

**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 Briscoe #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 Briscoe)**

**Background:**

Constable Michael Briscoe #15255 is before the Tribunal charged with one count of Discreditable Conduct pursuant to Section 2 (1) (a) (xi) of the Code of Conduct , Ontario Regulation 268 (10), Section 80 (1) (a) of the Police Services Act R.S.O. 1990 as amended.

It is alleged that on February 08, 2022, you made a monetary donation to support the illegal protests and occupations resulting from the Freedom Convoy movement in both Ottawa and Windsor.

This action was completed while you were on unpaid leave from the Windsor Police Service.

**Evidence:**

This Hearing commenced on February 06, 2023 in Windsor, Ontario and concluded on February 24, 2023. Six (6) days of testimony was heard by this Tribunal. Three (3) witnesses testified at this Hearing with thirteen (13) exhibits being tendered.

Mr. Miles addressed the Tribunal in relation to Motion he wished to make prior to the commencement of the Hearing. He wished to argue that due to the circumstances of Constable Briscoe Unpaid leave of Absence that a Motion on the issue should be decided whether he was still an employee of the Windsor Police Service at the time when the contribution was made to the Freedom Convoy. A decision by the Tribunal was made that the evidence to be called for the Discreditable Conduct count would be similar to the evidence required for the Motion. It was ruled the Tribunal would make a decision on the Motion and the Decision of the case after the evidence and submissions were completed.

Sergeant Leah McFadden #15075 is a member of the Windsor Police Service with fifteen years police experience. She has been a Sergeant for two and a half years. She is presently working as a Patrol Sergeant. Prior to be assigned to the Patrol Division she worked in the Professional Standards Unit and was assigned as the investigator of this file.

Exhibit #5 was tendered to the Tribunal by the Prosecutor, Mr. Amyot. It is a Document Brief which contains sixty five (65) Tabs of documents pertaining to the investigation of the alleged misconduct by Constable Briscoe investigated by Sergeant McFadden. These tabs contain the Chiefs Complaint, Investigation Report, McFadden's notes, emails, Windsor Police Service Policy and Memorandums, Photographs, newspaper clippings, Duty statement of Constable Briscoe and online articles which were utilized in this investigation.

It was learned by the Windsor Police Service from the Ontario Provincial Police that Constable Briscoe's name was on a list that donated to the freedom Convoy. This is contained in Exhibit #5 at Tab three.

The information was supplied by Constable Don Reid OPP Intelligence Branch. The issue of whether the donation was made is not disputed by Constable Briscoe. He admits to making the \$50 dollar donation. Briscoe was on unpaid leave effective November 26, 2021. McFadden notes in her report that Briscoe took an unpaid leave on November 26, 2021 as he opposed the mandatory vaccinations. Briscoe was receiving or able to access employer paid benefits and was not dismissed from the Windsor Police Service. He was deemed to be still employed by the Windsor Police Service while on unpaid leave. He returned to work on May 16, 2022.

Mc Fadden communicated with Mr. Bryce Chandler, Director of Human Services for WPS to ascertain employment status of Briscoe while on unpaid leave. She was advised that Constable Briscoe was still an employee.

McFadden interviewed Briscoe on Mary 24, 2022 in regards to this investigation. He admitted to making the \$50 dollar donation to Tamara for Ottawa on February 08, 2022 via Give Send Go.

McFadden determined from the evidence that the Convoy was deemed to be illegal on February 04, 2022 as vehicles were parked on the roadways in Ottawa.

Exhibit #5 at Tabs 23-28 through the several media reports it was determined that the donation made by Briscoe was unlawful as the Chief of Police from Ottawa, Councilors in Ottawa and the Premier of Ontario had made statements to the affect the Freedom Convoy was Unlawful on February 04, 2022. The Convoy continued it funding which galvanized the event against the Police.

A Judges order was proclaimed on February 16, 2022 to the truckers to stop blowing their horns and air horns for ten days. It also stated that protestors could engage in peaceful, lawful and safe protest.

On February 08, 2022 the Ambassador Bridge in Windsor was blocked by the Freedom Convoy. This was a significant event which overwhelmed the Windsor Police Service. People and vehicles were parked on the roadway.

