

CITATION: Douglas v. Babiar, 2025 ONSC 7075
COURT FILE NO.: CV-19-00630578-0000
DATE: 20251219

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
FRASER DOUGLAS and TARA) *Andrew Stein, for the Plaintiffs*
DOUGLAS)
)
Plaintiffs)
)
– and –)
)
JOHN BABIAR, JANINE CROWLEY, ED) *David A Gourlay and Matthew Cornett, for*
BOYD, CHIEF OF POLICE MARK) *the Defendants*
SAUNDERS and THE TORONTO)
POLICE SERVICES BOARD)
)
Defendants)
)
)
) **HEARD:** September 18, 2025

2025 ONSC 7075 (CanLII)

PAPAGEORGIU, J.

REASONS FOR JUDGMENT

Overview

- [1] The question in this case is whether the Superior Court has jurisdiction over the plaintiffs’ tort actions against the Toronto Police Services Board (the “Board”) and various officers arising from proceedings under the *Police Services Act*, R.S.O. 1990, c. P.15 (the “PSA”).
- [2] One of the plaintiffs, Fraser Douglas (“Douglas”), is a police constable with the Toronto Police Service (“TPS”).
- [3] The Board brought proceedings against Douglas under the PSA (the “PSA proceeding”). He was also criminally charged in the same matter (the “criminal proceeding”).
- [4] Douglas and his wife (the plaintiffs) plead the torts of malicious prosecution, misfeasance in public office, negligent investigation, intentional infliction of harm, and breach of *Charter* rights. These causes of action arise from the PSA proceeding against Douglas.

- [5] The plaintiffs also plead the same torts against the same parties stemming from the criminal proceeding against Douglas.
- [6] The defendants argue that the Superior Court does not have jurisdiction over the tort actions stemming from the *PSA* proceedings against Douglas. However, they concede that the Superior Court has jurisdiction over the claims arising from the criminal proceedings.
- [7] The defendants also seek to strike out all actions that relate to, or can only be proven by, reference to information or documents prepared or obtained during the *PSA* proceeding, including claims of negligent investigation, on the basis that evidence related to a *PSA* proceeding is inadmissible in a civil proceeding and subject to confidentiality provisions.
- [8] The defendants do not seek to strike out the claim against the Chief of Police relating to Douglas's suspension under s. 89 of the *PSA*. They acknowledge that in *Skof v. Bordeleau*, 2020 ONCA 729, 456 D.L.R. (4th) 236, the Court of Appeal concluded that a plaintiff can bring a claim for *Charter* breaches and misfeasance in public office relating to a s. 89 suspension: at para. 20. This is because the essential character of the claim is not governed by a Collective Agreement and is also not subject to review by statutory bodies under Part V of the *PSA*: *Bordeleau*, at paras. 17-18. Therefore, the only forum is the court.
- [9] Again, the defendants do not seek to strike any claims related to criminal charges. I will discuss this further below, but this is based on the Court of Appeal decision in *Rukavina v. Ottawa (Police Services Board)*, 2020 ONCA 533, where the Court concluded that once a disciplinary matter is taken to the criminal court, its essential character is no longer a labour relations dispute: at para. 60.
- [10] The defendants had also brought a motion to strike on the basis that the pleadings did not plead reasonable causes of action but withdrew that motion upon receipt of a Fresh as Amended Statement of Claim.

Decision

- [11] For the reasons that follow, I dismiss the motion to strike the pleadings in respect of all issues and conclude that the Superior Court has jurisdiction over this matter and/or should assume jurisdiction.
- [12] Even though the criminal proceedings were withdrawn, the *PSA* proceedings were based on the criminal prosecution. Once the matter was taken to the criminal courts, the essential character of the matter was not governed by the Collective Agreement: *Rukavina*. Notably, the defendants take the position that Douglas cannot bring any grievance proceedings under the Collective Agreement. As there are also no review proceedings available under the *PSA* to address the plaintiffs' claims, the Superior Court is the only forum where the plaintiffs' claims can be considered.

Issues

- [13] Issue 1: Should the tort actions against the defendants stemming from the *PSA* proceeding be struck out on the basis that this court lacks jurisdiction?
- [14] Issue 2: Should the tort claims be struck because of the provisions of the *PSA* related to admissibility and confidentiality?

Analysis

Issue 1: Should the tort claims against the defendants stemming from the *PSA* proceeding be struck on the basis that this court lacks jurisdiction?

- [15] The Defendants rely on r. 21.01(3)(a) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194. In *Bordeleau*, the Court of Appeal noted that the Superior Court, as a court of inherent jurisdiction, has jurisdiction over “every conceivable claim” unless the claim does not disclose a reasonable cause of action or jurisdiction has been removed by legislation or an arbitral agreement: at para. 8. To strike a claim on the basis of lack of jurisdiction, it must be clear and unequivocal that the jurisdiction has been removed or ousted: *Bordeleau*, at para. 9.
- [16] My reasoning in this section takes into account:
- The Fresh as Amended Statement of Claim
 - The relevant provisions of the Collective Agreement
 - The relevant provisions of the *PSA*
 - The relevant caselaw

The Fresh as Amended Statement of Claim

- [17] The plaintiffs plead the following facts which I must assume are true for the purposes of the motion.
- [18] On January 14, 2014, Officer Benjamin Elliott (“Elliott”) began searching police databases for information on Nguyen Son Tran (“Tran”). Elliott also asked Officer Brian Davy (“Davy”) for information about Tran. Elliott and Davy had previously arrested and charged Tran in 2013 for possession for the purposes of trafficking heroin after searching his car and finding heroin behind the glove box.
- [19] On January 15, 2014, Davy briefed Elliott and Officer Michael Taylor (“Taylor”) on information he received from a confidential informant about Tran while they were all working at 55 Division. Officer Jeffrey Tout (“Tout”) was present.
- [20] Douglas was also working at 55 Division but was not involved in this conversation and received none of this information.

