

Peel Regional Police

***Police Services Act* R.S.O. 1990, c. P. 15, as amended**

IN THE MATTER OF a hearing held in accordance with section 76(9) of the *Police Services Act* into allegations of misconduct against Constable Sunny Mukhi #3747 of the Peel Regional Police.

Charge: Count One – Discreditable Conduct

Disposition

Hearing Officer

Superintendent Robert Higgs
Peel Regional Police

Prosecutor

Ms. Sharon Wilmot

Co-Prosecutor for the Chief of Police

Superintendent Mark Dapat
Mr. Keegan Soles

Counsel for the Defence

Mr. Andy Adams

PART I: OVERVIEW

Allegations of Misconduct

[1] It is alleged that Constable Sunny Mukhi #3747 (“Constable Mukhi”), a member of the Peel Regional Police Service, committed the following acts of misconduct contrary to section 80(1)(a) of the *Police Services Act, R. S. O. 1990 c. P. 15*, as amended;

a. **Count One – Discreditable Conduct**

You are alleged to have committed Discreditable Conduct in that on September 23, 2021, were found guilty of a criminal offence that is an indictable offence or an offence punishable upon summary conviction, namely Assault contrary to s. 265 of the Criminal Code of Canada, in relation to an incident which occurred on or about September 15, 2018 constituting an offence against discipline as prescribed in section 2(1)(a)(xi) of the Code of Conduct, Ontario Regulation 268/10, as amended.

Plea

[2] On April 1st, 2022, Constable Mukhi appeared before me and entered a plea of guilty to Count One – Discreditable Conduct. An Agreed Statement of Facts was tendered as Exhibit #5 and accepted into the record on consent of both the Prosecution and the Defence. Based on those facts, and the confirmation by Constable Mukhi that they were substantially correct, a finding of misconduct was registered.

Decision

[3] After examining and weighing all of the evidence presented, as the Hearing Officer I impose on Constable Sunny Mukhi #3747 of the Peel Regional Police Service for one count of Discreditable Conduct:

A reduction in rank from First Class Constable to Second Class Constable for a period of 6 months. Following which, on the basis of satisfactory work performance to be determined by the officer’s Divisional Commander, the officer will be reinstated to the rank of First Class Constable.

The penalty is submitted in accordance with section 85(1)(c) of the *Police Services Act*.

[4] In response to a request of the Defense, and upon consent of the Prosecution, an oral decision was provided on April 1st, 2022 followed by the supporting written decision.

PART II: THE HEARING

Exhibits

[5] The Exhibits for this matter are listed as follows;

Exhibit #1	Delegation of Powers and Duties to the Hearing Officer (Supt. Higgs)
Exhibit #2	Prosecutor's Designation (Ms. Sharon Wilmot)
Exhibit #3	Co-Prosecutor's Designation (Supt. Mark Dapat)
Exhibit #4	Prosecutor's Designation (Mr. Keegan Soles)
Exhibit #5	Agreed Statement of Facts
Exhibit #6	Notice of Hearing
Exhibit #7	Joint Submission as to Penalty
Exhibit #8	Brief of Authorities (Prosecution)

Representation

[6] In this matter, Mr. Andy Adams represented Constable Mukhi, and Ms. Sharon Wilmot represented the Peel Regional Police Service.

Agreed Statement of Facts

[7] The facts of this matter are substantially agreed upon by the parties to this Tribunal. The Agreed Statement of Facts, filed as Exhibit #5, states;

- a. Constable Sunny MUKHI #3747 has been a member of Peel Regional Police (PRP) since December 2011. At the time of the incident, he was assigned to 22 Division, A Platoon.

COUNT ONE – DISCREDITABLE CONDUCT

- b. On Saturday September 15, 2018, Constable Sunny Mukhi (Constable Mukhi) was assigned to 22 Division A Platoon and was working a backfill paid duty shift ending at 7:00 a.m.
- c. At approximately 2:27 am, Constable Mukhi was operating a PRP cruiser and travelling eastbound on Steeles Avenue at Financial Drive in Brampton.
- d. While approaching the intersection, he saw a Range Rover SUV travelling at a high rate of speed southbound on Financial Drive. The Range Rover went through a red light and

narrowly missed Constable Mukhi's cruiser. It was later confirmed that this vehicle was driven by Mr. Conan Hamdani (Mr. Hamdani).

