

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 an allegation of misconduct against:

**Sergeant Graham Bettes #1740
of the Peel Regional Police**

Allegation: Discreditable Conduct

Decision on Penalty

Hearing Officer

Superintendent Dave Andrews
Peel Regional Police

Prosecutor

Ms. Sharon Wilmot
Peel Regional Police

Co-Prosecutor

Inspector Scott Clair
Peel Regional Police

Defence Counsel:

Ms. Maureen Salama
BTZ Law

Member Representative

Mr. Andy Adams
Mr. Jeff Banton
Peel Regional Police Association

Date of Hearing

April 16, 2019

PART I: OVERVIEW

Allegations of Misconduct

- [1] It is alleged that Sergeant Graham Bettes #1740 (hereinafter called “Sergeant Bettes”), a member of the Peel Regional Police Service, committed the following act of misconduct contrary to section 80(1)(a) of the *Police Services Act, R. S. O. 1990 c. P. 15*, as amended;

Count One: Discreditable Conduct

It is alleged that Sergeant Bettes committed Discreditable Conduct in that between October 6, 2017 and October 13, 2017, he acted in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the Peel Regional Police constituting an offence against discipline as prescribed in section 2(1)(a)(xi) of the *Code of Conduct, Ontario Regulation 268/10*, as amended.

Background

- [2] On December 4, 2018, Sergeant Bettes appeared before me and entered a not guilty plea to the one count of Discreditable Conduct. The Hearing was completed the same day. On January 24, 2019, I released my decision in which I found Sergeant Bettes guilty of the allegation.
- [3] Penalty submissions were heard on April 16, 2019. Sergeant Bettes was not present with the knowledge and consent of all parties.

Decision

- [4] After analyzing and weighing all the evidence presented, as the Hearing Officer, I impose on Sergeant Graham Bettes #1740 of the Peel Regional Police for one count of Discreditable Conduct:

A Forfeiture of one (1), eight (8) hour day (8 hours in total) to be served (worked) at the discretion of the Unit Commander, in addition to mandatory participation in Ethics Training to be arranged through the Corporate Learning Bureau.

- [5] The penalty is submitted in accordance with section 85(1)(e) of the *Police Services Act*.

PART II: SUBMISSIONS

Exhibits

[6] The Exhibits for this matter are listed as follows:

- Exhibit #1: Delegation of Powers and Duties to the Hearing Officer (Superintendent Don Cousineau)
- Exhibit #2 Prosecutor's Designation (Ms. Sharon Wilmot)
- Exhibit #3 Co-Prosecutor's Designation (Inspector Scott Clair)
- Exhibit #4 Delegation of Powers and Duties to the Hearing Officer (Superintendent Dave Andrews)
- Exhibit #5 Agreed Statement of Facts
- Exhibit #6 Brief of Authorities - Prosecution
- Exhibit #7 Book of Authorities - Defence
- Exhibit #8 Brief of Authorities on Penalty – Prosecution
- Exhibit #9 Employment File of Sergeant Graham Bettes - Defence

Representation

[7] During the penalty submissions, Ms. Maureen Salama represented Sergeant Bettes, and Ms. Sharon Wilmot and Inspector Scott Clair represented the Peel Regional Police. Both counsel provided me with a thoughtful, legal analysis of the various issues in this case.

Submissions of the Prosecution – Ms. Wilmot

- [8] Ms. Wilmot began by advising that she would be relying on the Agreed Statement of Facts (**Exhibit #5**) and she provided me with her Brief of Authorities (**Exhibit 8**).
- [9] The penalty position of the Prosecution was a **forfeiture of three days (24 hours in total) plus mandatory participation in Ethics training, which was to be arranged through the Corporate Learning Bureau.**
- [10] Ms. Wilmot advised this is a unique case. Although the misconduct was serious, she proposed that the Prosecution's penalty was reflective of the significant mitigating factors in this case. She felt that it fell at the bottom range of penalties and that it would be consistent with our matter.
- [11] I was referred to the disposition factors as set out in the case of Senior Constable Alexander Krug and the Ottawa Police Service (2003) OCPC-03-001 in **Tab 1** of the Prosecution's Brief of Authorities. Ms. Wilmot identified the more relevant factors in this case to be the seriousness of the misconduct; the public interest; the need for deterrence; the officer's employment history and the officer's disability and personal circumstances that he was experiencing at the time of the incident.