- [21] Douglas left 55 Division and heard on his police radio that Tout had stopped a car and identified the driver as Tran, who had pending heroin charges. Douglas did not know who Tran was. However, he drove to the site to offer assistance.
- [22] Douglas observed Tran next to a white Toyota Camry. Tout advised Douglas that there were drugs in the car and that Tout had arrested Tran.
- [23] Then, Elliott and Taylor arrived on the scene, having left 55 Division after Douglas.
- [24] Douglas searched Tran's car and observed white powder on the front console. Douglas searched the driver's and passenger's sides and found nothing. Elliott then searched the driver's side and found a package of heroin behind the steering column.
- [25] Douglas returned to Tran's car, checked the back seat for items left by Tran, and found a folded piece of paper that appeared to have whitish powder on it. He gave it to an officer at 55 Division.
- [26] At Tran's preliminary inquiry, Douglas gave evidence on his involvement in the investigation, together with Tout, Elliott, and Taylor. The judge committed Tran to trial.
- [27] In June 2015, at a *voir dire* before Morgan J., Douglas gave evidence regarding his involvement in the 2014 Tran arrest and search. Douglas testified that he arrived before Elliott and Taylor.
- [28] Tran testified that at the time of his previous arrest in 2013, the same Toyota Camry was searched, and heroin was found inserted behind the steering column, in the same place that Elliott found it on this occasion. Tran also testified that Elliott arrived at the scene before Douglas.
- [29] Justice Morgan concluded that Taylor, Elliott, and Tout had orchestrated the traffic stop and planted heroin across the console of Tran's car. Relying on the radio dispatch times, Morgan J. found that Elliott and Taylor were on the scene before Douglas arrived. This finding was not consistent with Douglas's evidence.
- [30] Justice Morgan concluded that Douglas's evidence that he arrived before Elliott and Taylor was given to deflect attention from the front-and-centre roles Elliott and Taylor played in planting the heroin to justify the search.
- [31] Justice Morgan concluded that the search of Tran's car was not authorized and he excluded the drugs from evidence. The charges against Tran were dismissed.
- [32] On January 28, 2016, Constable Douglas and the other officers involved in the arrest were charged with criminal offences under the *Criminal Code*, R.S.C., 1985, c. C-46, and disciplinary offences under the *PSA*. The criminal charges against Douglas included three counts of attempting to obstruct, pervert or defeat the course of justice, and two counts of perjury.

- [33] These charges stemmed from Douglas allegedly lying to the court about arriving at the scene of Tran's arrest before Elliot and Taylor. He was also accused of lying to provide cover for Elliot when he planted the heroin in Tran's vehicle.
- [34] The plaintiffs plead that the criminal charges against Douglas were initiated by officers for whom the Board is liable pursuant to s. 50(1) of the *PSA*.
- [35] As a result of the criminal charges, Douglas was suspended from duty with pay by Chief of Police Mark Saunders under s. 89 of the *PSA*. This also resulted in Douglas being demoted with a 6.5% reduction in pay. Additionally, he could no longer earn overtime pay.
- [36] On January 28, 2016, pursuant to s. 83(15) of the *PSA*, the Crown asked that any pending disciplinary charges under the *PSA* be stayed while the criminal matters were before the court.
- [37] On March 1, 2016, Douglas was then served with two Notices of Hearing under the *PSA*, specifying two counts of misconduct arising from the incident. To be clear, the pleading is that despite the request for the stay made by the Crown of any *PSA* charges, they had not yet been commenced until this time.
- [38] The plaintiffs plead that the defendants used the criminal charges, or relied upon the criminal charges, to charge Douglas with the *PSA* misconduct charges. The Notices state:

it was determined after an investigation that you acted in manner contrary to the Criminal Code of Canada and therefore you were charged with the criminal offence of Obstruction of Justice. In so doing, you committed misconduct in that you did act in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the Toronto Police Service.

The Notices of Hearing commanded Douglas to appear before a hearing officer on March 29, 2016.

- [39] At Douglas's first appearance in the *PSA* proceeding, he was arraigned, and the hearing was adjourned *sine die*.
- [40] On November 9, 2017, the Crown withdrew the criminal charges against Douglas due to unreasonable delay arising from Crown disclosure issues.
- [41] The plaintiffs plead that the continued prosecution under the *PSA* was tantamount to prosecution of the criminal charges.
- [42] On February 22, 2018, the defendants served Douglas with a Notice to Police Officer, ordering him to attend the Professional Standards Unit for an investigative interview on March 9, 2018. In accordance with his right under s. 83(6) of the *PSA* to not give evidence while charges are pending, Douglas refused to be interviewed. Despite this right, Douglas was charged with insubordination under the *PSA*.

- [43] In September 2018, Chief Saunders applied to the Board to expand the scope of the *PSA* proceeding by serving Douglas with three replacement Notices of Hearing. These notices included express allegations of “perjury” and giving “false, misleading inaccurate” testimony before the courts, contrary to s. 80(1)(a) of the *PSA*.
- [44] To seek the exception to the six-month limitation period under s. 83(17) of the *PSA*, Chief Saunders falsely claimed that the TPS could not act on the *PSA* offences because the Crown had requested that the *PSA* charges be stayed and that they gained further clarity through the criminal proceedings. This is false because the *PSA* charges were laid after the Crown had made the request. The Board dismissed Saunders’ request to serve these notices outside the limitation period and held that they could only pursue the original charges from 2016.
- [45] In March 2019, the Defendants disclosed to Douglas that on April 13, 2017, Davy gave evidence that Douglas was not at the briefing on Tran in January 2014.
- [46] The *PSA* charges proceeded to a 14-day hearing starting April 6, 2021. The prosecutor ultimately withdrew the *PSA* charges on May 17, 2021. Douglas's suspension was lifted on June 4, 2021.
- [47] At that point, Douglas had been suspended from the force for five-and-a-half years and was demoted. He pleads that he suffers from depression and loss of past and future income.
- [48] The plaintiffs say that the defendants knew Douglas was innocent. They say that the defendants had ulterior motives in pursuing the criminal and *PSA* charges against Douglas, and in suspending him from the force.
- [49] The plaintiffs say that the main target of the defendants’ investigation was Elliott, because he had a past history with Tran, which included a finding that Elliott gave misleading evidence.
- [50] The plaintiffs say that the defendants’ motivation for pursuing the criminal and *PSA* charges against Douglas was to wrongfully obtain, coerce, or pressure Douglas to provide incriminating evidence against Elliott. In the alternative, it was for public relations. That is, seeking to enhance the TPS’s image.

The Collective Agreements

- [51] At all material times, the employment relationship between Douglas and the Board was governed by two collective agreements.
- [52] The first Collective Agreement is the version that was in effect when the *PSA* charges were laid in 2016. The second is the version that was in effect when the *PSA* charges were withdrawn, and Douglas' suspension was lifted in 2021. Both collective agreements have substantially the same scope and grievance terms.

- [53] The provisions of the relevant collective agreements relate to "the remuneration, benefits, pensions and working conditions" of members. The agreements also provide that disputes regarding discipline, demotion, and suspension are all within its ambit:

3.01 (a) The Association and its members recognize and acknowledge that, subject to the provisions of the Police Services Act and the Regulations thereto, it is the exclusive function of the Board to: [Emphasis added]

(i) Maintain order, discipline and efficiency; (ii) Discharge, direct, classify, transfer, promote, demote or suspend, or otherwise discipline any member; (iii) Hire.

(b) If a member claims that the Board has exercised any of the functions outlined in paragraph (a) (ii) in a discriminatory manner or without reasonable cause, then such a claim may be the subject of a grievance under the provisions of the grievance procedure outlined in this Collective Agreement or dealt with under procedures within the exclusive jurisdiction of the Ontario Civilian Police Commission, as prescribed by the Police Services Act.