- e. Constable Mukhi followed the vehicle as it was weaving into the oncoming lanes. He believed that the driver might be impaired and attempted to conduct a traffic stop in the area of Grouse Lane and Financial Drive in Brampton.
- f. Mr. Hamdani exited the vehicle while it was still in motion and it crashed into the porch of a residence on Grouse lane. He took off running and ended up at a house at 28 Black Bear Trail.
- g. Ultimately, Mr. Hamdani was apprehended and arrested when he tried to evade capture by hiding under a barbeque, [BBQ], in the rear yard of 28 Black Bear Trail. In the course of the arrest, Constable Mukhi issued several leg-strikes to Mr. Hamdani, including one where he used "the interior side of his right boot to give Hamdani a short swat on his back essentially at the point where Hamdani's back is touching the ground".
- h. Mr. Hamdani suffered a broken wrist as a result of a fall suffered in the course of the initial foot pursuit, causing the Special Investigations Unit (SIU) to invoke their mandate.
- i. On January 31, 2019 the SIU charged Constable Mukhi with Assault and Assault with a Weapon.
- j. On September 23, 2021, the Honourable Justice J. Nadel convicted Constable Mukhi for one count of Assault in the Ontario Court of Justice in the City of Brampton, in relation to the single shove made with his interior side of his right boot as discussed in paragraph 6, above. The Assault with a Weapon charge was withdrawn.
- k. Justice Nadel noted in his Reasons for Judgement that "the shove to Hamdani's back inflicted by Mukhi with the inside aspect of his right boot was an unjustified assault on Hamdani."
- l. Constable Mukhi received a conditional discharge. He was placed on a 90-day probation order with conditions to keep the peace and be of good behaviour, notify the court or probation officer before any changes to name, address and employment and not to contact Mr. Hamdani directly or indirectly by any physical electronic or other means unless it was in the execution of his duties as a police officer.
- m. The actions of Constable Mukhi constitute Discreditable Conduct under 2(1)(a)(ix) of the prescribed Code of Conduct.

Positions on Penalty

[8] The parties representing the Prosecution and Defence provided a joint submission with respect to penalty, tendered as Exhibit #7. They propose that the appropriate disposition for the finding of guilt on one count of Discreditable Conduct is as follows:

A reduction in rank from First Class Constable to Second Class Constable for a period of 6 months. Following which, on the basis of satisfactory work performance to be determined by the officer's Divisional Commander, the officer will be reinstated to the rank of First Class Constable.

The penalty was submitted in accordance with section 85(1)(c) of the *Police Services Act*.

[9] The actual document submitted to the tribunal was submitted electronically and was undated and unsigned.

[10] The Prosecution, Defence, and Constable Mukhi adopted the contents of the document on the record.

Submissions of the Prosecution – Ms. Sharon Wilmot

[11] Constable Mukhi has agreed to the facts that have been put before the tribunal in the Agreed Statement of Facts.

[12] The basis of this discipline is a criminal code conviction in the Ontario Court of Justice for an on-duty assault after charges were laid by the Ontario Special Investigations Unit.

[13] The parties have discussed this and we are in agreement that an appropriate penalty in this case given the totality of the circumstances is a demotion in rank to Constable Second Class for a period of six months. Following which the officer will be returned the rank of Constable First Class.

[14] It is the Prosecution's position that this penalty is reflective of the applicable mitigating and aggravating factors. It is also consistent with the range of penalties imposed in similar cases.

[15] Some brief submissions on why the penalty is appropriate are:

[16] Krug and Ottawa Police Service 2003 OCPC 75460

- a. This case is known simply for outlining the relevant considerations that a Hearing Officer must consider when determining an appropriate disposition on a Police Services Act conduct matter.

- b. It is important to understand is that not all factors are necessarily relevant in each case but the tribunal is obligated to consider all of those disposition considerations which my friend and I will put up for you as being relevant to the circumstances.
- c. The task as a hearing officer is to appropriately balance these considerations for the case currently before you.
- d. The most relevant considerations for your decision are:
 - i. Nature and seriousness of the misconduct;
 - ii. Public interest and damage to the reputation of the Police Service;
 - iii. The ability to reform or rehabilitate the police officer;
 - iv. Employment history;
 - v. Deterrence, both General and specific;
 - vi. Consistency of disposition.
- e. It is recognized that this is a joint penalty submission that both parties have agreed to. While it is agreed by both parties that it is appropriate in the circumstances, you as the Hearing Officer are not obligated to accept the penalty. However, if you did decide for some reason that this was an inappropriate penalty you must provide clear and cogent reasons why you have made that determination. I would ask that you provide both parties the opportunity to respond to the reasons provided.
- f. It is the Prosecution's position, and the Defense position, that this penalty is reasonable given the circumstances.

