



PEEL REGIONAL POLICE DISCIPLINE HEARING

UNDER ONTARIO REGULATION 268/10
MADE UNDER THE POLICE SERVICES ACT, RSO 1990,
AND AMENDMENTS THERETO

IN THE MATTER OF THE PEEL REGIONAL POLICE
AND CONSTABLE MARK MOHAN (2579)

Charges: *Discreditable Conduct*, O.Reg. 268/10, s. 2(1)(a)(xi)
Neglect of Duty, O.Reg. 268/10, s. 2(1)(c)(i)(A)
Discreditable Conduct, O.Reg. 268/10, s. 2(1)(a)(xi) (*withdrawn*)
Deceit, O.Reg. 268/10, s. 2(1)(d)(ii) (*withdrawn*)

DECISION

Hearing Officer: Superintendent (retired) Peter Lennox

Prosecutor: Ms. Sharon Wilmot, PRP Counsel
Insp. Scott Clair, Peel Regional Police

Defence Counsel: Mr. Lorne Honickman, Brauti Thorning LLP
Mr. Alex Alton, Brauti Thorning LLP

Hearing Date: Tuesday, February 16, 2021

Decision Date: Friday, February 26, 2021

PENALTY

Police Constable Mark Mohan, 2579

DATE: FEBRUARY 26, 2021

Retired Superintendent Lennox: I thank Ms Sharon Wilmot, prosecutor and Peel Regional Police (PRP) counsel, supported by Insp. Scott Clair, and Mr. Lorne Honickman, defence counsel, supported by Mr. Alex Alton, for their submissions, which have assisted me in reaching my decision.

This was the second appearance of Const. Mohan before me, hearing officer Supt. (ret.) Peter Lennox, formerly of the Toronto Police Service. The first was a motion that was heard on Wednesday, November 18, 2020. Earlier appearances were before a PRP superintendent. The hearing was held electronically through the Zoom electronic application due to the ongoing coronavirus pandemic and by the authority of section 3 of the *Hearings in Tribunal Proceedings (Temporary Measures) Act, 2020* (S.O. 2020, Chapter 5, Schedule 3). Neither party raised concerns or objections to this measure.

Finding

For the reasons articulated in this document, and having heard, reviewed and carefully considered the submissions of the parties and the exhibits tendered (listed in the appendix), I accept Const. Mohan's guilty plea and determine that the joint penalty suggested by both parties is appropriate.

Const. Mark Mohan's penalty will be to be reclassified from first-class constable to second-class constable for a period of 16 months, after which, contingent on satisfactory performance and the approval of his divisional commander, he will be returned to first-class constable. This penalty is authorized by clause 85(1)(c) of the *Police Services Act (PSA)*.

Summary

On Tuesday, February 16, 2021, Constable Mark Mohan, 2579, pled guilty and was found guilty of one count of discreditable conduct and one count of neglect of duty, contrary to the Police Services Act. A second count of discreditable conduct and one count of deceit were withdrawn at the request of the prosecutor.

The specific clauses of the Code of Conduct (Ontario Regulation 268/10) articulating the offences, taken from the Notice of Hearing, are:

- 2(1)(a)(xi), which is “acted in a disorderly manner or a manner prejudicial to discipline or likely to bring discredit upon the reputation of the Peel Regional Police”, and
- 2(1)(c)(i)(A), which is “failed to report a matter that it is your duty to report”.

The particulars of the charge are found on the Notice of Hearing and the Agreed Statement of Facts (see below).

Defence and PRP counsel both made verbal submissions and took a joint position on penalty. The parties submitted that the appropriate penalty for these charges was reclassification to second-class constable for 16 months, and then a return to first class, contingent on acceptable performance and the approval of the respondent’s divisional commander.

Neither party called witnesses to this matter.

The parties agreed to my communicating my findings by electronic mail with no need for another hearing date. I informed them that I would return a decision as quickly as I could.

The facts of the matter are as follows (quoted from the Agreed Statement of Facts, Exhibit 4, which was read into the record by the prosecutor):

[Quote]

1. Constable Mark MOHAN #2579 has been a member of PRP since 2002. Constable Mohan worked in the Fraud Bureau as a temporary transfer for three months each summer in 2010 and 2011. He was assigned to 21 Division Traffic Unit at the time of the alleged incident.

COUNT ONE – DISCREDITABLE CONDUCT

2. In January of 2014, PRP Fraud Bureau received reports of a large-scale investment fraud involving a suspect named Shuaib Shafi (“Mr. Shafi”) (PRP Occurrence 14-0016295). Several victims came forward to report that they had been defrauded by Mr. Shafi after being convinced to invest money with him.

3. Some of the victims identified a PRP officer who was closely associated with Mr. Shafi and the investment scheme. The PRP officer was identified as Constable Mohan.

4. Shortly thereafter, the Fraud Bureau commenced investigation into Mr. Shafi and Constable Mohan’s role in the alleged investment scheme.

5. Constable Mohan met Mr. Shafi on or about May of 2012 through mutual friends. At some point following their meeting, Mr. Shafi invited Constable Mohan to invest in Mr. Shafi’s film company. Constable Mohan initially stated that he was not interested, however he eventually provided Mr. Shafi with \$10,000.00 for trading on the European stock market. Mr. Shafi promised a return of \$30,000.00 within a month. Mr. Shafi eventually provided Constable Mohan with a cheque for \$50,000.00, \$40,000.00 of which was profit on his original investment.