(c) The Board agrees that it will not exercise any of the functions set out in this Article in a manner inconsistent with the provisions of this Collective Agreement or the Police Services Act and the Regulations thereto.

- [54] The grievance procedure is set out in Article 6.

The Police Services Act

- [55] Part V of the *PSA* sets out a code for the investigation of complaints against police officers and for the discipline of police officers through a hearing and appeals process.

- [56] Section 76 permits a Chief of Police to make a complaint about the conduct of a police officer who is employed by his or her police force. The Chief of Police is permitted to investigate and report on the complaint.

- [57] Section 76(9) provides that where a Chief of Police believes that the officer's conduct constitutes misconduct or unsatisfactory work performance, he or she shall hold a hearing.

- [58] The subsections that define misconduct and are relevant to this case are as follows:

Misconduct

80 (1) A police officer is guilty of misconduct if he or she,

(a) commits an offence described in a prescribed code of conduct;

(e) commits an offence described in subsection 79 (1) or (2) (offences, complaints);

(f) contravenes section 81 (inducing misconduct, withholding services);

- [59] Sections 82 to 88 outline the process for such hearings and provide appeal routes from the initial decision to the Ontario Civilian Police Commission and then to the Divisional Court.
- [60] Finally, Part VII of the *PSA* pertains to labour relations matters including bargaining, arbitration, and conciliation processes. However, s. 126 provides that a collective agreement cannot affect the working conditions of members of the police force, which are instead determined by Part V of the *PSA*.

The Caselaw

The Combination of the Collective Agreement and PSA does Not Constitute a Complete Code that Ousts the Court's Jurisdiction in All Cases

- [61] The defendants rely on a series of cases to support their argument that the Collective Agreement and Part V of the *PSA* form a "complete code that ousts this court's jurisdiction over any tort claims relating to the *PSA* Charges" as well as the complaint and investigation related to them.
- [62] I disagree with their characterization of the current state of the law.
- [63] I begin with *Weber v. Ontario Hydro*, [1995] 2 S.C.R. 929, which is the leading decision on what the Superior Court's jurisdiction is when other legislative procedures can govern a dispute.
- [64] Weber was fired by Ontario Hydro after its investigators surveilled him and determined he was malingering. Weber filed a grievance under his collective agreement, which was settled, and also brought a court action alleging various torts and breaches of his rights under the *Charter*. He claimed damages for the surveillance. The question before the Supreme Court of Canada was whether Weber could bring a tort action in light of provisions in the collective agreement which required grievance arbitration.
- [65] The Supreme Court referenced s. 48(1) of the *Ontario Labour Relations Act* that conferred exclusive jurisdiction on labour tribunals to deal with all disputes between employers and employees that arise from the interpretation, application, administration or alleged violation of a collective agreement that governs conditions of employment: para 67.
- [66] The Supreme Court rejected the "concurrent" and "overlapping" models of jurisdiction, which allow a court to proceed with an action recognized by common law or statute notwithstanding that it arose in the employment context: *Weber*, at paras. 39-49. Instead, the Court adopted the "exclusive" model of jurisdiction, holding that if disputes arise within the scope of a collective agreement's dispute resolution provisions, such provisions oust the court's jurisdiction to consider a related civil claim: *Weber*, at para. 50. As noted at para. 43 of the decision:

The issue is not whether the action, defined legally is independent of the Collective Agreement, but rather whether the dispute is one "arising under [the] collective agreement". Where the dispute, regardless of how it may be characterized legally, arises under the collective agreement, then the jurisdiction to resolve it lies exclusively with the labour tribunal and the courts cannot try it. [Emphasis in original.]

[67] In determining whether the Superior Court has jurisdiction, the court must consider:

- i) The nature of the dispute: whether the dispute in its essential character arises from the interpretation, application, administration or violation of the collective agreement. This is based on the facts surrounding the dispute between the parties and not on the basis of how the legal issues may be framed; and
- ii) The ambit of the collective agreement and whether it contemplates the factual situation at hand: *Weber*, at paras. 43-44, 52, and 72.

[68] This test also extends to *Charter* remedies, provided that the governing statute empowers the arbitrator to hear the dispute and grant the remedies sought: *Weber*, at para. 67.

[69] However, because the ambit of the collective agreement and the nature of the dispute will vary from case to case, it is not possible to categorize all classes of cases that fall within an arbitrator's exclusive jurisdiction: *Weber*, at para. 53. This means that certain disputes between employers and employees with collective agreements can still be adjudicated by the court: *Weber*, at para. 54. Only those disputes that expressly or inferentially arise out of the interpretation, application, administration, or violation of the collective agreement are foreclosed to the courts: *Weber*, at para. 54.

[70] In particular, where a remedy is sought that an arbitrator or statutory tribunal cannot grant, the courts of inherent jurisdiction have a residual discretionary power to take jurisdiction: *Weber*, at para. 62. However, even a court may still decline to exercise jurisdiction in these cases on the grounds that the arbitrator's powers are sufficient to remedy the wrong: *Weber*, at para. 62.

[71] In *Regina Police Assn. Inc. v. Regina (City) Board of Police Commissioners*, 2000 SCC 14, [2000] 1 S.C.R. 360 ("*Regina Police*"), the Court explained the rationale in *Weber*, at para. 34:

The underlying rationale for the approach to determining jurisdiction set out in *Weber*, *supra*, was based, in part, on the recognition that it would do violence to a comprehensive statutory scheme, designed to govern all aspects of the relationship between parties in a labour dispute setting, to allow disputes to be heard in a forum other than that specified in the scheme.

- [72] The Court in *Regina Police* also explained that this rationale applies equally to cases involving police officers who are governed by the *Police Act* and its Regulations: at para. 35
- [73] In *Regina Police*, a police officer was facing disciplinary proceedings. He was told he would not face disciplinary proceedings if he resigned. He resigned and then sought to withdraw his resignation. The Chief of Police refused to accept the withdrawal of his letter of resignation. The officer sought to resolve this conflict through arbitration.
- [74] The Chief of Police stated that this conflict was beyond the jurisdiction of an arbitrator because the issue was not subject to the collective agreement, which provided for arbitration. The collective agreement specifically noted that any disputes that fell within the *Police Act* and its Regulations were not arbitrable.
- [75] The matter was ultimately heard by the Supreme Court, which applied the reasoning in *Weber: Regina Police*, at para. 22. The central issue was whether the legislature intended this matter to be governed by the collective agreement or the *Police Act* and its Regulations. The Court examined the essential character of the dispute, which was a disciplinary issue: *Regina Police*, at para. 29. It was essentially an informal resolution to the disciplinary proceeding.
- [76] The Court held that the legislature had provided a comprehensive scheme for the investigation and adjudication of such disputes. Even though the legislation did not provide for the kind of informal discipline the Chief of Police pursued, requesting a resignation inferentially arose from the disciplinary scheme in the statute: *Regina Police*, at paras. 32, 38. The legislature intended that all appeals from disciplinary matters would be heard by the Commission. The fact that there was no order for dismissal was not sufficient to deprive the Commission of jurisdiction. The Court held that the *Police Act* should be liberally construed to ensure that all forms of dismissal, including constructive dismissal, can be appealed to the adjudicative body designed by the legislature: *Regina Police*, at para. 36.
- [77] In arriving at this decision, the Court stated, at para. 26:

