

# ONTARIO CIVILIAN POLICE COMMISSION

---

## FORM 5

### Ontario Civilian Police Commission

#### *Police Services Act*

#### *- Notice Of Appeal -*

**Police Officer(s):** Senior First Class Constable Michael Brisco #15255,  
Traffic Branch-Collision Reconstruction, Windsor Police Service

**Complainant(s):** Police Commissioner

**Prosecutor:** Mr. David Amyot

**Date of Decision Being Appealed:** March 24 2023

**Date of Appellant Receiving Written Notice of Decision Being Appealed:** The Decision was rendered on March 24<sup>th</sup> 2023. The Decision with respect to penalty was rendered on May 18<sup>th</sup> 2023.

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):

- The finding of misconduct or unsatisfactory work performance.
- The penalty imposed.
- 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:

- By decision dated March 24, 2023, the Appellant, Constable Michael Brisco, was found guilty of one count of discreditable conduct.

- The conduct at issue is a \$50 online donation to the Ottawa Freedom Convoy.
- The Hearing Officer erred in law by failing to balance Constable Brisco's freedom of expression guaranteed pursuant to s.2(b) of the *Charter* with the statutory objectives of the *Police Services Act*.
- The Hearing Officer erred in law by failing to balance Constable Brisco's right to privacy guaranteed pursuant to s.8 of the *Charter* with the statutory objectives of the *Police Services Act*.
- The Hearing Officer erred in mixed fact and law by finding that the Ottawa Freedom Convoy Protest was illegal.
- The Hearing Officer erred in making findings of fact despite an insufficient evidentiary foundation. In particular, the Hearing Officer's finding that the \$50 donation could have been used to further a similar protest in Windsor and the blockade of the Ambassador Bridge was not supported by sufficient evidence.
- The Hearing Officer's decision to find Constable Brisco had committed Discreditable Conduct lacked an evidentiary basis.

### *Appeal of Penalty*

- By decision dated May 18<sup>th</sup>, 2023, the Hearing Officer imposed a penalty to forfeit eighty (80) hours of work pursuant to Section 85 (1) (f) of the *Police Services Act*.
- The Hearing Officer erred in fact and law in finding that Constable Brisco's vaccination status was an aggravating factor determining the appropriate penalty.
- The Hearing Officer erred in fact and law in finding that Constable Brisco had betrayed the trust of his fellow officers, the community, and Windsor Police.
- As a result of the above cited errors in fact and law, the Hearing Officer imposed a sentence which is unduly harsh and excessive.

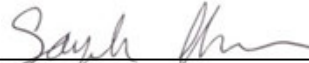
## ONTARIO CIVILIAN POLICE COMMISSION

---

2. The evidence I will rely upon is as follows:
  - Transcripts of the Hearing
  - The Record before the Hearing Officer
  - Oral arguments of counsel
  
3. The Order which I seek from the Commission is:
  - An Order overturning the Conviction and entering an acquittal
  - Alternatively, an Order overturning the Conviction and ordering a new hearing
  - Alternatively, an Order imposing an appropriate sentence which is not unduly harsh and excessive
  - Leave to amend this Notice of Appeal particularizing additional grounds of appeal, upon receipt of the hearing transcripts

June 14, 2023

*Date*



**CHARTER ADVOCATES CANADA**

PER: **SAYEH HASSAN**

**LSO # 53406E**

PER: **CHRIS FLEURY**

**LSO # 67485L**

Counsel for the Appellant