

## **Peel Regional Police**

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

**IN THE MATTER OF** a hearing held in accordance with section 76(9) of the *Police Services Act* into allegations of misconduct against Sergeant Eric Malone #2483 of the Peel Regional Police.

**Charge:**     **Count One – Discreditable Conduct**  
                  **Count Two – Neglect of Duty**  
                  **Count Three – Discreditable Conduct**  
                  **Count Four – Neglect of Duty**  
                  **Count Five – Neglect of Duty**  
                  **Count Six – Neglect of Duty**  
                  **Count Seven – Neglect of Duty**  
                  **Count Eight – Neglect of Duty**  
                  **Count Nine – Insubordination**

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### **Disposition**

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**Hearing Officer**

**Superintendent Robert Higgs**  
Peel Regional Police

**Prosecutor**

**Ms. Sharon Wilmot**

**Co-Prosecutor for the Chief of Police**

**Ms. Jovana Orbovic**  
**Inspector Raffaella D'Angela**

**Counsel for the Defence**

**Mr. Philip Wright**  
**Brauti Thorning LLP**

## **PART I: OVERVIEW**

### **Allegations of Misconduct**

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

a. **Count One – Discreditable Conduct**

You are alleged to have committed Discreditable Conduct in that on June 2, 2018 you 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.

b. **Count Two – Neglect of Duty**

You are alleged to have committed Neglect of Duty in that on June 2, 2018 you, without lawful excuse, neglected or omitted to perform a duty as a member of the Peel Regional Police constituting an offence against discipline as prescribed in section 2(1)(c)(i)(a) of the Code of Conduct, Ontario Regulation 268/10, as amended.

c. **Count Three – Discreditable Conduct**

You are alleged to have committed Discreditable Conduct in that in between April 15, 2016 and June 6, 2018 you 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.

d. **Count Four – Neglect of Duty**

You are alleged to have committed Neglect of Duty in that in between May 22, 2014 and June 6, 2018, you, without lawful excuse, neglected or omitted to perform a duty as a member of the Peel Regional Police constituting an offence against discipline as prescribed in section 2(1)(c)(i)(a) of the Code of Conduct, Ontario Regulation 268/10, as amended.

e. **Count Five – Neglect of Duty**

You are alleged to have committed Neglect of Duty in that in between February 1, 2014 and June 6, 2018, you, without lawful excuse, neglected or omitted to perform a duty as a member of the

Peel Regional Police constituting an offence against discipline as prescribed in section 2(1)(c)(i)(a) of the Code of Conduct, Ontario Regulation 268/10, as amended.

f. **Count Six – Neglect of Duty**

You are alleged to have committed Neglect of Duty in that in between October 20, 2014 and June 6, 2018, you, without lawful excuse, neglected or omitted to perform a duty as a member of the Peel Regional Police constituting an offence against discipline as prescribed in section 2(1)(c)(i)(a) of the Code of Conduct, Ontario Regulation 268/10, as amended.

g. **Count Seven – Neglect of Duty**

You are alleged to have committed Neglect of Duty in that in between March 16, 2017 and June 6, 2018, you, without lawful excuse, neglected or omitted to perform a duty as a member of the Peel Regional Police constituting an offence against discipline as prescribed in section 2(1)(c)(i)(a) of the Code of Conduct, Ontario Regulation 268/10, as amended.

h. **Count Eight – Neglect of Duty**

You are alleged to have committed Neglect of Duty in that between 2002 and June 6, 2018, you, without lawful excuse, neglected or omitted to perform a duty as a member of the Peel Regional Police constituting an offence against discipline as prescribed in section 2(1)(c)(i)(a) of the Code of Conduct, Ontario Regulation 268/10, as amended.

i. **Count Nine – Insubordination**

You are alleged to have committed Insubordination in that on December 13, 2018, you, without lawful excuse, disobeyed, omitted or neglected to carry out any lawful order, constituting an offence against discipline as prescribed in section 2(1)(b)(ii) of the Code of Conduct, Ontario Regulation 268/10, as amended.

## **Background**

- [2] Sergeant Malone of the Peel Regional Police Service appeared before A/Superintendent Lisa Hewison on November 20, 2019 in answer to a Notice of Hearing that was issued on October 28<sup>th</sup>, 2019, alleging nine counts of misconduct contrary to section 80(1)(a) of the *Police Services Act*, as noted in the “Allegations of Misconduct” section above.
- [3] Ms. Orabovic relayed a request from the Crown Attorney’s office to have the matter adjourned until outstanding criminal code matters could be resolved. This request was granted.

- [4] Sergeant Malone of the Peel Regional Police Service appeared before me on September 28, 2021 in answer to a Notice of Hearing that was issued on October 28<sup>th</sup>, 2019, alleging nine counts of misconduct contrary to section 80(1)(a) of the *Police Services Act*, as noted in the “Allegations of Misconduct” section above.
- [5] Ms. Wilmot advises that the Prosecution intends to withdraw Count One – Discreditable Conduct and Count Nine – Insubordination. These counts are noted as withdrawn.

**Plea**

- [6] On September 28, 2021, Sergeant Malone appeared before me and entered a plea of guilty to Count Two – Neglect of Duty. An Agreed Statement of Facts was tendered as Exhibit #7 and accepted into the record on consent of both the Prosecution and the Defence. Based on those facts, and the confirmation by Sergeant Malone that they were substantially correct, a finding of misconduct was registered.
- [7] On September 28, 2021, Sergeant Malone appeared before me and entered a plea of guilty to Count Three – Discreditable Conduct. An Agreed Statement of Facts was tendered as Exhibit #7 and accepted into the record on consent of both the Prosecution and the Defence. Based on those facts, and the confirmation by Sergeant Malone that they were substantially correct, a finding of misconduct was registered.
- [8] On September 28, 2021, Sergeant Malone appeared before me and entered a plea of guilty to Count Four – Neglect of Duty. An Agreed Statement of Facts was tendered as Exhibit #7 and accepted into the record on consent of both the Prosecution and the Defence. Based on those facts, and the confirmation by Sergeant Malone that they were substantially correct, a finding of misconduct was registered.
- [9] On September 28, 2021, Sergeant Malone appeared before me and entered a plea of guilty to Count Five – Neglect of Duty. An Agreed Statement of Facts was tendered as Exhibit #7 and accepted into the record on consent of both the Prosecution and the Defence. Based on those facts, and the confirmation by Sergeant Malone that they were substantially correct, a finding of misconduct was registered.
- [10] On September 28, 2021, Sergeant Malone appeared before me and entered a plea of guilty to Count Six – Neglect of Duty. An Agreed Statement of Facts was tendered as Exhibit #7 and accepted into the record on consent of both the Prosecution and the Defence. Based on those facts, and the confirmation by Sergeant Malone that they were substantially correct, a finding of

misconduct was registered.

[11] On September 28, 2021, Sergeant Malone appeared before me and entered a plea of guilty to Count Seven – Neglect of Duty. An Agreed Statement of Facts was tendered as Exhibit #7 and accepted into the record on consent of both the Prosecution and the Defence. Based on those facts, and the confirmation by Sergeant Malone that they were substantially correct, a finding of misconduct was registered.

[12] On September 28, 2021, Sergeant Malone appeared before me and entered a plea of guilty to Count Eight – Neglect of Duty. An Agreed Statement of Facts was tendered as Exhibit #7 and accepted into the record on consent of both the Prosecution and the Defence. Based on those facts, and the confirmation by Sergeant Malone that they were substantially correct, a finding of misconduct was registered.

### **Decision**

[13] After examining and weighing all of the evidence presented, as the Hearing Officer I impose on Sergeant Eric Malone #2483 of the Peel Regional Police Service for one count of Discreditable Conduct and six counts of Neglect of Duty:

**A reduction in rank from Sergeant to First Class Constable for a period of 24 months. Following which, on the basis of satisfactory work performance to be determined by the officer's Divisional Commander, the officer will be reinstated to the rank of Sergeant.**

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

[14] In response to a joint request of the Prosecution and Defense, an oral decision was provided on September 28, 2021 followed by the supporting written decision.

## **PART II: THE HEARING**

### **Exhibits**

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

Exhibit #1	Delegation of Powers and Duties to the Hearing Officer (A/Supt. Hewison)
Exhibit #2	Prosecutor's Designation (Ms. Jovana Orabovic)
Exhibit #3	Prosecutor's Designation (Ms. Sharon Wilmot)
Exhibit #4	Letter from Crown Counsel (Peter Scrutton)
Exhibit #5	Delegation of Powers and Duties to the Hearing Officer (Supt. Higgs)
Exhibit #6	Co-Prosecutor's Designation (Insp. Raffaella D'Angela)
Exhibit #7	Agreed Statement of Facts
Exhibit #8	Email: Agreed Statement of Facts, Joint Submission as to Penalty, Request for Oral Decision
Exhibit #9	Brief of Authorities (Prosecution)
Exhibit #10	R v. Malone Court File No.:CR-19-1689-00
Exhibit #10	Brief of Authorities (Defence)
Exhibit #11	Book of Supporting Materials (Defence)

### **Representation**

[16] In this matter, Mr. Philip Wright represented Sergeant Malone, and Ms. Sharon Wilmot and Ms. Jovana Orabovic represented the Peel Regional Police Service.

### **Agreed Statement of Facts**

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

- a. Before joining the police service, Sergeant. Malone ("Sgt. Malone") attended McMaster University, obtained a Bachelor of Science in the Nursing program, and secured a position as a Nurse at the Homewood Health Centre where he first met \_\_\_\_\_ ("\_\_\_\_\_").

