

Peel Regional Police Service
Police Services Act R.S.O. 1990, c. P. 15, as amended

IN THE MATTER OF a hearing held in accordance with section 76(9) of the *Police Services Act* into an allegation of misconduct against

Detective James Howard #2748
Peel Regional Police
Allegation: Discreditable Conduct

Disposition

Hearing Officer:	Superintendent Rob Shearer Peel Regional Police
Prosecutor:	Ms. Sharon Wilmot
Defence:	Mr. Michael Ardito Peel Regional Police Association
Date of Hearing:	March 19, 2021

PART I: OVERVIEW

Allegations of Misconduct

- [1] It is alleged that Detective James Howard #2748 (“Detective Howard”), a member of the Peel Regional Police Service, committed the following act of misconduct contrary to section 80(1)(a) of the *Police Services Act, R. S. O. 1990 c. P. 15*, as amended;

Count One: Discreditable Conduct

It is alleged that Detective Howard committed Discreditable Conduct in that in or around February 26, 2020, 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, in that you engaged in sexual misconduct, while on-duty, constituting an offence against discipline as prescribed in section 2(1) (a) (xi) of the *Code of Conduct, Regulation 268/10*, as amended.

Background

- [2] On December 3rd, 2020, Detective Howard was served a Notice of Hearing alleging one count of misconduct contrary to section 80(1) (a) of the *Police Services Act*, constituting an offence against discipline, Discreditable Conduct, as prescribed in section 2(1) (a) (xi) of the *Code of Conduct, Regulation 268/10*, as amended.

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- [3] On March 19, 2021, Detective Howard appeared before me, Peel Regional Police Superintendent Rob Shearer, and entered a guilty plea to one count of Discreditable Conduct. Ms. Sharon Wilmot tendered an Agreed Statement of Facts which was read into the record and confirmed by Mr. Ardito as being accurate. Based on those facts, I determined that the allegation of Discreditable Conduct had been proven on clear and convincing evidence. Consequently, I made a finding of misconduct.

Positions on Penalty

- [4] Ms. Wilmot presented the Tribunal with a Joint Submission as to Penalty which was marked as Exhibit #7. The submission indicated the following: **“In relation to the Notice of Hearing dated December 3, 2020, the parties jointly submit that the appropriate disposition for the finding of one count of Discreditable Conduct as prescribed in section s. 2(1)(a)(xi) of the Code of Conduct, Regulation 268/10, as amended is as follows: a) Reduction in rank from Detective to 1st (first) Class Constable for a period of sixteen (16) months following which the officer will be returned to the rank of Detective on the basis of satisfactory work performance determined by the officer’s Divisional Commander. The above penalty is submitted in accordance with section 85(1)(c) of the Police Services Act.”**
- [5] The Joint Submission was dated March 19th, 2021 and signed by the Prosecutor S. Wilmot, PRPA Representative Michael Ardito, and Detective James Howard #2748. Further, Mr. Ardito confirmed the accuracy of the Joint Submission and his agreement with the content. Consequently, I was satisfied that all parties agreed with the proposed penalty.

Decision

- [6] After analyzing and weighing all of the evidence presented and the Joint Submission As To Penalty, as the Hearing Officer, I impose on Detective James Howard #2748 of the Peel Regional Police for one count of Discreditable Conduct:
- A reduction in rank from Detective to 1st (first) Class Constable for a period of sixteen (16) months following which the officer will be returned to the rank of Detective on the basis of satisfactory work performance determined by the officer’s Divisional Commander.**
- [7] The penalty is submitted in accordance with section 85(1)(e) of the *Police Services Act*.

PART II: THE HEARING

Exhibits

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

Exhibit #1	Delegation of Powers and Duties to the Hearing Officer (Superintendent Graham Symington)
Exhibit #2	Prosecutor's Designation (Ms. Sharon Wilmot)
Exhibit #3	Prosecutor's Designation (Ms. Jovana Orabovic)
Exhibit #4	Prosecutor's Designation (Insp. Ryan Berrigan)
Exhibit #5	Delegation of Powers and Duties to the Hearing Officer (Superintendent Rob Shearer)
Exhibit #6	Agreed Statement of Facts
Exhibit #7	Joint Submission As To Penalty

Representation

[9] In this matter, Mr. Michael Ardito represented Detective Howard, and Ms. Sharon Wilmot represented the Peel Regional Police.