Before proceeding to an analysis of the ambit of the collective agreement, it is important to recognize that in *Weber* this Court was asked to choose between arbitration and the courts as the two possible forums for hearing the dispute. In the case at bar, *The Police Act* and Regulations form an intervening statutory regime which also governs the relationship between the parties. As I have stated above, the rationale for adopting the exclusive jurisdiction model was to ensure that the legislative scheme in issue was not frustrated by the conferral of jurisdiction upon an adjudicative body that was not intended by the legislature. The question, therefore, is whether the legislature intended this dispute to be governed by the collective agreement or *The Police Act* and Regulations. If neither the arbitrator, nor the Commission have jurisdiction to hear the dispute, a court would possess residual jurisdiction to resolve the dispute. I agree with Vancise J.A. that the

approach described in *Weber* applies when it is necessary to decide which of the two competing statutory regimes should govern a dispute. [Emphasis added.]

- [78] The principles in *Weber* and *Regina Police* have been applied in a long line of cases involving police officers in Ontario: see *Abbott v. Collins*, 64 O.R. (3d) 789 (C.A.); *Heasman v. Durham Regional Police Services Board*, 204 O.A.C. 283; *Renaud v. Town of LaSalle Police Association*, 216 O.A.C. 1; *Toronto Police Association v. Toronto Police Services Board*, 2007 ONCA 742, 287 D.L.R. (4th) 557, leave to appeal refused, [2008] S.C.C.A. No. 40; and *George v. Anishinabek (Police Service)*, 2014 ONCA 581.
- [79] The Court applied these principles in *Muirhead v. York Regional Police Services Board*, 2014 ONSC 6817. In *Muirhead*, a police officer and his wife brought a civil action against the Police Board, based on allegations surrounding its administration of the complaint and discipline process under the *PSA*.
- [80] A suspect had made racial slurs against Officer Muirhead, who is Black, during an investigation. The suspect told Officer Muirhead that if he did not have a badge and gun, the suspect would “kick his ass.” Officer Muirhead searched the suspect, moved his coat and charged him.
- [81] The suspect filed a public complaint for unlawful arrest. As a result, Officer Muirhead was charged with discreditable conduct under the *PSA* as well as insubordination, and neglect of duty. The Investigative Report cited matters including Officer Muirhead’s alleged failure to get consent for the search, his alleged failure to get consent before moving the suspect’s coat, and his failure to apologize for doing so.
- [82] While the *PSA* charges were pending, one of the defendants involved in the investigation told another constable, who was a member of Officer Muirhead’s platoon, that he should stay away from Officer Muirhead. Officer Muirhead complained that this constituted slander, and he was also dissatisfied with the informal discipline of that officer. He was also concerned that this constituted witness tampering because the officer who was told to stay away from Officer Muirhead was one of the officers involved in the *PSA* proceeding against him.
- [83] During the *PSA* trial, one of the detectives called Officer Muirhead a racist.
- [84] The York Regional Police ultimately withdrew the charges against Officer Muirhead but blamed him for prolonging the investigation.
- [85] Officer Muirhead and his wife sued the Board, alleging racial discrimination, negligent investigation, bias, and malicious prosecution. They sought \$10 million in general damages and \$5 million in punitive damages.
- [86] Officer Muirhead alleged that the defendants wanted him to plead guilty or admit liability for offences he never committed. Officer Muirhead also submitted that the defendants insisted he sign an informal resolution so that the charges would be dropped. Officer

Muirhead refused. Lastly, Officer Muirhead submitted that pursuing charges against him revictimized him and affirmed the racial discrimination he faced during the incident.

[87] The Court struck the entire claim on a preliminary motion.

[88] Justice Perell concluded that the case as pleaded was in essence a discipline dispute for which the court's jurisdiction was ousted: *Muirhead*, at para. 80. In doing so, he noted that where the allegation is that a public official abused their power and engaged in deliberate unlawful conduct with intent to harm, the *Weber* principle must be applied, but it should be applied carefully: *Muirhead*, at para. 90. He stated:

In the circumstances of a dispute about the abuse of power, the factual circumstances may move the classification of the dispute from being a dispute about an employment relationship to being a dispute about the misuse of power by a public official to hurt a person who happens to be an employee.

[89] While Perell J. struck the claim, he gave leave to amend at para. 91:

[91] In the case at bar, all of Constable Muirhead's grievances, as they are currently pleaded, fall within the grievance procedure of the collective agreement or the arbitration provisions of the *Police Services Act*, but there is at least a hint or suggestion that Defendants were using their power as an employer to discipline disingenuously, malevolently, and vindictively and for purposes extraneous to the employment relationship. It may be that there are material facts that could be pleaded to cross the line from a discipline dispute between employer and employee to a dispute about the intentional abuse of power to cause harm by a public official to a citizen who happens to be an employee of the public official.

[90] Based upon the above, there is certainly case law that supports the defendants' argument that the *PSA*, together with a collective agreement that requires the arbitration of labour disputes, constitute a complete code that ousts the court's jurisdiction: *Heasman* at paras. 11- 14, *Renaud* at paras. 6-7, citing *Abbott*, at paras. 2-4, 33; and *Toronto Police Association v. Toronto Police Services Board*, 2007 ONCA 742, at paras. 14, 16-18.

[91] However, in *Rukavina*, the Court of Appeal reviewed many of the authorities in the defendants' factum, including *Weber* and *Regina Police* and concluded that these cases do not establish an exclusive jurisdiction model in police cases, such that the court's jurisdiction is ousted in all cases: at paras. 35-38. The Court stated at paras. 34 to 36:

The respondents rely on numerous authorities in support of the proposition that "this court has repeatedly acknowledged that the grievance and discipline scheme that applies to police officers in Ontario was intended to create a complete substantive and procedural code, leaving no gaps for residual jurisdiction in the courts." I do not read the authorities offered in the same way as the respondents.

There is no doubt that in the policing context, collective agreements and the PSA will generally operate together to keep police-related disputes out of the court, given their robust grievance and disciplinary regimes. Nevertheless, I see no support for the proposition that, as a matter of law, the court's jurisdiction is necessarily ousted for the purpose of any dispute that may involve police officers.