Nature and seriousness of the misconduct

- [17] The first consideration is probably the most prominent consideration in this case: the nature and the seriousness of this misconduct;
- i. It is the Prosecution's position, which is supported by case law, that a criminal conviction for assault by a police officer is one of the most serious forms of misconduct.
 - ii. The exercise of excessive use of force resulted in criminal charges and a conviction for assault in the Ontario Court of Justice.

- iii. It is noted that the subject in this incident, Mr. Hamdani, was driving dangerously and attempting to evade the police. He also almost caused a significant accident and continued to display erratic behaviour while he made attempts to flee police custody.
- iv. The prosecution clearly acknowledges that this was difficult circumstances and it appears that this was a one-off incident in reaction to those difficult circumstances.
- v. Prosecution suggests that Constable Mukhi reacted in the heat-of-the-moment and made a regrettable decision.
- vi. It is further suggested that the fact that he was given a conditional discharge by the Court in response to the criminal conviction is indicative that the Justice in that case recognized these mitigating circumstances.

Public interest and damage to the reputation of the Police Service

- [18] The very clear goals of Peel Regional Police is to build an environment of professionalism and building trust with our community and their confidence in Peel Regional Police.
- [19] Prosecution suggests that Constable Mukhi's actions fell below the expectations of our officers and served to undermine these goals in that any criminal conviction of a police officer undermines the community's trust and confidence in their police service.
- [20] Further suggests that all agree that this is an aggravating consideration and that this is a serious offence.
- [21] Related interest is the Public Interest and the Reputation of the Peel Regional Police.
- [22] Constable Mukhi's conduct involved a member of the public so it is clear at least one member of the public was aware as was the owner of the residence where the video was obtained from.
- [23] Further consideration is that this incident was captured on video, obtained by investigators of the Special Investigations Unit, and utilized in a criminal court proceeding. This lead to the video being viewed by our Justice partners, crown attorneys and the Justice presiding.
- [24] Given the work that Peel Regional Police is doing to build trust with both our community and our justice partners it is suggested that this represents a clear setback in those efforts and negatively impacts our reputation. This is an aggravating factor for consideration.

Employment history

[25] In reviewing Constable Mukhi's employment history it is noted that:

- a. He has been a member of the service for ten years.
- b. He started as a cadet and has worked in various areas of the Service since then.
- c. He is regarded as a hard working member of the Service and was very eager to have this matter addressed to that he could get back to work and become a productive member of the Service again.
- d. Suggests that, given his employment and discipline history, that it is hoped by the Prosecution that this behaviour is out-of-character for this officer and not in line with his employment history generally.

The ability to reform or rehabilitate the police officer

[26] The Prosecution suggests that the factors that contribute to an officer's ability to reform include Employment History, which has been spoken to and is put forward as a mitigating factor, as well as his acceptance of responsibility and expressions of remorse.

[27] Prosecution submits that Constable Mukhi has taken responsibility at the absolute earliest opportunity, he has pleaded guilty and has accepted the Agreed Statement of Facts. This is put forward as a significant mitigating factor in why a brief demotion period is being put forward as opposed to a longer one.

[28] There is no indication whatsoever that Constable Mukhi will repeat this conduct. This behaviour likely falls into the category of, 'a single act of human frailty' which is referred to in the case law.

[29] These conditions contribute to the view that this officer will return to being a productive officer and this is a mitigating factor.

Deterrence, both General and specific;

[30] This is a particularly important consideration in this case, both for Constable Mukhi in the concept of specific deterrence.

[31] Constable Mukhi is to be reminded that a criminal conviction for assault is a serious matter and not something that occurs in the course of everyday employment.

- [32] It is suggested that the Service needs to remind Constable Mukhi, and all our members, that they are afforded significant powers to enforce the law and that they need to utilize these powers responsibly in order to maintain the public trust.
- [33] Prosecution suggests that the jointly agreed upon penalty of demotion is significant but also sends the appropriate message to all of our members that we take the instances of criminality, in particular in regards to the use of force,

Consistency of disposition

- [34] Provided a wide range of cases to highlight there is a wide range of dispositions that are largely fact driven.
- [35] One dismissal case has been provided specifically for a paragraph within the decision; there is no inference that it is the Prosecutions position is that this is a dismissal case.
- [36] Peel Regional Police and Szuch - October 15, 2009, Superintendent Frank Roselli
- a. Off-duty detention and arrest; officer placed himself on-duty
 - b. Young offenders; criminal charges for assault were laid, but withdrawn. No criminal conviction in this case.
 - c. Hearing Officer noted that the use of force was reprehensible, but more specifically to non-combative, impressionable youth.
 - d. Disposition: 10 days forfeiture
 - e. Note again that there was no criminal conviction in this case.
- [37] Peel Regional Police and Mazzotta - June 5, 2018, Superintendent Colleen Fawcett
- a. Disposition: 2 days forfeiture
 - b. There was a criminal conviction but there were unusual circumstances in that he opted to plead guilty when there was a very clear and reasonable defense that he could have taken and the facts of the specific charges in that case were mitigated by various circumstances.
 - c. Off duty altercation involving a number of young persons, one of whom was injured.

