

**Peel Regional Police Discipline Hearing  
IN THE MATTER of Ontario Regulation 268/10**

**Made Under the *Police Services Act*, RSO 1990,  
and amendments thereto;**

**IN THE MATTER OF**

**Peel Regional Police**

**and**

**Inspector Timothy Aumell, #2096**

**Charge:      Discreditable Conduct (Two Counts)**

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**Decision with Reasons**

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Before:	Superintendent (Ret.) Greg Walton Ontario Provincial Police
Counsel for the Prosecution:	Ms. Sharon Wilmot
Counsel for the Defence:	Mr. Joseph Markson
Hearing Date:	June 28, 2021

## **Allegations of Misconduct (amended)**

### Count #1: Discreditable Conduct

Inspector Timothy Aumell committed discreditable conduct in that on November 16, 2018, he did act in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of Peel Regional Police, thereby constituting an offence against discipline, contrary to section 80(1)(a) of the *Police Services Act* as amended, and section 2(1)(a)(xi) of the Code of Conduct, Ontario Regulation 268/10 as amended under the *Act*.

The edited particulars of allegations state:

On November 16, 2018, Inspector Aumell completed a nightshift at approximately 5:15 a.m. He attended his residence in Erin, Ontario and subsequently returned to Brampton to retrieve a snowblower from a rental property. He wore his lanyard with his police identification around his neck. On his return home, Inspector Aumell stopped to get sushi from Oceans Fresh Food Market located at 499 Main Street south in Brampton at approximately 2 p.m.

While waiting for his order to be completed, Inspector Aumell was observed by a loss prevention officer to pick up and handle a bottle of Sriracha mayonnaise. He then placed the bottle in his jacket pocket and closed the zipper of the pocket. When he selected the product, he had nothing else in his hands. Inspector Aumell then proceeded to pick up his sushi order. He paid only for the sushi and walked out of the store. He made no attempt to remove the product from his pocket and did not pay for the item.

Upon exiting the store, Inspector Aumell was approached by several loss prevention officers and was requested to produce a receipt for the item in his pocket. Inspector Aumell produced the item and advised that he had forgotten to pay for it. Inspector Aumell was arrested for theft under \$5,000 contrary to the *Criminal Code* and returned to the security office with the loss prevention officers. He was read his rights to counsel, cautioned, and received a notice of apprehension for theft under \$5,000 which he acknowledged and signed.

In the course of the investigation, Inspector Aumell was asked if he was a police officer. He confirmed that he was. Inspector Aumell produced his Peel Regional Police identification and advised that he had recently been promoted to the rank of Inspector.

Inspector Aumell was released from custody in accordance with the Peel Regional Police Shop Theft Release Program as outlined in Policy 1-B-724 (F). He paid for the item and left the store.

Inspector Aumell's actions constitute discreditable conduct in accordance with section 2(1)(a)(xi) of the Code of Conduct.

Count #2: Discreditable Conduct

Inspector Timothy Aumell committed discreditable conduct in that on November 16, 2018, he did act in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of Peel Regional Police, thereby committing an offence against discipline, contrary to section 80(1)(a) of the *Police Services Act* as amended, and section 2(1)(a)(xi) of the Code of Conduct, Ontario Regulation 268/10 as amended under the *Act*.

The edited particulars of allegations state:

On November 16, 2018, Inspector Aumell was arrested for Theft Under \$5,000 contrary to the *Criminal Code* outside of Oceans Fresh Food Market located at 499 Main Street South, Brampton. When asked if he was a police officer, Inspector Aumell identified himself with his Peel Regional Police photo identification, advising the loss prevention officers that he had recently been promoted to the rank of Inspector.

In the course of the investigation, Inspector Aumell asked if either of the loss prevention officers were interested in being a police officer. Jason Li, one of the loss prevention officers indicated that he was interested in being a police officer. Inspector Aumell told Mr. Li that he knew a couple of people in the Recruiting Bureau and could help him with his application if Mr. Li applied. Mr. Li gave Inspector Aumell his business card to pursue this offer and Inspector Aumell said that he would call Mr. Li in the next week to discuss the matter further. Mr. Li spoke with another loss prevention officer, Ms. Patrene Stewart and suggested they did not need to serve Inspector Aumell with a trespass notification.

Following the conversation about recruitment, Mr. Li offered to speak to Constable Ed Nicholson who is the member responsible for on-line reports related to the Shop Theft Release Program. Inspector Aumell said that he would appreciate that. Mr. Li did not ultimately speak to Constable Nicholson.

Following his release, at approximately 2:50 p.m. on November 16, 2018, Inspector Aumell sent several text messages to Staff Sergeant Mike Stone of the Recruiting Bureau, followed by a telephone call asking general recruiting questions. On the same date, Inspector Aumell sent a text message to Mr. Li confirming his number and then followed up with a telephone call. Inspector Aumell advised that he had spoken with his friend in recruiting and asked if Mr. Li had completed volunteer work. He said he would contact Mr. Li again in a week to continue the process.

After being contacted by members of the Professional Standards Bureau in the course of this investigation, Mr. Li suggested to Ms. Stewart that they “should not throw Inspector Aumell under the bus,” since he offered to help them gain employment with the police service. Mr. Li further suggested that they could falsify the facts to say that Inspector Aumell tried to return to the store to pay for the item.

Inspector Aumell’s actions in engaging in efforts to personally assist one or more of the investigating loss prevention officers in gaining employment with Peel Regional Police during the course of their investigation constitutes discreditable conduct in accordance with section 2(1)(a)(xi) of the Code of Conduct.

## **Plea / Representation**

On June 28, 2021, represented by Mr. Joseph Markson, Inspector Aumell entered a not guilty plea to the first count of alleged misconduct, and pleaded guilty to Count #2, discreditable conduct. Ms. Sharon Wilmot represented Peel Regional Police as prosecutor at the one-day hearing. A third count of alleged misconduct was withdrawn at the request of Ms. Wilmot and with the consent of Mr. Markson.

## **Decision**

After reviewing and considering all the evidence and submissions presented, I find Inspector Aumell:

Count #1:	Discreditable Conduct	-	Not Guilty
Count #2:	Discreditable Conduct	-	Guilty

## The Hearing

### Evidence

As noted, Inspector Aumell pleaded not guilty to the first count of alleged misconduct, and guilty to the second count of discreditable conduct. An Agreed Statement of Facts was tendered, but it was not in the standard form which might ordinarily accompany a guilty plea, rather it was an agreement of general facts related to each of the matters of alleged misconduct. Mr. Markson submitted that while Inspector Aumell acknowledged he had committed the offence of discreditable conduct related to Count #2, not every point contained in the particulars of allegations was admitted. It was not until after I heard, and considered all the evidence, that I made a finding of guilty on the second count of misconduct based on clear and convincing evidence. I will expand on the reasons for this finding in this decision.

The two counts of alleged misconduct relate to an incident that occurred on November 16, 2018. It is agreed that Inspector Aumell attended the Oceans Fresh Food Market at 499 Main Street South, Brampton where he placed a bottle of “Sriracha Mayo Sauce” in his jacket pocket. Inspector Aumell purchased other products but left the store without paying for the item concealed in his jacket pocket. Inspector Aumell did not dispute this, he did however, deny intent, stating that not paying for the item was merely an oversight on his part.