6. Following this investment, Mr. Shafi again asked Constable Mohan for \$40,000.00, promising an additional \$20,000.00 in returns. Constable Mohan provided Mr. Shafi with \$40,000.00 but was later advised that the investment did not work out.

7. Shortly thereafter, Mr. Shafi proposed another investment for Constable Mohan and his parents. This led Constable Mohan and his parents to invest a total of \$500,000.00 with Mr. Shafi. Constable Mohan obtained his share of the money from a line of credit, and his parents remortgaged their home to contribute \$250,000.00. Constable Mohan and his parents did not understand electronic trading on the stock market, but nevertheless decided to pursue the investment.

8. Constable Mohan indicated that on or about October or November 21, 2012, himself, Mr. Shafi and Mr. Shafi's sister together opened a bank account at the Bank of Montreal. On this date, Mr. Shafi deposited one million dollars into the account to demonstrate to Constable Mohan that he had a substantial amount of money. The alleged purpose of the account was to invest in films and film making with Mr. Shafi's film company "Bbuckswood." The account was registered under Constable Mohan's address.

9. At this time, Constable Mohan took no steps to ensure that Mr. Shafi was licenced to buy and sell stocks on behalf of others. When it was pointed out to Constable Mohan that he was being used "as the face" of Mr. Shafi's investment, he agreed that he should have questioned Mr. Shafi more.

10. The joint account was eventually closed on or about November of 2012 or April 22, 2013 due to an issue concerning the source of funds for a large deposit made by Mr. Shafi. The bank also expressed to Constable Mohan that they would end their banking relationship with him and Mr. Shafi due to their serious concerns.

11. On or around August 2013, Mr. Shafi provided Constable Mohan with two cheques in the amount of \$300,000.00 each, in order to pay Constable Mohan and his parents back on their investment; however the cheques could not be cashed because there was no money in the accounts, and the bank would not certify the cheques.

12. On or around May 1, 2014, Constable Mohan provided a statement to PRP Fraud Bureau and indicated that he had been a victim of fraud perpetrated by Mr. Shafi.

13. In July of 2014, Constable Mohan received another transfer from Mr. Shafi's sister, Ms. Shabnam Shafi, who was directly involved in the investment scheme.

14. Forensic accounting evidence of June 22, 2017 indicates that Constable Mohan was indebted between \$296,832.00 and \$470,624.00 as a result of his investment with Mr. Shafi.

15. Mr. Shafi used Constable Mohan to attempt to recruit new investors into his scheme. Mr. Shafi knew that Constable Mohan's position as a police officer would add legitimacy to his scheme. Constable Mohan, thinking that he was involved in a profitable enterprise, spoke to acquaintances about investing with Mr. Shafi. None of the individuals that Constable Mohan dealt with lost the principle [*sic*] of their investment.

16. As such the following is agreed to: (i) Constable Mohan was not charged criminally for his involvement with Mr. Shafi's fraud, or any other acts of criminal conduct with respect to his association with Mr. Shafi and (ii) Constable Mohan and his parents were victims of Mr. Shafi's fraudulent actions and (iii) Constable Mohan failed to conduct adequate inquiries and/or exercise the appropriate level of due diligence into the conduct of Mr. Shafi, that would be expected of a police officer with Constable Mohan's experience and training, specifically to ensure that Mr. Shafi was not involved in criminal activity, including fraud and money laundering by several persons

17. It is for this reason that Constable Mohan's actions constitute Discreditable Conduct in accordance with Section 2(1)(a)(xi) of the prescribed Code of Conduct.

COUNT TWO – NEGLECT OF DUTY

18. Sometime between January and May 2014, the wife of Mr. GL, Mrs. L attended 22 Division crying and asking for Constable Mohan. Mrs. L advised Constable Mohan that Mr. Shafi had stolen from her and her husband. They had given him investment money and never got it back.

19. Constable Mohan directed her to file a report with the Fraud Bureau but did not conduct any follow-ups directly and did not contact the Fraud Bureau to notify them of the report. Constable Mohan did not make notes of his meeting with Mrs. L.

20. Constable Mohan's actions constitute Neglect of Duty in accordance with Section 2(1)(c)(i)(A) of the prescribed Code of Conduct in that he, without lawful excuse, neglected or omitted promptly and diligently to perform a duty as required as a police officer.

[End quote]

Prosecution Submissions

Counsel for the PRP, acting as prosecutor¹, began by reading the entire Agreed Statement of Facts into the record. She then opened her submissions by telling the Tribunal that she and defence counsel had a joint submission on penalty, which was a reduction from first- to second-class constable for a period of 16 months, then reinstatement to first class on the approval of the respondent's divisional commander.

She reviewed the history of the matter for the Tribunal, outlining that Const. Mohan was charged in March of 2020 with four counts of misconduct, two of which have been withdrawn. He now faces one count of discreditable conduct and one count of neglect of duty.

¹ For clarity, Ms. Wilmot, counsel for the PRP, will be referred to as "the prosecutor".

