

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 Constable D'Arcy O'Shea #2807 of the Peel Regional Police.

Charge: Discreditable Conduct

Disposition

Hearing Officer: A/Superintendent Lisa Hewison
Peel Regional Police

Prosecutor: Ms. Jovana Orabovic
Peel Regional Police

Member Representative: Mr. Jeff Banton
Peel Regional Police Association

PART I:OVERVIEW

Allegations of Misconduct

- [1] It is alleged that Constable D'Arcy O'Shea #2807 ("Constable O'Shea"), 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 Constable O'Shea committed Discreditable Conduct in that on March 27, 2019, he was found guilty of criminal offences that are indictable offences or offences punishable upon summary conviction, namely Impaired Care and Control of a Motor vehicle and Refuse to Comply with Breath Demand of the *Criminal Code of Canada* in relation to an incident which occurred on or about January 19, 2019 constituting an offence against discipline as prescribed in section 2(1)(a)(ix) of the *Code of Conduct, Ontario Regulation 268/10*, as amended.

Background

- [2] Constable O'Shea of the Peel Regional Police Service appeared before me on June 11, 2019, in answer to a Notice of Hearing that was issued on May 13, 2019, 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) (ix) of the *Code of Conduct, Regulation 268/10*, as amended.

Plea

- [3] On September 5, 2019, Constable O'Shea appeared before me once again and entered a plea of guilty to one count of Discreditable Conduct. An Agreed Statement of Facts was tendered as **Exhibit #4** and read into the record. Based on those facts and the confirmation by Constable O'Shea that they were substantially correct, a finding of misconduct was registered.

Decision

- [4] After examining and weighing all of the evidence presented, as the Hearing Officer, I impose on Constable D'Arcy O'Shea #2807 of the Peel Regional Police Service for one count of Discreditable Conduct:

A reduction in rank from First Class Constable to Second Class Constable for a period of nine (9) months, following which the officer will be returned to the rank of First Class Constable on the basis of satisfactory work performance to be determined by the officer's Divisional Commander.

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

PART II:THE HEARING

Exhibits

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

Exhibit #1	Delegation of Powers and Duties to the Hearing Officer
Exhibit #2	Prosecutor’s Designation (Ms. Jovana Orabovic)
Exhibit #3	Co-Prosecutor’s Designation (Ms. Sharon Wilmot)
Exhibit #4	Agreed Statement of Facts
Exhibit #5	Joint Submission as to Penalty
Exhibit #6	Prosecution Brief of Authorities
Exhibit #7	Defence Book of Relative Disposition
Exhibit #8	Defence Book of Employment History

Representation

- [7] In this matter, Mr. Jeff Banton represented Constable O’Shea, and Ms. Jovana Orabovic represented the Peel Regional Police Service.

Agreed Statement of Facts

- [8] The facts of this matter are substantially agreed upon by the parties to this Tribunal. The Agreed Statement of Facts, filed as **Exhibit #4**, states;

Background

Constable D’Arcy O’Shea began his career in December 2003 with Peel Regional Police (“PRP”). At the time of this incident, Constable O’Shea was assigned to 12 Division, “B” Platoon.

Count One – Discreditable Conduct

Constable D’Arcy O’Shea was found guilty of Operating a Conveyance While his Ability to do so was Impaired by Alcohol contrary to paragraph 320.14(1) (a) of the *Criminal Code*, RSC 1985, c C-46 (“*Criminal Code*”); and for Refusing or Failing to Provide a Breath Sample contrary to subsection 320.15(1), before Justice D. Harris on March 27, 2019 in Milton, Ontario.

The following facts were agreed to as being substantially correct and read into the record by the Crown:

- (a) At approximately 12:45 a.m. on January 19, 2019, a citizen made a complaint to the Halton Regional Police Service (“HRPS”) about a 2013 GMC Sierra black pick-

up style truck driving erratically on the road. It appeared as if the driver of the truck was impaired.

- (b) Constable O'Shea was the registered owner of the 2013 GMC Sierra observed by the citizen to be driving erratically.
- (c) At approximately 1:07 a.m., an HRPS officer attended the home of Constable O'Shea and found him sleeping in the driver's seat of the vehicle. The ignition was running and the vehicle was parked in the driveway. Constable O'Shea was still seated in the driver's seat.
- (d) After several attempts, the HRPS officer woke Constable O'Shea up. Upon waking up, Constable O'Shea was startled and attempted to put his vehicle in gear. The HRPS officer detected an odour of alcohol emanating from Constable O'Shea's breath.
- (e) The HRPS officer placed Constable O'Shea under arrest for Operating a Conveyance While his Ability to do so was Impaired by Alcohol, pursuant to the *Criminal Code*. He was read his Rights to Counsel, Caution and Breath Demand.
- (f) Constable O'Shea was then transported to HRPS in order to be processed and lodged.
- (g) After being put in a cell, Constable O'Shea was given a Breath Demand at two different occasions to provide a breath sample. He refused to provide a breath sample on both occasions.
- (h) Constable O'Shea was then laid with a second charge, Refusing or Failing to Provide a Breath Sample, pursuant to the *Criminal Code*.