This hearing was scheduled for three days. Counsel agreed on certain facts which reduced the proceeding to a one-witness, single day hearing. Before delving into the testimony of Inspector Aumell, I will first consider the evidence that was agreed upon by Counsel. A Brief of Records was marked as Exhibit #5. It contained the following items:

- An Agreed Statement of Facts.
- A transcript of the compelled statement of Inspector Aumell dated Thursday, January 17, 2019, taken by the Professional Standards Bureau.
- A transcript of the interview of loss prevention officer Jason Li conducted by the Professional Standards Bureau on Thursday, November 22, 2018.
- A transcript of the interview of loss prevention officer Amandeep Grewal conducted by the Professional Standards Bureau on Thursday, November 22, 2018.
- A transcript of the interview of loss prevention officer Patrene Stewart conducted by the Professional Standards Bureau on Thursday, November 22, 2018.
- A flash drive containing four security video excerpts from Oceans Fresh Food Market on November 16, 2018.
- A copy of the Loss Prevention Officer Report dated November 16, 2018.
- Peel Regional Police Policy 1-B-724 (F), Shop Theft Release Program

- A transcript of the interview of Staff Sergeant Mike Stone conducted by the Professional Standards Bureau dated Thursday, January 17, 2019.
- A transcript of the interview of Superintendent Don Cousineau conducted by the Professional Standards Bureau dated Friday, November 23, 2018.
- Peel Regional Police Directive I-A-204 (F), Code of Ethics, Conduct and Discipline - Sworn Members.

Agreed Statement of Facts (amended)

Inspector Timothy Aumell #2096 has been a member of Peel Regional Police since 1998. At the time of this incident, he had been recently promoted to the rank of Inspector and was assigned to the Duty Inspector's Office. On November 16, 2018, Inspector Aumell completed a nightshift at approximately 5:15 a.m. and returned to his home in Erin, Ontario. At approximately 2 p.m., Inspector Aumell stopped to get sushi from Oceans Fresh Food Market located at 499 Main Street South, Brampton.

The events that took place at Oceans Fresh Food Market on November 16, 2018, relate specifically to the two counts of discreditable conduct noted as Count #1 and Count #2. The actions of Inspector Aumell are described by Oceans Fresh Food Market loss prevention officers Jason Li, Amandeep Grewal and Patrene Stewart and are recorded on Oceans Fresh Food Market security videos.

Inspector Aumell inquired about the arrest and notification process and was released from Oceans Fresh Food Market pursuant to Peel Regional Police Shop Theft Release Program as outlined in Policy 1-B-724 (F). He paid for the item and left the store.

At approximately 2:50 p.m. on November 16, 2018, Inspector Aumell sent several text messages to Staff Sergeant Mike Stone of the Recruiting Bureau, followed by a telephone call with some general recruiting questions. On the same date, Inspector Aumell sent a text message to Mr. Li confirming his number and telephoned Mr. Li.

The Agreed Statement of Facts and other tabbed material in Exhibit #5 also relate to subject matter associated to Count #3. That alleged count of misconduct was withdrawn, and as such, the related material will not be discussed in detail in this decision.

Jason Li - Interview with Professional Standards Bureau

Mr. Li is a private investigator who had over 18 years of experience at the time of this

incident. On November 16, 2018, Mr. Li was working at the Oceans Fresh Food Market at 499 Main Street South, in Brampton. Oceans Fresh Food Market had been a client of Mr. Li's for nine years. At the time, Mr. Li was working with two other loss prevention officers, Amandeep Grewal and Patrene Stewart.

Mr. Li first observed Inspector Aumell when he was patrolling the floor of the grocery store. Inspector Aumell was carrying a bottle of Sriracha mayonnaise in his hand. His attention was drawn to Inspector Aumell by the way he was cupping the product in his hand. He was twirling the bottle around and flipping it upside down and he kept reaching for his left pocket. Mr. Li stated that based on his experience, he fully expected Inspector Aumell to conceal the item because of the mannerisms he was presenting.

Mr. Li observed Inspector Aumell place the item in the outer left pocket of his jacket. Mr. Li believed Inspector Aumell then tried to close the zipper of his jacket pocket. Mr. Li stated that Inspector Aumell was carrying a bag of frozen vegetables in his other hand at the time he concealed the mayonnaise. Inspector Aumell then picked up a few trays of sushi after the mayonnaise was placed in his jacket pocket. Inspector Aumell ultimately placed the vegetables down and left them on a counter. He paid for the sushi and made no attempt to pay for the mayonnaise.

Mr. Li approached Inspector Aumell outside the store with Ms. Stewart and Ms. Grewal. Ms. Stewart explained to Inspector Aumell that he had left the store without paying for an item. Inspector Aumell removed the mayonnaise from his left jacket pocket and stated he had forgotten to pay for it.

Inspector Aumell returned with the loss prevention officers to the security office where he was processed. Because of his demeanor during the administrative process, Mr. Li suspected Inspector Aumell was a police officer. Inspector Aumell confirmed that he was an officer when asked by Mr. Li. Inspector Aumell added that he had been recently promoted to the rank of Inspector. Inspector Aumell asked about the process and who would be notified. Mr. Li explained that if there were no previous incidents, he would receive a warning, that he would send a report to the attention of Constable Ed Nicholson and that internal affairs would also likely be notified.

Mr. Li stated that Inspector Aumell asked Ms. Stewart and Mr. Li if they had considered a career in policing, and if they had previously applied for a position. According to Mr. Li, Inspector Aumell told him he had contacts in the Recruiting Bureau, he could help with the on-line application and then pass it on to the right people. Mr. Li gave his business card with his phone number to Inspector Aumell so that he would be able to contact him to facilitate this development.

Mr. Li expressed his opinion to the members of the Professional Standards Bureau, that Inspector Aumell was not asking for a favour, nor did he attempt to prevent the loss prevention officers from doing their job. Mr. Li offered to speak to Constable Nicholson to put in a good word on behalf of Inspector Aumell. Inspector Aumell expressed his appreciation for the gesture. Mr. Li stated that he did not follow-up and converse with Constable Nicholson, nor did he have any further contact with Inspector Aumell.

Inspector Aumell indicated that he would be in contact with Mr. Li in the near future. Minutes after being released, Mr. Li received a text message from Inspector Aumell confirming that the cell phone number he had for him was accurate. This was followed moments later by a telephone call to Mr. Li. Mr. Li told the Professional Standards Bureau that Inspector Aumell informed him that he had conversed with his friend in the Recruiting Bureau. Mr. Li and Inspector Aumell discussed issues such as volunteer work. Inspector Aumell indicated that he wanted Mr. Li to review the on-line application form and they would talk again in one week's time. Mr. Li stated that they did not in fact have a further conversation after this phone call.

#### *Amandeep Grewal - Interview with Professional Standards Bureau*

Ms. Grewal is a private investigator who had approximately 18 months of experience as of November 16, 2018. Ms. Grewal began working for Mr. Li at Oceans Fresh Food Market one week prior to this incident and therefore, she was in training at the time.

Ms. Grewal stated Mr. Li pointed out Inspector Aumell to her and requested that she keep observation of him because Mr. Li was concerned about his behaviour. Ms. Grewal observed Inspector Aumell select a bottle and place it in his left jacket pocket. He was holding other items at the time, and she felt he was unable to carry all the items at once.

Ms. Grewal stated that Inspector Aumell returned the items he was holding but did not take the bottle out of his pocket. He selected sushi packages, paid for them, and left the store without paying for the item in his pocket. Inspector Aumell was approached by Ms. Grewal, Mr. Li and Ms. Stewart. Ms. Stewart informed Inspector Aumell that he failed to pay for the item in his pocket. They all returned to the security office. Ms. Grewal stated that Inspector Aumell was compliant, indicating that he forgot to pay for the item in his pocket.