Agreed Statement of Facts

[10] The facts of this matter are agreed upon by the Defence and Prosecution. The Agreed Statement of Facts, filed as Exhibit #6, is outlined as follows:

Detective James Howard #2748 has been a member of Peel Regional Police (PRP) since May 2003. He was assigned to the Forensic Identification Services unit at the time of the incident.

Detective James Howard #2748 (Detective Howard), Cadet A, and Cadet B were assigned to the Forensic Identification Services (FIS) unit between January and April 2020.

Detective Howard was an acting supervisor in FIS. He was not Cadet A or B's direct supervisor.

Upon commencing her placement at FIS, Cadet A began anonymously texting Detective Howard. The messages became more flirtatious and Cadet A eventually revealed her identity.

On Friday, February 14, 2020, Detective Howard and Cadet A engaged in consensual sexual activity, while off-duty.

Approximately one week later, on or about February 26, 2020, Detective Howard was assigned to “B” platoon and working a dayshift. Cadet A and Cadet B were also both scheduled to work a dayshift on this day. Detective Howard planned to conduct a laser/alternate light source (ALS) demonstration with both Cadets A and B.

Detective Howard attended the old fingerprinting room to set up the ALS for the demonstration, when Cadet A entered the room. The door was located and Detective Howard and Cadet A took part in lascivious behavior where they both engaged in sexual activity. The consensual sexual activity of both Detective Howard and Cadet A escalated and was both inappropriate and egregious in nature and can be depicted as sexually explicit in nature.

At some point in the course of the interaction, Cadet B was let into the room and was present during much of the interaction and took pictures and videos on their cellular phones. She did not participate in any of the physical interactions.

All three members were on-duty, working a day shift, and in uniform.

Cadet B shared the details of the incident with at least one other member of Peel Regional Police. That member reported the incident. All of the photos from this incident are believed to have been subsequently deleted.

Detective Howard’s actions are in contravention of the Peel Regional Police Directive I-Q-204(f) Code of Ethics, Conduct and Discipline – Sworn Members and constitutes as Discreditable Conduct in accordance with section 2(1)(a)(xi) of the prescribed Code of Conduct.

- [11] I am satisfied on the clear and convincing evidence as presented in the Agreed Statement of Facts that the actions of Detective Howard constitute Discreditable Conduct as prescribed within section 2(1)(a)(xi) of the *Code of Conduct, Ontario Regulation 268/10, as amended*.

PART III: SUBMISSIONS, ANALYSIS AND FINDINGS

Submissions

Submissions of the Prosecution – Ms. Sharon Wilmot

- [12] Ms. Wilmot began by indicating that this is a joint proposal between the Prosecution and Defence and highlighted that the law is clear that Hearing Officers need to consider relevant factors which may be either mitigating or aggravating, consistent with paragraph 69 in *Krug and Ottawa Police Service 2003 OCPC*. In particular, Ms. Wilmot pointed out that seriousness of the misconduct, public interest, damage to the reputation of the police service, need for deterrence, recognition of the misconduct, consistency of disposition were relevant in the Howard case. Ms. Wilmot asserted that there were no disability concerns and that Detective Howard was certainly provided procedural fairness.