- [12] Ms. Wilmot reiterated that this misconduct was serious in nature, however it arose during a very difficult time in Sergeant Bettes' life. She advised that he should be given the opportunity to acknowledge his mistake and rehabilitate himself.
- [13] The Prosecution reminded this Tribunal that Sergeant Bettes' conduct consisted of two parts. First, he instructed a nurse to destroy blood samples, knowing that a blood warrant was being sought a secondly, Sergeant Bettes instructed Sergeant Jeff Knights to destroy any blood samples in possession of the Ontario Provincial Police that had not been seized with Judicial Authorization. Furthermore, the Prosecution stated that this Tribunal found that Sergeant Bettes, with his length of service and investigative experience, ought to have known that he could not provide those instructions, regardless of who wanted that action to be taken.
- [14] According to the Prosecution, the public interest was an obvious issue in this case. The public would expect criminal activity, including cases of impaired driving to be investigated fairly and impartially without interference by another police officer. The interference in this case would undoubtedly affect the reputation of the police service from the perspective of the Ontario Provincial Police, the Crown Attorney's Office and the hospital and nursing staff.
- [15] Ms. Wilmot referenced my April 24th decision in stating that the reasonable person would know that tampering, destroying or suppressing evidence was wrong. Furthermore, the public would expect police officers to abide by this law, especially since they are held to a higher standard.
- [16] It was recognized that Sergeant Bettes was not charged criminally, however, his actions had the appearance of criminality and his brother, who was the subject of the impaired driving investigation, stood to benefit from Sergeant Bettes' interference, which is contrary to the public interest. I was advised that this was an aggravating factor for my consideration.
- [17] Ms. Wilmot stated that interfering with another police agency's investigation was serious misconduct which had the potential to undermine public confidence. While Ms. Wilmot conceded that this appeared to be an isolated incident which didn't result in criminal charges, I was directed to the case of Provincial Constable C.J. (Carmen) Bressette and Ontario Provincial Police (2014) OCPC-14-007. The purpose of this case, which was found at **Tab 2** of **Exhibit 8**, was to reinforce the fact that the absence of a criminal charge doesn't necessarily mitigate the seriousness of the conduct and my attention was specifically drawn to paragraph 71. However, the Prosecution admitted that Sergeant Bettes was facing a difficult situation which minimized or at least went towards mitigating the seriousness of the misconduct.
- [18] I was advised that there was no evidence before me regarding any recognition of the seriousness of the misconduct. I was advised that while his "not guilty" plea could not be considered as a lack of remorse, he could not get any mitigating consideration that he might get otherwise. It was suggested that I remain neutral on this issue.

- [19] Ms. Wilmot recognized that Disability and Personal Circumstances and Employment History were expected to be mitigating factors, however she left those factors to be discussed by the Defence.
- [20] In terms of rehabilitation, the Prosecution submitted that if Sergeant Bettes accepted his responsibility, in conjunction with my ruling, and if he took steps to overcome his personal circumstances, then rehabilitation was a valid potential outcome.
- [21] Deterrence was of significant importance. As there was no evidence of any improvement in Sergeant Bettes' family situation, there needed to be a message to prevent a recurrence, both by Sergeant Bettes and by other police officers. This needed to be seen by Sergeant Bettes as a learning opportunity.
- [22] Ms. Wilmot had difficulty trying to find cases that would assist in the consistency of sentence, and she recognized that parity is one of the hallmarks of fairness. In order to assist the Tribunal, the Prosecution provided a number of cases with varying ranges of penalty and varying ranges of circumstances and disposition factors.
- [23] I was referred to **Tab 3, Tab 4 and Tab 5** of the Prosecution's Brief of Authorities which contained three (3) Peel Regional Police Tribunal decisions. Ms. Wilmot explained the penalties along with the factors upon which the Tribunal made their decisions.
- [24] **Tab 6, Tab 7 and Tab 8** contained decisions that were appealed to the Commission of the time. Again, Ms. Wilmot gave a brief overview of all three cases.
- [25] In summary of the six cases, there was a wide range of reasonable penalties for my consideration which could include the penalty proposed by the Prosecution, up to and including demotion. Given the officer's circumstances and mitigating factors, it was suggested that the proposed penalty on the lower end of the spectrum was most appropriate.