The charges Const. Mohan faces relate largely to his relationship with Mr. Shuaib Shafi, who was convicted of several counts of fraud in 2019; to the involvement, awareness and knowledge of the respondent officer of Mr. Shafi's activities; and to his failure to take appropriate actions with respect to them.

The prosecutor reminded me that while Mr. Shafi was convicted criminally, Const. Mohan never faced criminal charges and does not have criminal convictions related to this matter. She also allowed that, to some extent, Const. Mohan and his family were victims of Mr. Shafi's fraudulent investment scheme.

The prosecutor submitted that, all things considered, a 16-month reduction in rank is reflective of the aggravating and mitigating factors in this matter, and is consistent with similar cases. She acknowledged that I am not obliged to accept the joint submission, but submitted that the proposal is appropriate and reasonable and that there is no reason for me to reject it.

Turning to the accepted criteria largely repeated in Krug and the Ottawa Police Service,² [in Exhibit 5] and articulated by Paul Ceysens and Scott Childs in their annotated Police Services Act, the prosecutor focused on eight of the criteria:

- Nature of the misconduct
- Public interest
- Damage to the reputation of the police service
- Disciplinary and employment history
- Recognition of the seriousness of the matter
- Handicap and personal circumstances
- Deterrence
- Consistency of disposition

² Cases will be referred to by abbreviated names in the text. More complete references are found in the Appendix.

She also presented three cases to assist me in considering the consistency of the suggested penalty with earlier cases.

- *Nature and Seriousness of the Matter:* The prosecutor underscored that the misconduct is serious. The respondent associated over a long period of time with an individual whom he knew, or ought to have known, was involved in significant fraudulent activity. During this time, Const. Mohan lost a large amount of money himself, but he also:
 - Lost a substantial amount of his family members' money
 - Took an active role in trying to involve others in the scheme, even though he knew or should have known its perils
 - Put his name on business accounts without verifying the legitimacy of the business activities
 - Allowed himself to be used as “the face of the scheme” despite his position as a police officer (and his previous position in the Fraud Unit) and in the face of repeated warnings from banks and others, which lent the appearance of legitimacy to the scheme
 - Continued to be involved with Mr. Shafi even after reporting the matter to the Fraud Unit
- The prosecutor took the position that these activities are aggravating to penalty, and that they could have led to criminal consequences for Const. Mohan.
- With respect to the charge of neglect of duty, she repeated that a victim had attended at a PRP division, upset and asking for Const. Mohan. The respondent did no investigation, took no steps to file a report, and did not ensure that the matter was reported to the appropriate PRP bureau for investigation.
- *Public Interest and Damage to the Reputation of the PRP:* The prosecutor submitted that police officers are entrusted by the community to enforce the law, and it is inherently serious when they are seen to be involved in offences. This also adds to the aggravating nature of this factor.
- *Disciplinary and Employment History:* The prosecutor said that Const. Mohan has been a member of the PRP since 2002. He worked in a variety of capacities.

- He had no previous disciplinary matters except one finding of discreditable conduct in 2016 (improper use of police databases). That matter is connected with the matters currently at hand, so the prosecutor submitted that I should not consider it separately. At the time, the respondent took responsibility for the improper database searches and accepted his penalty.
- *Recognition of the Seriousness of the Misconduct:* In addition to the acceptance of responsibility in the 2016 matter, the prosecutor submitted that the officer's current recognition of the seriousness of his conduct shows that he has rehabilitative potential. The belief that he can likely be rehabilitated is based on his acknowledgement of responsibility and his positive employment history. The prosecutor perceived this and the officer's early guilty plea (without which the PRP would have sought a higher penalty) as mitigating to penalty.
- *Handicap and Personal Circumstances:* The prosecutor acknowledged that there is evidence that Const. Mohan experienced, and continues to experience, medical issues that may have contributed to the matter, and reminded me that he has given evidence that he is taking steps to address these issues. She presented this as a mitigating factor, and expressed the hope of the PRP that the officer will continue to take these steps to prevent future issues.
- *Deterrence:* The prosecutor reminded me that specific and general deterrence are both important in the consideration of an appropriate penalty.
 - The penalty must be sufficient to remind the respondent of the seriousness of his actions, so that he will recognize that such behaviour will not be condoned, regardless of the effect of any medical challenges. She made it clear that future transgressions will result in the PRP seeking higher penalties, which may include dismissal.
 - The penalty must also be sufficient to remind other PRP members that association with people involved in criminal activity is serious and adverse to the role of a police officer, and will result in serious penalties.
 - The prosecutor submitted that the proposed penalty is sufficient to address both of these elements.
- *Consistency:* Finally, the prosecutor reminded me that I am required to consider whether the penalty I impose is consistent with other similar matters. That said,

she was unable to produce earlier cases that were precisely on point, as the current matter is rather unique. She presented three cases that, while not precisely parallel to this matter, were, in her opinion, reasonable and appropriate comparators.