- [13] **Seriousness of Misconduct:** Ms. Wilmot asserted that although the sexual activity was consensual, Detective Howard was a Supervisor, and the incident involved junior members of the Service. Ms. Wilmot referred to Tab 2 in her Brief of Authorities, the matter of Herridge and St. Thomas Police Service 2007 OCPC advising it is relevant to the Howard matter.
- [14] Ms. Wilmot advised that there was no question that Herridge's conduct was serious, but did not rise to the seriousness of sexual assault – the sexual activity in this case was consensual. The error by Herridge was in the timing and location of the sexual encounters – some occurred on duty and/or occurred on police property.
- [15] **Public Interest and Damage to the Reputation of the Service:** Ms. Wilmot advised that although Detective Howard's conduct did not involve a member of the public, had the public become aware of the conduct – that the reputation of the Service would have been damaged. Further, that there is an expectation by the public that the workplace would be free of sexual activity. Lastly, that sexual acts were recorded on cellular phones and distributed between employees. Had these recordings become public, the reputation of the Service would be damaged.
- [16] **Employment History:** Detective Howard began his career in 2003, and has a positive work history. He is a productive employee who is well appreciated for his work. Ms. Wilmot advises Detective Howard's conduct appears to be momentary lapse and that his employment history is a significant mitigating factor.
- [17] **Deterrence:** Ms. Wilmot advised that the penalty must be serious enough to ensure that this doesn't happen again. Further, that the penalty act as a reminder to all members that this conduct will not be tolerated. Ms. Wilmot reiterated that Herridge and St. Thomas Police Service 2007 OCPC is relevant on this point.
- [18] **Recognition of the Seriousness of the Misconduct:** Ms. Wilmot indicated that there is a lack of discipline in Detective Howard's employment history. She further advised that Detective Howard acknowledged his misconduct at an early stage and cooperated fully with the Professional Standards investigation and has entered a guilty plea. There is no reason to believe that this will never happen again with Detective Howard, and the incident has had an effect on him by causing embarrassment and financial hardship. Ms. Wilmot stressed that Detective Howard's actions were his own and pointed out the demotion is lessened by the fact that in demotion he will receive an investigative premium for the duration of his demotion.
- [19] **Consistency of Disposition:** Ms. Wilmot asserted that Herridge and St. Thomas Police Service 2007 OCPC is the most appropriate case to compare with Howard. This case also resulted in a demotion, and involved acknowledge behavior and no history of misconduct with the officer.
- [20] Ms. Wilmot also referred to the case of Crozier and Waterloo Regional Police Service 1993 CanLii at Tab 3 in her Brief of Authorities. The Crozier case involved fifteen counts of discreditable conduct with a not guilty plea. The misconduct involved having sex with a member of the public. The officer argued that he told the lady he was on duty but he actually wasn't. He used it as an excuse to get out early. Ms. Wilmot referred to Paragraph 17 advising that the complainant had the perception that the officer was on duty, which would bring discredit to the Service.

- [21] Ms. Wilmot also referred to *Ottley and Peel Regional Police 2005* in Tab 4 of her Brief of Authorities, indicating that this officer's conduct was less serious, involving inappropriate gifts and comments to a subordinate. Page 3 of this case speaks to the accountability of supervisors who are the first face of management and role models with a duty and obligation for fostering an environment of work enjoyment.
- [22] Ms. Wilmot also referred to *Brooks and Peel Regional Police 2013* which involved accessing website while on duty, indicating that the relevant issue in this case as it relates to Howard is the on-duty aspect of both cases.
- [23] In closing, Ms. Wilmot put forward to the Tribunal that the penalty range being proposed in the Joint Submission is reasonable.

Defence Submissions – Mr. Michael Ardito

- [24] Mr. Ardito provided oral submissions as well as a covering memo and Book of Materials in support of his position on penalty.
- [25] Mr. Ardito advised Detective James Howard has accepted responsibility for the charge of Discreditable Conduct by entering a guilty plea and he has acknowledged that the Agreed Statement of Facts accurately reflects the nature of his misconduct. He is also in agreement with the penalty proposed by the prosecution which is supported by the Association by way of a joint submission.
- [26] Mr. Ardito referred to *Krug and the Ottawa Police Service – OCCPS 2003* in his Book of Materials, Tab 1, p. 21, indicating that the then Ontario Civilian Commission on Police Services highlighted key elements or factors that may be mitigating or aggravating, that a Hearing Officer should consider when determining penalty. Mr. Ardito highlighted several factors that he felt were relevant to the matter at hand and supported the joint submission for the proposed penalty.
- [27] **Seriousness of the Misconduct:** Mr. Ardito advised that Detective Howard's misconduct is serious and is recognized as being egregious in nature, having placed himself and others in the situation. Mr. Ardito indicated that Detective Howard's conduct was in contravention of internal directive I-A-204 (F) – *Code of Ethics, Conduct and Discipline*, which was included in Tab 2 of his Book of Materials. Mr. Ardito asserted that the jointly proposed penalty adequately addresses the misconduct in this case.
- [28] **Recognition of the Seriousness of the Misconduct:** Mr. Ardito advised that Detective Howard upon being served by Internal Affairs, attended Professional Standards that same day to be interviewed. During the interview, Detective Howard was co-operative and respectful of the Detectives and took full ownership of his actions. Detective Howard was

