere in the document that if you were an unvaccinated member you would be terminated. Brisco replied "No". Amyot stated it said an unpaid leave of absence. He commented that you would come back to work and it did not say the leave was indefinite. He had Brisco read section 5.17 of the directive. Brisco acknowledged he read and understood it was an unpaid leave of absence and you are subject to the Police Services Act.*

*Amyot then directed Brisco to Section 6 of the WPS Directive. This Section relates to the request for accommodation/exemption. It outlines the areas that applied. Brisco did not ask for an accommodation.*

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***Your email is not entirely correct when you say that the vaccination is a condition precedent for continued employment; the directive is clear that you will not be terminated, but placed on an unpaid leave if you remain unvaccinated.***

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*Brisco testified he did not have his computer so he was unaware of court. The end result was that he did not attend court while on unpaid leave so this became a non-issue.*

*At Tab 15 the Record of Employment of Constable Brisco was reviewed by Brisco. He acknowledged on the form that at Box 14 the expected date of recall was marked as "Unknown" and at Box 16 the reason for issuing the ROE was "Leave of Absence."*

*At Tab 9 (the second paragraph of this email from Chandler to Brisco) it outlines Brisco duties upon completing his last shift. It outlines the equipment to be returned to the Service and also states it will be returned when the member is eligible to return to the workplace. He returned to work in mid- May of 2022 and his equipment was returned as was outlined in this email.*

*Brisco testified he had to submit documents of vaccination. He stated he was not sure of his standing but acknowledged he was not on probation.*

*Constable Brisco is an intelligent officer. He read the Directive and I am sure it is clear to him now that he was a member on Unpaid Leave. It appeared to me he cherry picked his answers in relation to being a member.*

*There are two kinds of Leave with Absence. One paid and one that is not paid. Constable Brisco was on unpaid leave and once he met the criteria to return to work he would be paid again and receive a pay cheque and resume his police duties. This he did in May of 2022.*

*The Police Services Act as stated in section 5.17 was in affect for this officer.*

*The second issue can now be addressed. Did Constable Brisco commit an act of Discreditable Conduct while on unpaid leave from the WPS?*

*The donations made from various police personnel from across the province became an issue when the hacked documents were received by the Intelligence Branch of the Ontario Provincial Police. Various personnel from Police Services from across the province were identified as parties that contributed to various sites for the Freedom Convoy. Their Police Services were contacted in regards to these donations. Discreditable Conduct was the alleged misconduct identified for personnel who contributed to the Freedom Convoy.*

*Constable Brisco has testified he contributed a \$50.00 donation and is not disputing that contribution. He argues he did so as a civilian and it was anonymous donation only found out by his Service due to the hacked documents.*

*He believes he has done nothing wrong and would support the Convoy again .He believes his Charter Rights were breached.*

*His contribution was made on February 07 and processed on February 08, 2022 and was meant for the Ottawa protests.*

*As we go through the chronology of the events in February of 2022 we learn the following:*

*On February 02, the Prime Minister states the blockade is becoming illegal.*

*On February 04 the Go Fund Me removes their fundraiser as the peaceful protest is turning into an occupation and violence is happening.*

*On February 04 Chief Sloly through media articles stated the Freedom Convoy is dangerous, volatile and Ottawa residents are becoming increasingly angry and frustrated, the lawlessness must end. The Funding is enabling the unlawful activity.*

*The Ottawa Police Service does not have enough resources to control the protest.*

*All Ottawa Police personnel are on active duty and other police services as well.*

*On February 04, Premier Ford called the protest an occupation.*

*On February 06, the Mayor of Ottawa declared a State of Emergency.*

*On February 07 an Ottawa Judge through a Civil Injunction declared the truckers were to cease blowing their horns.*

*February 05-07 the Freedom Convoy arrives in Windsor. Bridge blocked for Canada bound traffic and roads in the city of Windsor were blocked.*

*It is clear at the time of Constable Brisco's donation that the protest was unlawful. Brisco is an avid consumer of media and I believe reads and observe the media in the position that favours his opinion. As he has testified in his testimony before this Tribunal he was not aware of the blockade in Windsor. I find that statement to be remarkable. I am sure all media sights would have shown the issues in Windsor. He stated his donation was not for Windsor. As I have stated previously in my decision the person placing the donation has no power to dictate where the contribution ought to be headed. It is out of your control.*

*The money donated by this officer was made after the Protest was deemed to be unlawful. The donation is was in direct contrast to what the officers were attempting to contain in Ottawa. The money enabled the protestors and made it more difficult for the Police being on the opposite side.*

*The money directly opposed what the various Police Services in Ottawa were doing. I understand it was a cause he believed in but this does not render it okay when you are a member of a Police Service and in this case that Service is Windsor.*

Police Act disciplinary Hearings are proceedings which make police officers accountable to their respective police agencies. It is employer and employee law. Police officers must follow policies of their respective agencies otherwise a misconduct charge can be filed against the member. The worst situation is that a member can be dismissed from the organization. That in itself is severe however, there are no charter issues and loss of freedom in Police Act matters. These issues are applicable and do occur in criminal or quasi criminal proceedings. No Police Act charge is equivalent to a criminal process, nor is the Hearing likened to a criminal trial.