Ms. Grewal stated that while being processed, Mr. Li believed Inspector Aumell was a police officer. Inspector Aumell confirmed that he was an officer and produced identification that he had been wearing around his neck. Inspector Aumell indicated to them that he was tired after working a nightshift.



Ms. Grewal was unable to recall the specific details, but she was aware of a conversation between Inspector Aumell, Ms. Stewart and Mr. Li, about employment with Peel Regional Police.

*Patrene Stewart - Interview with Professional Standards Bureau*

Ms. Stewart is a private investigator with five years of experience as a loss prevention officer. She had been working at Oceans Fresh Food Market for about six months at the time of this incident on November 16, 2018. Ms. Stewart was making observations of customers on the security monitors when Mr. Li asked her to “keep an eye” on Inspector Aumell. He was holding a bottle of mayonnaise in his hands when she took note of him. Ms. Stewart stated that whenever Mr. Li had predicted a person was likely to commit a theft, he was correct about 90 percent of the time.

Ms. Stewart left the security office and attended the floor where she observed Inspector Aumell moving the bottle around in his hands. Ms. Stewart stated that Mr. Li had trained her to take notice of customers acting in such a manner; people who started playing with an item in their hands by moving it around, is an indicator that they might conceal the item. Mr. Li was also watching Inspector Aumell. Mr. Li informed Ms. Stewart that he expected Inspector Aumell to conceal the item he was holding.

Inspector Aumell was observed placing the item in his pocket by Mr. Li. Ms. Stewart then returned to the security office to maintain observation of him using the video monitors. Inspector Aumell returned vegetable packages to a shelf in an aisle, and then picked up sushi. He paid for the sushi but not the item he had concealed in his jacket.

Ms. Stewart noted that the security cameras do not capture the deli section. She did not personally observe Inspector Aumell conceal the item, but Mr. Li informed her he that had done so. Accompanied by Mr. Li and Ms. Grewal, Ms. Stewart approached Inspector Aumell outside the store and advised him he had failed to pay for the item in his pocket. Inspector Aumell indicated that he had forgotten to pay. They all returned to the security office together.

Ms. Stewart stated that while Inspector Aumell was being processed, Mr. Li asked him if he was a police officer. Inspector Aumell confirmed this by showing identification that he was wearing around his neck. Ms. Stewart stated that Mr. Li told her a trespass notice would not be required despite the fact one was issued to every other person given similar circumstances.

Inspector Aumell was cooperative and polite. Ms. Stewart could not recall the specific

details but was aware that Inspector Aumell and Mr. Li were talking about a career in policing. Ms. Stewart stated that Inspector Aumell expressed concern to them that he was likely to be in trouble at work as a result of this incident. Inspector Aumell said he had just been promoted to the rank of Inspector. Ms. Stewart stated that Mr. Li gave his business card to Inspector Aumell, and they talked on the phone a short time later about the police recruiting process.

### Security Video Recordings

Exhibit #5E is a flash-drive containing four clips of video footage dated November 16, 2018, from the Oceans Fresh Food Market. One video clip shows Inspector Aumell walking in an aisle where he stopped and selected an item from a shelf with his right hand, presumably, the Sriracha mayonnaise. He was not holding anything else in either hand at the time he selected the item and immediately thereafter, he walked away and out of camera view, holding the item in his right hand. Inspector Aumell was wearing the same jacket that was described by the loss prevention officers and that he presented to the Tribunal when he testified. The remainder of this particular video clip shows the exchange in the security office. There is no audio component, and this section of video is of no assistance to the Tribunal.

In the next video clip, Inspector Aumell is seen to be holding an item or two in his left hand, but the bottle of mayonnaise is not among them. Inspector Aumell walked out of view of the screen shot for a period of 30 seconds. When he re-entered the view of the camera, he was carrying less items than what he had initially. He picked up sushi, paid for the items in his hands and left the store.

The third video is an overhead view of the cash register area. It shows Inspector Aumell in camera view for approximately 50 seconds, using a debit or credit card to pay for the sushi.

The last clip shows Inspector Aumell exiting the store. He was approached by the loss prevention officers after walking away from the front doors in what I consider to be a normal fashion. He can be seen removing an item from his left jacket pocket and accompanying the loss prevention officers back to the store.

### Loss Prevention Property Report

The eight-page, handwritten report reflects the observations of the loss prevention officers. The report indicates that Inspector Aumell concealed a bottle of Sriracha mayonnaise inside his left jacket pocket and then exited the store without making an attempt to pay for it, despite the fact he purchased sushi. The concealed item was valued

at \$6.99.

Staff Sergeant Mike Stone - Interview with Professional Standards Bureau

Staff Sergeant Stone was interviewed by members of the Professional Standards Bureau on Thursday, January 17, 2019. At the time of this matter, he was the staff sergeant assigned to the Recruiting Bureau. Staff Sergeant Stone had known Inspector Aumell for approximately 20 years and had worked together at one time in the Fraud Bureau. They have a strong working relationship with Inspector Aumell in the role of mentor, but they do not converse on a regular basis.

On November 16, 2018, at 2:50 p.m. Staff Sergeant Stone received a text message from Inspector Aumell which generated a subsequent telephone conversation. Inspector Aumell posed generic questions about the recruiting process, asking about what type of attributes a candidate requires to be competitive. They conversed about whether the age of an applicant is an issue but beyond that, Staff Sergeant Stone could not recall the details of the conversation. Inspector Aumell did not provide a name of a potential candidate or ask for preferential treatment for an applicant.

Superintendent Don Cousineau - Interview with Professional Standards Bureau

Superintendent Cousineau was interviewed by members of the Professional Standards Bureau on Friday, November 23, 2018. The statement contains no relevant information pertaining to these two counts of alleged misconduct.

Peel Regional Police Policy 1-B-724(F), Shop Theft Release Program

This purpose of policy is stated as follows:

The purpose of this directive is to set out the operational procedures for an alternative response mechanism which diverts many routine shop theft calls to the Divisional Call Diversion Unit in lieu of a uniform patrol response.

The policy summarizes areas of responsibilities noting that unless there are extenuating circumstances, offenders shall be released from the scene with the Divisional Call Diversion Unit being notified, but without police attendance. The Divisional Call Diversion Unit reviews the information received from the complainant store, and subsequently issues a summons, or documents that the offender is a participant in the shop theft program and has not been charged.

Peel Regional Police Directive I-A-204, Code of Ethics, Conduct and Discipline Sworn Members

This policy states:

The purpose of this directive is to provide sworn members with clear guidelines, establishing the conduct expected of them and the implications of failure to conform to conduct expectations.

*Inspector Aumell – Compelled Statement - Interview with Professional Standards Bureau*

Inspector Aumell provided a compelled statement to the Professional Standards Bureau when he was interviewed on January 17, 2019. He stated that he had finished his night shift at 5:15 a.m. on November 16, 2018, went home but did not go to bed. He completed chores and attended the Brampton area to retrieve a snow blower from storage. He then attended the Oceans Fresh Food Market to purchase sushi.

Inspector Aumell stated that he was wearing a large snow jacket when he attended the store. He ordered sushi from a clerk at the counter. He was informed it would take 10 minutes to prepare. Inspector Aumell stated that he walked around the store and picked up a bottle of spicy mayonnaise. Inspector Aumell did not recall exactly when, but he did acknowledge that he put the bottle of mayonnaise in his jacket pocket at some point.