While the respondents point to numerous authorities said to support their sweeping proposition, I find that the authorities actually demonstrate the opposite. Those authorities do not approach the jurisdictional question by simply noting the application of a "complete code" in the policing context. Rather, the authorities demonstrate the need to consider the essential character of the dispute and then reason to a jurisdictional conclusion. Although the conclusions in those authorities may well mirror the outcome the respondents desire in this case, the reasoning process must propel the decision toward that conclusion.

- [92] In *Rukavina*, the plaintiff was an Acting Staff Sergeant in charge of a tactical unit. He was in charge of a training exercise that involved a hostage-taking scenario where an explosive device was used. When it was detonated, it created a fireball that caused serious injuries to paramedics and two police officers. The Special Investigation Unit ("SIU") was involved, and the plaintiff was charged with criminal negligence causing bodily harm and breach of a legal duty to use reasonable care while having an explosive substance under his care and control.
- [93] The charges were stayed one year later. The plaintiff sued for malicious prosecution and misfeasance in public office.
- [94] The plaintiff alleged that the defendants launched a campaign to influence the SIU investigation, provided false information to the SIU and released confidential information to the media. The plaintiff also alleged that the defendants conspired to provide false evidence which included that the detonation device was filled with windshield washer fluid instead of water, as required. The plaintiff submitted that this evidence led the SIU to find him criminally responsible.
- [95] The plaintiff also alleged that the Ontario Provincial Police were asked to investigate the matter for evidence of manipulation and fraud.
- [96] The defendants brought a motion to strike which was granted by the motions judge. The judge concluded that the conflict was a workplace dispute that was governed by the collective agreement and the *PSA*.
- [97] The Court of Appeal concluded that by examining the facts surrounding the dispute, it became clear that the essential character of the dispute was not covered by the collective agreement. That is, the dispute did not arise, explicitly or implicitly, from the interpretation, administration or violation of the collective agreement: *Rukavina*, at paras. 46-47.

[98] Rather, the factual matrix involved officers allegedly knowingly providing false and misleading information to investigators in the context of a serious investigation that resulted in criminal charges. Additionally, the Court considered the defendants' alleged intentional release of false information to the media: *Rukavina*, at para. 50. The Court stated, at para. 52:

Mr. Rukavina is not alleging that he was unfairly disciplined by his employer. Rather, he is alleging that he was wrongfully charged with criminal offences after his fellow officers lied to the SIU and that his superior officers acted in a manner that continued to mislead the SIU. The allegations do not pertain to discipline. At their highest, they are allegations of criminal activity, knowingly and intentionally misleading a criminal investigation.

[99] The Court referenced a number of cases outside the policing context, concluding that once an employer reports an employee to the police, the employer has gone outside the collective bargaining regime. In *Piko v. Hudson's Bay Co.*, 41 O.R. (3d) 729 (C.A.), at para. 18, the Court of Appeal concluded that:

A dispute centred on an employer's instigation of criminal proceedings against an employee, even for a workplace wrong, is not a dispute which in its essential character arises from the interpretation, application, administration or violation of the collective agreement.

[100] See also *McNeil v. Brewers Retail Inc.*, 2008 ONCA 405, at para. 37, where the Court of Appeal stated at para. 37:

In our view, this is not a dispute which in its "essential character" arises from the fairness of the employer's application or administration of the collective agreement. Rather, this dispute, as in *Piko*, is centred on the employer's resort to the criminal process.

[101] The Court of Appeal in *Rukavina* applied the above decisions and concluded that once the workplace issue is taken to the criminal court, its essential character is no longer a labour relations dispute: at para 60. The Court stated at paras. 64 and 65:

While it may be that the very genesis of the dispute in this matter was workplace centred, taking the claim at its highest, once the SIU was involved, this was a matter taking place completely outside of the workplace. Indeed, the whole point of the SIU is to create an independent policing agency that exists to police the police. As stated in *Schaeffer v. Woods*, 2013 SCC 71, [2013] 3 S.C.R. 1053, at para 3, "the SIU plays a vital role in ensuring our society remains fair and just and that everyone is treated equally before and under the law." Later in the *Woods* decision, at para 44, the court reinforced this point. "In establishing the SIU, the legislature intended to create an independent and transparent investigative

body for the purpose of maintaining public confidence in the police and the justice system as a whole.”

There should be no mistake about what the SIU investigation was about. It was not a workplace-related matter. Indeed, it was the antithesis of a workplace-related matter. It was an independent criminal investigation that the appellant alleges resulted in serious criminal charges because the criminal investigators were intentionally misled.

- [102] Thus, the Court of Appeal concluded that even though the combination of the collective agreement and the *PSA* cover a wide variety of disputes, the court’s jurisdiction is not necessarily ousted just because the dispute involves the police: *Rukavina*, at paras. 30-32, 50-51, 60, and 72-74.
- [103] In *Whiteway et al v. Durham Regional Police Services et al*, 2024 ONSC 2309, the Court applied *Rukavina*. The plaintiff brought several actions against police defendants, including civil conspiracy, misfeasance in public office, negligence, defamation and abuse of non-criminal proceedings. The Superior Court referenced *Rukavina* and concluded that its jurisdiction was not ousted.
- [104] In the present case, the plaintiffs submit that *Rukavina* is the controlling authority because this case involves a criminal prosecution.
- [105] They argue that the *PSA* proceeding was based on a criminal investigation and charges thereunder which were instigated for improper purposes. They say that once the subject matter of the dispute was taken to the criminal courts, its essential character was no longer a labour relations dispute subject to the Collective Agreement and the *PSA*.
- [106] The defendants’ position is that the most *Rukavina* does is establish that the claim against the defendants in respect of the criminal complaint cannot be struck. However, the defendants submit that any tort claims stemming from the *PSA* proceeding are not under the court’s purview.
- [107] With the above law in mind, I now consider:
- i) The nature of the dispute: whether the dispute in its essential character arises from the interpretation, application, administration or violation of the collective agreement.
 - ii) The ambit of the collective agreement and whether it contemplate the factual situation at hand.
- [108] The nature of the dispute relates to Douglas’s complaint in respect of the Defendants’ conduct with respect to *PSA* charges which were based solely on Douglas’ alleged criminal conduct, and which were commenced after the criminal charges were laid.