- Kolenko and the Peel Regional Police [the second case in Exhibit 5] is from 2016, and involved a police officer trying to arrange for another officer to have a speeding ticket withdrawn for a personal associate. The associate had a criminal background; despite this, the officer had a friendly relationship with him and tried to interfere with the ticket as a personal favour. While the facts were different, the principles of improper association coupled with the inappropriate use of the officer's authority to help a person with an unlawful and non-police purpose are similar. The prosecutor submitted that our current case is more serious due to Mr. Shafi's criminal convictions and the extensive financial consequences for the victims, but it shows that even in relatively minor incidents where authority is used unlawfully, a demotion is warranted. The penalty in this case was a reduction from first- to second-class constable for three months.
- Mountjoy and the Metropolitan Toronto Police [the third case in Exhibit 5] is an appeal by Const. Mountjoy to the Ontario Civilian Police Commission (OCP) from 1989. In this case, the respondent was found guilty of two separate offences: lying on behalf of a female associate who was being investigated for a \$1000 cheque fraud, and (though the prosecutor did not point this out) misrepresenting how long he had known another person on a passport application. Const. Mountjoy was appealing the penalty of being reduced from first- to third-class police constable, but the OCP stated that this was, in fact, a modest penalty in light of the charges and that it would have upheld a dismissal penalty had the hearing officer imposed it. The prosecutor reminded me that the PRP is not seeking Const. Mohan's dismissal, but that this case places the proposed penalty "within the range of reasonableness".
- Purbrick and the Ontario Provincial Police [the fourth case in Exhibit 5] is also an OCP appeal, this time from 2011. Again, the prosecutor allowed

that this case is not directly on point with the current matter, but it involves another instance of poor judgement with financial overtones. The hearing officer had dismissed Const. Purbrick for theft of gasoline and toilet paper, but the penalty was varied by the OCPC to a reduction from first- to fourth-class constable, returning to first-class only after spending one year in each of the lower grades and receiving satisfactory appraisals. In this case, the OCPC determined that dismissal was too extreme a penalty, but that a reduction in classification was appropriate.

The prosecutor concluded that a reduction in classification is also appropriate and reasonable in this case, and again urged me to accept it.

Defence Counsel Submissions

Defence counsel³ began by urging me to remember that an officer before the Tribunal comes with a history that cannot be set aside as we review the facts of the case. He also pointed out that, while he and the prosecutor may differ somewhat on the nature or seriousness of the matter, they do not differ in the submissions they are making, including the joint proposal on penalty. He indicated that this is the final chapter for Const. Mohan on these issues of misconduct, and he looks forward to the officer coming back as “the officer that he can be, and that he was”.

Counsel allowed that the offences are serious, but the respondent has pled guilty to them and is remorseful for the misconduct.

Counsel then took the Tribunal through Const. Mohan’s history with the PRP, which he represented as a career “with a lot of very important bright moments”. Const. Mohan served as an auxiliary officer from 1999 to 2002, when he became a police officer with the PRP. Counsel then turned to the Defense Book of Sentencing Materials [Exhibit 6] to illustrate the respondent’s career.

³ Hereinafter “counsel”

Counsel showed me the officer's Employee Profile Report [Tab 2] and moved quickly to his 2016 performance appraisal, which he characterized as having been completed right before the respondent went on leave due to [medical] issues "he has been working through and will continue to work through". Counsel invited me to consider the appraisal to be a window into the officer's performance and activities, and drew my attention particularly to Section 3, the supervisor's comments (which underscores that he was officer of the month in 2017 for rescuing a person in crisis who was attempting suicide), and the "Ethical Account/Responsibility" element of Section 1, which indicates that he meets PRP expectations with respect to handling ethical dilemmas effectively.

Counsel then took me through the rest of Exhibit 6, which provided materials from the officer's personnel record.

- *Internal correspondence and a community letter* from 2011 praising PRP officers for the successful resolution of a "fatal fuel theft" from Suncor Energy. [Tab 4]
- *Letters from the principal of St. Mary's Catholic School and supporting internal memos* from 2010 and 2011 praising Const. Mohan specifically for his impactful and helpful work as a community and school police officer. I note that these letters are specific not only to times when Const. Mohan went out of his way to support the school community, but also for his interpersonal skills in dealing effectively with students. [Tab 5]
- *Letters and memos from 2003, 2004 and 2010* thanking Const. Mohan, among others, for involvement in the annual Tim Horton Camp Day. [Tab 6]
- *Letters from 2003 and 2010* thanking Const. Mohan and others for involvement in the Toys for Tots initiative to benefit disadvantaged children during the holiday season. [Tab 7]
- *A 2009 letter from the Juvenile Diabetes Research Foundation* thanking Const. Mohan personally and specifically for organizing the first Peel Regional Police JDRF Golf Tournament to benefit research into type one diabetes. I note that while I cannot read the signature on the bottom of the page, there is a note

apparently from a senior PRP officer adding enthusiastic praise to that of the JDRF. [Tab 8]

Counsel took the position that the letters above show the potential for Const. Mohan to be rehabilitated, “if he can get past where he is now and get back into the community”.

Counsel also drew my attention to internal documents from Exhibit 6.

- *Documentation showing Const. Mohan as the winner of the 2008 and 2009 Matt Parr awards.* Named after a PRP officer who was killed by an impaired driver, the awards celebrate effective apprehension of impaired drivers. The documentation is clear that Const. Mohan was the winner in 2008, and I accept the submission that he was also the winner in 2009. [Tab 9]
- *Documentation for initiative in the seizure of drugs at a traffic stop from 2003.* [Tab 10]
- *A certificate from 2003 recognizing Const. Mohan as Employee of the Month in No. 21 Division.* [Tab 11]

Counsel pointed out that all of these letters, as records of where Const. Mohan has been, serve to show the level of performance to which he can return.