On February 11, 2022 a Judge ordered that the Protestors could not block the roadway to the Ambassador Bridge for ten days from the date of the Order. It authorized the Police to remove vehicles, equipment, structures etc. from the roadways leading to the Bridge.

The Windsor Police Service was assisted by hundreds of police officers from across the Province to assist them with this issue.

At Tab 20 Windsor Police Service Directive 111-01 outlines the Statement of Purpose – Vision, Mission and Values.

Sergeant McFadden reviewed the remaining tabs in Exhibit #5 which contained personal comments from Constable Briscoe's Facebook, newspaper articles, Tiktok comments all relating to the Freedom Convoy protests in Ottawa and Windsor which Briscoe was an avid supporter of this protest.

Sergeant McFadden has made an extensive and thorough investigation into the alleged misconduct of Constable Briscoe. She has stated in paragraph seventeen (17) in her investigative report the following: ***“The ongoing fundraising efforts of the Freedom Convoy 2022 organizers attracted hundreds of thousands of donors and millions of dollars were raised which prolonged the protest.***

***This resulted in millions of dollars being spent by numerous police services to police the unlawful protest. The City of Windsor estimates their protest operating costs to be more than \$5.6 million, and the City of Ottawa’s estimate is \$37 million.***

***The OPP obtained the Freedom Convoy 2022 donation information and identified Constable Briscoe as a Windsor Police Service officer who had made a donation on February 08, 2022. Constable Briscoe confirmed he made this donation.”***

In cross examination by Mr. Miles, Sergeant McFadden again testified to her extensive investigator experience. She was questioned by Miles in regards to Exhibit #7 Tab 2 a document brief tendered to the Tribunal by the defense. It is an article which contains opposing views and raises issues with the Freedom Convoy and Miles solicited from McFadden whether she had considered these documents in her investigation.

She testified that she was assigned this file from her Staff Sergeant in Professional Standards and it was a Chiefs Complaint.

She confirmed the information obtained about Briscoe’s donation was received from a Hack list from a third party.

McFadden confirmed via Exhibit #7 at Tab 1 that Briscoe was a Windsor Police Officer and was on unpaid leave. She had not made any notes with her conversation with Bryce Chandler the Director of Human Resources for WPS. Miles advised McFadden that Briscoe believed he was a civilian at the time of his donation. He reviewed the emails between the Windsor Police Association and she to notify Briscoe was under investigation for the donation that was made to the Convoy.

He also through articles contained in Exhibit #7 that media outlets had varying views and opinions as to the actions of participants at the protest in Ottawa and whether she had considered these views as well in her investigation. He also reviewed the attendance in Windsor of the Convoy and that on February 05, 2022 no roads were blocked.

Miles referred McFadden to Exhibit #7 Tab 15 a letter written by Chief Pamela Mizuno to Windsor Police Service personnel who indicated the service was going to reach out for more officers to assist the WPS to keep the peace in Windsor. This letter was dated February 09, 2022.

He reminded McFadden that the donation from Briscoe was made on February 08, 2022 at 3.46PM and was processed for \$50.00.

Mr. Amyot conducted a re-examination of Sergeant McFadden. During the re-examination of McFadden, Amyot elicited from her that Freedom Convoy 2022 blocked the Ambassador Bridge in Windsor, Ontario. Media reports posted it was a blockade. The Ambassador Bridge was blockaded from February 4-11 shutting down Canadian bound traffic. The American access was one lane from the Canadian side and all this transpired before Briscoe made his donation.

He noted that the Judge's Order of February 07, 2022 did not legalize the protest in Windsor.

The second witness to be called by the Prosecution was Mr. Bryce Chandler, Legal Counsel, Director, Human Resources for the Windsor Police Service. He testified that he provides Legal Counsel to the Chief of Police as it relates to Legal matters, Memorandums of Understanding and Contracts. He is also the Human Resources Director where he implements HR Plans and Management Issues. Exhibit #8 was tendered as an Exhibit by the Prosecution.

At Tab One of this exhibit Mr. Chandler identified the Oath of Office and the Oath of Secrecy that each member of the Service is sworn to abide as he is sworn in by a Judge prior to becoming a police officer. He testified that a member ceases to be a member of the service when he/she is terminated from their employment or the person tenders their Resignation or the person Retires from the Service.