- b. Sgt. Malone applied to the Peel Regional Police Service (“PRPS”) in 2001 and started with the PRPS in August of that year. Sgt. Malone’s first assignment was to Uniform Patrol in 22 Division.
- c. In 2003, Sgt. Malone married \_\_\_\_\_ and they went on to have three children.
- d. In 2004, Sgt. Malone was assigned to the Neighbourhood Unit, where he worked closely with high school youths before his transfer back to 11 Division in 2006. Sgt. Malone applied for and was accepted into the Criminal Investigations Bureau (“CIB”). In 2013, he was appointed to the Central Robbery Bureau (“CRB”) before his promotion to Sgt. at 11 Division in May 2017.
- e. **COUNT 2 – NEGLECT OF DUTY**

- i. On Saturday, June 2, 2018, Sgt. Malone was due to commence duty at 11 Division from 1600 hrs to 0200 hrs. He had arranged to have this day off to attend his son’s baseball tournament in Mississauga. Sgt. Malone was a coach to his son’s baseball team during this time. After completing the Bike Training course, Sergeant Malone was assigned to be in charge of the 11 Division Bike Unit and as such was required to work June 2, 2018, at the Streetsville Bread and Honey Festival (the “Festival”). Sergeant Malone was a part of the Festival planning committee and was the dedicated supervisor for the officers assigned to the Festival. Sgt. Malone did not request any time modification for the Festival.
- ii. The first baseball game was at 0900 hrs on June 2, 2018, at 2255 Meadowvale Blvd, Mississauga (“Meadowvale”).
- iii. When the baseball game was over, he attended 11 Division at 1657 hrs, changed into his police uniform and commenced working at the division at approximately 1727 hrs. Sgt. Malone then left 11 Division and returned to Meadowvale for the last game, which was due to commence at 1900 hrs.
- iv. Sgt. Malone returned to 11 Division after the baseball game at approximately 2123 hrs and attended the Streetsville Bread and Honey Festival in the dedicated 11 Division NPU Sergeant’s car during the evening. Sgt. Malone was due to finish his duty at 0200 hrs; however, Sgt. Malone left the Division at 0057 hrs.
- v. Sgt. Malone’s notes indicated he reported for duty at 1630 hrs, out of service from 1830-2100 hrs for coaching duties and out of service at 0200 hrs. The notes were not

an accurate reflection of Sgt. Malone's activities for that day. Sgt. Malone's explanation for the absence was that, "it happens all the time".

f. **COUNT 3 – DISCREDITABLE CONDUCT**

- i. On April 13, 2016, Nathanael Brown-Malabre ("Malabre") was one of two culprits who carried out a robbery at Vic's Fashion Jewellery located at 4141 Dixie Road, Mississauga ("Vic's"). Sgt. Malone was the officer in charge of the investigation ("PR16-0140629"). The owner of Vic's reported twenty (20) gold chains taken from the display case.
- ii. On April 15, 2016, PRPS executed a search warrant at Malabre's home at 2590 Rugby Road, Mississauga and arrested Malabre. Sgt. Malone seized an iPhone 6, a Blackberry and a wallet containing \$980 in cash. Sgt. Malone counted the \$980 in cash in front of Malabre. Sgt. Malone recorded the seizure, the amount of money and the denominations of the bills in his notes. He also filled out a PRPS cash property receipt, including the total amount of cash and the denominations. Det. Steve Nickson, Sgt. Malone's supervisor at the time verified the information and witnessed Sgt. Malone put the money and cash receipt in a property bag and seal the bag.
- iii. Following Malabre's interview, Constable Adam Holland #2903 ("Cst. Holland") recovered fifteen(15) gold chains valued at approximately \$15000 from the B & L Jewellery Exchange located 109 Dundas Street East, Mississauga. Cst. Holland handed the fifteen gold chains to Sgt. Malone. Malone recorded the seizure of the chains in his notebook and sealed the items in a property bag.
- iv. Although the seized items were recorded in Sgt. Malone's notebook, these items were not recorded in the PRPS occurrence or the property template. None of the items recovered were lodged in the Central Property Unit in accordance with the PRPS directives. Instead, Sgt. Malone placed the items in the Central Robbery Property Room. The CRB members used this room, which was identified by a PRPS sign on the door as the "Central Robbery Property Room", to temporarily store property, at the very least, in the period between 2012 and 2018.



- v. This room was commonly used by members of the CRB; however, its use was not in accordance with PRPS Property Directives. The Central Bureau Property Room was generally unlocked with the door open. The filing cabinets where the property was stored could be secured, although, often, they were not secured as the keys were left in the locking mechanisms for the cabinets.
- vi. On March 24, 2017, and May 3, 2017, charges against the two (2) culprits resolved; however, there was no forfeiture or return orders for the seized property. The property was not returned to any party who had an interest in it.
- vii. The present whereabouts of the seized property remain unknown.
- viii. Following Sgt. Malone's promotion to the rank of Sgt. in May 2017, he was required to pick up banker's boxes that were assigned to him from the Central Robbery Bureau and move them out of the office. Sgt. Malone attended the Central Robbery Bureau and collected three (3) boxes. The boxes contained an assortment of personal items as well as PRP property, including clothing and police files, pertaining to police business.

Cst. Holland assisted Sgt. Malone to load the boxes into the police cruiser. Sgt. Malone took at least one of these boxes home and stored it in his bedroom.

ix. In and around June 2017, Sgt. Malone separated from \_\_\_\_\_, and they were living in separate rooms. \_\_\_\_\_, who had full access to Sgt. Malone's bedroom searched the bedroom when he was not present and found some items of interest to her. \_\_\_\_\_ found a PRP evidence bag #B985183 under the bed, identified with occurrence number PR16-0140629. Sgt. Malone was identified as the officer in charge on the evidence bag. The bag contained a sum of money. \_\_\_\_\_ took the money out of the evidence bag, spread the money out on the bed and photographed the contents using her phone. The photograph of the money was not consistent with the money that Sgt. Malone had seized. The amount of money did not match, the denominations did not match, and there were US funds when no US money had been seized. Sgt. Malone did have US funds in his room which was leftover from a trip to the Dominican Republic in January 2017. It is likely that the money photographed by \_\_\_\_\_ was money from the seizure as well as money from other sources which had been comingled by someone before the photograph was taken.

x. \_\_\_\_\_ shared the photographs with \_\_\_\_\_ of the Waterloo Police Service, with whom she had a personal relationship, and another officer. Neither the officers nor \_\_\_\_\_ reported the matter to the police at that time. Although \_\_\_\_\_ recalled confronting Sgt. Malone about other items she found, including new sheets, cutlery, and a Costco cheque, she had no recollection of confronting Sgt. Malone about the money she found.

xi. The property seized during PR16-0140629 has never been recovered. It is admitted that Sgt. Malone failed to deal with the property recovered during the investigation into the robbery at Vics in accordance with the Directives PRP Directive 1-B- 150(F), Property in Custody Property- General.

g. **COUNT 4- NEGLIGENCE OF DUTY**

i. On April 9, 2013, there was a robbery at the Comfort Inn at 5 Rutherford Road, Brampton. Sgt. Malone was the officer in charge of the investigation ("PR13-0202150"). In the investigation that followed, a search warrant was executed, and a grey hoodie was seized as well as \$65 in cash.

- ii. Sgt. Malone complied with the PRPS Directives concerning the recording and lodging of the property at the Central Property Bureau.
- iii. On May 22, 2014, Sgt. Malone retrieved the property for the trial. Following the case's resolution, Sgt. Malone neglected to return the items to the Central Property Bureau. Sgt. Malone made no notes regarding the status of these items of property, and cannot recall what happened to the property. The property remains unaccounted for.
- iv. It is admitted that Sgt. Malone neglected to deal with the property in accordance with his duty under PRP Directive 1-B- 150(F), Property in Custody Property- General.

**h. COUNT 5- NEGLECT OF DUTY**

- i. On January 20, 2014, there was a robbery at the Daisy Mart Convenience Store located at 537 Van Kirk Drive, Brampton ("PR14-0037426"). When the culprit's demand for money was not met, he assaulted the person in the shop and made off with money from the drawer. Originally, the stolen money was reported as \$120, but four years later, the shop owner stated that there was \$45 in cash taken.
- ii. On February 1, 2014, in the follow-up investigation led by Det. Nickson, a search warrant was executed, and Sgt. Malone was the appointed exhibits officer. The property seized during the search included a wallet, a jacket, and an iPhone. Sgt. Malone did not record whether the wallet included cash or that an iPhone was seized. Sgt. Malone did not indicate whether the wallet was empty or contained money in his notes, exhibit sheet or the occurrence. The relevant occurrence report suggests that \$120 in cash was tagged as PY14008396. Sgt. Malone maintains that there was no money in the wallet when it was seized. The PY number was allocated because the complainant's allegation that \$120 was stolen was included in the occurrence.
- iii. The accused, Joseph Bitar ("Bitar"), was interviewed by Internal Affairs four years after the PRPS search and seizure. Bitar was asked about the property seized from him at the time of his arrest. Bitar received his wallet and iPhone on release from jail. He informed police in his interview, 4 years later that he believed he had \$100 to \$140 in his wallet at the time of his arrest, although he was unsure.
- iv. It is admitted that Sgt. Malone failed to treat the wallet and the iPhone in accordance with the PRP Directive 1-B- 150(F), Property in Custody Property- General.

