

**DIVISIONAL COURT, SUPERIOR COURT OF JUSTICE**

B E T W E E N:

**MICHAEL BRISCO**

Applicant

and



**ONTARIO CIVILIAN POLICE COMMISSION and  
WINDSOR POLICE SERVICE**

Respondents

APPLICATION UNDER Rules 14.05(2), 38 and 68 of the *Rules of Civil Procedure*,  
RRO 1990, Reg 194 and Sections 2(1) and 6(1) of the *Judicial Review Procedure Act*,  
RSO 1990, c J.1.

**NOTICE OF APPLICATION TO DIVISIONAL COURT  
FOR JUDICIAL REVIEW**

TO THE RESPONDENTS

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION for judicial review will come on for a hearing before the Divisional Court on a date to be fixed by the registrar by the method of hearing requested by the applicant, unless the court orders otherwise. The applicant requests that this application be heard **in person** at Osgoode Hall, 130 Queen Street West, Toronto, ON, M5H 2N5.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the office of the Divisional Court, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY

**EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE**

**APPLICATION**, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the office of the Divisional Court within thirty days after service on you of the applicant's application record, or at least four days before the hearing, whichever is earlier.

**IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN TO IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.**

*TAKE NOTICE: THIS APPLICATION WILL AUTOMATICALLY BE DISMISSED* if it has not been set down for hearing or terminated by any means within five years after the notice of application was filed with the court, unless otherwise ordered by the court.

Date: March 14, 2024

**Jessa-  
Marie  
Clegg**

Digitally signed  
by Jessa-Marie  
Clegg  
Date: 2024.03.14  
15:22:17 -04'00'

**TO ONTARIO CIVILIAN  
POLICE COMMISSION**  
[Redacted]  
[Redacted]

**AND TO WINDSOR POLICE SERVICE**  
[Redacted]  
[Redacted]  
[Redacted]

**AND TO ATTORNEY GENERAL OF ONTARIO**  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

Respondents

## APPLICATION

1. The applicant, Michael Brisco (“**Brisco**”) makes application for:
  - a) an order setting aside the appeal decision of the Ontario Civilian Police Commission (the “**Commission**”), dated February 14, 2024 (the “**Appeal Decision**”), affirming (i) the decision of Superintendent (retired) Morris Elbers (the “**Hearing Officer**”), dated March 24, 2023, finding Brisco guilty of discreditable conduct contrary to s. 2(1)(a)(xi) of the *Code of Conduct* set out in Ontario Regulation 268/10, made pursuant to the *Police Services Act*, RSO 1990, c. 15 (the “**Act**”); and (ii) the Hearing Officer’s penalty decision issued on May 18, 2023, ordering Brisco to forfeit 80 hours off, pursuant to s. 85(1)(f) of the Act (collectively, the “**Decision**”); and
  - b) such further and other relief as this Court considers appropriate.
2. The grounds for the application are:
  - a) Brisco is a 15-year veteran of the Windsor Police Service (“**WPS**”). He has been a hardworking, diligent officer throughout his career, holding many specialist positions in the WPS and performing them to a high standard. He has no prior disciplinary history;
  - b) beginning in January 2022, vehicles and persons from all over Canada began to arrive in downtown Ottawa with the primary purpose of peacefully protesting the federal and provincial legislative responses to the COVID-19 pandemic. The vehicles included tractor trailer style trucks and other commercial vehicles. The protest became known as the “Freedom Convoy”;
  - c) various fundraisers were organized in support of the Freedom Convoy in