- [109] The Notice of Hearing stated: "it was determined after an investigation that you acted in manner contrary to the Criminal Code of Canada and therefore you were charged with the criminal offence of Obstruction of Justice. In so doing, you committed misconduct in that you did act in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the Toronto Police Service."
- [110] To put it another way, because of the way the Notice of Hearing was drafted, to succeed at the PSA Proceeding, it would have to have been demonstrated that Douglas acted in manner contrary to the *Criminal Code of Canada*. Thus, the entire genesis of even the PSA Proceeding was the criminal complaint initiated and/or supported by the defendants for the improper purposes alleged by Douglas. The criminal complaint and the PSA Proceeding are inextricably linked.
- [111] In line with *Rukavina*, the essential character of this matter does not arise from the interpretation, application, administration, or violation of the Collective Agreement. Once the defendants brought/supported the criminal proceedings against Douglas and took the alleged steps with respect to that criminal proceeding, the matter was no longer a workplace dispute governed by the Collective Agreement.
- [112] The defendants attempt to distinguish *Rukavina* on the basis that there was no PSA proceeding in that case, only a criminal complaint.
- [113] However, in *Rukavina*, the Court specifically addressed this argument and stated that even if the PSA were applicable in the context of the underlying complaint, it would not impact the court's jurisdiction: at para. 68. At paras. 72 to 75, the Court stated:

I see no reason why, even if the PSA could be applied, it would preclude the appellant's claim. This is unlike a collective agreement where the jurisdiction of the court is ousted by a complete arbitration clause. In contrast, there is nothing about a matter being dealt with under the PSA that would or should oust a private claim. Indeed, as noted in *Odhavji Estate v. Woodhouse*, 2003 SCC 69, [2003] 3 S.C.R. 263, at para 31:

The mere fact that the alleged misconduct also constitutes a breach of statute is insufficient to exempt the officer from civil liability. Just as a public officer who breaches a statute might be liable for negligence, so too might a public officer who breaches a statute be liable for misfeasance in public office.

In this case, there was a criminal investigation. That investigation resulted in the appellant being charged with serious criminal offences. And the appellant stood charged, before a criminal court, for over a year before the Crown determined that a stay of proceedings was in order.

At a minimum, for the appellant, once the SIU became involved and a criminal investigation started, this became a private and not a workplace matter. While the PSA may well have been invoked if the chief had decided to make a complaint, the

fact remains that like Woodhouse, the private wrong would go without a remedy if the *PSA* precluded a private action.

Accordingly, his claim is not restricted by the disciplinary procedures in Part V of the *PSA*.

- [114] Although *Muirhead* – a case in which the claim was struck – has similar facts to this case, there are some relevant differences. The *PSA* prosecution of Officer Muirhead did not arise from criminal charges. Rather, they arose from a public complaint regarding Muirhead allegedly dropping a jacket on the ground and failing to acknowledge responsibility after picking it up. In this case, Douglas was alleged to have committed perjury and obstruction of justice contrary to the *Criminal Code*.
- [115] Furthermore, *Muirhead* was decided before *Rukavina*. Even without the benefit of *Rukavina*, Perell J. was alive to the problems inherent in preventing officers from litigating complaints related to abuses of power in the courts.

No other body has jurisdiction over the matters raised by Douglas

- [116] While the *PSA* proceeding was certainly disciplinary, Douglas is not complaining about any discipline he received. He is complaining about an alleged abuse of power and malicious prosecution for which he will have no remedy unless this court assumes jurisdiction.
- [117] Under s. 87 of the *PSA*, an officer may, within 30 days of receiving notice of a decision, serve a notice setting out the grounds of appeal. Because the *PSA* proceeding was withdrawn, there is no decision for Douglas to appeal. Moreover, under s. 87(8), even if there was an underlying decision, the only powers the Commission would have are to confirm, vary or revoke the decision, substitute its own decision, or order a new hearing. Therefore, the *PSA* does not provide any procedure to address the wrongs Douglas alleges.
- [118] Notably, both the defendants and the plaintiffs take the position that Douglas cannot launch a grievance in respect of this matter because the disciplinary proceedings were commenced under Part V of the *PSA*. They rely on section 3.01(a) of the Collective Agreement that states that the Board's exclusive jurisdiction over matters where a grievance can be commenced is subject to the *PSA*. Both sides agree that while matters of discipline may be grieved under s. 3.01(a) this is limited to the situation where the discipline was not conducted under Part V of the *PSA*.
- [119] As additional support, both sides reference s. 126 of the *PSA*, which provides:

Restriction

126 Agreements and awards made under this Part do not affect the working conditions of the members of the police force in so far as those working conditions are determined by sections 42 to 49, subsection 50 (3), Part V (except as provided

in subsections 66 (13) and 76 (14)) and Part VII of this Act and by the regulations. 1997, c. 8, s. 36; 2007, c. 5, s. 11. [Emphasis added]

- [120] Recall that the Collective Agreement relates to "the remuneration, benefits, pensions and working conditions" of members. [Emphasis added]
- [121] Both parties argue that s. 126 means that where discipline is carried out under Part V of the *PSA*, the Collective Agreement grievance procedures cannot be invoked.
- [122] There is support for their joint position.
- [123] In *Bordeleau*, although the collective agreement was found not to apply to the officer, the Court of Appeal considered whether the essential character of the matter related to the employment relationship. The Court stated: "if the dispute arises out of disciplinary action in a regulatory context, the dispute does not fall within the collective agreement or the jurisdiction of an arbitrator": *Bordeleau*, at para. 17. Further, "[b]y virtue of s. 126 of the *PSA*, collective agreements between police services in Ontario and their employees are not entitled to address the statutory complaints system under Part V of the *PSA*": *Bordeleau*, at para. 18. See also *Abbott* and *Heasman*, at para. 11, where the Court of Appeal indicated that "matters of discipline were excluded from the collective agreement because they were dealt with under the *Police Services Act*."
- [124] It is not entirely clear whether these decisions and s. 126 relate only to discipline under the *PSA* that is actually carried out or settled, or whether it also applies to discipline proceedings commenced under the *PSA* which are then withdrawn and alleged to have been instituted for improper purposes. In that regard, s. 126 speaks to agreements and awards made under the *PSA*. Where a proceeding is withdrawn, there is no agreement or award.
- [125] Nevertheless, the defendants' position is essentially that Douglas cannot initiate a grievance under the Collective Agreement. In my view, there are also no procedures he can pursue under the *PSA* to address the wrongs he alleges. Having taken the position that the grievance procedure in the Collective Agreement does not apply, the defendants may not then also challenge the Superior Court's jurisdiction because it means that no entity has jurisdiction over the wrongs the plaintiffs allege.
- [126] In *Abbott*, the Court of Appeal noted at para. 22 that "if neither the arbitrator, nor the Commission have jurisdiction to hear the dispute, a court would possess residual jurisdiction to resolve the dispute."
- [127] Further, even if matters related to the improper or unreasonable initiation and withdrawal of a proceeding under the *PSA* is contemplated by the Collective Agreement, *Rukavina* would still apply. In other words, this matter would still not be considered a workplace dispute because the employer made a criminal complaint against Douglas. The *PSA* charges were premised on the criminal charges. After the criminal proceeding was withdrawn, the *PSA* proceeding hung over Douglas's head for five-and-a-half years while he was suspended, only to be withdrawn.