i. **COUNT 6 – NEGLECT OF DUTY**

- i. On October 20, 2014, there was a home invasion and robbery at Redfinch Way in Brampton (“PR14-0569476”). Three (3) suspects pushed their way inside and stabbed the homeowner several times in the back. Cst. Shoniker was the officer in charge.
- ii. During the investigation several items were turned over to Sgt. Malone. The items included a cell phone and a knife, both covered in blood. Sgt. Malone sent the items to Forensic Identification Services (“FIS”). Both items were returned to Sgt. Malone when FIS finished their examination.
- iii. Sgt. Malone has no independent recollection of what happened to the items after they were returned to him. No property templates were created for either item; they were not lodged in the Central Property Bureau in compliance with the property Directives. Sgt. Malone did not make any notes to say what he did with the items or make any entry in the occurrence report.
- iv. It is admitted that Sgt. Malone neglected to deal with the items in accordance with his duty and PRP Directive 1-B- 150(F), Property in Custody Property- General.

j. **COUNT 7 – NEGLECT OF DUTY**

- i. On March 16, 2017, there was a robbery at Peter Robertson Boulevard Brampton (“PR17- 0098492”). Two culprits entered a residence, accosted the victim, and made demands for money. When the victim refused to meet their demands, the victim was pistol-whipped, and zip ties were used to bind the victim’s hands and feet. The culprit stole an iPhone, Acer laptop, silver necklace and a pair of Nike shoes. Sgt. Malone was the officer in charge of the case.
- ii. During the investigation, PRPS executed a search warranted and arrested a suspect. All of the stolen items were recovered and handed to Sgt. Malone. Sgt. Malone returned the Acer laptop to the victim. Although the occurrence report #PR 17-098492 was updated to reflect the recovery of all the stolen items, the remaining stolen items were not lodged with the Central Property Bureau in accordance with the PRPS Directives on property.
- iii. In preparation for the trial, Sgt. Malone retrieved the zip ties from the Central Property Bureau; however, neither the zip ties nor other stolen items were lodged in the Central Property Bureau after the trial was adjourned. The trial is now scheduled to take place

in May of 2022.

- iv. While Sgt. Malone has some recollection of having the items during trial preparation, given the amount of time that has passed, he cannot recall what he did with the items after the court proceeding. Sgt. Malone is expected to be a witness at the upcoming trial.
- v. It is admitted that Sgt. Malone neglected to deal with the stolen items and zip ties in accordance with his duty and PRP Directive 1-B- 150(F), Property in Custody Property- General.

k. **COUNT 8- NEGLECT OF DUTY**

- i. After the discovery of the missing property from the Malabre case, Professional Standards investigators carried out an audit of the Central Robbery Bureau and 11 Division for outstanding property items. Twelve (12) banker's boxes attributed to Sgt. Malone were recovered. Investigators drafted an inventory of items contained in nine (9) of the banker's boxes and conducted inquiries on PRPS systems to identify the source of the items and the associated investigations. The following items recovered from the nine (9) banker's boxes are listed as follows:
  - 1. Black clothing item (Evidence Bag#B65973) was not associated with any occurrence. Its origin is unknown.
  - 2. Blue Adidas pants (Evidence Bag #B663756), seized by Cst. Shoniker and dated July 22, 2013, was associated with occurrence number PR 130353914. A check on Niche for the evidence bag #B663756 did not locate an occurrence report for the property number. A review of occurrence report PR130353914 and other associated occurrences did not reveal a property template for the item. Neither Cst. Shoniker nor Sgt. Malone had notes for the item, and Sgt. Malone was not working the day of the robbery.
  - 3. Property receipt #P166801 pertaining to Evidence Bag #D489965 dated December 28, 2013. Sgt. Malone noted in his notebook that he received #D489965 on December 28, 2013, which referred to a Lacoste Bag, Silver Ecko Watch, one (1) iPhone and one (1) Blackberry. Both the Lacoste Bag and the Ecko Watch were accounted for on Niche and returned to the owner. The occurrence or property template did not account for the property returned on December 28, 2013. Evidence

Bag #D489965 was unaccounted for on Niche.

4. A USB stick (Evidence Bag #B891615). A piece of paper with the occurrence number PR130653519 indicated that the USB was associated with this Evidence Bag. Sgt. Malone was the officer in charge of this matter. Neither the occurrence nor a check on Niche found any reference to the USB Stick.
5. A video surveillance DVD (Evidence Bag #B922317) bearing the occurrence number PR140477755. The officer in charge of the investigation associated with the occurrence was Sgt. Malone. Neither occurrence PR140477755 nor any associated occurrence checked contained details of the video surveillance DVD or revealed that a property template was completed.
6. A video surveillance DVD (Evidence Bag #1085917) bearing the occurrence number PR150316230. The officer in charge of the investigation associated with the occurrence was Sgt. Malone. Neither occurrence PR150316230 nor any associated occurrence checked contained details of the video surveillance DVD or revealed that a property template was completed.
7. A video surveillance DVD (Evidence Bag #1085918) bearing the occurrence number PR150316243. The officer in charge of the investigation associated with the occurrence was Sgt. Malone. Neither occurrence PR150316243 nor any associated occurrence checked contained details of the video surveillance DVD or revealed that a property template was completed.
8. A SIM card (Evidence Bag #1180321) bearing the occurrence number PR170091399. The officer in charge of the investigation associated with the occurrence was Sgt. Sgt. Malone. There was an email from Miriam Windmoller FIS Video Unit attached to the Evidence Bag. However, neither occurrence PR170091399 nor any associated occurrence checked contained details of the video surveillance SIM card. No property template was found referring to this item.
9. A surveillance DVD (Evidence Bag #1179652) bearing the occurrence number PR160243186. The officer in charge of the investigation associated with the occurrence was Sgt. Malone. Occurrence PR160243186 was checked by investigators but they found that it did not contain details of the surveillance DVD; nor was a property template completed.

10. A Maxwell VHS tape (Evidence Bag #223985) bearing occurrence number PR02015122. The officer in charge of the investigation associated with the occurrence was Sgt. Malone. A note attached to the Evidence Bag indicated that it was to be returned to the owner. The item was properly included in the occurrence, however, the occurrence indicated that the item had been returned to the owner.
11. A video surveillance DVD (Evidence Bag #B826894) bearing the occurrence number PR124444156. The officer in charge of the investigation associated with the occurrence was Sgt. Malone. Neither occurrence PR124444156 nor any associated occurrence checked contained details of the video surveillance DVD. A search of Niche failed to find a completed property template.
12. A video surveillance DVD and stills (Evidence Bag #B811975) bearing the occurrence number PR12163799. The officer in charge of the investigation associated with the occurrence was Sgt. Malone. Occurrence PR12163799 was checked by investigators who found that it did not contain details of the surveillance DVD. A search on Niche using the Evidence Bag number did not locate an entry or property template for the DVD and stills.
13. A brown paper bag containing an Adidas running shoe. There was no other information to assist the investigators in identifying the source of this item.
14. A ripped open evidence bag containing one (1) metro receipt PY16111411(Evidence Bag #1167656) bearing PR160304305. The item was properly listed in the property template and was checked out to Sgt. Malone on August 15, 2016.
15. A TD Visa Card (Evidence Bag #1085803) bearing occurrence number PR150316243. The item was properly listed in a property template and was checked out to Sgt. Malone on October 8, 2015.
16. A brown paper bag containing a pair of grey jogging pants. There was no other information to assist with the identification of the source for this item.
17. A video surveillance DVD (Evidence Bag #B891176) bearing the occurrence number PR130115728. The officer in charge of the investigation associated with the occurrence was Sgt. Malone. Neither occurrence PR130115728 nor any associated occurrence checked contained details of the video surveillance DVD. A

check on the Niche system failed to find a completed property template.

18. A white Samsung cellular telephone and numerous pieces of identification, including two health cards, a birth certificate, a driver's license and SIN card, as well as two credit cards, (Evidence Bag #1176744) bearing occurrence number PR170015432. The officer in charge of the investigation associated with the occurrence was Sgt. Malone. Occurrence PR170015432 did not contain any details of Evidence Bag #1176744.
19. A white Samsung cellular telephone (Evidence Bag #1083092) bearing the occurrence number PR150210861. The officer in charge was Det. Nickson #2452. A review of occurrence PR150210861 did not reveal any property template or property number for the cellular phone.
20. An empty Evidence Bag #891831 bearing the occurrence number PR130275511. A piece of paper attached to the evidence bag indicated that it should contain a thumb drive. The officer in charge for the associated occurrence was Sgt. Malone. A review of occurrence PR130275511 did not reveal any property template or property number for the thumb drive.
21. A video surveillance DVD (Evidence Bag #B891374) bearing the occurrence number PR140036745. The officer in charge of the investigation associated with the occurrence was Sgt. Malone. Neither occurrence PR140036745 nor any associated occurrence checked contained details of the surveillance DVD. A check of Niche failed to find a property template for the video surveillance DVD.
22. A *Youth Criminal Justice Act* file containing a blue phone cover, ear buds, Sony music device and cellular telephone related to PR12202872. Sgt. Malone was the officer in charge of the case. A review of occurrence PR12202872 did not reveal any property template or property number for the items contained in the *Youth Criminal Justice Act* file.
23. A video surveillance DVD (Evidence Bag #B923293) bearing the occurrence number PR140090921. The officer in charge of the investigation associated with the occurrence was Sgt. Malone. Neither occurrence PR140090921, nor any associated occurrence checked, contained details, a property number or property template for the video surveillance DVD.

24. A property tag for an iPad (Evidence Bag #B891739). The Evidence Bag was empty and the paperwork with the Evidence Bag indicated that the iPad for occurrence number PR12373546 and PY12190467 was returned to the owner on January 22, 2013, by Sgt. Malone.
  25. A property tag for a black Golla Helsinki bag and a Canon digital camera (Evidence Bag #B8663051) bearing occurrence number PR12372546. The property tag receipt portion is signed and dated January 22, 2013 and indicated that the property was returned to the owner. The fact that the property was returned to the owner was entered on Niche.
  26. Forensic Video Analysis Documents (Evidence Bag #B826746) bearing occurrence number PR12372546. The officer in charge of the related occurrence was Sgt. Malone. A check on Niche using the Evidence Bag number did not find any occurrence report or property number relating to the documents.
- ii. It is admitted that Sgt. Malone did not comply with Directive 1-B-150(F), Property-In Custody Property- General with regard to items (a) – (z). As a result of the failure to comply, important legal documents and valuable items of property that should have been returned to the lawful owner, were not. Further, considerable amount of time had to be spent making efforts to properly account for and return the property to the lawful owners.