Tabs 12 and 13 contain copies of letters from Dr. [REDACTED] and Dr. [REDACTED]. These letters were also introduced as evidence in a motion in November 2020. Counsel pointed out that I had acknowledged in my finding in that motion that Const. Mohan is going through a hard time, and that it will be important for Const. Mohan to have this matter finally dealt with. He submitted that the joint penalty submission is part of that finality that will bring this matter to an end after seven long years.

Counsel continued by underscoring that he and the prosecutor agree that the conduct is serious and on the appropriate penalty for that conduct, but also pointed out that the matter is unique in some ways, including that both the respondent and his parents lost a significant amount of money, and suggested that such a loss might be a deterrent in itself.

He clarified his earlier comment that he and the prosecutor differed only in their perception of the seriousness of the matter; the prosecutor said that Const. Mohan was “wilfully blind”, whereas defence counsel thinks that Const. Mohan’s actions were “reckless at worst”. He directed my attention to the forensic analysis mentioned in the Agreed Statement of Facts [Exhibit 4, Paragraph 14], and took the position that there was “no indicia of intent” on Const. Mohan’s part. This does not detract from the recklessness of the conduct, which was more than negligent, but counsel took issue with prosecution’s characterization of the officer as “wilfully blind”. The officer now acknowledges that he failed himself and his parents, and accepts responsibility that he did not take the proper steps at the time. As a police officer, these are steps he should also have undertaken.

While he agreed with the prosecutor that neither party had been able to find cases that were parallel to this unique matter, counsel presented two earlier cases that he said speak to the seriousness of the matter [and therefore to the consistency of disposition].

- Const. Penner and Peel Regional Police [Exhibit 7] is a 2019 matter involving a PRP officer facing three counts of neglect of duty and one of discreditable conduct. This matter involved a police officer entering into a business relationship (acting as a real estate agent) with a suspect in serious criminal matters. The penalty in this matter was reduction to second-class constable for six months. Counsel referred to Const. Penner’s actions as “very bad judgement”.
- Const. Barden and Peel Regional Police [Exhibit 8] is a 2017 matter involving a police officer who pled guilty at the PRP Tribunal after having been convicted criminally of assault causing bodily harm and unlawful confinement. The penalty in this matter was reduction to second-class constable for 18 months. Counsel submitted that, though Const. Barden had been convicted criminally, this “shows we are in the range”.

Counsel concluded by submitting that the cases submitted by both the prosecution and the defence show the range of penalties appropriate to this matter, and, like the

prosecutor, encouraged me to adopt the joint submission on sentence, especially in light of the responsibility assumed by Const. Mohan and the treatment he continues to take.

The prosecutor did not respond to defence counsel's submissions.

Analysis and Decision

The behaviour that led to Const. Mohan's charges is not in dispute. The plea of guilty and joint penalty submission tell me that the parties agree on what transpired. They also agree, as do I, that Const. Mohan's actions constitute serious misconduct.

The task before me now is to determine whether the penalty of a gradation to second-class constable for a period of 16 months, suggested jointly by the prosecutor and defence counsel, is appropriate, and, if not, whether I am justified in substituting another penalty.

I have heard the submissions of both parties and reviewed in detail the cases and other documents they submitted. These documents and cases are recorded above and in the exhibits listed in the appendix. Considering the submissions of both parties to this matter and the documentary submissions provided to me, I have thought the matter through in light of the recognized categories below (as pointed out by the prosecutor in Krug and the Ottawa Police Service, 2003, contained in Exhibit 5) and further articulated in the Ontario Police Services Act, Fully Annotated by Paul Ceysens and Scott Childs.

Public Interest

Police officers have authorities above and beyond those of their fellow citizens. As defence counsel has pointed out, their unique position in society means that they are held to a higher standard.

I agree with the prosecutor's comment that the community trusts police officers to enforce the law, and it is inherently serious if they are seen to be involved in offences.

It is a truism that the police in our society can act only with the consent of the community, and anything that impacts the trust that leads to that consent, such as being involved in criminal or unethical behaviour, is against the public interest.

Although the prosecutor did not mention it in her submissions, I note a passage by PRP Supt. Colleen Fawcett from Kolenko and the Peel Regional Police that was highlighted in the Prosecution Book of Authorities [Exhibit 5, Tab 2, Pages 8-9]:

The public expectations of our organization and specifically with the behaviour of the police officers they interact with must reflect accountability, integrity, professionalism, and transparency. When officers demonstrate favourable treatment to people, it is a serious misuse of their authority ... Such behaviour stands to outrage and undermine the absolute confidence, trust and support of the community.

I agree.

This is an aggravating factor when I consider the appropriate penalty.

Seriousness of the Misconduct

The penalty must reflect the seriousness of the misconduct and the damage done to the reputation of the Service.

