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CASE SUMMARY: SASKATCHEWAN COURT OF APPEAL CONCLUDES TRIAL JUDGE MADE NO REVIEWABLE ERROR IN ACCEPTING POLICE COMMISSION'S DECISION ON PENALTY FOR PROFESSIONAL MISCONDUCT

Administrative law – Judicial review – Decisions of administrative tribunals – Police Commission – Public Complaints Commission – Standard of review – Reasonableness; Professions – Police officers – Professional governance and discipline – Professional misconduct – Public interest

Robin v. Saskatchewan (Police Commission)

The appellant was employed as a police officer with the Prince Albert Police Service. He was dismissed by the Chief of Police pursuant to section 60 of The Police Act, SS 1990-91, c. P-15.01, on the grounds that he was unsuitable for police service.

[2016] S.J. No. 668

2016 SKCA 159

Saskatchewan Court of Appeal

December 6, 2016

M.J. Herauf, J.A. Ryan-Froslic JJ.A. and Y.G.K. Wilkinson J. (ad hoc)

Following the appellant's dismissal, a number of appeals occurred. The appellant initially appealed the decision to a hearing officer of the Office of the Commission. The hearing officer set aside the dismissal and instead ordered a penalty of a nine month suspension, without pay, and one year of probation. The Chief of Police then appealed to the Saskatchewan Police Commission (the "Commission"). The Commission found the hearing officer's disposition on penalty unreasonable, determined the appellant unsuitable for police service and ordered his dismissal. The appellant then applied for judicial review of the Commission's decision, which was heard before a judge of the Court of Queen's Bench. The judge found the Commission's decision on penalty to be reasonable. The appellant appealed to the Saskatchewan Court of Appeal, asserting numerous errors with the judge's approach.

The conduct that led to the appellant's dismissal was not in dispute. The appellant was subject to a complaint from a driver that he had ticketed. As a result of the complaint, the Chief asked the appellant to work with a coaching officer for mentoring. The appellant thought he was being treated unfairly and took sick leave for three weeks. The Crown also eventually decided to not prosecute the traffic offence against the driver. Apparently, this infuriated the appellant who then took matters into his own hands. The appellant vehemently pursued the traffic prosecution against the driver, including by working with a retired police officer and ultimately having the matter set down for trial under his own accord. The appellant also lied to his direct superiors and, in order to facilitate the collection of overtime pay for the unauthorized prosecution, arranged to subpoena himself as a witness at the trial. As the Court of Appeal put it, the appellant employed "subterfuge". Further, it was found that the appellant's sole motivation to pursue the prosecution was because he believed that if the driver was convicted it would establish that the driver's complaints about the appellant were baseless.

The appellant raised a number of grounds in appealing the decision of the judge on judicial review, two of which are highlighted below.

First, the appellant argued that the judge erred in determining that her sole focus was to determine whether the Commission decision was reasonable, in disregard of any consideration whether the hearing officer acted reasonably on first hearing the matter. On this point, the Court of Appeal classified the appellant's argument as "much splitting of hairs". The Court of Appeal went on to hold that in the event where you have a chain of decisions (like in this case) from a hearing officer to a tribunal to a court tasked with a judicial review, there will inevitably be a 'flow-through' examination, but that this does not require a "first-stage, stand-alone" analysis of the hearing officer's decision, as advocated by the appellant. In other words, the Court of Appeal advocated for a more fluid interpretation of a judge's role on judicial review when there are various levels of decisions to consider.

Second, the appellant argued that the trial judge failed to give sufficient deference to the hearing officer's decision. In particular, the appellant argued that the Commission was not appropriately deferential to the hearing officer's conclusion and fixated instead on the nature and seriousness of the conduct. The Court of Appeal rejected this argument recognizing that under the applicable regime, the Commission could impose its own finding if it determined the hearing officer's disposition on penalty was unreasonable (which it had). In the end, the Court of Appeal held that the Commission provided "full and intelligible reasons for its conclusion, identifying the gaps and flaws in the hearing officer's approach" that made her disposition of the case unreasonable.

In the end, the Court of Appeal concluded that the trial judge made no reviewable error in coming to the conclusion that the Commission's decision on penalty was reasonable and that its decision fell within a range of possible, acceptable outcomes.

This case was digested by [Adam R. Way](#) of Harper Grey LLP. If you would like to discuss this case further, please feel free to contact him directly at away@harpergrey.com or review his biography at <http://www.harpergrey.com>.