### **Positions on Penalty**

[18] The parties representing the Prosecution and Defence provided a joint submission with respect to penalty, tendered as Exhibit #8, dated September 10, 2021. They propose that the appropriate disposition for the finding of guilt on one count of Discreditable Conduct and six counts of Neglect of Duty is as follows:

**A reduction in rank from Sergeant to First Class Constable for a period of twenty-four (24) months, following which the officer will be returned to the rank of Sergeant.**

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

## **Submissions of the Prosecution – Ms. Sharon Wilmot**

- [20] This matter commenced pursuant to a Notice of Hearing dated October 2019;
- [21] Original charge list included six counts of Neglect of Duty, two counts Discreditable Conduct and one count of Insubordination.
- [22] As you are aware, the Prosecution has withdrawn one count of Discreditable Conduct and the count of Insubordination and Sergeant Malone has pled guilty before you to the remaining counts.
- [23] These charges are related to one issue of neglect of duty for attending a baseball tournament while on duty which was the precipitating event that resulted in the subsequent investigation.
- [24] The remaining Counts are to multiple issues with the proper storage of property.
- [25] Those issues were so significant that one of the counts led to criminal charges which in turn caused some of the delay in this proceeding.
- a. That criminal trial has happened and Sergeant Malone was acquitted. There are no criminal findings before you today.
- [26] The parties have discussed this and we are in agreement that an appropriate penalty in this case given the totality of the circumstances is a reduction in rank from Sergeant for a period of 24 months. Following which the officer will be returned the rank of Sergeant.
- [27] It is the Prosecution's position that this penalty is reflective of the applicable mitigating and aggravating factors. It is also consistent with the range of penalties imposed in similar cases.
- [28] Some brief submissions on why the penalty is appropriate are:
- [29] Krug and Ottawa Police Service 2003 OCPC 75460
- a. This case is known simply for outlining what the factors are that a Hearing Officer must consider when determining an appropriate disposition on a Police Services Act conduct matter.
  - b. It is important to understand is that not all factors are necessarily relevant in each case but the tribunal is obligated to consider all of those disposition considerations which my friend and I will put up for you as being relevant to the circumstances.
  - c. The task as a hearing officer is to appropriately balance these considerations for case currently before you.

- d. The most relevant considerations for your decision are:
  - i. Nature and seriousness of the misconduct;
  - ii. Public interest and damage to the reputation of the Police Service;
  - iii. Employment history;
  - iv. The ability to reform or rehabilitate the police officer;
  - v. Deterrence, both General and specific;
  - vi. Consistency of disposition.
- e. It is recognized that this is a joint penalty submission that both parties have agreed to. While it is agreed by both parties that it is appropriate in the circumstances, you as the Hearing Officer are not obligated to accept the penalty. However, if you did decide for some reason that this was not an appropriate penalty you must provide clear and cogent reasons why you have made that determination.
- f. It is the Prosecution's position that this penalty is appropriate given the circumstances.

**Nature and seriousness of the misconduct**

- [30] The first consideration is probably the most prominent consideration in this case: the nature and the seriousness of this misconduct;
- a. The investigation began as a result of Sergeant Malone's failure, on June 2, 2018 to properly execute his orders as the dedicated supervisor at the Mississauga Bread and Honey festival.
  - b. Instead of attending the festival, he left the division and attended his son's baseball game where he coached the team in a tournament for several hours.
  - c. He then returned to the division and left early at the end of the shift.
  - d. It was at this event that a conflict with another parent, who also happens to be a police officer from Waterloo police service, resulted in an investigation and the remaining allegations against Sergeant Malone came to light.
  - e. The subsequent allegations relate to significant, serious and systemic deficiencies in Sergeant Malone's lodging of property and dealing generally with property and administrative issues in his cases.

- f. These allegations ultimately lead to criminal charges being laid and Sergeant Malone being suspended from his duties.
- g. Sergeant Malone was acquitted of the criminal theft charge but it is important to note that the underlying facts are significantly aggravating in that they lead to the appearance of significant improper or nefarious conduct which really highlights the seriousness of the problem that we are dealing with before you today.
- h. Remaining multiple accounts of neglect are all in relation Sergeant Malone's failure to deal with property in accordance with Peel Regional Police's (PRP) internal directives.
- i. Most significantly noted is count three - discreditable conduct; a sum of money was located in an evidence bag under the bed in Sergeant Malone's home.
- j. When the money was located by Sergeant Malone's wife she photographed it and shared that photograph with two other police officers; one of which was the one from Waterloo police service that we heard came forward after the baseball tournament.
- k. None of the parties reported this to Peel Regional Police and it was not until the event of June second that precipitated the report.
- l. This money or this evidence bag since been identified as having been related to money that was seized in the course of a robbery investigation.
- m. The robbery investigation property included the total amount of \$980 as well as fifteen gold chains.
- n. This property was not properly documented, it was in Sergeant Malone's notes but it was not in property records or the associated occurrence report. It was not properly logged in accordance with PRP directives.
- o. The property has never been recovered.
- p. This count goes beyond neglect and reaches discreditable conduct because not only were Sergeant Malone's actions in not lodging the property neglectful; but they lead to the appearance amongst other parties that he had in fact stolen this property.
- q. This brought clear discredit on the reputation not only on Sergeant Malone but on other PRP officers as well.

- r. It is noted that in counts four, five, six and seven that there were other items of property that were received in relation to other ongoing investigations. This property included personal personal effects as well as items of evidentiary value. All of this property was in Sergeant Malone's responsibility and not dealt with in accordance with PRP internal directives. The property items related to these counts have not been recovered and have never been accounted for.
- s. Count eight – Neglect of Duty – is an omnibus count that arose out of an audit that needed to be conducted as a result of the identified property deficiencies. This audit identified nine banker boxes that were located and contained numerous items of case related property, all attributed to Sergeant Malone.
- t. This property was clearly not dealt with in accordance with PRP directives.
- u. As a result of Sergeant Malone not properly accounting for this property multiple legal documents, pieces of identification, and items of value had not been returned to the lawful owners.
- v. This also resulted in an extensive amount of time having to be spent by two experienced detectives trying to trace back that property and return it to its rightful location.
- w. Tab 3 - Crouse and Peel Regional Police, Supt. Frank Roselli, March 9, 2021;
  - i. Page 4 – Considerations: *“The timely submission and processing of property and summonses is a core function of policing. The public expects that the police will act diligently and in a timely manner, and strictly to adhere to policy and procedure. Failing to act as required can result in persons being unlawfully deprived of their lawful property, delay investigative processes and in this case allow offenders to avoid prosecution for offences. There are also serious civil repercussions for the organization for the inappropriate behavior of its officers. Failing to take action required by policy and procedure and in a timely manner is beneath the expectations of the public, and highly detrimental to the reputation of the service.”*
  - ii. It is the Prosecutions position that, due to the magnitude of the infractions that occurred over a long course of time, and the appearance of wrongdoing that was created as a result, this is a seriously aggravating factor for your consideration today and that was factored into our agreement with what is admittedly a significant penalty for Sergeant Malone.

## **Public interest and damage to the reputation of the Police Service**

- [31] This conduct investigation began by a police officer from another police service becoming aware of the seized cash being located under Sergeant Malone's bed.
- [32] Although Sergeant Malone was ultimately acquitted of a criminal charge of theft, it would be an understatement to say having significant amounts of seized cash in an evidence bag stored under his bed in his home created an obvious appearance of disreputable conduct.
- [33] That allegation went through the course of the judicial system where local judges and crowns became aware of the allegations and, while acknowledging that Sergeant Malone was acquitted, it is also acknowledged the facts are still before the public in the decision of Justice André.
- [34] Comment about the damage to the reputation of the service can be evidenced in that decision.
- [35] R v. Malone Court File No.:CR-19-1689-00:
- a. “[26] *Those practices relating to the temporary storage of evidence in the CRB property room constitute a shocking disregard for the PRPF’s directive concerning the storage of evidence following a criminal investigation. This disregard may well call into question evidence in numerous trials involving the CRB to the effect that continuity of evidence had been established and that only the officer in charge had access to the stored evidence.*”
  - b. This clearly highlights the problem that this factual situation creates for the integrity of all PRP criminal investigations that are before the courts.
  - c. It is understood and agreed by all parties that part of the facts that led to this case was that there was a common practice in the robbery unit to store property in a informal storage locker that was not properly secured.
  - d. It is the Prosecution’s position that Sergeant Malone is a supervisor and an experienced officer. It should be expected that he would be able to recognize the clear problem with these practices and take steps to try and bring a stop to it.
  - e. This decision is one a public record and there are numerous instances in the decision of comments about Sergeant Malone’s general credibility:
    - i. “[10] *I find this part of the officer’s testimony to be self serving and unworthy of belief. The testimony is self serving because it provides an explanation why Sergeant Malone did not return the money to the store that had paid Mr. BrownMalabre and Mr. Olakami for the fifteen gold chains. It is simply incredible that a seasoned and*

*experienced officer such as Sergeant Malone would have believed Mr. Brown-Malabre's concocted story about winnings at a casino in light of the information received during the investigation up to that point. The fact that Sergeant Malone did not make any inquiries at the casino confirms, in my view, that he did not believe Mr. Brown-Malabre's statement that the money found in his possession had been won at a casino."*

ii. *"[33] Sergeant Malone testified that he did not return the cash following Mr. Brown-Malabre's arrest because the investigation was still ongoing. He also testified that he believed Mr. Brown-Malabre's statement that the \$980 retrieved from him came from Casino winnings. I have already noted that I find this latter explanation for the failure to return the money to be preposterous."*

f. There is also the documentation of Sergeant Malone's unwillingness to comply with Peel Regional Police directive or and a "even obey orders of his superiors."

i. *"[64] Sergeant Holland, Inspector Ross, and Detective Nickson all testified that Sergeant Malone had an excellent reputation among his peers for professionalism and ethical behaviour. That may be the case, but the evidence adduced by the Crown suggests that the officer did not always abide by the PRPF's directives or even obey orders of his superiors. For example, his commanding officer cancelled his attendance at his son's baseball game, but he nevertheless went to the game and rationalized his actions by stating that he was close to his division. Further, the Agreed Statement of Facts suggest that he did not always act in accordance with the PRPF's directives. For these reasons, this evidence of general reputation has been accorded little weight in my analysis of the Crown's case in this matter."*

[36] The Prosecution highlights these public comments of disrepute exist and will be comments that Sergeant Malone may have to face when testifying in the future.