Inspector Aumell stated he had selected vegetables that he was holding in his arms, he decided not to purchase them and returned them to a shelf. He then picked up the sushi and paid with his debit card. It was when he was approached by security that he realized he had forgotten to pay for the item in his jacket pocket. Inspector Aumell stated that he did not recall zipping up his pocket after placing the item in his jacket.

When questioned by the loss prevention officers in the security office, Inspector Aumell stated that he identified himself as a police officer in response to being asked about his vocation by Mr. Li. Inspector Aumell speculated that he had shown his warrant card to Mr. Li as identification. When shown that the loss prevention officers had taken a photocopy of his identification, he realized it was the identification attached to his lanyard that he had produced. He explained that he often carries or wears his lanyard even on days that he is not scheduled to work as it provides access to police buildings if needed. Inspector Aumell explained that Mr. Li acknowledged this was obviously just a mistake and not intentional. Mr. Li expressed his desire to be a police officer but that he was told he was too old. Inspector Aumell asked his age, about his background, and indicated that age was not a factor for consideration. Inspector Aumell stated that one of the female loss prevention officers asked if it was possible to be an officer without having to be armed. He explained the multitude of civilian positions available to her.

Inspector Aumell stated that he did not offer to fast track employment, but he did let it be known that he knew a person in the Recruiting Bureau. He acknowledged that he

contacted Staff Sergeant Stone the same day and then from the number found on Mr. Li's business card, he called him to confirm there was no age restriction for employment.

Inspector Aumell stated that in hindsight, he should not have engaged the loss prevention officers in this type of conversation given the circumstances that existed at the time, but he was simply correcting the misunderstanding that Mr. Li's age would prevent him from being a police officer.

Inspector Aumell acknowledged that he was not issued a trespass notice and that he was informed that he was welcome to return to the store as a customer.

### *Testimony of Inspector Aumell – Examination-In-Chief*

Inspector Aumell reviewed his career assignments with Peel Regional Police. At the time of this matter, he had recently been promoted to the rank of Inspector, assigned to the Duty Inspector's office which necessitated shift work. His schedule was to work two dayshifts followed by two nightshifts.

On November 16, 2018, his second nightshift concluded at 5:15 a.m. He attended his residence and became engaged in a minor disagreement with his wife. He did chores rather than going to bed. Inspector Aumell indicated that he had been finding it difficult to sleep and often tried to stay awake following his last nightshift. Inspector Aumell testified that he would have been mentally and physically exhausted at the time of this incident not only due to lack of sleep, but because of the stress resulting from serious medical issues his wife was experiencing.

Inspector Aumell testified that he shoveled snow, then went to Brampton to pick-up a snow blower that was stored there. Inspector Aumell chatted with his wife over the phone, and she asked him to attend Oceans Fresh Food Market to purchase sushi for dinner. He was familiar with the store and knew he had to submit his order with a clerk in order for it to be prepared fresh. He did so, and then walked around the store awaiting his order. Inspector Aumell testified that he could not recall if he had selected vegetable packages before or after he had selected the mayonnaise bottle. He testified that he also had trays of sushi and acknowledged that he should have used a shopping basket to manage all the items. Inspector Aumell testified that he could not recall when exactly it happened, but he did place the mayonnaise bottle in his jacket pocket when his hands were full because he was juggling items. Inspector Aumell also testified that he did not recall placing the mayonnaise in his pocket but based on the security video, he conceded he must have. He added that he did not close the zipper on the pocket.

Inspector Aumell stated that he paid for the sushi and exited the store. He was startled

when he was approached by two or three people who said he had an item in his pocket that he had not paid for. He removed the mayonnaise from his front left jacket pocket and told them he had forgotten to pay. He testified that it was an oversight likely due to his exhaustion; he was “in a fog” at the time.

Inspector Aumell produced the same jacket that he was wearing at the time of the incident. He stated that it was a double extra large, far larger than what he needed but it was ideal for snow blowing. The jacket’s zipper was done up when he was in the store.

While testifying, Inspector Aumell donned the jacket, closed the front zipper and placed a 445 ml bottle of “Sriracha Mayo” in the front left pocket. He stated that this was an exact replica of the item in question. Inspector Aumell stood with the bottle in his pocket. I was unable to observe that there was a bottle concealed in the pocket, the pocket zipper was not closed for the demonstration. Inspector Aumell testified that he did not place the item in his pocket with the intent to steal it, he would not risk his reputation for a \$6.99 bottle of mayonnaise.

Inspector Aumell testified that he cooperated fully with the loss prevention officers. He accompanied them to the security office, answered all questions posed, and signed a copy of their report. He did not make it known he was a police officer until Mr. Li asked him. He provided his lanyard to a female loss prevention officer so she could make a copy of his police identification. Inspector Aumell testified that he always took his police identification with him whether he was working or not. He stated that he always wore his Peel Regional Police identification on his lanyard, but it would not be openly displayed, it would be worn beneath an item of clothing.

Inspector Aumell testified that the female loss prevention officer asked him questions about policing and expressed an interest in a policing career, but she did not want to carry a firearm. He explained that there were several civilian positions available. They also discussed the merits of the Police Foundation college program.

Inspector Aumell testified that Mr. Li had indicated he was told by the Recruiting Bureau that he was too old to be hired as a police officer. Inspector Aumell informed him this was not true, that would be age discrimination. Inspector Aumell told Mr. Li he would confirm this with the Recruiting Bureau. Subsequently, Mr. Li gave his business card to Inspector Aumell.

Inspector Aumell testified that following his release, he contacted Staff Sergeant Stone of the Recruiting Bureau, learned that an age restriction did not exist, and called Mr. Li to share this information with him. Inspector Aumell also told Mr. Li that volunteer work would

be beneficial to his application and that if hired, we would be prevented from owning a loss-prevention company. Inspector Aumell had no further contact with Mr. Li.

Inspector Aumell testified that he found himself in an awkward position; he had been detained by the loss prevention officers, and in conversation with them, they expressed an interest in a policing career. He testified that in hindsight, he should have told the loss prevention officers it was a conflict of interest to engage in a conversation about a policing career considering the circumstances. He stated he offered no benefit and asked for no benefit.

Inspector Aumell testified that he thought it was wrong that Mr. Li had the impression that he was unemployable with Peel Regional Police. He stated that he thought it was his duty to explain and prove to him it was not the case. He stated, that in hindsight, he should have recognized it was improper for him to offer his assistance. Even though he felt he had done nothing wrong, Inspector Aumell stated that he understood how it could be perceived as inappropriate.

#### *Testimony of Inspector Aumell - Cross Examination*

Inspector Aumell confirmed much of the testimony that he gave during his examination-in-chief. I see no purpose in repeating all of it in this section, instead, I will focus on issues that were not covered or that resulted in a discrepancy.

Inspector Aumell testified that he did not consider using a shopping basket at the time. He could not recall if he was holding another item when he selected the mayonnaise but stated that his hands were full when he placed it in his pocket.

Ms. Wilmot pointed out to Inspector Aumell that during his compelled interview he stated that he could not recall when he placed the mayonnaise in his pocket or whether he was in possession of the vegetables at the time. Inspector Aumell explained that that interview was several months after the incident, and he did not recall the incident well. With the benefit of watching the security video, he had a better recollection of events while testifying. He testified that he was holding two bags of vegetables when he placed the mayonnaise in his pocket and did so because he needed his hands to carry the vegetables.

Inspector Aumell testified that he was certain that he did not close the zipper of his coat pocket after placing the mayonnaise in it. Ms. Wilmot pointed out to Inspector Aumell that during his compelled statement, he told investigators that he did not recall if he closed the zipper. Inspector Aumell stated that his recollection of the event was clearer at the time of his testimony because he was aided by watching the security video. He stated that the

video shows that he did not have to undo a zipper when removing the mayonnaise from his pocket when confronted by the loss prevention officers.

