IN THE MATTER OF POLICE SERVICES ACT
R.S.O. 1990, C.P. 15, as amended:

B E T W E E N:

Constable Ryan Simpson (#8832);
Constable Jason Crawford (#10025);
Constable Blair Begbie (#8401);
Constable Vincent Wong (#8456)

Applicants

- and -

TORONTO POLICE SERVICE

Respondent

JASON WALL

Respondent

DECISION

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Toronto police constables Jason Crawford, Ryan Simpson, Blair Begbie and Vincent Wong bring a motion before me, as a Designated Hearing Officer under s. 94 (1) of the *Police Services Act*, to stay the proceedings against them on the basis of an abuse of process. As grounds for the motion, the officers argue there was an inordinate and inexcusable delay in the investigation of the two complaints at issue, in the laying of charges under the *Police Services Act*, in the provision of disclosure, and in the prosecution of the charges. The officers further state that the delay, through no fault of theirs, has caused prejudice to them such that a stay of proceedings is the only appropriate remedy.

For the reasons that follow, and with some reluctance, I dismiss the motion. Were I not bound by the decision in *Blencoe v. British Columbia (Human Rights Commission)* [2000] 2 SCR 307, I might have decided the motion differently.

Let me begin by saying I find the fact that the first hearings scheduled under the *Police Services Act* are scheduled to commence on October 28, 2013, three years and four months after the events which gave rise to the charges, disturbing. I am mindful of the fact that the objective of the Legislature was to provide, in the words of the Divisional Court in *Ramsay v. Toronto Commissioners of Police* 66 O.R. (2nd) 99 "...a cheap, expeditious, and effective means of investigating alleged misconduct." Without question, at the time, the Legislature

through the *Police Services Act* was seeking a speedy determination of these issues and that it was in the public interest (as well as in the interest of the officers charged) to do so. This thinking was again captured in *Gage v. Ontario (Attorney General)* (1992) OJ # 696 where the Divisional Court stated " ...the Act bristles with time limits of varying intensity. Time is of the essence of the machinery of the Act....The machinery of the Act is very time sensitive....The Act treats time seriously....The Legislature obviously addressed itself to the time significance of each step of the machinery of the Act."

I don't believe the respective timelines regarding each officer from the time of the filing of the two complaints until the serving of the Notices of Hearing or the times from those dates to the hearing dates bear repeating here. They are amply set out in the applicants' factum and are generally conceded by the respondent. I can come to no other conclusion but that the OIPRD in many instances took a very long time to investigate two rather straightforward complaints – one alleging improper detention for approximately 20 minutes and the other for approximately 28 hours. I recognize, as well, that the complainant Wall did not file his complaint until December 27, 2010, nevertheless within the statutory time line. I further recognize the OIPRD was inundated with complaints regarding police conduct resulting from the G-20 disturbances. Surely the OIPRD must have anticipated that holding the G-20 in downtown Toronto would attract

many protestors, placing incredible strain on Toronto's police resources. Granted they did staff up after the G-20 but it strikes me that they were totally unprepared for what transpired, something that in my view was entirely foreseeable.

The creation of the OIPRD was a conscious decision of the Legislature to add a layer of civilian oversight to the process of dealing with public complaints about police conduct in Ontario. I also recognize the obvious, that by adding a new layer of oversight, the perhaps unintended consequences of greater delay would occur in processing these sorts of complaints. No longer would such matters be dealt with internally by the police but rather this new body would be responsible for reviewing complaints paying serious attention to the public interest and the public policy objectives intended by the Legislature. The notion of expediency, while still important, had, to some extent, give way to this new legislative purpose. And clearly, as these cases demonstrate, it has.

I am well aware that the OIPRD began in October, 2009, however, it is no excuse to simply say it was a new body just getting its feet wet when the G-20 occurred. The legislative goal of expediency had not been tossed aside, it was simply added to with the creation of this mechanism for public oversight. In other words, speed was no longer the only legislative objective.

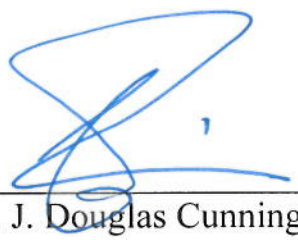
I think, notwithstanding my comments about the OIPRD, it is important to recognize the events of the G-20 weekend in context. Without question, once the decision was made to move the G-20 to Toronto the police authorities knew there would be trouble and they staffed up accordingly. And their forecasts were not in vain. There was serious trouble. Some involved were clearly anarchists. Others, as was their right, protested without violence. Without question the G-20 events had a significant affect upon the Toronto community, indeed upon the greater community of the Province and indeed the country. The entire event, covered fully by the media, engaged great public debate and concern. And so I must ask myself, with an eye upon *Blencoe*, whether the delay in these cases and the alleged prejudice occasioned is sufficient to outweigh the damage to the public interest that would occur should the proceedings be stayed. As *Blencoe* tells me, the prejudice must not only outweigh the disadvantage to the public should the legal process be terminated, it must also result in stigmatizing or psychologically damaging the officers in question, to such an extent that it would bring the police discipline system into disrepute. Only then should I order a stay of these proceedings based upon an abuse of process. It is a very high bar, and as *Blencoe* reinforces, only to be used in the "clearest of cases". I cannot find in these cases that the combination of delay and alleged prejudice "was unacceptable to the point of being so oppressive as to taint the proceedings". The officers in question have

clearly suffered from anxiety and stress. They all speak of how having these charges hanging over them for a very long time has been trying not only for them but for their families. They all speak of the "risk" of reduced future advancement and some lost opportunities. I fully sympathize with them. However, I am not persuaded the prejudice here combined with the unexplained delay (delay alone not being sufficient by itself to found an abuse of process) is sufficient to meet the rather onerous test set out in *Blencoe.*

These are rather straightforward cases and thankfully they are to be dealt with in October and November. The hearings should not be lengthy and shortly there will be finality. The public interest will be served by having these matters proceeded with.

I have read with interest the aspirational goals of the OIPRD contained in the annual reports since the G-20. One can only hope the OIPRD will not ignore the legislative goal of expediency as it continues its important work.

October 22, 2013



The Hon. J. Douglas Cunningham, Q.C.