On March 27, 2019, Constable O'Shea attended the Milton Ontario Court of Justice and appeared before Justice D. Harris. He pled guilty to both offences and received the following penalties:

- (a) \$1000 fine on the Operating a Conveyance While his Ability to do so was Impaired by Alcohol charge.
- (b) \$2000 fine for the Refusing or Failing to Provide a Breath Sample charge.
- (c) A 12 month Criminal Code Driving Prohibition.

The actions of Constable O'Shea constitute Discreditable Conduct as prescribed within section 2(1) (a) (ix) of the prescribed *Code of Conduct*.

- [9] Based on the clear and convincing evidence that was contained within the Agreed Statement of Facts, in conjunction with an acknowledgment from the Defence that the facts were correct, I made a finding of misconduct.

Positions on Penalty

- [10] The parties representing the Prosecution and Defence provided a joint submission with respect to penalty, tendered as **Exhibit #5**, dated September 5, 2019. They propose that the appropriate disposition for the finding of one count of Discreditable Conduct is as follows:

A reduction in rank from First Class Constable to Second Class Constable for a period of nine (9) months, following which the officer will be returned to the rank of First Class Constable on the basis of satisfactory work performance to be determined by the officer's Divisional Commander.

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

Submissions of the Prosecution – Ms. Orabovic

- [11] Ms. Orabovic commenced her submissions that the Joint Submissions as to Penalty is reflective of the applicable mitigating and aggravating factors and is consistent with the penalties in similar cases.
- [12] Ms. Orabovic addressed the dispositional factors within the Ontario Civilian Police Commission (the "Commission") case law to be considered when determining the appropriate penalty in police discipline matters. The case of *Krug and the Ottawa Police Service (OCCPS, January 21, 2003)* was discussed to address the aggravating and mitigating factors to consider. In the present case, the Prosecution submits that the relevant factors of consideration include: Nature of the Misconduct, Public Interest, Damage to the Reputation of the Service, Disciplinary and Employment History, Recognition of the Seriousness of the Offence, General and Specific Deterrence and Consistency of the Disposition.
- [13] Ms. Orabovic addressed the first category of the Nature of the Misconduct and specifically discussed that the tribunal have repeatedly recognized that impaired driving offences be treated seriously. Ms. Orabovic highlighted the case of *Devine and the Ontario Provincial Police (OCCPS, November 26, 2008)* (Exhibit #6, Tab 2), in which the Commission stated "*It is clear that drinking and driving is a conduct which cannot be tolerated and for which a substantial penalty must be assessed. Both the community and Police Services across Ontario have become increasingly less tolerant of drinking and driving. Police Services have expended considerable resources to combat drinking and driving, and clearly the perception of the seriousness of this misconduct has increased with the passage of time*" (p. 8).
- [14] Ms. Orabovic suggested that impaired driving is a very topical issue in policing and community safety. In this case, Constable O'Shea's conduct was dangerous, it was illegal and it was offensive to his role as a police officer. She further submits that Constable O'Shea's conduct was made more serious by a number of elements including the following: Constable O'Shea engaged in a very public display of

illegal and impaired conduct. His impairment by alcohol caused him to drive in a very unsafe, erratic manner on a highly trafficked road which could have easily led to a grave accident. His driving was so erratic that it caused a concerned member of the public to call Halton Regional Police. The attending officers noted that Constable O'Shea had fallen asleep in his vehicle while the ignition was still running. Upon being woken up, Constable O'Shea attempted to put his vehicle into gear before being stopped by the officers. This behaviour placed both himself and the officers at risk. Constable O'Shea's conduct was further aggravated by the fact that he refused on two separate occasions to provide a breath sample, resulting in the second *Criminal Code* charge being laid against him. Constable O'Shea's misconduct resulted in a criminal conviction that will impact his credibility going forward as a police officer and has also resulted in a Criminal Code driving prohibition that Peel Regional Police is required to accommodate. Ms. Orabovic submits that these factors involved in Constable O'Shea's misconduct are aggravating.