[37] Sergeant Malone's actions not only impact his own reputation but potentially the reputation of Peel Regional Police as a whole.

[38] The Prosecutions position is that this is an aggravating factor that went into the consideration of the penalty being proposed today.

## Employment history

- [39] In reviewing Sergeant Malone's employment history it is noted that:
- a. He has been a member of the service as an officer since August 2001.
  - b. Promoted to Sergeant in 2017.
  - c. Sergeant Malone is well liked, well respected, and does not have any historical problems.
- [40] It is the Prosecution's position that, in this regard, Sergeant Malone's employment history is a mitigating factor.
- [41] It is noted, however, that because of Sergeant Malone's experience, and the fact that he was a Sergeant, it is the expectation that he would not rely on doing something just because it is a common practice.
- [42] It would be the expectation that as a Sergeant that he would be a leader and a supervisor in the Service.
- [43] *Hewlett and Ontario Provincial Police 2007 ONCPC 7 (CanLii)*
- a. Do not need to read that decision in detail; The facts are not similar to this case and it is not factually on point.
  - b. The purpose of its inclusion is simply to highlight the finding at law that supervisors are expected to be leaders in the organization and are held to a higher standard.
  - c. The Hearing Officer noted that supervisors, "are responsible to ensure that the officers under his supervision satisfactorily perform their duties as assigned." This is self-evident and does not require a specific policy or procedure. As well, these are responsibilities that cannot be discarded or ignored."
  - d. The Prosecution's position is that Sergeant Malone, while he was an officer, and an investigator, failed in his duties as a supervisor in ensuring that his behavior met the standards of the Service as well as ensuring that others in the unit met the standards.
- [44] Sergeant Malone has no discipline history and this is a clear mitigating factor. This is a consideration that Sergeant Malone does have rehabilitative potential and will, once he is able to address improving and re-learning the skills in his administrative and property management competencies, it is very likely that Sergeant Malone will go on continue to be a well respected and contributing Sergeant, supervisor, and leader in this organization.

[45] It is noted that some of these matters go back to 2002 and it is hoped that his time of demotion will be spent retraining and learning how to address these issues so that he can go back to being a productive and well-respected member of the Service.

**The ability to reform or rehabilitate the police officer**

[46] The Prosecution notes that the other mitigating factor is that Sergeant Malone has come before the hearing today, accepted responsibility, and provided a guilty plea.

[47] Sergeant Malone's demonstration of the recognition of his understanding of the seriousness of his conduct and the impact of this conduct is directly related to the fact that the Prosecution is of the view that he does have usefulness to the Service, that he does have rehabilitative potential and that the guilty plea before the hearing today is indicative of that it is a significant mitigating factor.

[48] The Prosecution notes that they are unaware of any medical issues to address but that there were some significant personal issues at the time of the incidents. These, no doubt, had an affect on Sergeant Malone's work, however, the Prosecution will not explore the specifics and will simply note that this was taken into consideration of the penalty.

[49] The Prosecution also puts forward the recognition that the Service's conduct contributed to the misconduct and is a mitigating factor.

[50] Numerous members of the Service were aware of the improper property storage practices in the Robbery unit and it was not stopped.

[51] Sergeant Malone, as a Sergeant, contributed to this process, but it is also the Prosecution's position that all members of the unit were responsible for contributing to that and it must be acknowledged that this was not just Sergeant Malone on his own and this was a bigger issue. This is a mitigating factor.

**Deterrence, both General and specific;**

[52] The Prosecution notes that, given the systemic property storage component of this matter, the factors of specific and general deterrence are of significant importance.

[53] The penalty must act as a reminder, not only to Sergeant Malone, of the seriousness of his actions and the impact both on the cases but he is charged with investigating but also on the reputation of the Service. It is equally important, however, that the penalty needs to serve as a reminder to other members of the service that this kind of conduct is serious and is not acceptable. The expectation is officers will act in accordance with Service directives and policies and it is simply not enough

to say that other officers were doing it too. This must be a reminder to each officer that they all have independent responsibilities to ensure that not only themselves but other members comply with Service policy and directives.

### **Consistency of disposition**

[54] Tab 3 - Crouse and Peel Regional Police, Supt. Frank Roselli, March 9, 2012

- a. There are some similarities in that numerous items of property were located at his residence. Items included some identification documents as well as other items of property.
- b. Limited to a few items of property but there were also Part III Summonses that were not properly processed which resulted in those charges not proceeding.
- c. Prosecution suggests equivalency to at least one of the counts relating to Sergeant Malone.
- d. The Hearing Officer acknowledged that a reduction in rank was justified in the circumstances, however, ultimately issued a penalty of 20 days forfeiture and put the officer in a work performance program for two years.
- e. Prosecution notes Constable Crouse was not a supervisor, was less experienced, and all of the property was ultimately recovered whereas in the circumstances of Sergeant Malone there were significantly more cases affected, more items of property not accounted for, and because some of those items were cash and items of financial value created the appearance of discredit not necessarily present in case of Constable Crouse.

[55] Ferro and Peel Regional Police, Supt. Lee Weare, October 2, 2014

- a. Constable Ferro had a wallet returned to him while working at the airport and failed to submit it in accordance with directives. He did not make any effort to contact the owner and did not submit an occurrence report. When the owner attended at the airport to collect his wallet there was no note of it.
- b. There was also an issue of deceit once the issue of the missing wallet came to light.
- c. Constable Ferro was ordered to forfeit 15 days.
- d. Prosecution notes, however, this was a singular incident which was referred to in the case as a one-time oversight.
- e. Last paragraph, page 5, "The police are held to a higher standard, and there is an expectation that officers will attend to their duty with due diligence, adhere to policy and procedure, and

act with the utmost integrity and honesty. By failing to properly document the recovery of this found property, failing to conduct an investigation into the found property, failing to submit a police occurrence and submit the property into the property room in accordance with policy and procedure, Constable Ferro's action fell well short of the expectations of a Peel Regional Police officer”

[56] Tab 5 - *Grove and Peel Regional Police*, Supt. Frank Roselli, March 27, 2009

- a. Constable Grove pled guilty to one count of discreditable conduct.
- b. In one circumstance, Constable Grove took property belonging to a group of youths who were under investigation and rather than lodging it and returning it he threw it in the garbage.
- c. Property included personal items, house keys, cell phone and cash.
- d. Constable Grove also pled guilty to one count of Neglect for failing to file the appropriate documentation in response to a purse that had been reported stolen. There was an allegation of missing money and, again, because of the failure to properly document the property it created the appearance of wrongdoing on the part of Constable Grove.
- e. Constable Grove was ordered to forfeit six days on each count.
- f. The prosecution notes the comments on page 5 are particularly relevant, *“He has eroded the trust of the members of the public who were directly affected by his actions, created a level of civil liability for the organization and himself by causing hardship and distress to others through the disposal of their personal property, brought criticism by another police service, and created a situation where there would naturally be a suspicion of criminality on the part of the police. I make these points to ensure that Constable Grove has a clear understanding of the affects of his actions, and the resultant need for deterrence and remedial action.”*

[57] *Livingston and Peel Regional Police*, Sup. Frank Roselli, May 18, 2007

- a. Prosecution notes that, in this case, there were two separate issues of failing to conduct a proper investigation and then failing to properly deal with property. Property included several items of jewelry and a semi-automatic magazine which was subsequently found in his locker.
- b. Constable Livingston was ordered a penalty of nine days forfeiture.
- c. The Prosecution notes that, while not endorsing the formula, the Hearing Officer suggests three days forfeiture per incident. It is simply noted that in Sergeant Malone’s matter there are well over thirty incidents including some property which has never being located.

- d. The Prosecution suggests that a medium level demotion is well within the reasonable range of circumstances.

[58] The Prosecution notes that the final three cases being provided given the below factors:

- a. All are OCPC cases that involved improper disposition of property to a certain extent all three of them involve some allegation of theft even though the officers were either not charged or not found guilty of the criminal charges.
- b. In all of the cases all three of these cases the officer, on the PSA, matter was ordered to resign or to be dismissed.
- c. Prosecution notes that in each of these cases there were significant aggravating factors which is why the Prosecution has not proceeded with a position of dismissal in regards to the Sergeant Malone matter. They are being presented simply to demonstrate that, if an officer were found guilty of theft that a finding of dismissal would be warranted.