- [128] Notably, in withdrawing the motion to strike, the defendants implicitly conceded that the pleading discloses valid causes of action.

Douglas will have no remedy for the wrongs he alleges if the Superior Court does not have jurisdiction

- [129] In *Weber* at para. 62, the Supreme Court also stated that where a remedy is sought that an arbitrator (or statutory tribunal) cannot grant, courts of inherent jurisdiction have residual discretionary power to take jurisdiction.

- [130] In *Piko* at para. 11 the Court also noted that: “[s]ome disputes between employers and employees may not arise under the collective agreement; others may call for a remedy that the arbitrator has no power to grant. The courts may legitimately take jurisdiction over these disputes” (emphasis added).

- [131] In *Bordeleau*, the Court also concluded since there was no available remedy under Part V of the *PSA* to challenge the suspension ordered by a Chief of Police under s. 89 of the *PSA*, and the matter could not be grieved, the only remedy for an officer who asserted that she was subject to an unlawful suspension was to seek relief through a court action: paras. 18-20, 24.

- [132] The defendants concede that the action related to the Chief of Police’s suspension of Douglas can be the subject of a court proceeding. The *PSA* proceeding is inextricably linked to this suspension. Without addressing the *PSA* proceeding and the allegations therein (malicious prosecution and abuse of power), Douglas may also have no remedy for his continued suspension against the Chief of Police. This is because the Chief of Police can simply argue that the suspension was justified by the pending *PSA* proceeding. To consider the plaintiffs’ argument with respect to the suspension, the bona fides of the *PSA* proceeding must also be considered.

The policy underlying the legislative scheme is not frustrated by this proceeding

- [133] Finally, I return to the policy that underscores *Weber*, “to ensure that the legislative scheme in issue was not frustrated by the conferral of jurisdiction upon an adjudicative body that was not intended by the legislature”: *Regina Police*, at para. 26.

- [134] The purpose of the *PSA* and the Collective Agreement is not to shield or immunize authorities governing police officers from legitimate claims relating to their alleged unlawful exercise of power or abuses of power.

- [135] The legislature could not have intended that officers, who may have been harmed through abuses of power, have no avenue for justice. Taken to the extreme, if the defendants are right, then police oversight bodies that want to remove officers from duty for improper purposes could initiate *PSA* charges over and over, putting the officers on leave after leave. The bodies can then withdraw the charges, leaving the officers with no remedy. The oversight bodies would be able to abuse their power with impunity.

[136] For all these reasons, this court has jurisdiction in this case.

Issue 2: Should the tort claims be struck because of the provisions of the PSA related to admissibility and confidentiality?

[137] The defendants claim that apart from the jurisdictional issues, there are legal and practical impediments that prevent the court from adjudicating the claim and would prevent the defendants from properly responding to the claims in the *PSA* proceeding.

[138] They argue that it would cause injustice and prejudice if these claims are not struck because the below provisions would hamper their ability to defend themselves.

[139] I begin with the proposition that “he who alleges must prove” and foreshadow that the defendants have failed to prove they will suffer any prejudice by virtue of the provisions they reference.

[140] Part V of the *PSA* relates to complaints and disciplinary proceedings.

Hearings, procedure

83 (1) A hearing held under subsection 66 (3), 68 (5), 69 (8), 76 (9) or 77 (7) shall be conducted in accordance with the *Statutory Powers Procedure Act*.

Non-compellability

(7) No person shall be required to testify in a civil proceeding with regard to information obtained in the course of his or her duties under this Part, except at a hearing held under this Part.

Inadmissibility of documents

(8) No document prepared as the result of a complaint made under this Part is admissible in a civil proceeding, except at a hearing held under this Part.

(9) No statement made during an attempt at informal resolution of a complaint under this Part is admissible in a civil proceeding, including a proceeding under subsection 66 (10), 69 (12), 76 (12) or 77 (9), or a hearing under this Part, except with the consent of the person who made the statement.

Confidentiality

95 Every person engaged in the administration of this Part shall preserve secrecy with respect to all information obtained in the course of his or her duties under this Part and shall not communicate such information to any other person except,

- (a) as may be required in connection with the administration of this Act and the regulations;
- (b) to his or her counsel;
- (c) as may be required for law enforcement purposes; or
- (d) with the consent of the person, if any, to whom the information relates

[141] In *Andrushko v. Ontario*, 2011 ONSC 1107 (Div. Ct.) the Divisional Court applied these provisions, (although numbered differently at the time) to set aside an order in a civil discovery process that would have required the disclosure of information contained in a police officer's personnel file. The Divisional Court determined that the provisions under Part V of the *PSA* together create a statutory privilege that extends beyond the records themselves to information in those records that was gathered in the course of duty: *Andrushko*, at para. 24

Use of the Investigative Reports

- [142] The personal defendants in this matter were involved in the investigation into the *PSA* charges. They argue that they will not be able to use any documents or investigative reports prepared as a result of the *PSA* proceeding and that their defence will be hampered as a result.
- [143] The defendants were entitled to file evidence in support of this motion pursuant r. 21.01(3)(a). They filed a four-paragraph affidavit attaching the Collective Agreements. The defendants filed no evidence that there are reports and documents from the *PSA* proceeding that would assist their defence. I agree with the plaintiffs that it is insufficient for the defendants to simply argue that there are investigative reports or documents that might assist them in support of their prejudice argument.
- [144] Further, the Notices of Hearing filed by the defendants in relation to the *PSA* charges show that the *PSA* charges were based solely on the *Criminal Code* charges and nothing further. There is no evidence that the defendants relied on any documents, investigative reports, or other evidence in support of the *PSA* charges which were not part of the *Criminal Code* charges. The plaintiffs have pleaded that the evidence for the *PSA* charges was the same as the criminal charges, and this is assumed to be true for the purpose of this motion. While the defendants argue that they have been unable to address this with evidence because of the above provisions, in my view a statement in an affidavit that there were different investigative reports related to the *PSA* charges would not run afoul of s. 83 because it would not have involved filing of any such documents or any statements made during informal resolution of the matter or at a hearing.
- [145] Again, the defendants concede that this court has jurisdiction over the claim related to the criminal charges. There is nothing barring the admissibility of the documents from the criminal proceeding, apart from the ordinary rules of evidence. As such, since the

defendants will be able to refer to the evidence, which is the same for the criminal charges, they will not be prejudiced.