not evasive in his explanation of the incident, he was upfront and honest in recounting events leading up to the day of the incident and the incident itself.

- [29] Detective Howard acknowledges that he did not handle the situation in a way that would be expected of a member of the Peel Regional Police and was further aggravated as he was an acting supervisor at the time of the incident. He is remorseful and is embarrassed by his actions. Mr. Ardito further advised that a guilty plea at this stage and Detective Howard's agreement with all of the facts supporting the Discreditable Conduct charge, demonstrates both a clear acceptance of responsibility and recognition of his misconduct.
- [30] **Employment History:** Mr. Ardito advised that Detective Howard is currently assigned to Forensic Identification and has been so for the past five (5) years. He has provided over seventeen (17) years of professional and dedicated service to Peel Regional Police and has no prior discipline on his file. His file contains thirty-three (33) honours, awards and commendations that consist of both internal and external recognitions. Mr. Ardito asserted that most notable is Detective Howard being the recipient of a Police Services Board award in 2010. Copies of the awards and accolades were attached in the Book of Materials, Tab 3.
- [31] **Potential to Reform or Rehabilitate:** Mr. Ardito advised that Detective Howard has had an exemplary record of employment up to this point which is supported by current and past Supervisors. Mr. Ardito believes Detective Howard deserves to be given the chance to demonstrate that he has the potential to reform and rehabilitate his career and that the penalty proposed provides Detective Howard with an opportunity to reflect on his actions and an opportunity to atone his misconduct.
- [32] Mr. Ardito further advised that in many cases when officers find themselves facing discipline, they completely shut down both during and after the process and in some cases become detrimental to the workplace. This has not been the case with Detective Howard who has continued to work effectively and positively during this process.
- [33] Mr. Ardito referred to Detective Howard's evaluations contained in Tabs 4-6 of the Book of Materials which cover the evaluation periods from 2016 to 2019. In these evaluations, Detective Howard is consistently rated as exceeding standards in many of the performance dimensions. Based on these positive evaluations and the numerous letters and accolades, Mr. Ardito asserted that although the matter before the Tribunal is serious, this conduct is totally out of character for Detective Howard. Mr. Ardito further advised that given Detective Howard's work ethic and dedication to the Peel Regional Police Service that he will continue to work in a positive manner once he has put this matter behind him.
- [34] **Damage to Reputation of Service:** Mr. Ardito indicated that fortunately, there was no publicity in this matter so Damage to the Reputation of the Service is limited. However, it is understood there is no doubt that the reputation of the Service would have been affected in a negative manner if the actions of Detective Howard had become public knowledge.