- [38] Peel Regional Police and Andrews - December 19, 2018, Superintendent Colleen Fawcett
- a. Entered a guilty plea in regards to a summary offence of disorderly conduct in Pennsylvania after he was arrested for assault,
 - b. Provocation was a factor.
 - c. Summary offence of disorderly conduct is akin to a Provincial Offences ticket
- [39] Peel Regional Police and Webber - June 28, 2016, Superintendent Colleen Fawcett and jointly, Peel Regional Police and Kerec - July 3, 2016, Superintendent Colleen Fawcett
- a. Off-duty Christmas party where there was an altercation with a member of the public.
 - b. Both officers were convicted of assault and unlawful confinement in criminal court.
 - c. Based on those convictions charged under the Police Services Act.
 - d. Disposition – Weber received a two year demotion, aggravating circumstances were that he was a sergeant with considerable experience and should have known better.
 - e. Disposition – Kerec received 18-month demotion to 3rd class constable, then an 18-month period as a 2nd class constable after which he returned to a 1st class constable. Aggravating circumstances included an insubordination charge for failing to cooperate with a Professional Standards investigation.
- [40] Groot and Peel Regional Police Service 2002 ONCPC 4
- a. Charged with assault cause bodily harm involving a handcuffed male in-custody which is a significantly aggravating factor.
 - b. On appeal the conviction of assault cause bodily harm was overturned and he was convicted on common assault. He had no history of discipline but the significance of the use of force led to a dismissal disposition.
 - c. Prosecution includes this simply to refer to:
 - i. “It is clear that police officers, whether on or off duty should not be threatening harm to others or engaging in assaultive behavior. Such conduct is discreditable, warrants discipline and must be deterred. Gulliver and Brantford Police Service (1997), 3 O.P.R. 1175 (O.C.C.P.S.) This is particularly the case, where a police officer assaults an intoxicated, handcuffed and helpless prisoner at a police station. This is highly damaging to the reputation of a police service. We agree with the Hearing Officer’s

conclusion that, “What occurred was a serious deviation from the professional behaviour expected and demanded by the public of an officer and of every member of this service.”

As was noted in *Gladish v. Byers* (1992), 1 A.L.E.R.B.J. 55 at page 61:

“Excessive use of force by a police officer which causes bodily harm, is one of the most serious forms of police misconduct. It must be made clear to the few who engage in such misconduct that serious penalties are likely to follow proof of such an event.”

Absent substantial mitigating factors, such conduct can warrant dismissal.

- d. A significant aggravating factor is that these cases involved assault cause bodily harm or the person was handcuffed, but relevant considerations in how the Police Commission has treated assault convictions in the past.

[41] All of this is to suggest there is a wide range of reasonable penalties in situations such as this. Prosecution submits that the cases ranges from a forfeiture of days, to a demotion, to dismissal. Given the existence of a criminal conviction it is submitted that a forfeiture of days is inappropriate but considering the other significant mitigating factors; positive employment history, clear remorse and acceptance of responsibility; a moderate demotion is appropriate.

[42] The Prosecution submits that the proposed penalty of a six month demotion should be accepted by this tribunal.

Submissions of the Defence – Mr. Andy Adams

[43] The Defence notifies the Tribunal that they will not be providing a formal submission involving cases to review but will provide comments for consideration on behalf of Constable Mukhi.

[44] This journey started with an SIU investigation on Saturday September 15th, 2018 and can best be described as four long years which were stressful and concerning not just for Constable Mukhi but also for his family.

[45] His family is comprised of his wife and a very young child with another on the way. This matter has been very stressful.

[46] Constable Mukhi recognizes and accepts both the Agreed Statement of Facts as well as the Joint Submission of Penalty.

[47] Constable Mukhi stands before the tribunal and accepts full responsibility for his actions and respectfully requests that accept this guilty plea and impose a sentence that would take effect

immediately. This would allow Constable Mukhi to finally close this book that has effected both his professional and personal life.

[48] Defence requests that Constable Mukhi be allowed to address the tribunal.