[59] The Prosecution emphasizes that, in the matter of Sergeant Malone, a period of demotion, in consideration of the above, the range of reasonable penalties is between the highest level of forfeiture of 15-20 days and dismissal.

[60] In this case the Prosecution has gone through some of the aggravating factors that were there and mitigating factors and, in light of the magnitude of the issues that came to light in this investigation and Sergeant Malone's rank and experience, as well as the judicial comments that were made; appropriate penalty is a two-year demotion.

[61] Prosecution submits this is in the reasonable range and takes into consideration the particular circumstances of this officer.

[62] Prosecution submits this provides the officer with a chance to improve on the skills that he was lacking in and subsequently return to his rank as a Sergeant and continue to be a contributing member of this Service.

### **Submissions of the Defence – Mr. Philip Wright**

- [63] The Defence recognizes that Sergeant Malone is facing seven charges, six of which relate to the handling of property. He has pled guilty and accepts responsibility for this matter and recognizes the seriousness of the offenses, especially when you take into consideration the number of offenses that are involved when it comes to the property.
- [64] The Defence suggests the only variance between the Prosecution and Defence is in the categorization of the proposed penalty. Defence position is that the penalty that Sergeant Malone is agreeing to is actually at the higher end of the penalty scale.
- [65] In relation to each, and every, charge Sergeant Malone has put his hands up and he has taken full responsibility.
- [66] In looking at the Neglect of Duty charge, that was an occasion where Sergeant Malone had just moved to the Bike Unit. He was previously cleared to go and do the baseball tournament and that but for the move to the Bike Unit there would not have been an issue.
- [67] Defence submits that, as identified from the Agreed Statement of Facts, the tournament was relatively close. This is not presented as an excuse but it is just put forward to indicate that his state of mind was that, if something were to happen, he could respond to the festival. He did not want to let the boys down and, of course, this morning he is facing the consequences of those decisions.
- [68] Defence submits that, in relation to Charge number three – Discreditable Conduct, the sad thing is that what gets lost is the incredible work that Sergeant Malone and the Robbery team did at the outset. They solved what was quite an extensive robbery and you can see from the paragraph under Count Three that when it came to the property Sergeant Malone did have notations in his notebook. Sergeant Malone did not have the cash receipt and the chains. Of course, however, the occurrence did not have them listed.
- [69] It is noted, as described by the Prosecution and contained in the Agreed Statement of Facts, that this property room in Robbery Unit was common practice. The Agreed Statement of Facts actually has the photograph of the property room door.
- [70] It is the understanding of the Defence that, since this case has come to light, the Robbery Property room practice has completely come to a stop,

- [71] It is noted in the criminal trial transcript how many people were aware of this ongoing practice. As well as, on page 6, *“This evidence indicates that, at the very minimum, Sergeant Malone created a record of the money he found on Mr. Brown-Malabre in his notebook and the Robbery Bureau Property Case Record, which he prepared. The creation of this record regarding the recovered money does not, in my view, support the Crown’s case that the officer tried to conceal the fact that he misappropriated the property.”*
- [72] Defence concedes that Sergeant Malone, following his transfer, returned to the Robbery unit to retrieve property that was stored there and, in that process, took one of the boxes to his home. It is at this point, however, where some of the facts become unclear.
- [73] Defence emphasizes that Sergeant Malone is not charged with Corruption, Deceit, or that he stole the property.
- [74] Was going through a separation with his wife and that this was a stressful period for all involved.
- [75] Defence notes that on page twenty-two and twenty-seven (paragraphs [42] and [56]) of the criminal trial transcript that it is Sergeant Malone’s wife that conducts the search of Sergeant Malone’s bedroom. She finds items of interest to her as well as the property that subsequently became part of this investigation. She photographed the money, included US money which was never part of the money that was seized.
- [76] Defence reviews that Sergeant Malone’s wife’s testimony was less than clarifying. She testifies that she confronted Sergeant Malone about the property she found, but she has no recollection of having mentioned the most prominent property, that being the cash money. It had been in a PRP evidence bag and she had photographed it.
- [77] The allegation involving the money is only mentioned a year later when Sergeant Malone has an altercation with his wife’s boyfriend at the baseball tournament.
- [78] Defence indicates that, while there may be suspicion on Sergeant Malone, the decision clearly shows that others had access to the money and that suspicion could be on them as well.
- [79] Sergeant Malone is taking responsibility for having taken that property to his home and that as a result it is now missing, but he is not charged with having taken it. He is not charged with corrupt practice and he is not charged with deceit.

- [80] Defence confirms that Sergeant Malone takes responsibility for the property and the seriousness of the offences he is charged with. Sergeant Malone takes full responsibility for the embarrassment he has caused Peel Regional Police, his colleagues and himself.
- [81] This is why Sergeant Malone has attended here this morning and pled guilty and accepted a significant demotion from Sergeant to Constable for two years.
- [82] Count four involves \$65 involved in a matter that was resolved in court and then the money was not returned following the resolution of the matter. Sergeant Malone accepts responsibility for that.
- [83] Count five involves a wallet and it was Detective Nickson's investigation. Sergeant Malone failed to note if there was money in the wallet and then there is some confusion in the police property template around the \$120. The \$120 did not actually exist, but the template was created as that was the amount that was claimed to have existed prior to the robbery having occurred. The accused person in the robbery was not sure how much he had taken. Sergeant Malone again takes responsibility for not complying with the directive in regards to not checking, and noting, what if anything was in the wallet when it was turned over to him.
- [84] Count six involves a knife and a phone that comes into Sergeant Malone's possession. Sergeant Malone again puts his hand up and simply says he cannot recall what was done with that property. He recognizes that answer is not good enough and he has learned from everything that has been discussed this morning.
- [85] Count seven relates to property that went out for trial and now that the trial has been concluded, they cannot be located. Sergeant Malone says this is not good enough, that this is below the expectations that he has of himself and it will not happen again.
- [86] Count eight is the omnibus charge. Eleven of the twenty-six items in this charge are surveillance videos. While it is not an excuse, Defence would be remiss if it was not noted that the Robbery squad would have seized hundreds of videos. These videos should have been recorded properly in the property process, this is admitted, but the numbers are put forward to give context to the volume that was been handled. Four other items are clothing; these items are not able to be linked to Sergeant Malone, but they are in his box so he has said, 'yes, I will take responsibility for those.' There were four other occasions where property had been found to have been returned but, of course, the records had not been updated to reflect this. Sergeant Malone takes responsibility for this and recognizes that the records should have been updated.

[87] Defence describes their “Book of Documents”

- a. Tabs 1-11 are Letters of Reference
- b. Tabs 12-24 are Recognitions and Commendations
- c. Tabs 25-28 are Performance Appraisals
- d. Tabs 29-39 are Charity Work

[88] Sergeant Malone has twenty years of service with PRP. A lot of this time has been in 11 Division. From 2005-2007 he served in the Neighbourhood Policing Unit. In 2008 he was temporarily transferred to the Criminal Investigations Bureau. In 2012 he is transferred to first to the Break and Enter Unit and then to the Robbery Unit. In May 2017 he was promoted to the rank of Sergeant and transferred to 11 Division.

[89] As noted by the Prosecution, there is no previous discipline in relation to Sergeant Malone.

[90] In relation to the Book of Documents:

- a. Tab 13 - Challenge Coin – Involved a violent robbery and shooting where the victim ended up being paralyzed from the waist down. High and intense media coverage related to this event. After four months three culprits were arrested, five other robberies were solved and a total of thirty-one charges were laid.
  - i. *“Acting Detective Malone was a capable and enthusiastic team leader. He was the driving force behind the investigation overseeing critical tasks, witness interviews and managing tight timelines. Acting Detective Malone should be commended for his strong work ethic and dedication to the team and to the success of the investigation.”*
  - ii. Dedication and professionalism are consistent themes in the documents being submitted today.
- b. Tab 14 – Refers to a commendation from 2016. Relates to two CIBC bank robberies and again involves great teamwork and dedication.
- c. Tab 18 – Refers to a 2015 commendation involved an investigation of TD bank robberies that focused on the armoured vehicles. Highly organized and professional crew of criminals. Three culprits were arrested and firearms were seized.
- d. Tab 19 – Refers to a 2012 commendation which speaks to Constable Malone’s investigative and surveillance skills in relation to a break and enter investigation

- e. Tab 20 – Refers to a commendation that speaks to his considerable intelligence gathering skills.
- f. Tabs 12, 15 and 16 are all letters of correspondence from the Crown recognizing Constable Malone’s efforts in case management and carrying those matters through trial.
- g. In regards to the charity event contributions, they are listed and, additionally, Sergeant Malone also coaches baseball outside of Peel Regional Police.
- h. Tab 26 is the appraisal for 2015-2016. This addresses the period that Sergeant Malone was in the Robbery bureau. Page 94 notes that Sergeant Malone achieved an overall rating of ‘Exceeds Expectations in Some’.
- i. Tab 25 is the appraisal for 2015-2017. This is the period of Sergeant Malone being a newly promoted Sergeant. Page 69 has the Supervisor’s comments, paraphrased: learning the new duties of a Sergeant, quickly gained the respect of his peers, bonded with his platoon who sought him out for his experience. His leadership skills were recognized as well as his being a mentor.
- j. Tab 3 – Reference letter from S/Sgt Darlene Smith #2149: Supervised him in 2016. Considered him an informal leader and relied on him for his expertise. Worked hard and with professionalism and could be relied upon to take on any task.
- k. Tab 7 – Reference letter from D/Sgt Phil King: describes himself as a friend, co-worker and supervisor of Sergeant Malone. Speaks to Sergeant Malone’s work ethic and commitment to the organization. Describes Sergeant Malone as honest, assertive, compassionate and empathetic. He believes Sergeant Malone will continue to be a leader amongst his peers and will use this experience to elevate to this organization and co-workers.
- l. Tab 1 – Reference letter from Detective Shoniker: describes Sergeant Malone as dedicated officer, professional, strong work ethic with a common sense approach.
- m. Tab 2 – A reference letter from Detective Steve Roy: Again notes, professional, commitment, strong work ethic.
- n. Tab 4 – Reference letter from Detective Adam Holland: describes Sergeant Malone as reliable and trustworthy.