Inspector Aumell testified that he was not able to feel the bottle of mayonnaise in his coat pocket. Ms. Wilmot suggested that the video of Inspector Aumell at the cash register shows that he was holding his left arm in such a manner as to cover the pocket containing the mayonnaise. Inspector Aumell disagreed with the suggestion by stating he is right-handed and that was how he would normally stand and process the transaction.

Inspector Aumell did not accept that he demonstrated poor judgement by placing the mayonnaise in his pocket because he had intended to pay for the item.

Inspector Aumell agreed that he may have indicated to Mr. Li that he was likely to be in trouble at work as a result of the incident, but it was the loss prevention officers who initiated the conversation about police work. Inspector Aumell denied the assertion that Constable Nicholson's name was discussed, and that Mr. Li offered to speak with him on Inspector Aumell's behalf.

Inspector Aumell agreed that taking Mr. Li's business card and the conversations he had with him about recruiting could be considered poor optics. He also agreed that it is routine practice that people arrested for shoplifting are issued a trespass notice. In this instance it was not required because Mr. Li acknowledged Inspector Aumell had made a mistake.

#### Inspector Aumell – Re-Examination

Inspector Aumell testified that he did not use his left arm to conceal his left pocket when he was paying for the sushi. He stated that there was nothing unnatural in his behaviour, he is right-handed and used his right hand to pay. Inspector Aumell clarified that although he was not issued a trespass notice, he did not ask the loss prevention officers to take that position.

### **Prosecution Submissions**

Ms. Wilmot submitted that the evidence in the form of agreed facts and the testimony of Inspector Aumell is clear and convincing. She conceded this was not a financially motivated theft, there was no suggestion Inspector Aumell could not afford to pay for the item. That does not suggest that therefore he did not intend to steal the item, the value of the mayonnaise is irrelevant.

Ms. Wilmot submitted that the reliability of Inspector Aumell's testimony must be scrutinized, the allegation brings his character into question. Police officers are held to a



higher standard and the public expects officers to behave in compliance with the law. Ms. Wilmot submitted that the context about Inspector Aumell's state of mind at the time of the incident does not excuse the conduct, rather, it is a consideration for penalty.

Ms. Wilmot submitted the compelled statement of Inspector Aumell was two months after the incident and where there are discrepancies, his statement ought to be considered more reliable than his testimony more than 30 months later. Ms. Wilmot submitted the observations of the three loss prevention officers is critical because the security video does not show when Inspector Aumell placed the mayonnaise in his pocket; that occurred out of view of the camera range. Mr. Li is a very experienced loss prevention officer whose attention was immediately drawn to Inspector Aumell because of the behaviour he exhibited in the store. Mr. Li stated that Inspector Aumell was cupping the product in his hands and reaching for his left pocket. He observed him close the zipper once the mayonnaise bottle was concealed in the pocket. Ms. Wilmot conceded the zipper may not have been closed entirely but the fact it was partially closed supports Mr. Li's observations and expectations that he was about to conceal the item.

Ms. Wilmot noted that Mr. Li stated that at the time Inspector Aumell placed the bottle of mayonnaise in his pocket, his hands were not full, at most, he was holding two bags of vegetables. His rationale for needing to place the bottle in his pocket because his hands were full is not supported by Mr. Li's observations.

Ms. Wilmot submitted that Ms. Stewart noted that the mayonnaise bottle was not a small item. Ms. Wilmot submitted the item was large enough that Inspector Aumell would feel it in his pocket and that he would have known it was there. Ms. Wilmot submitted that while he was paying for the sushi, Inspector Aumell held his left arm over his left pocket and did so to conceal the item in his pocket.

Ms. Wilmot submitted that while in conversation with the loss prevention officers following his arrest, Inspector Aumell did not overtly identify himself as a police officer but did so subtly and purposely in an effort to benefit from his position. Ms. Wilmot submitted that Mr. Li and Ms. Stewart both stated that Inspector Aumell told them he had been recently promoted to Inspector and that he would be in trouble because of the incident. He also asked if the loss prevention officers if they had considered becoming police officers. Ms. Wilmot submitted that Inspector Aumell's actions suggest that he was seeking their help and benefit because of his position as an officer.

Ms. Wilmot noted that Mr. Li gave his business card to Inspector Aumell so he could contact him following his inquiry with the Recruiting Bureau. Furthermore, Mr. Li told Ms. Stewart that they did not need to serve a trespass notice to Inspector Aumell.

Ms. Wilmot noted Mr. Li informed the Professional Standards Bureau that he offered to speak to Constable Nicholson on behalf of Inspector Aumell and he thanked him for the offer. Ms. Stewart stated that once they knew they were going to be interviewed by the Professional Standards Bureau, Mr. Li suggested that they could falsify the facts so as to not “throw Inspector Aumell under the bus.”

Ms. Wilmot submitted that I must conduct a credibility assessment. She said is necessary to compare the statements from the three loss prevention officers indicating Inspector Aumell intentionally stole the item in question and took actions afterwards that appear to cause the loss prevention officers to treat him favourably based on his position of authority, versus Inspector Aumell’s denials.

Ms. Wilmot submitted the standard of proof is less than the standard of reasonable doubt found in a criminal proceeding. The standard for this hearing is based on clear and cogent evidence. Based on this threshold, Ms. Wilmot submitted Inspector Aumell’s behaviour was discreditable. From the perspective of a reasonable person, fully apprised of all the facts, Ms., Wilmot submitted the evidence shows that Inspector Aumell’s conduct is likely to cause damage to the reputation of the police service.

Ms. Wilmot submitted that the agreed upon facts show that the act was committed, and the evidence is clear that it was not a mistake as suggested by Inspector Aumell. The loss prevention officers observed how Inspector Aumell handled the item and Mr. Li predicted correctly, based on his mannerisms that he would steal the item. Ms. Wilmot noted that the bottle of mayonnaise is not small and easily forgotten about in a pocket. Ms. Wilmot submitted that Inspector Aumell’s hands were not full, there was no reason to put the bottle in his jacket pocket. She added that when he returned the bags of vegetables to the shelf, Inspector Aumell had ample time to remove the bottle from his pocket.

Ms. Wilmot submitted that even if Inspector Aumell felt it was necessary to place the bottle in his pocket in order to carry other items, a reasonable person would expect a police officer to know better than to conceal an item; doing so creates the appearance of dishonesty. Ms. Wilmot submitted that additionally, there is evidence that Inspector Aumell closed or at least attempted to close the zipper of his jacket pocket.

Ms. Wilmot submitted that while paying for the mayonnaise, Inspector Aumell held his left arm over the coat pocket containing the bottle of mayonnaise in an attempt to conceal it from the clerk. She submitted that Inspector Aumell would have noticed it in his pocket at that time.

Ms. Wilmot submitted that following his arrest, Inspector Aumell confirmed that he was a police officer and expressed concern that he would be in trouble at work resulting from this incident. He followed that up with the suggestion that he could help the loss prevention officers with employment with Peel Regional Police. Ms. Wilmot submitted that although he did not overtly seek consideration due to his status as an Inspector with Peel Regional Police, his actions suggested it.

The Prosecution's Book of Authorities is marked as Exhibit #7. Ms. Wilmot submitted that the eight cases in this exhibit support the prosecution's position. In the matter of *Campbell and Fredericton Police Force* an Arbitrator ordered the officer dismissed for shoplifting and for using her position as an officer to gain favourable treatment. In that matter, the officer paid for some items, and concealed others in her pockets. The Arbitrator determined that dishonest intention was a necessary element to make a finding of guilty as it related to not paying for the concealed items.