Section 47 applies to a sworn or civilian member that is deemed unfit by a Medical Practitioner.

At Tab two of this exhibit is Directive 310-13 WPS which relates to the Covid-19 Vaccination and Infection Prevention Directive.

This policy Chandler testified in particular section 1.6 states that *'This policy will be in place for one year after implementation, but may be extended based on recommendations of Health Canada, the Ontario Ministry of Health and the WECHU.'*

He testified that unvaccinated members were not terminated. They were on unpaid leave and at section 5.17 the policy states *"Members on an unpaid leave shall continue to be subject to the provisions of the Police Services Act and /or any successor legislation."*

Tabs 3-9 were referred to by Chandler and are self-explanatory and can be viewed in Exhibit #8.

Mr. Amyot reviewed Tabs 10-15 with Chandler. They are email messages from Briscoe to Chandler, Chandler to Briscoe which clarify issues that Briscoe wished a better understanding in relation to his unpaid leave. They related to benefits, court time payment and his unpaid leave status. All emails are self-explanatory.

At Tab15 of this Exhibit is the record of Employment of Constable Briscoe with the Windsor Police Service. The reason for issuing this Record of Employment for Briscoe is ***"Leave of Absence."***

Chandler explained the Leave of Absence incurred no Loss of Seniority and he was not terminated. It was purely he stated an officer on leave of Absence which was unpaid. He stated the Service could not terminate his employment for not taking the Vaccine. He stated because Briscoe was not terminated he was still an Officer with the Windsor Police Service.

Mr. Miles in cross examination solicited from Chandler that Briscoe during his leave of absence was not paid any wages, made no pension contributions, turned in his use of force items, computer and telephone. While on unpaid leave no vacation time or sick leave was accrued by this officer.

Miles stated that Briscoe was unfit for work which Chandler testified that that was incorrect. Briscoe was not complying with the Vaccination Directive. Miles stated that Briscoe was not provided any other alternatives. He was not given another area to work. Chandler testified he could not work in the building due to workplace safety issues.

Miles provided some options to Chandler that other Services were utilizing however Chandler stated the WPSA did not utilize these exceptions that other Services may have incorporated.

He questioned Chandler if the WPS contacted Briscoe on the unpaid leave which he responded in the negative.

Miles questioned Chandler as to the authorization the service had to put Briscoe on unpaid leave. Chandler stated it was a health and safety issue which is completely outlined in Tab 2 the WPS Directive 310-13.

Miles stated it was a forced leave and reduced the number of front line officers. Chandler responded that it did affect operational and non-operational needs of the Service. The authorized strength of the service did not change due to the members that were off on unpaid leave.

Chandler testified that decisions were made with the Police Services Board. Miles reviewed Exhibit #8 at Tab 6-7 which outlines the Benefit process and payment plans .The Record of employment was shown as 'Leave of Absence" for Constable Briscoe. Miles compared the paternity Leave known to Briscoe with the leave of Abscenc4e and noted the notebooks were not taken on a Paternity leave. In the emails to Chandler from Briscoe he was concerned with five questions which were all answered by Chandler.

The first witness called by the Defense was the subject officer Constable Michael Briscoe. He testified that he has heard all the evidence presented at this Hearing and has reviewed all the production given to Defense Counsel concerning the Discreditable Conduct charge.

He believed his status of employment with the Service as it relates to the Motion issue that he was not employed. He was no longer receiving a pay cheque as of November 26, 2021. He stated he believed in his Charter of Rights and did not believe he could come back to work. He testified he had been on leave before from the Service and he kept his force assigned equipment. It was a Parental leave. This time he testified his equipment was taken from him. He attended court on parental leave and on November 26, 2021 his equipment was taken and he had no contact. He testified he had never been put on forced leave and he had a number of questions regarding this leave. He wanted to know in regards to compensation would it be as a civilian or as per his contract. He testified he did not want to share his medical status with the Service. He attempted to receive accommodation from the Service because he did not want to reveal his medical status.

He testified that the Windsor Police Services Board wished to mirror the policy of the City of Windsor. He tried accommodation re-Covid-19 testing. He testified he knew people were getting fired but was aware he was protected by the Police Services Act. He believed the policy to be "Get the shot or be fired". He believed he was protected by Section Seven of the Charter of Rights.