I recognize that the prosecutor and defence counsel differ subtly on their interpretation of the seriousness of the matter, characterizing it variously as wilful blindness (prosecutor) and a lapse in judgement (defence). That said, I accept the position of the prosecutor that, in working to involve others in the scheme and allowing himself to give

it the appearance of legitimacy by acting as its “face” despite his position as a police officer and – surprisingly – a former member of the Fraud Unit, he was involved in activities that he knew or should have known to be improper, to the extent of misconduct. I recognize that Const. Mohan lost a substantial amount of money himself, but also that his parents also lost money and other community members were, at the very least, put into positions where they could have been similarly victimized.

The neglect of duty charge pertains to a victim of the scheme who approached Const. Mohan in his official capacity and asked for help, which he manifestly failed to provide. This also shows that Const. Mohan did not deserve the trust that police officers and agencies work so hard to secure and maintain.

I find that the seriousness of the matter is aggravating to penalty.

Recognition of the Seriousness of the Misconduct

I recognize that Const. Mohan’s guilty plea indicates an acceptance of responsibility for his actions. I also accept the submission of defence counsel that the officer feels remorse for his actions.

While I also understand counsel’s submissions about the lack of indicia of intent, I cannot assign much of a mitigating effect to that. Whatever his intentions, Const. Mohan should have taken a series of actions and steps that he did not take, and while he may accept this now, his actions or lack of them at the time were discreditable and negligent.

I believe, however, that Const. Mohan now recognizes the seriousness of his misconduct, even if this recognition did not exist earlier in the series of events that led to this matter. I find this recognition and acceptance of the seriousness of the matter to be mitigating to penalty.

Disability and other Relevant Personal Circumstances

I recognize that Const. Mohan has suffered health challenges during the events leading to this hearing. This was discussed extensively in the motion for a stay in November 2020, and is reinforced by the letters from ██████████ in Exhibit 6, ██████████
██████████

I give Const. Mohan complete credit for seeking help and support for these challenges, and hope earnestly that, with help from his medical team, family, friends and colleagues, he will be able to overcome those challenges. The letter from ██████████ in particular paints an optimistic picture for his recovery.

Without restating the arguments and analysis from the November 2020 motion of the sources and impacts of these challenges, I must acknowledge the submission of the prosecutor that the challenges may have contributed to the misconduct. I find for this reason that the challenges are at least somewhat mitigating in my consideration of penalty. The fact that the officer is apparently doing all he can to address and remediate these challenges is certainly a mitigating factor to penalty.

Provocation

I have been given no reason to think that provocation was a factor in the way Const. Mohan chose to behave during the events that led to this hearing. He seems to have, whether through wilful blindness or a lapse in judgement, participated willingly in Mr. Shafi's activities throughout most of the time under consideration.

I consider this factor to be neutral to penalty.

Procedural Fairness Considerations

Other than the November 2020 motion (for a stay due abuse of process), which was denied and is concluded, neither party has raised issues of procedural fairness. Const.

Mohan has had the benefit of counsel, and also the benefits and protections of the police tribunal system.

This factor is neutral to penalty.

Employment History

Const. Mohan has been a member of the PRP as a police officer for almost 20 years – in fact, if one considers his auxiliary service, his association with the organization exceeds that period.

During that time, defense counsel has submitted that he has not had disciplinary issues. I accept the position of the prosecutor that, as the 2016 database breaches were connected with this current matter, they will not count toward progressive discipline in this case.

I reviewed Const. Mohan's career history and personnel appraisal [Exhibit 6, Tabs 2 and 3] in detail. He seems to have taken advantage of a considerable amount of training offered by the PRP, which can indicate an ongoing interest in the work he does. I also see that he has taken on a number of useful and important functions during his career, dedicating himself to traffic safety and young people as well as to general policing duties. This makes me give credence in defense counsel's appealing submission that Const. Mohan can return to being "the officer that he can be, and that he was", which was, I see, a productive member of the PRP. I will deal with rehabilitation below, but I consider that his earlier service stands in his favour.

I also see that he has been appraised as meeting expectations in his most recent personnel appraisal; that is, he has served satisfactorily even during the period covered by the current charges. His manager's comments [Exhibit 6, Tab 3, Section 3] indicate that he "routinely performed above platoon average for traffic enforcement" and assisted "several officers in impaired driving investigations". The manager also comments that "Mark can be relied upon to complete his task list and daily assignments in a

professional manner". These comments also support a conclusion that Const. Mohan is routinely satisfactory in the performance of his policing duties.

I am encouraged by the community letters and internal messages contained in Exhibit 6 [Tabs 4-11], which paint the picture of a community-minded, competent, personable and dedicated PRP member. He is described as a person who can take initiative and show leadership in both policing and community settings, and who is a positive influence on the PRP and community members, and especially young people. His particular dedication to young people, to the quality of life in his assigned school, and to traffic safety are particularly encouraging.

Const. Mohan's employment history is mitigating to penalty. I encourage him, on returning to duty, to strive to exceed the expectations he currently meets, and, based on the internal and external letters and memoranda of congratulations and on his awards, I believe that he has the potential to do so.

Potential to Reform or Rehabilitate the Police Officer

I accept the submissions of the prosecutor that Const. Mohan's remorse, his acceptance of responsibility in this matter, and his guilty plea indicate that he has the potential to be rehabilitated.