- [35] **Consistency of Disposition:** Mr. Ardito provided four (4) cases for consideration by the Tribunal, dated between 2007 and 2021 indicating that although the facts of these cases do differ, and the penalty imposed for each varied in duration however all consisted of demotion in rank. At Tab 7 in the Book of Materials is Herridge and St. Thomas Police Service 2007 OCPC. Tab 8 contains Bond and Ottawa Police Service 2010. Tab 9 contains Dhillon and Peel Regional Police 2014. Tab 10 contains Bowles and Peel Regional Police 2021.
- Mr. Ardito highlighted that the penalty proposed has been jointly agreed to giving due consideration to all the facts in issue and the particular details of this case.
- [36] **Specific and General Deterrence:** Mr. Ardito stressed that this type of behavior and circumstances have absolutely no place within the workplace nor while on duty. There is zero tolerance for this behaviour, and it is understood this matter requires a deterrence. In Mr. Ardito's view, the penalty being proposed does address deterrence, and it will have a tremendous impact on the career of Detective Howard.
- [37] In terms of specific deterrence, Mr. Ardito advised that a summary of Detective Howard's Discipline Record will have to be disclosed to the Crown as he will be subject to the *R. v. McNeil 2009 Supreme Court Decision*. The proposed penalty will also impact Detective Howard financially, recognizing a loss in salary and having this discipline on his file for a period of five (5) years. His demotion penalty along with a reduction in pay, will have a severe financial impact on Detective Howard and his family. In terms of general deterrence, the penalty will reaffirm the message to other officers that this type of misconduct is unacceptable, has no place within the workplace and will not be tolerated by the Service.
- [38] Mr. Ardito concluded that the employment history of Detective Howard is reflective of a productive officer with excellent potential whose career has now taken a downturn due to a serious lapse in judgement. There have been no facts provided that have questioned his honesty.
- [39] Further that Detective Howard is a valuable and respected member of the Peel Regional Police Service – FIS, as well as the community. Detective Howard has been very appreciative with how the Service has handled his matter. He is very appreciative of the support that he has received throughout the process which has allowed him to continue to work effectively and provide the excellent service to the Organization as he has done for the past seventeen (17) years.
- [40] Mr. Ardito stressed that Detective Howard understands the situation was totally avoidable and he accepts full responsibility for his actions as been entirely his fault. He is accepting of the joint submission on penalty as the consequences for his actions. He is both remorseful, embarrassed and expresses his regret through acts of contrition.
- [41] Lastly, that the Association is confident that that a penalty of demotion to 1st Class Constable for a period of sixteen (16) months is appropriate in this case given the totality of the circumstances while considering Detective Howard's remorse, his dedication to the Service and his potential to rehabilitate.

[42] **Apology:** Detective Howard was given an opportunity to address the Tribunal. He was sincere and genuine, indicating that he apologized for his actions, which were wrong and inappropriate. He stated that this is not something that will happen again and he is looking forward to building back trust. Detective Howard advised that his actions were not intended to bring harm the reputation of the service or FIS (Forensic Identification Service). Detective Howard reiterated his apology.

Analysis and Findings

[43] As the adjudicator for this matter, I must make an objective, dispassionate assessment of the evidence presented during this Tribunal with respect to the appropriate penalty. I have reviewed the information provided during this hearing, including the Agreed Statement of Facts, Joint Submission as to Penalty, submissions made by the Prosecution and Defence, as well as the accompanying supportive documents.

[44] The factors that should be considered, with varying degrees of weight, are as follows:

- Public Interest
- Seriousness of the Misconduct
- Employment History
- Recognition of the Seriousness of the Misconduct
- Procedural Fairness Considerations
- Potential to Reform or Rehabilitate the Police Officer
- Effect on Police Officer and Police Officer's Family
- Consistency of Disposition
- Specific and General Deterrence
- Systemic Failure and Organizational Context
- Damage to the reputation of the Peel Regional Police Service

[45] **Public Interest:** Public interest is an important consideration when assessing the appropriateness of dispositions regarding police misconduct. Ms. Wilmot and Mr. Ardito both agree that had this situation involved a member of the public, or had the recordings of the sexual acts become public, then there would have been a greater impact on public interest. I consider public interest to have a limited impact on my assessment under the circumstances.

[46] **Seriousness of the Misconduct:** Mr. Ardito described Detective Howard's conduct as egregious in nature, and asserted that the jointly proposed penalty adequately addresses the misconduct in this case. Ms. Wilmot posited that although the sexual activity was consensual, Detective Howard was a Supervisor, and the incident involved junior members of the Service. Both the Prosecution and Defence brought forward the matter of Herridge and St. Thomas Police Service 2007 OCPC as relevant to the Howard matter.