Submissions of the Defence – Ms. Salama

- [26] Ms. Salama began by confirming that this was not a joint submission although she was appreciative of the professionalism demonstrated by Ms. Wilmot throughout the life of the Prosecution of this matter. Ms. Salama stated that the Defence was proposing this matter be dealt with by way of a reprimand accompanied by the proposed mandatory ethics training.
- [27] The Defence agreed that the misconduct was serious in nature and that the conduct of Sergeant Bettes would damage the reputation of the police service which was an aggravating factor. However, Ms. Salama advised that the penalty for this misconduct must be decided contextually. She advised there was no evidence of explicit intention, although an inferred intention could be made. The action was the result of an honest attempt to assist his brother who was in crisis. Ms. Salama advised that Sergeant Bettes was not trying to make excuses for his behavior, however the context of the case was extremely important in my analysis of the matter.
- [28] The Defence position was that this was an isolated incident based on an ill-conceived misapprehension that what he was doing was appropriate. This was based on his decision to handle matters on his own, rather than seeking professional assistance. Ms. Salama went on to state that Sergeant Bettes now understood the concept of how his involvement in personal relationships had casted him in an unfavourable light.
- [29] Ms. Salama drew my attention to **Tab 2 of Exhibit 8**, and specifically to paragraph 71 of the *Brissette matter*. Her interpretation of the Commission's comments in the paragraph was that putting the circumstances into proper context was the focus of my analysis and decision.
- [30] The Defence stated that perfect consistency in sentencing is impossible to achieve because the Tribunal never has the same officer with the same set of circumstances committing the same misconduct. However, it was suggested that a full criminal investigation that concluded with no criminal charges should weigh into my evaluation.
- [31] There was no evidence that Sergeant Bettes ever identified himself as a police officer or used his status in his discussions. Nor did he act in a way that caused concern on the part of the hospital staff. Even Sergeant Knights initially dismissed the comments of Sergeant Bettes as someone who was worried about a family member.
- [32] The Defence provided me with the Employment File of Sergeant Graham Bettes which was marked as **Exhibit 9**. The remainder of the Defence submissions were spent reviewing this document which were divided into three sections: Employment Related Documents; Commendations and Awards; and Performance Appraisals. Based on the information, it was Ms. Salama's position that this incident was out of character from the officer depicted in **Exhibit 9**. She stated that the potential for Sergeant Bettes' rehabilitation should not need to be a strong factor in my overall consideration.

- [33] In terms of the effect of this Hearing process on the officer, the Defence purported that Sergeant Bettes, who suffered from PTSD, was currently in treatment and therefore unable to attend the Penalty Submissions. However, he consented to the proceedings continuing in his absence as part of his acceptance of responsibility.
- [34] The Defence also struggled to find cases that were on par with or similar to the circumstances of this case. Ms. Salama advised that this was indicative of the unique circumstances and unique mitigating factors contained in our case. She realized that a reprimand was not a penalty and would normally be out of the range of consideration for these types of cases, therefore the Defence did not present this option without due consideration. It was agreed that the Prosecution's position was also within the range but was on the high end of the spectrum that did not adequately address the mitigating factors.
- [35] It was pointed out to the Tribunal, that an aggravating theme found in the Prosecution's cases was that of deceit. Ms. Salama demonstrated how the actions of the various officers were deliberate and misleading. This was not the case with Sergeant Bettes.
- [36] The Defence did not agree that deterrence was a major factor for my consideration. She submitted that Sergeant Bettes' recognition of the seriousness of the misconduct and his rehabilitation potential dissuaded any future misconduct. Moreover, had Sergeant Bettes taken the time to think his actions through, he never would have engaged in the misconduct.

Reply submissions – Ms. Wilmot

- [37] Ms. Wilmot did not make any reply submissions.