A Police Service has the right to discipline its members and have the proceedings proceed in a timely manner.

As I reflect on the cases submitted by Counsel, I am of the firm belief that the Neilson case from Ottawa is the only one that is similar to this case. The disposition in that case as I have stated earlier was forty (40) hours forfeiture of hours and a Restorative Justice component. It was a guilty plea and a joint submission.

In this case we had seven (7) days of testimony. I agree with Mr. Miles that an officer is allowed to have a Hearing. He stated it should not be considered an aggravating factor to consider. I agree with this position as well. The difference in these cases is that there was an acknowledgement that the officer did commit the offence of Discreditable Conduct at the onset of the Hearing. In this case the officer was found to be guilty of Discreditable Conduct after a six (6) day Hearing. As such the forty hours deemed appropriate in Ottawa and what Mr. Miles is submitting in this case are not similar whatsoever.

As I have stated in my Decision, Constable Brisco is an intelligent officer. He believed in the Freedom Convoy and its cause. He would donate again he stated. As a police officer there comes a time when you must take the political issues out of your head when you are making decisions. You must obey the Policies, Procedures and Directives of the Police Service which is paying your salary. We don't always agree and when we do not there are processes which we can take to make changes. The issue here was the vaccination. It was clear to all officers of this Service what the position of the Windsor Police Service was in this situation. Constable Brisco was aware of the terms and procedures for continued uniform duties however he chose to not accept the terms. He was placed on unpaid leave and I also believe he knew the conditions but chose to ignore these as well to support the Freedom Cause.

Constable Brisco acted in a manner not conducive to a member of the Windsor Police Service. His actions are clearly unacceptable. It is necessary to consider a general deterrence for all members.

The penalty must reflect that the Windsor Police Service will not tolerate unacceptable behaviour. There must be specific deterrence for the member to send a message that individuals will be held accountable for their conduct. The Windsor Police Service must deliver a penalty that not only prevents a recurrence, but also adequately protects the public.

In addressing deterrence in this case I believe that specific deterrence is not an issue. As already stated, the officer has learned a great deal and I am confident he will continue serving the people of City of Windsor in an acceptable if not an exemplary manner.

General deterrence in this situation offers the Adjudicator in this matter the opportunity to remind all members of this organization that policing is serious business. You must as a police officer strive daily to complete your duties as a sworn police officer in a diligent and professional manner. You are accountable for your actions and any deviance from those actions, the Windsor Police Service will hold you accountable. This is what the public expects of the management of this Police Service.

The Discreditable Conduct displayed by this officer has caused damage to the reputation of this organization. The City of Windsor was directly affected by this blockade at the Ambassador Bridge and there has been extensive media coverage of the blockade and this proceeding. It also exposed the donation this officer made to the Freedom Convoy which was directly opposed to what his fellow officers from Windsor and other police agencies across the province were attempting to resolve with the protestors.

I have considered the submissions by Counsel, and have reviewed the Book of Authorities to assist in rendering an appropriate disposition.

I must be guided by the OCCPS decision of Schofield and Metropolitan Police Service.

*“Consistency in the disciplinary process is often the benchmark of principles. The penalty must be consistent with the facts and consistent with similar cases that have been dealt with on earlier occasions”*

As stated in the submissions of Counsel there is one case that is similar to this case before the Tribunal.

This case will set a standard for any further disciplinary issues within the Windsor Police Service and other Services that have a “Freedom Convoy” component to the disciplinary issue at hand.

A strong and fair disposition is expected and I believe is delivered in this case.

**Disposition:**

**In light of the seriousness of these allegations and bearing in mind all the evidence placed before me, Constable Michael Brisco #15255 will forfeit eighty (80) hours pursuant to Section 85 (1) (f) of the Police Services Act.**

**This means you will attend your office on either rest days or annual leave days and work the prescribed hours until eighty (80) hours have been accomplished. The timeline to complete these hours will be issued by your Divisional Commander. I would recommend eight months to complete.**

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**M.P.B. Elbers, Superintendent  
(Retired)**      -

**May 18, 2023**  
**Date**