- [47] There are several parallels between Herridge and Howard, so it is certainly a relevant case to draw insights from. This passage from Page 11 of Herridge is particularly meaningful: “There is no question that Staff Sergeant Herridge’s actions represented serious misconduct that was unacceptable. However, his actions do not rise to the level of seriousness apparent in cases of sexual assault, sexual harassment, stalking or sexual coercion directed at citizens. Rather, it was as the Hearing Officer noted, “consensual sex with a willing civilian employee. The error...[was] the location and timing of these sexual encounters. This speaks to the heart of the matter. While the relationship with Ms. Kopic was consensual, some of their sexual interactions did occur while the officer was on duty and/or on police property. This is inexcusable, particularly for a supervisor.”
- [48] The above passage is befitting in the Howard context. Detective Howard was a Supervisor, involved in consensual sexual activities with an employee in the presence of another employee, and the incident occurred in the work place and on duty. Although the Agreed Statement of Facts indicates that Detective Howard was not Cadet A or B’s direct Supervisor, the fact is that he was a Supervisor, and Cadets are junior employees. A power imbalance certainly exists between the ranks of Detective and Cadet which is, in my view, an aggravating factor added to nuances drawn from Herridge. Overall, I consider seriousness of the misconduct to be aggravating.
- [49] **Employment History:** Both the Prosecution and Defence agree on Detective Howard’s positive employment history and that his conduct appears to be momentary lapse. Ms. Wilmot describes Detective Howard as a productive employee who is well appreciated for his work and that his employment history is a significant mitigating factor. Mr. Ardito highlighted that the officer has had over seventeen (17) years of professional and dedicated service to Peel Regional Police and has no prior discipline on his file. His file contains thirty-three (33) honours, awards and commendations that consist of both internal and external recognitions, including a Police Services Board award in 2010.
- [50] I again draw wisdom from *Herridge and St. Thomas Police Service 2007 OCPC* regarding this area of the assessment. On Herridge, Page 11, the Commission wrote: “According to the evidence presented during the hearing, Staff Sergeant Herridge has performed at a very high level for sixteen year. His Performance Evaluations show that he met or exceeded standards. He has many positive letters of appreciation and recognition for his professional expertise, loyalty and work ethic. There are no prior disciplinary infractions on his record. The Hearing Officer described the conduct as ‘out of character’”. Such is the case with Howard. Detective Howard’s employment history is descriptive of an officer senior police managers would want on their work team. The 17 year career leading up to this misconduct was impeccable. As reflected in his performance evaluations and numerous accolades, Detective Howard has a solid track record and a strong professional foundation. I consider his employment history to be highly mitigating.
- [51] **Recognition of the Seriousness of the Misconduct:** Ms. Wilmot indicated a lack of discipline in Detective Howard’s employment history. Further, that he acknowledged his misconduct at an early stage; cooperated fully with the investigation; and has entered a guilty plea. Mr. Ardito advised that Detective Howard upon being served by Internal Affairs, attended Professional Standards that same day to be interviewed and was co-operative, respectful and took full ownership of his actions. Detective Howard was not evasive in his explanation

of the incident, he was upfront and honest in recounting events leading up to the day of the incident and the incident itself.

- [52] I agree with the submissions of the Prosecution and Defence. Throughout the discipline process and ensuing Tribunal, Detective Howard has shown that he clearly recognizes the seriousness of his misconduct. His actions are the best indication of this, up to and including his sincere apology to the Tribunal. There is nothing that I can think of that Detective Howard could have done to further illustrate how he recognizes that his conduct was unacceptable and the impact it has had. I consider this to be significantly mitigating.
- [53] **Procedural Fairness Considerations:** Detective Howard received fair treatment and provided proper disclosure. Therefore, this is a neutral factor.
- [54] **Potential to Reform or Rehabilitate the Police Officer:** Mr. Ardito believes Detective Howard deserves to be given the chance to demonstrate that he has the potential to reform and rehabilitate his career and that the penalty proposed provides Detective Howard with an opportunity to reflect on his actions and an opportunity to atone his misconduct. Ms. Wilmot advised that there is no reason to believe that this will never happen again with Detective Howard, and the incident has had an effect on him by causing embarrassment and financial hardship.
- [55] Again, I agree with the above submissions on this point. I am confident that this is a “blip on the radar” in what has been an otherwise tremendous career. I consider this mitigating.
- [56] **Effect on Police Officer and Police Officer’s Family:** There will certainly be an effect on Detective Howard and his family, both financial and reputational. Detective Howard will have to deal with the negative impression those in his personal and professional lives will have towards his conduct. He will need to face this for some time to come. There are also MacNeil implications which will serve as an ongoing reminder of his misconduct every time he is called as a witness. I consider this to be a mitigating factor.
- [57] **Consistency of Disposition:** The 2017 edition of *Ceyssens & Childs Police Services Act* speaks to Consistency of Penalty and cites the case of Schofield and Metropolitan Police Force:
Consistency in the discipline process is often the earmark of fairness. The penalty must be consistent with the facts, and consistent with similar cases that have been dealt with on earlier occasions.