PART III: ANALYSIS AND FINDINGS

- [38] In my analysis, I reviewed all information available to me, including a careful assessment of the submissions of both counsel as well as an in-depth examination of the materials provided to me in **Exhibit 8 and Exhibit 9**.
- [39] I have reviewed the disposition factors as listed in Krug and I agree that the factors as proposed by the Prosecution in this case are reasonable. I do not find any other disposition factors that need to be addressed in my analysis. As such, I will comment on the disposition factors individually.
- [40] In dealing with the Seriousness of the Misconduct, I agree with the Prosecution and the Defence that the misconduct is serious. I find so because it involved the appearance of criminality, despite that no criminal charges were laid. It was committed by a police supervisor and by an experienced criminal investigator who ought to have known that his actions were likely to be interpreted as operating outside the law. The fact that no criminal charges were laid cannot be viewed as mitigating, because I have no evidence as to why no charges were laid. For these reasons, I find this to be aggravating. However, there are several mitigating factors that will diminish the level of aggravation and I will address them shortly.
- [41] I have determined that the Public Interest is a major consideration in my decision. The public expects police officers to abide by the law and when they do not obey the law, the public is quick to react with shock, displeasure or anger. This is a reasonable reaction considering the role of police officers in society and the fact that they are held to a higher standard. Sergeant Bettes was not criminally charged but since there was the appearance that his actions operated outside the confines of law, the public would be equally outraged and rightfully so. The impact on the public interest is an aggravating factor.
- [42] In her submission regarding the Recognition of the Seriousness of the Misconduct, Ms. Wilmot suggested that I remain neutral as there was no evidence before me on any recognition on the part of Sergeant Bettes. For the most part this is true. However, as Ms. Salama pointed out, the officer was cooperative in this process and narrowed down the issues by way of his participation and consent to the Agreed Statement of Facts. This saved the Tribunal time and prevented inconvenience to potential witnesses. Furthermore, despite his inability to attend the penalty hearing, he consented to the Hearing continuing in his absence. I find this to be, at least to some measure of an acceptance of responsibility, albeit limited, and I have afforded this some degree of mitigation.
- [43] I have read the Defence materials that were tendered as **Exhibit 9**. This Brief was both voluminous and impressive. It depicts an officer who has served the Peel Regional Police and the community for twenty-five years. His numerous commendations highlight his many accomplishments as does the positive remarks from his supervisors throughout his annual performance appraisals. He is a member of the Peer Support Team and is an instructor in Group Crisis Intervention. It paints the picture that this Tribunal is not dealing with an officer who has struggled with discipline issues throughout his career, but rather I am faced with a productive officer who committed an isolated incident which can be described as “out of character”. This is a significant mitigating factor.