Ms. Wilmot submitted the matter of *Moraru v Ottawa Police Service*, 2008 ONCPC 1 as an indicator despite external stressors, a finding of guilty was registered. The fact that Inspector Aumell may have been tired and stressed, ought to be considered at the sanction hearing, it is not relevant to the considerations at this point in the proceedings.

At tab 3 is the matter of *McCoy and Ontario Provincial Police*, April 22, 2008, ONCPC 1 wherein the officer argued that absentmindedness, stress, and anxiety, contributed to justification for taking an item from a store and not paying for it. The Commission rejected that position stating that it cannot be considered a lawful excuse for the conduct. Similarly, in *Spizziri and Ontario Provincial Police*, January 31, OCPC 1989, medical evidence was accepted indicating the officer was under stress at the time that he stole items from a retail store, but it did not excuse the act.

Ms. Wilmot submitted the matter of *Aujla and Ontario Provincial Police*, May 12, 1997, CanLii 22040. The officer argued that he was walking to his car to obtain his wallet and that he did not have intent to steal. That argument was not accepted. The Commission found the officer's actions were discreditable.

## **Defence Submissions**

Mr. Markson submitted that Inspector Aumell's personal issues relating to his stress and his exhaustion were raised to illustrate his potential for forgetfulness. Inspector Aumell testified he forgot that he put the bottle in his pocket; people who are tired and stressed are prone to making errors, such was the case here. Mr. Markson submitted that with

respect to Count #1, this was an accident, it was human error, and it does not constitute discreditable conduct.

Exhibit #8 is the matter of *Allen v. Alberta Law Enforcement Review Board*, September 19, 2013, wherein the Court stated that errors in judgement do not rise to the level of discreditable conduct. Mr. Markson agreed that police officers are held to a higher standard, but a police officer is not less prone to making errors. Mr. Markson submitted Inspector Aumell forgot that he placed the bottle in his pocket and subsequently failed to pay, that is not discreditable conduct.

Mr. Markson noted that in the cases submitted by Ms. Wilmot, an intent to steal exists, but in this instance, the mental deduction to leave the store without paying does not exist. Mr. Markson submitted that the sworn evidence of Inspector Aumell was consistent throughout, he had no intent to steal.

Mr. Markson noted that the security video shows Inspector Aumell selecting the bottle of mayonnaise with his right hand and when he walked out of the aisle, he was out of view of the camera. There is no video showing when Inspector Aumell placed the bottle in his pocket. Inspector Aumell testified that he could not recall the exact point in time when he put the bottle in his pocket, it was part of the shopping experience. Mr. Markson disagreed with the position taken by Ms. Wilmot and submitted there was nothing unusual in the manner in which Inspector Aumell stood when he checked out and paid for the sushi; he was not protecting his pocket with his left arm.

Mr. Markson submitted the video footage confirms that Inspector Aumell's pocket was not zipped up when he was stopped and confronted by the loss prevention officers. Mr. Markson submitted it is quite proper for Inspector Aumell to have a better recollection of events after viewing the surveillance footage than he did when he was interviewed by the Professional Standards Bureau. Mr. Markson submitted that Mr. Li stated that he thought Inspector Aumell was trying to close the pocket, and there is no evidence to that effect from the other loss prevention officers.

Mr. Markson submitted it is difficult to determine whether Inspector Aumell's hands were empty or full at the time he put the bottle in his pocket. Either way, it was an error but that does not amount to misconduct.

Mr. Markson submitted that the common characteristics of a person about to commit a theft as described by Mr. Li are not a golden rule that applies in every instance; it was what drew his attention to Inspector Aumell, but no further weight ought to be applied. Mr.

Markson submitted that it is understandable how the bottle could have gone unnoticed by Inspector Aumell after he placed it in the pocket of the oversized coat.

Mr. Markson conceded that Inspector Aumell confirmed he was a police officer, but it was in response to Mr. Li's inquiry. Mr. Markson submitted there are no grounds that he acted in a manner to present himself as an officer to the loss prevention officers. There was no evidence that Inspector Aumell sought special treatment, or that he was not issued a trespass notice at his request.

## **Analysis**

I did not receive cases that addressed the standard of proof pertaining to Code of Conduct offences in the *Police Services Act*, however, it is imperative that I explain that standard as I understand it. The standard of proof for the *Police Service Act* is distinct from the standard in criminal or civil cases. "Clear and convincing evidence" is the standard of proof as it pertains to Code of Conduct offences found in the *Police Services Act*. In the matter of *Jacobs v. Ottawa Police Service*, 2016 ONCA 345, the Court stated:

...we are bound by the Supreme Court's statement in *Penner* that the standard of proof in *Police Services Act* hearings is a higher standard of clear and convincing evidence and not a balance of probabilities.

I consider clear and convincing evidence to be well beyond a balance of probabilities, and slightly less than the criminal code standard of beyond a reasonable doubt. To make a finding of guilty, I must find that the evidence is so clear, so reliable, and so convincing as to persuade me the allegations are true and the facts in issue satisfied.

Inspector Aumell faces two counts of discreditable conduct. In each instance, the Notice of hearing relies on section 2(1)(a)(xi) which in part, states; Inspector Aumell did act in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of Peel Regional Police.

I must consider whether the actions of Inspector Aumell were prejudicial to discipline or were likely to discredit the reputation of his employer from the perspective of a reasonable member of the community, fully apprised of the facts. The actual presence of reputational damage is not necessary, it is the likelihood of that occurring in the eyes of a reasonable person fully acquainted with the facts which must be considered. Evidence was not presented specific to the expectations of the community, so I must use my own judgement and place myself in the position of the reasonable person fully apprised of the circumstances.

Inspector Aumell was the sole witness who testified at the hearing. However, I received an Agreed Statement of Facts accompanied by transcripts of witness interviews. Mr.

Markson submitted that the witness statements are not accepted as matters of fact but rather what the witnesses would have said had they testified. Therefore, where conflicting evidence between witnesses exists, a credibility assessment will be necessary.

Several of the particulars pertaining to Count #1 are undisputed while others require thorough scrutiny. It is clear that on the afternoon of November 16, 2018, Inspector Aumell attended Oceans Fresh Food Market located at 499 Main Street South in Brampton. Surveillance video footage shows that while in the retail store, Inspector Aumell selected a bottle of Sriracha mayonnaise with his right hand and at that time, there were no other items in his hands. The video shows Inspector Aumell paying for sushi but not paying for the mayonnaise. When confronted by loss prevention officers outside the store, the bottle was in his left jacket pocket. Inspector Aumell did not pay for that item.

Ms. Grewal stated that Inspector Aumell was holding other items at the time he selected the bottle of mayonnaise; it made sense to her that he could have made a mistake by placing the bottle in his pocket because he needed his hands to carry other items. The video footage clearly shows that is not accurate. Inspector Aumell's hands were free at the time he selected the bottle of mayonnaise from the shelf.

According to Mr. Li, Inspector Aumell had no other items in his hands when he selected the mayonnaise, in fact, this is what drew his attention to Inspector Aumell initially. When he first noticed Inspector Aumell, Mr. Li told his co-workers to take observation of Inspector Aumell because he was displaying characteristics of a person who was likely to conceal an item and not pay for it. Mr. Li told the Professional Standards Bureau:

So, in our, in our position, in our job, we look for mannerisms and different uh ways people shop. So right away I knew his intention was to uh put the product into his pocket. So, I um, I brought the attention to uh, Amandeep, uhm, and then we both started to uh, watch him, uh, at which point we both, uh, saw the person in, uh, in question, put the item into his left pocket and close the zipper.