Ottawa. One such fundraiser was organized by a Canadian named Tamara Lich on a website called “GiveSendGo”;

d) in addition to the protest in Ottawa, the Freedom Convoy sparked a worldwide protest movement of citizens similarly concerned with governments’ legislative response to the COVID- 19 pandemic. This movement included protests in border cities across Canada, including Windsor, Ontario. The Freedom Convoy was an organic, decentralized protest movement with no formal leadership or organizational structure. There were no formal links between the original Ottawa protest and the subsequent protests in cities all over the world;

e) on February 8, 2022, as he was entitled to do, Brisco made a \$50 donation to the fundraiser organized by Tamara Lich. This donation was made anonymously from his personal computer and while on an unpaid leave from duty. In the end, the account containing funds was frozen by a civil court order. None of the funds, including the \$50 donated by Brisco, made it through to the Ottawa protest;

f) a list of donors to the GiveSendGo fundraiser was illegally obtained through a computer “hack” and made public. On February 16, 2022, the Ontario Provincial Police (“**OPP**”) obtained this list of donors and commenced investigations. It prepared a list of officers in other police forces who may have donated to the fundraiser and shared this list with WPS;

g) Brisco was ultimately charged under section 2(1)(a)(xi) of O.Reg 268/10 (the “**Code of Conduct**”) and section 80(1)(a) of the *Police Services Act*, R.S.O. 1990, c. P.15 (the “**Act**”) with one count Discreditable Conduct in relation to the donation. The allegation against Brisco was that the protest in Ottawa was illegal,

and that by providing financial support to the protest, Brisco was providing financial support to an illegal activity. It was further alleged that there was a link between the Ottawa and Windsor protests, and that by supporting the Ottawa protest, the funds could have been used to support an illegal protest in Brisco's hometown of Windsor;

h) Brisco's disciplinary hearing commenced on February 6, 2023 (the "**Hearing**");

i) on or about March 24, 2023, the Hearing Officer released a decision convicting Brisco of Discreditable Conduct. Following a further hearing on penalty, the Hearing Officer imposed a penalty on Brisco of a forfeiture of 80 hours' worth of remuneration (collectively, the "**Decision**");

j) Brisco appealed the Decision to a panel of the Ontario Civilian Police Commission, pursuant to section 87(1) of the *Police Services Act*, RSO 1990, c. P.15. (the "**Police Services Act**"). The appeal hearing was held via videoconference on November 21, 2023;

k) on February 14, 2024, the Commission released the Appeal Decision, dismissing Brisco's appeal in its entirety;

l) the Appeal Decision was unreasonable in finding that there was evidence on the record before the Hearing Officer supporting a finding of discreditable conduct to the "clear and convincing" standard of proof, when there was not;

m) the Appeal Decision was unreasonable in finding that it was inappropriate to consider on appeal whether the proceeding before the Hearing Officer amounted to an abuse of process, and otherwise failed to properly apply the applicable common law test for raising new issues on appeal; and

n) the Appeal Decision was unreasonable in finding that in this case, the severity of the interference with Brisco’s *Charter* rights was outweighed by the statutory objectives of the *Police Services Act* and the Code of Conduct;

o) the Appeal Decision does not bear the “hallmarks of reasonableness” – transparency, intelligibility, and justifiability – and therefore is not reasonable and must be set aside; and

p) such further and other grounds as counsel shall advise and this Court permit.

3. The following documentary evidence will be used at the hearing of the application:

a) the Record of Proceedings filed in this matter, containing the entirety of the evidence before the Hearing Officer and the Commission in the proceedings below; and

b) such further and other affidavits and materials as counsel may advise and this Court permit.

March 14, 2024

**CHARTER ADVOCATES CANADA**

[REDACTED]  
[REDACTED]

**James Manson LSO #54963K**

[REDACTED]  
[REDACTED]

**Chris Fleury LSO #67485L**

[REDACTED]  
[REDACTED]

Counsel for the Applicant

**MICHAEL BRISCO**  
Applicant

-and-

**WINDSOR POLICE SERVICE**  
Respondent

Court File No.

**DIVISIONAL COURT,  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
TORONTO

**NOTICE OF APPLICATION  
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**CHARTER ADVOCATES CANADA**

[REDACTED]  
[REDACTED]

**James Manson (LSO #54963K)**

[REDACTED]  
[REDACTED]

Chris Fleury (LSO #67485L)

[REDACTED]  
[REDACTED]

Counsel for the Applicant