- [44] From the perspective of this Tribunal, the rehabilitation potential of the officer is good. Both Prosecution and Defence agree this is an isolated incident. The evidence was clear that his actions were based on emotions during a family crisis. From my review of the Defence materials in **Exhibit 9**, this type of conduct was out of character for Sergeant Bettes. While I agree that his ongoing family situation still presents challenges for Sergeant Bettes, nothing in the evidence or submissions leads me to believe that he would make the same decision if ever confronted with the same circumstances. In fact, I am satisfied that Sergeant Bettes has learned from this process and would seek professional help rather than inserting himself into another officer's investigation, regardless of what police service is conducting the investigation. His potential for rehabilitation is a mitigating factor.
- [45] I agree with Ms. Salama that context is paramount in deciding the appropriate range of penalty. It is for this reason that the "Handicap and other Relevant Personal Circumstances" plays such a large role in my analysis and findings. In normal circumstance, the disposition of a reprimand would be well outside the penalty range for any consideration. However, the Defence's proposal of a reprimand, under these unique circumstances, was appropriate and the proposed reprimand did fall under my range of penalties to be considered. Sergeant Bettes had to make a decision about a family member. The decision was made during a crisis. The family member was suffering from PTSD. This is a difficult position for any police officer to be in. To make matters worse, Sergeant Bettes, who has a vested interest in Peer Support and Group Crisis Intervention (as demonstrated in his Employment File of **Exhibit 9**) was faced with this crisis intervention on a personal and family level. All the while, Sergeant Bettes himself suffers from PTSD. I will comment that Sergeant Bettes' PTSD diagnosis was brought to the attention of this Tribunal through Defence submissions and no actual evidence was called to support this claim. However, as a Hearing Officer, I can use my training, knowledge or experience in instances where no evidence exists. I have been aware for some time that Sergeant Bettes has been suffering from PTSD. During the Hearing and during the delivery of my Decision, he was present with his Service Dog. Therefore, I am satisfied that Sergeant Bettes does suffer from PTSD and this mental health factor was present during Sergeant Bettes' decision-making process and was given appropriate weight. The unique Handicap and other Relevant Personal Circumstances in this case are substantially mitigating and impact the Seriousness of the Misconduct when viewed contextually.
- [46] Consistency in sentencing is an important disposition factor, however it was an arduous and demanding task in this incident because of the uniqueness of this case versus the limited number of cases presented to this Tribunal. It cannot be stated enough that both the Prosecution and Defence were not able to provide any case that was close to our case because of the exceptional factors involved in our matter. All cases for the Tribunal's consideration were found in **Exhibit 8**.
- [47] The first Tribunal case at **Tab 3** involved an officer who counseled a citizen to fabricate a false version of a witness statement. Furthermore, he instructed an officer to make an inaccurate notebook entry regarding his investigation. The case at **Tab 4** involved a junior officer facing multiple counts of misconduct, including deceit. **Tab 5** contains a case involving a premeditated, improper destruction of evidence followed by a count of insubordination. The OCPC case at **Tab 6** involved corrupt practice that involved a firearm. The Ontario Police Commission case at **Tab 7** involved an officer attempting to influence an investigation. It has many aggravating factors and no mitigation.

- [48] The final case at **Tab 8** involved two counts of misconduct with factors that were not present in our case. The Prosecution was correct in stating that these cases demonstrate there is a wide range of available penalties and the correct range for our matter lies at the lower end of the spectrum. Therefore, in attempting to maintain parity, I agree with both counsel that the appropriate range exists at a lower level of the penalty scale.
- [49] My decision must balance the interests of the public and the interests of the Peel Regional Police while equally balancing the interests of Sergeant Bettes. This is a delicate matter because there are so many exceptional factors involved. These factors mainly revolve around emotional decisions made by Sergeant Bettes in response to a family crisis. Trying to strike this balance entailed recognizing that Sergeant Bettes was subject to human frailty while being placed in an unenviable position. Any reasonable member of the public would hope for some level of compassion to be displayed to them if they were placed in a similar situation. I also found, in favour of Sergeant Bettes, that there was no evidence that Sergeant Bettes ever identified himself as a police officer. This was not a case of him using his authority for the advantage of him or a family member.
- [50] The only issue that prevented the Tribunal from a reprimand was the disposition factor of Deterrence. Ms. Salama asserted that specific deterrence was not a major factor for my consideration. In my view, consideration needs to be given to both general and specific deterrence. Due to the seriousness of the misconduct, there needs to be a message sent to Sergeant Bettes that this behavior, despite his personal circumstances, cannot be repeated. A message must be conveyed to other members that serious misconduct cannot be tolerated, regardless of situational factors. And the public must be satisfied that their interests have been protected by addressing the general and specific deterrence. For this reason, I cannot find that the reprimand is an appropriate disposition. However, I recognize that my penalty in this decision is lower than I would normal consider appropriate. I caution that this is not a new level or standard for future parity but was made to address these exceptional circumstances.

PART IV: DECISION

- [51] The Prosecution’s proposed forfeiture of three days is reasonable, however, after careful consideration of the mitigating circumstances and with the addition of mandatory training, the Tribunal is satisfied that the balance of interests can be accomplished with the following disposition:

A Forfeiture of one (1), eight (8) hour day (8 hours in total) to be served (worked) at the discretion of the Unit Commander, in addition to mandatory participation in Ethics Training to be arranged through the Corporate Learning Bureau.

- [52] The penalty is submitted in accordance with section 85(1)(e) of the *Police Services Act*.


Superintendent (Ret'd) Dave Andrews, #1305
Peel Regional Police – Hearing Officer

July 9, 2019

Date