[49] Constable Mukhi states, "I would like to say thank you to everybody who helped to make this happen as fast as it did. It know it is somewhat unprecedented circumstances and I really do appreciate our Legal Services, Andy, and yourself Sir for making this happen. I want to apologize to everyone, to the Service, the community, the community I grew up in. I want to be a productive member of this organization going forward and serve my community again. I love being a police officer and I love being a Peel Regional Police Officer. I wish none of this had ever happened. I not only put my family, myself through this but also my peers and affected their families. I have that weight on my shoulders and I am hoping that today is one way of relieving some weight from my shoulders and closing this chapter in my life and moving forward. As Andy mentioned, I do have a 3 year old and he is great and I have another addition on the way. This situation has taught me a lot that I probably will never forget but is something that I will carry with me but also use as a tool to help younger officers make the right decisions, again this is an opportunity to move on and I am sorry for everything that has happened and I am sorry for everyone involved in this and I just want to be a productive member of this organization again."

PART III: ANALYSIS AND FINDINGS

[50] The information before the Tribunal is limited to the Agreed Statement of Facts, the submissions made by the Prosecution in regards to the appropriateness of the Joint Penalty Submission, comments provided by and Defence and the supplemental materials which were subsequently entered as exhibits. I have reviewed all of the information and evidence that was submitted.

[51] Given that, after review, it is concluded that the Agreed Statement of Facts accurately outlines the facts in issue of this alleged misconduct, and that Constable Mukhi #3747 has agreed to the accuracy of the Agreed Statement of Facts and subsequently pled guilty, the primary task before the tribunal is to confirm that the associated Joint Submission to Penalty is both reasonable and appropriate.

a. It is recognized that, if the penalty is deemed to be inappropriate or unreasonable, that the rationale behind said determination will be articulated through clear and cogent reasons.

[52] In considering the validity of the Joint Submission to Penalty I note that, while it is undated and unsigned, its contents were adopted, on the record, by all parties in the same manner in which the

Agreed Statement of Facts was adopted. I am confident that all parties support the Joint Submission to Penalty.

[53] The Prosecution provided case law submissions as recorded in the body of this Decision. Each highlighted key aspects of the specific case law and, in reviewing the submissions; I find that the presentations were accurate and relevant to the points, or concepts, that they were drawing attention to with their comments.

[54] Specific note can be given to *Krug and the Ottawa Police Service (OCCPS, January 21, 2003)* in that, while no one factor needs to be given more weight than another, I accept that the key factors to be considered when determining the penalty in this particular matter are:

- i. Nature and seriousness of the misconduct;
- ii. Public interest and damage to the reputation of the Police Service;
- iii. The ability to reform or rehabilitate the police officer;
- iv. Employment history;
- v. Deterrence, both General and specific;
- vi. Consistency of disposition.

[55] In reviewing the material presented by the Prosecution, specifically recorded in paragraphs [11] to [42] inclusive, and in reviewing the associated material provided in Exhibit #8 Brief of Authorities (Prosecution), I find that the relevant factors listed in [54] were appropriately addressed.

[56] It is noted that Defence indicated that they would be allowing the Prosecution to speak on their behalf in regards to their submissions and, when provided the opportunity, did not present any contradictory submissions. I find that this supports my paragraph [55] statement.

[57] The Tribunal would like to note that the material provided by all parties (Prosecution, Defence and Constable Mukhi #3747) generally, but also specifically, [17]v., [28], [47] and [49], leads me to have high confidence in concluding that Constable Mukhi #3747 will be successfully rehabilitated and effectively return to being a productive officer, and a valuable asset to Peel Regional Police and the larger community.

[58] Upon review of the submissions, I am convinced that the penalty is both appropriate and reasonable.

PART IV: DISPOSITION

[59] Constable Mukhi has accepted responsibility by pleading guilty. After having reviewed all of the available information and, while a Hearing Officer is not bound by joint submissions, there is no clear and cogent reason before me to vary from the submission on penalty. It is the Tribunal's position that the penalty appropriately addresses the factors discussed and is both appropriate and reasonable. I concur with the joint submission being suggested in this case as it is entirely appropriate.

Penalty

[60] After examining and weighing all of the evidence presented, as the Hearing Officer I impose on Constable Sunny Mukhi #3747 of the Peel Regional Police Service for one count of Discreditable Conduct:

A reduction in rank from First Class Constable to Second Class Constable for a period of six months. Following which, on the basis of satisfactory work performance to be determined by the officer's Divisional Commander, the officer will be reinstated to the rank of First Class Constable.

The penalty is submitted in accordance with section 85(1)(c) of the *Police Services Act*.



#1603

April 29, 2022

Robert Higgs, Superintendent #1603
Regional Police – Hearing Officer

Date Peel