Inspector Aumell was exhibiting mannerisms that were consistent with a person who was likely to steal an item. Mr. Li is a very experienced loss prevention officer, and I would expect that a certain level of expertise comes with 18 years of experience. I would expect that Mr. Li knows what characteristics to look for and I find his interpretations of Inspector Aumell's characteristics compelling. I have faith in Mr. Li's ability to identify which customers he ought to focus on based on the manner in which they present themselves. Ms. Stewart stated that Mr. Li had a near flawless record of identifying potential shoplifters.

Inspector Aumell testified that he could not recall if he was "playing" with the bottle of mayonnaise in his hands, but it was possible because he tends to spin things in his hand.

I find that to be a dubious, self-serving comment.

I find there is a strong likelihood Mr. Li's assessment was correct and it was not just a coincidence that a person whom he predicted would conceal an item, ultimately did. However, as noted by Mr. Markson, I cannot conclude that because Inspector Aumell exhibited the characteristics of a thief, that therefore he must have intended to steal. Mr. Li's belief that Mr. Li was like to steal is not absolute; further evidence is required to support Mr. Li's observations.

The Particulars of Allegations allege that Inspector Aumell closed the pocket zipper of his jacket after placing the bottle in the left jacket pocket. The surveillance video did not capture the moment in time when Inspector Aumell placed the bottle in his jacket pocket. This is most unfortunate. Video footage could have provided clarity about whether Inspector Aumell closed or made an attempt to close the pocket zipper after he put the bottle in it. Had the evidence clearly shown that he attempted to close the zipper, it would have removed any consideration that Inspector Aumell simply forgot to pay for the item and had no intent to steal.

Video footage shows Inspector Aumell removing the bottle from his jacket pocket when confronted by the loss prevention officers outside the store. There is a considerable distance between the camera and where they are standing, and the quality of the video is grainy at that distance. From the video, I am able to ascertain that Inspector Aumell removed the bottle from his left jacket pocket, but I cannot state with any degree of certainty whether the pocket's zipper was already open, or if he had to open it to access the pocket. I can say that he appears to retrieve the item fairly quickly, which is more consistent with the pocket already being open as opposed to having to first open a closed zipper. None of the loss prevention officers were asked by the Professional Standards Bureau if Inspector Aumell had to unzip his jacket pocket in order to obtain and remove the item when they stopped him.

In his compelled statement, Inspector Aumell stated that he walked around the store and picked up a bottle of spicy mayonnaise. He stated:

I don't know exactly how, when I'm picking up the vegetables or something's happening at some point, I put the spicy mayo in my big jacket pocket which is a large, oversized jacket.

In his compelled statement it was put to Inspector Aumell that he had closed the pocket zipper. Inspector Aumell responded:

I don't recall doing it and I don't know why I would've done it. Other than they're big pockets and, but I don't have a recollection of doing that.

Inspector Aumell testified that he did not recall placing the mayonnaise in his pocket but based on the security video, he conceded he must have. Inspector Aumell testified he was certain that he did not close the zipper of his coat pocket after placing the mayonnaise in it. He explained the disparity between this and his previous statement on the fact he had a better recollection of events after watching the videos, he did not have that opportunity before providing his compelled statement.

I do not accept his reasoning on this point. In his interview with the Professional Standards Bureau, he was vague in his recollection of events. He could not recall specific details. Now, years later, he is absolutely certain he did not close the zipper. I find this to be merely a self-serving statement and I give it no weight. Inspector Aumell is well aware that if he closed the zipper after placing the mayonnaise in the pocket, it would preclude a defence of absentmindedness. Furthermore, he testified that he did not recall placing the mayonnaise in his pocket and he also testified that he placed the item in his pocket because his hands were full. To state that was certain his hands were full is in conflict with him maintaining he had no recollection of placing it there.

Mr. Li observed Inspector Aumell place the bottle of mayonnaise in his pocket. Mr. Li's conversation during his statement with the Professional Standards Bureau, went as follows:

Li: I brought the attention to uh, Amandeep um, and then we both started to uh watch him, uh, at which point we both uh, saw the person in uh, question, put the item into his left pocket and close the zipper.

PSB So put it in left pocket?

Li Yeah. Of his uh, of his outer jacket.

PSB And you saw him close the zipper?

Li Yeah, I thin (sic), I think he was trying to close it, I don't know if, I don't, I don't think it was closed all the way cause I can still see the lid from the inside, so.

In reading this transcript, I am left with a sense of ambiguity about the status of the zipper. Based on Mr. Li's statement, I cannot be certain whether Inspector Aumell closed the zipper or even attempted to close the zipper. Mr. Li used the term "I think he was trying to close it." I have no understanding what he saw to come to this conclusion, in fact it is not even a conclusion, it is merely an assumption at best when he used the words "I think." Investigators did not ask Mr. Li any further details about this particular issue.

In her statement to the Professional Standards Bureau, Ms. Amandeep Grewal stated:

Mmm, I saw like uh that guy like grab one bottle, I don't know, like I think it's the sauce, sauce bottle and like he put it very fastly [sic] in, uh, his pocket.



Ms. Grewal was not asked whether Inspector Aumell made any attempt to close the zipper of his coat pocket. Ms. Stewart did not personally make observation of Inspector Aumell selecting the bottle of mayonnaise or placing it in his pocket. As noted, there is no video footage to provide clarity on this issue other than the video showing when the loss prevention officers confront Inspector Aumell.

Based on the totality of the evidence, I cannot conclude Inspector Aumell closed the zipper or even attempted to close the zipper after placing the bottle in his jacket pocket. There is no video footage to support the assertion he did so, nor is it supported to any level of confidence, by the observations of the loss prevention officers.

In his statement to the Professional Standards Bureau, Mr. Li indicated:

...his hands weren't full at the time, he had one item. So, his, his reasoning of like my hands were full, um, didn't really match his, in like what he was doing.

I viewed all the video footage of Inspector Aumell's shopping experience many times. At no time did the items he was holding in his arms appear cumbersome, and it is clear to me that there would be no concern that he would drop the bottle of mayonnaise if he had been also holding it rather than having it concealed in his pocket. Carrying all the items including the mayonnaise without fear of dropping one of them, appeared easily accomplished.

The 455ml bottle of mayonnaise is not a small item. I find it difficult to accept that Inspector Aumell would not have noticed it in his pocket. However, he was wearing an over sized coat and therefore, I must give him the benefit of the doubt.

I first viewed the video footage before I had reviewed any other evidence. When I saw the videotape of Inspector Aumell paying for sushi at the cash register I was struck by two things; he looked to his left, to his right and behind him several times and also, he was holding his left arm in a such manner that covered his left pocket.

Inspector Aumell's actions could easily be considered consistent with someone who is shoplifting; knowingly concealing an item in his jacket pocket and looking around to determine if loss prevention officers were present so he could decide whether he ought to pay for the item. However, it is just as plausible that he was simply looking around while waiting in line. It is possible that Inspector Aumell testified truthfully when he said his left arm was hanging naturally at his side.

I was not influenced by the cases submitted by the prosecution. In *Campbell* and *Aujla*, the Arbitrator and the Commission respectively, determined there was a definite intent to

steal. The remaining cases dealt with medical issues and/or external stressors such as anxiety. I did not take Inspector Aumell's external stressors into consideration; he either intended to steal or he did not. I strongly suspect Inspector Aumell committed a theft, but the evidence falls short of convincing me.