Through Exhibit 6, I can see that Const. Mohan has demonstrated that he can perform well, and am confident through the submissions of both the prosecutor and the defense counsel that he can return to or exceed that level of performance.

I believe, therefore, that Const. Mohan can be rehabilitated and that he continues to have a future as a productive member of the PRP. This is important; as a 20-year member, he has many years left to serve his community. This is a mitigating factor to penalty.

Effect on the Police Officer and Police Officer's Family

Any penalty I impose, whether in accordance with the joint submission or not, will have an impact on the officer and his family by decreasing his income. I find, however, that the officer has brought this on himself through his misconduct.

I have also been made aware that Const. Mohan and his family have suffered a substantial financial loss due to his involvement in the fraudulent scheme. I do not accept the submission of defence counsel that this loss might serve as a deterrent, as the loss was a risk inherent in the making of investments, exacerbated by the officer's failure to do his due diligence with respect to the legitimacy of the operation.

This factor therefore does not mitigate penalty. It has a neutral impact.

Consistency of Disposition

Reviewing previous comparable cases, especially recent ones, and the penalties attached to them, can be very helpful in ensuring that the penalty is consistent with previous penalties imposed by other hearing officers. I often hear in the context of discipline tribunals that "consistency is the hallmark of fairness", and I believe this to be true.

I accept the submissions of both the prosecutor and defence counsel that it was a challenge to find previous cases that are right "on point" to this current matter. That said, despite the similarities and differences in the cases they submitted, I found them at least somewhat helpful in determining the appropriateness of the joint submission. I consider them here in alphabetical order.

- Const. Barden and Peel Regional Police [Exhibit 8]: This matter is fairly recent and is similar to the current matter in that it involves a PRP member with a positive employment history who pled guilty to charges of discreditable conduct that were based on off-duty (though work-related) conduct. It is, however,

substantially different in that Const. Barden (along with an accomplice) was convicted criminally of offences that differ substantially from the ones for which Const. Mohan was investigated but never charged. While the penalty imposed on Const. Barden is similar to that proposed for Const. Mohan (reduction to second-class constable for 18 months), this case was arguably the least helpful in determining the appropriateness of penalty due to the substantial differences between the two matters.

- Const. Kolenko and the Peel Regional Police [the second case in Exhibit 5] is also recent, and has similarities and differences to the Mohan matter, but is closer to the mark than Barden. Const. Kolenko, also of the PRP and appointed the same year as Const. Mohan, also pled guilty to discreditable conduct. The facts of that matter were that Const. Kolenko used his authority to intervene successfully but improperly in the prosecution of a speeding charge against an acquaintance, and this interference was discovered through a criminal investigation against the friend. One substantial difference between the two cases is that Const. Kolenko's actions influenced a more junior officer to be complicit in the offence and to commit at least one offence of his own. I understand the position of the prosecutor that Const. Mohan's offence is the more serious due to the significant financial consequences for the victims, but that the principles of the two cases are similar in that police officers used their authority improperly to help people with non-police and unlawful purposes. The penalty in Kolenko was a reduction to second-class constable for three months.
- Const. Mountjoy and the Metropolitan Toronto Police [the third case in Exhibit 5] is an older appeal (1989) from the OCPC. Const. Mountjoy, like Const. Mohan, was charged with discreditable conduct (two counts), and not charged criminally with respect to his actions. It is not clear from the OCPC report whether or not Const. Mountjoy pled guilty in the first instance. Const. Mountjoy, however, lied twice, once on a passport application and once to mislead investigators who were investigating a friend of the officer's, so the facts of the matter are distinct except in the association with a person involved in criminal activity. In its finding on the appeal, OCPC stated that it would have supported a dismissal in this matter. In fact, the penalty in this matter was reduction to third-class constable

for a year, then second-class constable for a year, with additional performance evaluations during the period of the penalty.

- Const. Penner and Peel Regional Police [Exhibit 7], another recent PRP matter, is arguably the closest to the current matter of Const. Mohan in terms of several of its facts, if not its seriousness. Const. Penner, who pled guilty to three counts of neglect of duty and one of discreditable conduct, was a 17-year officer who had secondary employment in real estate. In this capacity, he associated with people involved in criminal activity, and allowed it to impact the conduct of investigations in which he was involved. He failed to make appropriate notes and reports, to inform other PRP members of information he was required to disclose (including his association with criminal suspects), and to consider evidence pertinent to the investigation of his friends. He maintained an improper friendship with a witness in several criminal allegations, including murder, and did not disclose those relationships to his team leader despite being one of the investigators in the matter. The case is similar in that it involved improper relationships and avoided duties, and also in that the officers are considered to have a high prospect of rehabilitation and previously satisfactory careers. The penalty in Penner was reduction to second-class constable for six months, with a return to first-class status under circumstances similar to the current joint submission.
- Purbrick and the Ontario Provincial Police [the fourth case in Exhibit 5] is a ten-year-old OCPC appeal. It involves an officer who pled guilty to one count of discreditable conduct pertaining to a series of on-duty thefts from the OPP. There are some similarities with the Mohan case, including that the officer faced medical challenges, but substantial differences include a plea of guilty to four counts of criminal theft (of gasoline and cleaning supplies) and an initial penalty of immediate dismissal from the OPP. This penalty was varied by the OCPC to reduction to fourth-class constable and the requirement to spend one year in each of fourth, third and second classes before being returned to first-class constable. He was also required to accept and to report on counselling.