- o. Tab 5 – Reference letter from Detective Bertrand: He specifically mentions Sergeant Malone’s skills in handling complex investigations. Has a victim-centered approach when dealing with reported incidents.
- p. Tab 6 – Reference letter from Detective Scott Robertson #2294: Notes it was reassuring to have Sergeant Malone responding to a critical call.
- q. Tab 11 – Reference letter from Detective Steve Nickson #2452: Knew of Sergeant Malone’s reputation before he met him and later found it was well-earned.

[91] In relation to the Prosecution’s Book of Authorities:

- a. Hewlett and Ontario Provincial Police 2007 ONCPC 7 (CanLii)
  - i. Recognizes that the Prosecution has noted that the case details do not apply, that it is included as it speaks to supervision duties.
  - ii. Noted that the facts do not apply whatsoever to Sergeant Malone’s matter.
- b. Crouse and Peel Regional Police, Supt. Frank Roselli, March 9, 2021
  - i. Recognize that the penalty was twenty days.
  - ii. There were numerous items of property that were recovered from the officer’s home.
  - iii. The officer had previous discipline.
- c. Ferro and Peel Regional Police, Supt. Lee Weare, October 2, 2014
  - i. Penalty was fifteen days.
  - ii. There was a deceit charge involved in this case; there is no deceit charge related to Sergeant Malone.
  - iii. This involved officer in this matter repeatedly denied any involvement numerous times before finally taking responsibility.
- d. Grove and Peel Regional Police, Supt. Frank Roselli, March 27, 2009
  - i. Involves the officer throwing away property.
- e. Defence accepts the Prosecution’s comments that there are many more instances involved in Sergeant Malone’s matter but still notes that in the above cases the penalty range was a matter of days.
- f. Livingston and Peel Regional Police, Sup. Frank Roselli, May 18, 2007

- i. Three charges in this matter and recognized that all the property was recovered.
- ii. Noted that the penalty was only nine days forfeiture.
- g. Defence suggests that the penalty range for property offences seems to be in the lower end of days forfeited.
- h. Seamons and Durham Regional Police 2006 ONCPC 8 (CanLii)
  - i. Prosecution included this case but did not speak to it.
  - ii. Dismissal case; Four Discreditable and two Neglect charges; 19 years' experience, previous discipline;
  - iii. Received thirty-two hours when dealing with property.
  - iv. This case bears no resemblance to the situation that Sergeant Malone finds himself in.
  - v. The main issue in the Seamons case is how he dealt with a 17-year-old female, having her in the police car, taking her to crime scenes, taking Polaroid photographs for his own use and not returning them. This case decision speaks directly to corrupt practice. Also noted that the constable was 'ungovernable'. That he was not going to be able to rehabilitate.
- i. Parker and Ontario Provincial Police 2004 CanLii 85036 (ONCPC)
  - i. Full case deals with corrupt practice as well as discreditable.
  - ii. Did involve property, it was a domestic dispute.
  - iii. Involved a Hearing which lasted 6-10 days.
  - iv. No submissions made by the Defence during the penalty phase as that was their instructions from the officer.
  - v. Evidence for court went missing.
  - vi. There was evidence that the officer had taken the property for his own use.
  - vii. This incident also involved an assault by the officer during the domestic dispute.
  - viii. The facts of this case are completely distinguishable from Sergeant Malone's matter.

- j. Delano and Niagara Regional Police Service 1998 CanLii 27138 (ONCPC)
  - i. This matter involved a shotgun being turned into the police and the Sergeant kept it for himself.
  - ii. Originally denied the theft but later admitted it.
  - iii. Separate but similar incident occurred in relation to a knife being turned into police and the Sergeant kept it for himself.
  - iv. This case is completely distinguishable on the facts from the matter involving Sergeant Malone.

[92] In relation to the Defence's Book of Authorities:

- a. Constable D. Pantaleo and Metropolitan Toronto Police, 1980 CanLII 2754 (ON CPC)
  - i. Facts are that he was absent from duty and was required to forfeit eight days.
- b. Staff Sergeant C. Widmeyer and Windsor Police Force, 1981 CanLII 3040 (ON CPC)
  - i. Called in sick but was observed later drinking alcohol at a bar.
  - ii. On appeal the conviction was overturned.
  - iii. Defence submits that the comments of Paragraph 29 are relevant, "29. I would have thought that a reduction in rank to a Sergeant for a period not longer than one year would have been adequate."
- c. Constable J.D. Walker and Board of Commissioners for the City of Belleville, 1989 CanLII 6731 (ON CPC)
  - i. Involves the failure of the officer to report for duty, penalty was one day forfeiture.
  - ii. There was a note that there was a finding of procedural unfairness so that may have factored into the penalty as well.
- d. Detective Constable L. Smith and Detective Elmer Manuel, and the Toronto Police Service, 2003 ONCPC 4 (CanLII)
  - i. Officers attended bars on-duty instead of doing assigned duties.
  - ii. Officers charged with deceit and neglect
  - iii. Penalty was six days forfeiture for each charge.

- e. Constable P. D'Souza and Toronto Police Service, 2007 ONCPC 10 (CanLII)
  - i. Officer issued a traffic ticket and then failed to attend court.
  - ii. Officer had an additional twelve matters on the court docket
  - iii. Penalty was a reprimand.
- f. Sergeant Brian Berger and Toronto Police Service, 2007 ONCPC 8 (CanLII)
  - i. It was discovered that there was an informal work schedule where officers were allowed to work when they were not scheduled and were allowed to take time off when they were expected to be at work.
  - ii. Second charge related to the officer leaving work over two hours early.
  - iii. Penalty was twenty days forfeiture.
  - iv. On appeal the penalty was reduced to ten days forfeiture.
- g. Cst. Moore and OPP, 2008 ONCPC 2 (CanLII)
  - i. Issues of property infringements.
  - ii. The penalty was a reprimand.
- h. Cst. J. Pinto and Toronto Police Service, 2011 ONCPC 6 (CanLII)
  - i. Two charges of Discreditable and one for Insubordination.
  - ii. Penalty was a demotion from Constable First Class to Constable Second Class for a period of one year.
  - iii. Case involved a domestic incident with daughter.
  - iv. When the couple separated the wife found property which was left behind:
    - 1. *12. The property found included a quantity of the Service memorandum books that were improperly stored at his home and improperly completed, contrary to the Service procedures and directives. Also found were the following items: a hat, badge and memorandum book of the Orangeville Police Service; portable radio extension microphones, a Glock pistol storage container and street directory alleged to belong to the Service; two cellular phones; identification papers belonging to other persons; two collapsible ASP batons; a Confidential Crown Envelope containing documents relating to outstanding criminal charges against*

*five individuals and Provincial Offences charges against other persons which had not been processed in accordance with the Service procedures and policies. In addition, a quantity of ammunition was found which was not stored in accordance with the Service procedures and policies.*

- v. The insubordination charge related to the property and on Page 17 it is noted, “67. *With reference to the insubordination offence, the penalties have ranged from five days suspension to demotion for one year. The penalty in this case is therefore within that range and consistent with other cases.*”
- vi. And on Page 18 it is noted, “72. *On seven occasions over a fourteen year period, the Appellant failed to follow the Service’s policies and procedures. This constituted a repetitive and deliberate practice. These failures resulted in arrested individuals not being processed and victims not receiving justice. It also involved improper storing and retention of police property and property belonging to others for which he had no authority.*
- vii. And on Page 19 it is noted, “75. *Accordingly, for all of these reasons, we find that the penalty imposed was reasonable. The appeal against penalty is therefore dismissed.*

[93] The Defence notes that Sergeant Malone has come forward and taken responsibility for his actions.

[94] It is the Defence position that this penalty is at the higher end and Sergeant Malone has accepted this penalty and understands the seriousness of his misconduct.

[95] Defence submits that Sergeant Malone still has a lot of value to Peel Regional Police based on the evaluations and letters of reference and commendations.

[96] Sergeant Malone has demonstrated remorse for his actions.

[97] Defence submits that, given the stiffness of the sentence, that both general and specific deterrence have been achieved.

### **Responding Submissions of the Prosecution**

[98] Prosecution observes that Defence made comments that Sergeant Malone was not charged with corruption or deceit and the Prosecution wishes to make it clear that this too is the Prosecution’s position.

[99] The penalty being put forward for consideration is not one for theft or corruption.

- [100] The Prosecution, in a case of theft or corruption, would be proceeding with a dismissal request.
- [101] The intention of the Prosecution's comments, if it was not clear, is that the aggravating factor was that Sergeant Malone, in allowing the property to be dealt with in this manner, by allowing it to come to his home and stored in the fashion it was (under his bed), created this appearance of discredit. It was not that it was simply found in his locker.
- [102] The impact of these actions was to create a problematic appearance of discredit and significantly greater impact upon the Service.
- [103] This, coupled with the extent of the number of instances, is why it moves into a demotion matter and not simply a forfeiture of days.
- [104] Prosecution wishes to make it clear that there is not an allegation of theft. That there is not an allegation of dishonest intent and in fairness to Sergeant Malone that should be made clear in the decision so that it does not follow him.