To achieve consistency of disposition, it is necessary to consider the cases presented by Defence and Prosecution and come to an assessment within the range of reasonableness and consistent with applicable penalty principles.

- [58] **Specific and General Deterrence:** Mr. Ardito stressed that this type of behavior and circumstances have absolutely no place within the workplace nor while on duty. There is zero tolerance for this behaviour, and it is understood this matter requires a deterrence. In Mr. Ardito’s view, the penalty being proposed does address deterrence, and it will have a tremendous impact on the career of Detective Howard. Ms. Wilmot advised that the penalty must be serious enough to ensure that this doesn’t happen again. Further, that the penalty

act as a reminder to all members that this conduct will not be tolerated. Ms. Wilmot reiterated that Herridge and St. Thomas Police Service 2007 OCPC is relevant on this point.

- [59] It goes without saying that there is an expectation that police officers will conduct themselves appropriately in the work place. Detective Howard did not demonstrate this expectation through his actions. Specific deterrence should be designed in such a way that sends a message to the officer regarding his conduct and judgement, but also gives him an opportunity to regain the trust of the public, the Service and his fellow officers. The penalty must strike the balance of specific and general deterrence and support the core values of policing.
- [60] **Systemic Failure and Organizational Context:** There is no evidence to support that there was any systemic failure in this case. Detective Howard made poor choices on his own and is solely responsible for his lack of good judgement.
- [61] **Damage to the reputation of the Peel Regional Police Service:** Both Ms. Wilmot and Mr. Ardito agree that had the public become aware of Detective Howard's conduct – that the reputation of the Service would have been damaged. Further, that there is an expectation by the public that the workplace should be free of sexual activity. I agree with these submissions. It is fortunate that the recordings taken of the sexual activities of Detective Howard and Cadet A were not widely distributed and were ultimately destroyed. Had they been distributed, this situation would have taken on a much more ignominious tone, both for the parties involved, as well as for the reputation of the Service. I feel that this component of the assessment, while serious, does not warrant consideration for an increase in penalty.

PART IV: DISPOSITION

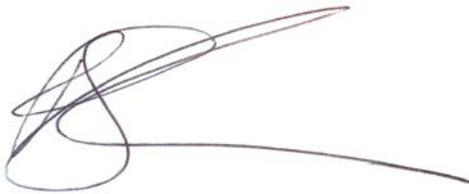
- [62] Detective Howard's guilty plea is a strong illustration that he understands the significance of his actions and has taken responsibility. I have had the opportunity to review all of the information presented at this Tribunal and have weighed and balanced all aggravating and mitigating factors. The penalty assessed takes all of the pertinent factors into consideration with the goal of providing a measured and appropriate disposition.

Penalty -

For the reasons outlined in my assessment, on the one (1) count of Discreditable Conduct, as the Hearing Officer, I impose on Detective James Howard #2748 of the Peel Regional Police Service:

A reduction in rank from Detective to 1st Class Constable for a period of sixteen (16) months following which the officer will be returned to the rank of Detective on the basis of satisfactory work performance to be determined by the officer's Divisional Commander.

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

A handwritten signature in black ink, appearing to read 'Rob Shearer', with a long horizontal stroke extending to the right.

Superintendent Rob Shearer
Peel Regional Police – Hearing Officer
April 12, 2021