Considering the similarities and differences in these five cases and the difference in the level of seriousness among them, I find the joint penalty submission to be reasonably consistent with comparable earlier matters.

Specific and General Deterrence

As Const. Mohan has pled guilty to the charge and, through his counsel, expressed remorse and understanding of the seriousness of this matter, I am satisfied that the penalty jointly proposed by the parties satisfies the interests of specific deterrence.

I accept the submission of the prosecutor that the penalty must be sufficient to send a message to the officer that future such behaviour will not be condoned, and this finding informs him that future transgressions will likely result in the PRP seeking more substantial penalties.

General deterrence is also important in cases such as this. As I trust that this conviction and the penalty that accompanies it will be made known across the PRP, the principle of general deterrence will also be served as other members of the Service see that serious misconduct, including that of failing to do important due diligence, to consider and safeguard the interests of victims, and to discharge effectively all of the duties required by law, will result in discipline and penalties consistent with the magnitude of the misconduct.

Systemic Failure and Organizational/Institutional Context

While it is acknowledged that this matter has taken a long time, this was the subject of an earlier motion on which I have already made a ruling. I have been given no other reason to believe that any systemic or organizational failure has impacted on Const. Mohan's behaviour or on this specific case. This factor is therefore neutral to the determination of penalty.

Damage to the Reputation of the Police Force

I have not been made aware of media or other publicity in relation to this matter, and am therefore not able to find that publicity through public venues has had an impact on the reputation of the PRP due to this matter.

It is clear, however, that the people who were touched by the substantial fraud at the heart of this matter are aware of it and are free to discuss it. In that context at least, the reputation of the Peel Regional Police has suffered due to the actions of Const. Mohan and their consequences.

While the damage seems to be contained to a smaller number of people that would have been the case had there been substantial media publicity, I do find that there was damage to the reputation of the Service, so this is an aggravating factor to penalty.

Effect of Publicity

I considered the effect of publicity simultaneously with the damage to the reputation of the police service under “Damage to the Reputation of the Police Force”, above.

Loss Resulting from Unpaid Interim Administrative Suspensions

There was no unpaid administrative suspension in this matter, so this consideration does not apply and is neutral in the consideration of penalty.

Finding

I have reviewed the mitigating and aggravating factors and considered the submissions of defence counsel and the PRP prosecutor carefully. I have determined the penalty in this matter.

I gave substantial consideration to this penalty and undertook a thorough review of the submissions of both parties. I also considered whether specific and general deterrence would be served by this joint proposal and whether the faith of the public in the PRP and in the Tribunal would be impacted negatively.

Based on the considerations above, I find that I do not have reason to deviate from the joint submission, and I accept it. I considered making an order for continued treatment under the authority of clause 85(7)(b) of the Police Services Act, but I am content that Const. Mohan has this well in hand, to his credit.

The penalty in this matter imposed under Clause 85(1)(c) of the Police Services Act, therefore, will be **a reclassification from first-class constable to second-class constable for a period of 16 months, after which, contingent on satisfactory**
ommander, he will be returned to

A handwritten signature in black ink, appearing to be 'Peter Lennox', written in a cursive style.

Peter Lennox
Superintendent (retired)
Hearing Officer

Dated and released (electronically) on February 26, 2021

APPENDIX

LIST OF EXHIBITS

Constable Mark Mohan, 2579

1. Letter of Delegation – Hearing Officer (Retired Superintendent Peter Lennox)
2. Letter of Designation – Prosecutor (Ms. Sharon Wilmot)
3. Notice of Hearing, as amended (third and fourth counts removed):
 - i. Count One: Discreditable Conduct
 - ii. Count Two: Neglect of Duty
4. Agreed Statement of Facts
5. Prosecution Book of Authorities, containing:
 - i. Senior Const. Krug and the Ottawa Police Service (OCPC, 2003.01.21)
 - ii. Const. David Kolenko and the Peel Regional Police (2016.05.04)
 - iii. Const. Gary Mountjoy and the Metro Toronto Police (OCPC, 1989.03.15)
 - iv. Prov. Const. Purbrick and the OPP (OCPC, 2011.05.25)
6. Defence Book of Sentencing Materials, containing tabs as follows:
 - i. Agreed Statement of Facts
 - ii. Employee Profile Report
 - iii. 2016 Performance Appraisal
 - iv. Recognition Letter for Work on Fatal Fail to Remain
 - v. Letters from St. Mary Catholic School and Internal Recognition
 - vi. Recognition for Support – Tim Horton’s Camp Day
 - vii. Recognition for Participating in Toys for Tots
 - viii. Organizing first PRP JDRF Golf Tournament
 - ix. 2008 and 2009 Constable Matt Parr Awards
 - x. Commendation for Initiative and Ability
 - xi. Employee of the Month, February 2003
 - xii. Letter from ██████████
 - xiii. Letter from ██████████
7. Const. Penner and Peel Regional Police (unreported, 2019.08.16)
8. Const. Barden and Peel Regional Police (unreported, 2017.01.05)