He testified he was able to work however he was not allowed.

He testified after turning his equipment into the Service on his last day of November 25, 2021 he was allowed to leave on his own however to return he would have to be escorted. He testified he had no connection with the Service after leaving. He testified he could not identify himself as a police officer.

He testified his first contact with the Service was in April of 2022 when they wanted to serve him documents about his contribution to the Freedom Convoy.

He testified that his sister works for the OPP and she did not have to test for Covid. She was also not required to get vaccinated. He testified he found himself at home with no pay and no benefits. He testified he knew nothing about the Collective Agreement and had no way of accessing information from the Service. This was not what happened when he was on Paternity leave.

He testified his wife works for the Windsor Police Service. He testified he needed income to look after his wife and two small children. He testified he did not want to get the shot and was concerned how long this leave would last.

He testified he started a company to supplement the family income. He testified he did not believe that the WPS was his employer. He registered his business.

During this time he learned about the movement. In reviewing the Directives from WPS he determined the lack of vaccination led to the incapacity to continue to work for the WPS. He testified that the employer should be paying his benefits.

He testified that he was consumed by the media and was keenly aware that 6 million people were not vaccinated and it affected the trucking industry. He testified he knew about the convoy going to Ottawa. He testified about observing lots of media on this issue. He testified that people have alternate views from the Government. He testified he saw articles misrepresenting what was taking place with the Convoy.

He did not believe by contributing to the Convoy he could be subject to Police Services Act charges. He testified he believed he was watching a Milestone event. There were thousands of people attending Ottawa, protesting, something he believed in and sympathized with them.

He testified he observed hundreds of hours including the Brian Peckford speech of January 29, 2022 to learn the truth. He testified he saw nothing criminal, saw no violence and believed this to be a noble cause.

He testified to vehicle being parked on the roadway was an offence however police officers have discretion. People have a right to be heard and protesting his necessary.

He testified that the Peckford speech resonated with him and reaffirmed his believe that his Charter Rights had been infringed.

He testified he believed he lost his job and his Charter Rights were infringed and he could relate to the truckers and others. He testified he was not an anti-vaxer. He did not believe in the MNRA vaccine. There was not enough data with this vaccine and he was not comfortable with putting that drug in his body. He testified he invoked his right to not put that drug in his body.

He testified in people being able to protest. He saw Ottawa as a righteous movement. Honking horns, families playing in the streets, carrying flags were all peaceful. There were some exceptions with people carrying rebel flags and swastikas. He made various references to newspapers which were pro and con to the Convoy.

He admitted to making a donation of \$50.00 to Tamara Lynch on February 08 with his card on the email Jason Briscoe @hotmail.com.

He testified as of the 7th of February protestors were being mischaracterized. The injunction was announce and he testified people were allowed to continue protesting peacefully. He testified he wanted to be part of the movement and the injunction validated his position.

He testified that he supported the movement and does not believe there was any violence. He finds this repugnant as the police knew the convoy was coming. They were allowed to stage he testified. He testified his beliefs fall within the constitution and that the videos of what was happening in Ottawa informed him. Media has different slants he testified.

Briscoe testified he sent the money through Give Send Go through observing the Lynch video and it was to go to Ottawa for the truckers. He testified he does not support criminal activity.

He testified he supported the movement in Windsor, supports the right to protest however he did not support the blocking of roadways to block critical infrastructure. He testified at the time of his donation he was not aware the bridge was blockaded. He supported the convoy in Ottawa. He does not believe that the donation he made reflected badly towards him. He believed the cause to be noble.

He reviewed a number of articles with his Counsel which corroborated his belief the movement was peaceful.

He referred to further articles at Tab 14 and various movements in our society.

He testified that the Senior Management of the Service being Chief Mizuno and Deputy Chief Bellaire raised their fists in the air to support the Black Lives Matter movement and he sees what he did was similar. He supported a movement. He stated if he thought the Freedom Convoy was doing anything illegal he would not have supported the cause. He testified he donated anonymously. He received notification that the donation was made. He denies being disrespectful to the Windsor Police Service.

He testified he received positive feedback from members of the WPS. He stated the government was trying to control people's lives. He believes he is a person who can judge a person's character quite decently. He testified people reached out to him to say "Thank You". He referred to the Windsor Star article where a number of people supported his position.