### **PART III: ANALYSIS AND FINDINGS**

- [105] The information before the Tribunal is limited to the Agreed Statement of Facts, the submissions made by the Prosecution and Defence in regards to the appropriateness of the Joint Penalty Submission and the supplemental materials which were subsequently entered as exhibits. I have reviewed all of the information and evidence that was submitted.
- [106] The formal charges before the tribunal have been clearly articulated within this decision and, while they do not need to be specifically reviewed here, both the Prosecution and the Defence spent considerable energy to ensure that the nature of the offences were clearly understood by both myself and those that will subsequently review this decision. To this end I do feel it is appropriate to highlight the Prosecution's comments in paragraphs [23] and [24] that this matter involves Sergeant Malone's failure to fulfil a specific supervisory duty on one occasion and then failing to properly deal with seized property on multiple unrelated occasions. The Prosecution further clarifies in paragraph [25]a that the Tribunal does not have a criminal finding before it to consider and the Defence further articulates in Paragraph [73] which misconduct charges are before the Tribunal and which ones are not before the Tribunal.
- a. I am confident that, in listening to the submissions and reviewing the provided material that I have an accurate grasp of the matter currently before the Tribunal and further note that an

inference of dishonest intent is not a part of the inappropriate handling of property allegations before the tribunal.

[107] Given that, after review, it is concluded that the Agreed Statement of Facts accurately outlines the facts in issue related to the counts that were proceeded on, and that Sergeant Malone has agreed to the accuracy of the Agreed Statement of Facts and subsequently pled guilty, the primary task before the tribunal is to confirm that the associated Joint Submission to Penalty is both reasonable and appropriate.

- a. It is recognized that, if the penalty is deemed to be inappropriate or unreasonable, that the rationale behind said determination will be articulated.
- b. While the Defence has indicated agreement with the Joint Submission on Penalty they do note in paragraph [64] that their variance with the Prosecution is in the categorization of the proposed penalty in that it is at the higher end of the penalty scale. It is recognized that, while the location of where the penalty falls on the scale is subjective at best, and may have some merit for subsequent reviewers of this decision, this is not the concern of the tribunal. The concern of the tribunal is simply restricted to confirming that the proposed penalty is 'within the scale of reasonableness' given the unique mitigating and extenuating factors of this particular matter.

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

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

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

[110] All of the above factors listed in [109] were appropriately addressed and of specific note:

- a. I take particular care to remind the reader that there is no inference of nefarious intent in the property-related allegations but in considering both the nature and seriousness of the misconduct and the public interest and damage to the reputation of the Police Service I do accept that the public will most likely not be as discerning or objective when presented with the optics as described by the Prosecution in paragraph [30](g) and [101].
- b. These optics are further compounded by the accepted position of both Prosecution and Defence in regards to the volume of the property involved, the limited property that was recovered, and the lack of explanation for the property that was not recovered.
- c. When considering just the property-related offences, it is largely these components; circumstances of mishandling and volume of property, which distinguishes this case from the comparator cases provided by the Defense submissions.
  - i. The Defence assertion that three specific cases put forward by the Prosecution are not applicable (Paragraph [91]h. to [91]j.) is accepted as the Prosecution submitted them to address a scenario which was subsequently demonstrated not to exist in this matter, namely the allegation of an actual theft.
- d. The volume and circumstances involved in this matter give context to the comments in “Crouse and Peel Regional Police, Supt. Frank Roselli, March 9, 2021;
  - i. Page 4 – Considerations: *“The timely submission and processing of property and summonses is a core function of policing. The public expects that the police will act diligently and in a timely manner, and strictly to adhere to policy and procedure. Failing to act as required can result in persons being unlawfully deprived of their lawful property, delay investigative processes and in this case allow offenders to avoid prosecution for offences. There are also serious civil repercussions for the organization for the inappropriate behavior of its officers. Failing to take action required by policy and procedure and in a timely manner is beneath the expectations of the public, and highly detrimental to the reputation of the service.”*
- e. Defense provided ample material in relation to the positive reputation and work ethic that Sergeant Malone displayed in the years prior to this misconduct becoming known. It is noted, however, that a significant portion of the time period that this reputation was being earned was the same time period that Sergeant Malone was acting in contravention of Peel Regional

Police property directives. This incongruence was remarked upon by Justice Andre who concluded that, although numerous officers testified towards Sergeant Malone's reputation, the many examples of behavior that contradicted this positive portrayal led him to state, "[64]...For these reasons, this evidence of general reputation has been accorded little weight in my analysis of the Crown's case in this matter." The Prosecution noted in [50] and [51] that there was a systemic component to this misconduct and that this was a mitigating factor. I find this to be an accurate observation and this will be addressed further in regards to specific and general deterrence. For this factor I can simply infer that Sergeant Malone is a hard-working officer and performs well in a team environment. He has fostered relationships strong enough that those persons, all of whom were established and well thought of members in their own right, were willing to stand out from the crowd and speak on his behalf. This gives me confidence that he has a strong support network who will hopefully utilize the benefit of hindsight and help Sergeant Malone develop the needed competencies so that he can successfully return to the rank of Sergeant. I do have confidence that Sergeant Malone can once again thrive within the work environment and return to a role of mentorship and supervision. The proposed penalty will provide the necessary time for Sergeant Malone to demonstrate the required competencies prior to resuming these roles.

- f. It is in reviewing the interest of deterrence, both specific and general, that I find a concerning nexus between Count Two and the remaining property related counts. Count Two relates to Sergeant Malone disregarding his assigned supervisory duties in order to coach a baseball game.
  - i. Sergeant Malone's response to this incident, which included his leaving early, was 'happens all the time.'([17](e)(v.)) and the Defense suggestion that his state of mind in regards to attending the baseball game, instead of fulfilling his assigned supervisory duties, was that 'he was close enough if something were to happen'[67] speaks to the fundamental misunderstanding of the role of a supervisor.
  - ii. Hewlett and Ontario Provincial Police 2007 ONCPC 7 (CanLii) speaks to the duties of a supervisor namely, supervisors are *“responsible to ensure that the officers under his supervision satisfactorily perform their duties as assigned.” This is self-evident and does not require a specific policy or procedure. As well, these are responsibilities that cannot be discarded or ignored. Sergeant Hewlett's role was to provide advice and guidance while the occurrence was being investigated; afterwards, his role was*

*to ensure that the investigation was properly completed by his officers.”*

- iii. While the entire quote above is relevant, a key point is contained in the final sentence in that a supervisor is to fulfil a proactive role in the work environment, providing advice and guidance as incidents develop. Sergeant Malone’s assertion that he was ‘close enough to respond’ is a disservice to those that he was supervising as he denied them the opportunity of his experience and knowledge to prevent incidents from occurring in the first instance as opposed to simply responding after the fact when a preventable incident occurs. The similarity to the non-proactive mindset of the Robbery property room’s existence is notable.
- iv. The property-related offences originated in the Robbery Unit where it was established that property was being managed in a manner that contravened Peel Regional Police directives and failed to encapsulate the inherent protections, both for officer, PRP and the community, that the directive contains. While the Prosecution does recognize in [50] and [51] that there was a systemic issue in regards to property storage within the Robbery Unit during this time period, and puts it forward as a mitigating factor, this is the environment that empowered Sergeant Malone to continue to treat the handling of property in a negligent manner.
- v. Sergeant Malone had an opportunity to correct the misconduct by electing to submit the property to the appropriate property room when he retrieved it from the Robbery unit property room. Instead, he elected to exasperate the situation further by removing the property to his residence. The subsequent negative implications have become apparent throughout this tribunal process. This can be seen as a continuation of an under-appreciation of the requirement to deal with property with intentional integrity. This again speaks to the comments of Supt Roselli in [110](d).
- vi. It was this failure to predict risk and liability that caused Justice Andre to note in R v. Malone Court File No.:CR-19-1689-00:

*[26] “Those practices relating to the temporary storage of evidence in the CRB property room constitute a shocking disregard for the PRPF’s directive concerning the storage of evidence following a criminal investigation. This disregard may well call into question evidence in numerous trials involving the CRB to the effect that continuity of evidence had been established and that only*

*the officer in charge had access to the stored evidence.” This clearly highlights the problem that this factual situation creates for the integrity of all PRP criminal investigations that are before the courts.”*

- vii. When addressing the factor of specific deterrence it is found that the proposed penalty appropriately speaks to Sergeant Malone’s misconduct, both in regards to his failure to supervise and the multitude of property-related misconduct incidents.
- viii. When addressing the factor of general deterrence it is found that the proposed penalty appropriately speaks to the need for:
  - 1. All officers to critically examine their work environment to ensure compliance with Peel Regional Police directives and that a failure to do so, or to simply accept the status quo, puts both themselves, and the organization at increased risk, and
  - 2. As supervisors to recognize that, the role is an interactive role and they have a duty to proactively guide, lead and mentor. A failure to do this is a disservice to the position that they have been entrusted with as well as to those that are in their care.
- ix. Given the above comments, I find that the proposed sentence is appropriate in regards to both specific and general deterrence.

[111] While the submissions made to the tribunal may be utilized to assess where on the scale of appropriateness the penalty falls, as noted previously this is not the concern of the tribunal. Upon review of the submissions, I am convinced that the penalty is both appropriate and reasonable.

#### **PART IV: DISPOSITION**

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

## Penalty

[113] After examining and weighing all of the evidence presented, as the Hearing Officer I impose on Sergeant Eric Malone #2483 of the Peel Regional Police Service for one count of Discreditable Conduct and six counts of Neglect of Duty:

**A reduction in rank from Sergeant to First Class Constable for a period of 24 months. Following which, on the basis of satisfactory work performance to be determined by the officer's Divisional Commander, the officer will be reinstated to the rank of Sergeant.**

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

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Robert Higgs, Superintendent #1603  
Regional Police – Hearing Officer

Date Peel