The Information in any Documents or Reports Can Be Referenced by the Defendants Because the Plaintiff has Waived Any Privilege Over Them

- [146] Furthermore, even if there was evidence of investigative reports and documents adduced for the *PSA* proceeding that are different than the documents adduced for the criminal proceeding, the defendants could still reference the information in such documents.
- [147] Pursuant to s. 95(d) of the *PSA*, a police officer can choose to place his/her disciplinary history in an action before the court and thereby waive the privilege over the information contained therein: *Hume v. Ghadban*, 2011 ONSC 6396, at paras. 24-26, 46; *Hewitt v. Doyle*, 2021 ONSC 6655, at para. 20; and *Andrushko* at para 18. See also the Supreme Court decision in *Penner*, at para 50 where the Supreme Court specifically referenced the exceptions to the confidentiality provisions. The Court also noted that the above sections of the *PSA* specifically contemplate parallel proceedings in civil courts: *Penner*, at para. 50.
- [148] Courts have permitted police officers to disclose information related to *PSA* complaints in order to bring tort claims arising from allegedly false *PSA* charges: *Bainard v. Toronto Police Services Board*, (2002) CarswellOnt 2366.
- [149] The plaintiffs concede that because Douglas has pleaded causes of action for misfeasance in public office, malicious prosecution, *Charter* breaches and intentional infliction of harm from the *PSA* proceeding, he has waived privilege. Therefore, the plaintiffs are prepared to permit the defendant officers to reference any information contained in any documents or investigative reports relating to Douglas's prosecution under the *PSA*. They would be permitted to describe exactly what they did to investigate to address the negligent investigation claim.
- [150] If anything, if there were such documents, the inadmissibility of the documents would benefit the defendant officers. In the absence of the documents, Douglas would not be able to look behind the defendant officers' testimony and cross examine them on any investigative reports and documents contained in the *PSA* file, if there are any that are different than those related to the Criminal proceeding.
- [151] As well, the defendants provided no law to suggest that any of these alleged investigative documents would be admissible for the truth of their contents in any event. Therefore, it is unclear how the inadmissibility of these documents, if they exist, would hamper their defence. They can still testify on the information therein.
- [152] The defendants rely on a number of cases, all of which are distinguishable.
- [153] *Andrushko* was a private complaint by a member of the public against an officer, and the member of the public sought the officer's personnel file to consider whether there were previous complaints against the officer that could constitute similar fact evidence. The

officer did not consent to the production. The court specifically noted that there were four exceptions to the confidentiality provision, including that if an officer consents, the information does not have to remain confidential: *Andrushko*, at paras. 5, 11, and 18,

- [154] In *Lochner v. Tor. Police Serv. Board et al*, 2014 ONSC 2137, leave to appeal refused 2015 ONCA 626, the Superior Court struck out portions of a claim that referred to information and documents prepared and obtained as a result of the complaints process under Part V of the *PSA*: at paras. 8, 13. The Court held that the information and the documents were privileged and inadmissible in a civil action: *Lochner*, at para. 4. Again, this matter related to a complaint by a member of the public against an officer under the *PSA*. The member of public then sued the officer in the Superior Court, and the officer did not consent to the information or documents being produced.
- [155] The defendants also cite *Murray v. Independent Police Review Director (Ontario)*, 2023 ONSC 4372 (Div. Ct.), at para. 21, where the Divisional Court confirmed that information obtained during an investigation under the *PSA*, including investigative reports, are not admissible in a civil proceeding. Notably, this matter also involved a complaint made by a member of the public against police officers. There is no information set out in the decision that the officers consented to the use of any information related to the investigation of the complaint. The matter was dismissed pursuant to r. 2.1.
- [156] I agree with the plaintiffs' argument that all of these cases are distinguishable because the statutory exceptions in s. 95(d) of the *PSA* did not apply.
- [157] As of April 1, 2024, after the plaintiffs issued their claim, the *PSA* was replaced by the *Community Safety and Policing Act, 2019*, S.O. 2019, c.1, Sched. 1 ("*CSPA*"). Under its transition provisions, the *CSPA* addresses complaints, investigations, and appeals under the *PSA*:

Transition

216 (1) Complaints made under the Police Services Act and hearings under section 25 of that Act shall continue to be dealt with in accordance with the provisions of that Act as they read immediately before the Act's repeal with necessary modifications, subject to subsections (3) to (6) and to such other modifications as may be set out in the regulations.

Testimony

(6) No person shall be required to testify in a civil proceeding with regard to information obtained in the course of an investigation under Part II or V of the Police Services Act as it read immediately before its repeal, except at,

(a) a hearing under Part XII of this Act; or

(b) a hearing or appeal dealt with in accordance with subsection (1) or (2) of this section.

Documents

(7) No document prepared in the course of dealing with a complaint under Part V of the Police Services Act is admissible in a civil proceeding, except at, (a) a hearing under Part XII of this Act; or (b) a hearing or appeal held under Part V of the Police Services Act as the result of the application of subsection (1) or (2) of this section.

- [158] The defendants argue that because the exceptions in s. 95 relating to information in the documents are not expressly referenced in the transition provisions, the exceptions do not apply.
- [159] I disagree.
- [160] Section 216 of the *CPSA* broadly states that complaints under the *PSA* will continue to be dealt with in accordance with the provisions of the *PSA* as it read before its repeal. This means all relevant provisions of the *PSA* apply, not just the ones expressly set out in s. 216.
- [161] Even if that is not the case, it does not assist the defendants. The confidentiality over the information in any documents is created by s. 95 of the *PSA* which specifies there are exceptions. If the s. 95(d) exception is not part of the transition provisions as the defendants allege, then the confidentiality requirement set out in s. 95 in respect of the information is also not a part of the transition provisions.
- [162] In either case, the officers will be able to reference the information in any relevant investigative documents if they wish. The defendants provided no persuasive argument as to why they require the documents themselves to defend themselves if they exist, and why referencing the information therein would be insufficient for their defence.
- [163] Finally, the fact that no person shall be required to testify in a civil proceeding with regard to information obtained in the course of an investigation under Part V of the *PSA* does not mean that the defendant officers cannot testify to defend themselves in this proceeding. If they choose to, they may reference information they obtained in the course of their investigation of the *PSA* proceeding against Douglas. Therefore, this also does not prevent them from defending themselves. To the extent that each of the defendants may require the others' evidence to defend themselves and may need to compel their testimony, there is no evidence that any of the defendants take the position that they will not testify or that their testimony needs to be compelled as a result.
- [164] Again, it was the defendants' onus, and they have not met it.
- [165] The motion is dismissed.

[166] The parties may make cost submissions as follows: The plaintiffs within 7 days; the defendants within 7 days thereafter.

Papageorgiou J.

Released: December 19, 2025

CITATION: Douglas v. Babiar, 2025 ONSC 7075
COURT FILE NO.: CV-19-00630578-0000
DATE: 20251219

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

FRASER DOUGLAS and TARA DOUGLAS

Plaintiffs

– and –

JOHN BABIAR, JANINE CROWLEY, ED BOYD,
CHIEF OF POLICE MARK SAUNDERS and THE
TORONTO POLICE SERVICES BOARD

Defendants

REASONS FOR JUDGMENT

Papageorgiou J.

Released: December 19, 2025