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

Amyot then questioned Briscoe if it stated anywhere in the document that if you were an unvaccinated member you would be terminated. Briscoe 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 Briscoe read section 5.17 of the directive. Briscoe acknowledged he read and understood it was an unpaid leave of absence and you are subject to the Police Services Act.

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

The letter of Chief Mizuno was discussed and Briscoe 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 Briscoe to the Chandler email contained in Tab3 of Exhibit #8. Briscoe 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 Omers 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 Briscoe to Tabs 8, 10, 11, 12, 13 and 14 which were series of emails between Chandler and Briscoe. They were questions about court time, reimbursement for court. Briscoe 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 Briscoe was reviewed by Briscoe. 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 Briscoe) outlines Briscoe 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.

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

Briscoe testified he believed during the time he was on unpaid leave he believed his employment ended. He stated he could not get the alternative vaccination so he felt terminated. He testified he was an avid consumer of the Freedom Convoy on mainstream media and elsewhere.

Amyot questioned Briscoe about Tab 27 contained in Exhibit #5. Briscoe testified he was aware of this document prior to his donation however he believed the media report to be sensationalized. At Tab 28 the media report of Chief Sloly indicating the trucker convoy was unlawful on February 04, 2022 prior to his donation and Briscoe replied "Yes".

Public statements were circulating that Funding was enabling the protestors. Briscoe acknowledged in the affirmative to this as well.

Briscoe testified he was aware that the Premier had called it an occupation and that he wanted the protests to stop and these statements were made prior to his donation. Briscoe stated some politicians called the protest violent while others did not.

He testified he was aware that the Ottawa Police called the protest in Ottawa violent. Ottawa police said the protests were unlawful and that Funding was enabling this behaviour. This was February 06, 2022.

Briscoe testified there were many different views. He saw mainstream media and had a balanced view. He testified he was aware that Ottawa Police was having problems dealing with the protestors. He testified that he made his donation for Ottawa. Mr. Amyot reminded Briscoe that upon donating he had no control over where his money would end up. It could have ended up in Windsor.

Amyot reminded Briscoe his money was donated the same day as the blockade in Windsor came into realization.

Briscoe testified he heard the Prime Minister, other politicians speak about the injunction etc. He testified he would have attended in person himself if he did not have a family to take care of. He stated the Chief said it was Unlawful but the Justice stated it was Lawful. He stated he did not believe Chief Sloly. He testified that the Ottawa Police believed the protest to be the weekend only. He testified that Sloly clearly revoked this after a period of time.

Briscoe concluded his cross by stating that he believed he was unemployed and was acting as a private citizen when making his donation. He was not employed by the WPS so the Police Services Act does not apply.

In re-examination by his Counsel Mr. Miles, Constable Briscoe testified his warrant card was taken by Sergeant Evans on his last day. He testified his gun belt, building pass were all left at the police station. He testified with no warrant card you cannot identify yourself as a police officer. He testified he would not take the vaccine and there were no alternatives. Miles asked if he was paid as a police officer and he replied in the negative. Briscoe was aware that you could not be placed on probationary period more than once. He believed he was laid off. He testified that his Freedom Convoy donation did not make it beyond the processing. He completed his testimony in saying that all officials were not in agreement that it was an illegal protest. There was a divergence in this opinion he testified.

### **Findings:**

Constable Michael Briscoe #15255 is before the Tribunal charged with Discreditable Conduct. The Hearing generated six days of evidence. Submissions were made on day six by Mr. David Amyot representing the Windsor Police Service and Mr. Shane Miles representing Constable Michael Briscoe #15255. Counsel has provided the Tribunal with twenty six (26) cases contained in Exhibit #11 for the Defense and Exhibits #12 and #13 for the Prosecution.

I have considered the cases supplied to me by Counsel. I have read the cases supplied to the Tribunal and while not always on point, have found them to be instructive in my deliberation.

I have reviewed the submissions by Mr. Amyot and Mr. Miles as they were provided to me on day six of the Hearing and they form part of the transcript for day six of the Hearing in their entirety. In reading and reviewing same I do not believe they need to be summarized as both gentlemen have done so in their submissions to me.