I agree with Ms. Wilmot's submission that a reasonable person would expect a police officer to know better than to conceal an item in a retail store environment and doing so creates the appearance of dishonesty. However, doing so does not rise to the level of misconduct.

Inspector Aumell entered a plea of guilty to Count #2. It is clear to me that Inspector Aumell's behaviour was more than likely to discredit the reputation of Peel Regional Police should the public be made aware of it. In coming to this conclusion, I have considered the evidence from the perspective of a reasonable member of the community.

The evidence does not support the assertion that Inspector Aumell overtly presented himself to the loss prevention officers in such a manner that it was intended to, and ultimately caused Mr. Li to conclude he was a police officer. Inspector Aumell did not identify himself as a police officer when he was confronted by the loss prevention officers outside the store. Granted, he was wearing a blue lanyard around his neck, but his police identification was concealed beneath his jacket. I cannot make out from the video footage, if the lanyard itself has the logo of, or the words Peel Regional Police on it. There was no evidence tendered on this issue.

Inspector Aumell used this identification to identify himself as an officer, but this was done in response to Mr. Li's inquiry. I take no issue with his conduct post arrest until he identified himself as an Inspector and engaged the loss prevention officers in conversation about a career in policing. Regardless of whether it was the loss prevention officers or Inspector Aumell himself who raised the topic, it was an inappropriate conversation for him to have with them. Inspector Aumell made it clear that he had recently been promoted to the rank of Inspector. I find this was a self-serving statement, meant to suggest to the loss prevention officers that he held status within the police service; there is no other purpose in revealing this to the loss prevention officers that makes sense to me.

Mr. Li stated that Inspector Aumell asked Ms. Stewart and Mr. Li if they had considered a career in policing, and if they had previously applied. Mr. Li stated:

...he told me, that uh, he knows a couple people, uh, in the recruiting department uh, that, and he can help me do the application on-line and then pass it to the right people, uhm, if I'm interested in uh, getting on the police force. I gave him a copy

of my business card.

Inspector Aumell, despite being under arrest by the loss prevention officers presented himself as being a person in authority, not just a police officer but one of significant rank. He then proceeded to insinuate that he was well positioned to assist them in their quests for employment as an officer or as a civilian with Peel Regional Police. He made this known to them while they were in the process of managing paperwork and notifying his employer of his arrest. It did not cause them to not make the notification, but I find it did affect their decision to not issue a trespass notice, a notice that was issued in virtually every other instance at that location. Therefore, he received preferential treatment because of his actions.

Inspector Aumell's attempt to suggest he could help Mr. Li's future employment endeavours went so far as to take Mr. Li's contact information, contact the Recruiting Bureau, and then call Mr. Li to inform him of those results. I do not accept Inspector Aumell's explanation that he did this out of a sense of obligation or duty. I find this was done for a self-serving purpose.

I find that Inspector Aumell's actions influenced the loss prevention officers, specifically, Mr. Li. Just moments earlier, Mr. Li was certain that Inspector Aumell was exhibiting the characteristics of a shoplifter. After a short conversation, according to the testimony of Inspector Aumell, Mr. Li assured him the shoplifting incident was just a mistake, and a trespass notice was not required. I conclude that Mr. Li took this position because of Inspector Aumell's explicit offer to provide assistance to him.

I accept Mr. Li's statement, that he offered to contact Constable Nicholson, insinuating that he would put a good word in for Inspector Aumell. There was no reason for Mr. Li to lie about such a statement. He stated that he did not ultimately contact Constable Nicholson but the fact that he offered to do so is consistent with the impact that Inspector Aumell's behaviour had on him. I do not accept Inspector Aumell's denial that Constable Nicholson's name was never discussed. Inspector Aumell acknowledged that he asked the loss prevention officers about the paperwork process. It makes sense for Mr. Li to mention Constable Nicholson by name, expecting Inspector Aumell to be familiar with it.

After being contacted by members of the Professional Standards Bureau in the course of this investigation, Mr. Li suggested to Ms. Stewart that they "should not throw Inspector Aumell under the bus," since he offered to help them gain employment with the police. Mr. Li further suggested that they could falsify the facts to say that Inspector Aumell tried to return to the store to pay for the item. This is another illustration of the impact Inspector Aumell's offer to assist the loss prevention officers had on Mr. Li

## Conclusion

To make a finding of guilty, the evidence must be so clear, so reliable, and so convincing, as to persuade me the allegations are true and the facts in issue satisfied.

The evidence, as it relates to Count #1, causes me to strongly suspect that Inspector Aumell intentionally concealed the bottle of mayonnaise in his pocket and then left the store without paying for it. He was seen exhibiting the characteristics of a person likely to steal, and he then concealed an item in his pocket and left the store without paying for it. There was no justifiable reason for Inspector Aumell to place the item in his pocket in the first place. A police officer ought to be very aware of the negative optics that result from any person, let alone an officer, concealing an item while in a retail store. Whether he was holding other items at the time or not, he should not have placed the bottle in his pocket. Once there, I suspect Inspector Aumell would have felt its presence in his pocket, it is not a small item. He then acted in what could be considered a suspicious manner at the register, he looked around him in all directions and his left arm was covering his left jacket pocket.

Nevertheless, the evidence must be clear and convincing. Mr. Li, an experienced loss prevention officer, was drawn to Inspector Aumell because he exhibited the characteristics of a person likely to commit a theft. Exhibiting these characteristics is not a conclusive science. Inspector Aumell made a poor decision to place the mayonnaise in his pocket. This poor decision does not amount to discreditable conduct on its own. I cannot conclude that Inspector Aumell made any attempt to close the zipper on his jacket pocket. Although I am of the opinion, he ought to have felt the weight of the bottle in his pocket, I am unable to be certain on this point. Similarly, his actions at the cash register are concerning, but not conclusive that he was in the process of committing a theft. Inspector Aumell informed the loss prevention officers, told the Professional Standards Bureau, and testified at the Tribunal, that he forgot the item was in his pocket. Short of a confession, what else could he have said to justify his behaviour? However, the evidence is not so conclusive as to reject this explanation as a possibility.

Regarding Count #2, Inspector Aumell's behaviour must be measured by the reasonable expectations of the community. Placing myself in the position of a reasonable person in the community, fully apprised of the circumstances of the case, including appropriate rules and regulations in force at that time, I find Inspector Aumell's conduct would likely damage the reputation of his employer.

Inspector Aumell used his status as a police officer, specifically, his rank of Inspector with Peel Regional Police, to advance his situation. He took advantage of the fact the loss prevention officers had an interest in employment with Peel Regional Police by offering

to provide assistance in those endeavours. He made this offer after he had been placed under arrest by the same loss prevention officers. His behavior impacted how the loss prevention officers dealt with him; he was permitted to pay for the item they suspected him of stealing and he was not issued a trespass notice.

## **Decision**

I have carefully considered all the evidence. I strongly suspect that Inspector Aumell intentionally concealed a bottle of mayonnaise in his pocket and chose not to pay for it. However, a strong suspicion does not equate to the requisite standard of proof, clear and convincing evidence. As such, I find Inspector Aumell not guilty of discreditable conduct pertaining to Count #1. Conversely, for the reasons outlined above, I find the evidence clear and convincing as it relates to Count #2 and find Inspector Aumell guilty of discreditable conduct.



Greg Walton  
Superintendent (Ret.)  
Ontario Provincial Police

Date electronically delivered: July 19, 2021.