In Ontario, Legal Aspects of Policing (pages 6-11) provides that a police officer commits an offence against discipline by acting “in a disorderly manner prejudicial to discipline or likely to bring discredit upon the reputation of the police force”.

The most recent application of the test for discreditable conduct in Ontario confirms that the test is “primarily an objective one” and that the conduct must be measured against the “reasonable expectations of the community”.

The Ontario Civilian Commission on Police Services has articulated the following approach regarding the meaning of “likely” to bring discredit upon the reputation of the police force:

*The measure used to determine whether conduct has been discreditable is the extent of the potential damage to the reputation and image of the service should the action become public knowledge.*

There are two issues to decide on this case. The first issue is the Motion Mr. Miles was going to raise which was the issue whether Constable Briscoe was a police officer at the time he made the donation to the Freedom Convoy. This issue proceeded with the testimony that was relevant to the entire case.

The second issue deals with the donation made by Constable Briscoe and does it rise to the level of Misconduct under the Police Services Act.

I would like to deal with Issue #1:

Constable Briscoe was adamant in his testimony on this issue with his Counsel that he believed to not be part of the Windsor Police Service while he was on his unpaid leave. In his testimony he utilized words like *'I believe, it was my feeling'* in relation to his work status and his interpretation of other events which I will expound on later in my findings. He had turned in his equipment and this was not done when he was on parental leave which he utilized as comparatives in his belief he was not employed.

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

*Amyot then questioned Briscoe if it stated anywhere in the document that if you were an unvaccinated member you would be terminated. Briscoe 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 Briscoe read section 5.17 of the directive. Briscoe acknowledged he read and understood it was an unpaid leave of absence and you are subject to the Police Services Act.*

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

*The letter of Chief Mizuno was discussed and Briscoe 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 Briscoe to the Chandler email contained in Tab3 of Exhibit #8. Briscoe 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 Briscoe to Tabs 8, 10, 11, 12, 13 and 14 which were series of emails between Chandler and Briscoe. They were questions about court time, reimbursement for court. Briscoe 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.*

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*At Tab 9 (the second paragraph of this email from Chandler to Briscoe) outlines Briscoe 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.*

*Briscoe 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 Briscoe 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 Briscoe 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 Briscoe 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 Briscoe 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 Briscoe 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 Briscoe whether he had received a copy of the Windsor Police service directive 310-13 which is contained in Exhibit #8 at Tab 2. Briscoe acknowledged receipt of the Directive. Amyot had him read the eight page document. Briscoe testified he read and understood the Directive.

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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.***

Amyot referred Briscoe to Tabs 8, 10, 11, 12, 13 and 14 which were series of emails between Chandler and Briscoe. They were questions about court time, reimbursement for court.

Briscoe 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 Briscoe was reviewed by Briscoe. 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 Briscoe) it outlines Briscoe 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.

Briscoe 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 Briscoe 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 Briscoe 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 Briscoe 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 Briscoe 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 Briscoe's donation that the protest was unlawful. Briscoe 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.

I have heard both Counsels speak at large about fairness.

The fair and just procedure was to proceed with this Hearing determined by way of evidence received by a Tribunal, whether it can make a decision based on clear and convincing evidence. This is the process that would follow if no motions were before the Tribunal. It is slightly complicated at this point due to the Motion brought forth by the by Constable Briscoe through his Counsel Mr. Miles. This does not mean to say that the process is not fair. To the contrary, that is why we have these procedures contained in the Police Services Act. It is this Act, along with the Statutory Powers and Procedures Act, which Hearings Officers rely on the most for guidance in conducting a just and proper Tribunal

The accepted quality of the evidence that is required to be met in the prosecution of matters such as these is *clear and convincing evidence*, which has been described as:

*“weighty, cogent and reliable evidence upon which a trier of fact, acting with care and caution, can come to a reasonable conclusion that the officer is guilty of misconduct.”*

The prosecution has met its burden of proving these allegations to me through clear and convincing evidence.

**Decision:**

**Based on all the evidence brought before me in this Hearing, it is the decision of this Tribunal that Constable Michael Briscoe #15255 is GUILTY of Discreditable Conduct as stated in the allegation contained in this Notice of Hearing.**

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

**March 24, 2023**  
**Date**