- [15] The factors of Public Interest and Damage to the Reputation of the Police Service were addressed by Ms. Orabovic. She began by highlighting the case of *Bryl and Toronto Police Service (OCCPS, May 27th, 2009)* (Exhibit #6, Tab #3), in which the Commission stated, "*The public must be assured that serving police officers will protect, not threaten, their safety. All officers have been and are placed on notice that convictions for impaired driving or similar conduct will have significant consequence to an officer's professional status.*" (p.26).
- [16] Ms. Orabovic submits that members of the public that are convicted of impaired driving face significant consequences. Additionally the members of the public certainly would be interested in ensuring that police officers tasked with enforcing the laws related to impaired driving would face similar significant consequences. Ms. Orabovic submits that this is an aggravating factor as Constable O'Shea's criminal convictions were ultimately made part of a public record, and as a result members of the judicial system and the public were made aware of his conduct, which brings the reputation of the Service into disrepute.
- [17] The next factor addressed by Ms. Orabovic was the employment and disciplinary history of Constable O'Shea. Constable O'Shea has been a member of the Peel Regional Police Service for approximately fifteen (15) years with a previous neglect charge which does not appear to be a history of similar misconduct. She submits that it should be noted that given the seriousness of his actions and length of service that Constable O'Shea should have known better. It is the prosecutions positions that this would be a neutral factor.
- [18] Ms. Orabovic then discussed the seriousness of the misconduct and Constable O'Shea's rehabilitative potential. It is recognized that factors relevant to the officer's rehabilitative potential include acceptance of responsibility, expressions of remorse and employment history. She submits that there is evidence suggesting that Constable O'Shea recognizes the seriousness of his misconduct. He pled guilty to all criminal offences and to the allegations before the Tribunal. He fully

admitted in open court to all his actions and immediately signed up for the MTO Back on Track program. He has accepted responsibility for his actions and has expressed sincere remorse. He was forthright in his compelled interview and has expressed an overall desire to positively move forward from this incident. This is demonstrative of a likelihood of rehabilitation. Ms. Orabovic reiterated that it is expected and hoped from Peel Regional Police that his type of misconduct is an isolated occurrence.

- [19] With regards to deterrence, Ms. Orabovic submitted that matters involving impaired operation is a very serious concern and as such this conduct cannot be tolerated, especially where the involved party is a police officer. The penalty needs to sufficiently address the seriousness and serves to remind Constable O'Shea and other members of the Service that this kind of behaviour is not acceptable and will be penalized accordingly.
- [20] Consistency of disposition was addressed by Ms. Orabovic with reference made to eleven (11) cases within the Book of Authorities (Exhibit #6). The cases contain some similar aspects with range of penalties for a first finding of guilt for impaired range from a six (6) to twelve (12) month demotion, depending on the circumstances of the case. The Commission cases included (Exhibit #6, Tab 1-3) had a range of penalties from a nine (9) month demotion to dismissal for impaired matters. Ms. Orabovic submitted that the penalty of a nine (9) month demotion for Constable O'Shea is supported by the case law and is reflective of the factual circumstances of this misconduct.
- [21] Ms. Orabovic concluded that the misconduct of Constable O'Shea was very serious and that he has quickly taken responsibility for his actions. He has demonstrated a willingness and an ability to be rehabilitated and shown an interest in moving forward in a positive manner. It is the Service's position that the proposed penalty is reflective of the factual circumstances of the misconduct. The penalty addresses the various aggravating and mitigating factors applicable in the case.

Submissions of the Defence – Mr. Jeff Banton

- [22] Mr. Jeff Banton, Member Representative for the Peel Regional Police Association, spoke on behalf of the officer and submitted that Constable O'Shea was before the Tribunal and accepted responsibility for one count of Discreditable Conduct. Constable O'Shea accepted the Agreed Statement of Facts and the Joint Submission as to Penalty.
- [23] Mr. Banton provided some background in relation to Constable O'Shea's actions leading up to and following his arrest. He stated that on January 18, 2019, Constable O'Shea spent the day working on a major renovation at his home residence. In January 1999 and 2010, Constable O'Shea lost both his father and uncle respectively. The night of his arrest was intended as a celebratory remembrance for his grief and a distraction from his home project. He made a very

poor decision and drove home. He submits that Constable O'Shea fully accepts the consequences and understands nine-month period of demotion. Constable O'Shea plead guilty on March 27, 2019, demonstrating his recognition of the seriousness of the misconduct and acceptance of responsibility.

- [24] Mr. Banton spoke on Constable O'Shea's various athletic accomplishments through hockey prior to policing and while an officer. Constable O'Shea also coaches a high level midget hockey team in Mississauga and has demonstrated this commitment over the past ten years.
- [25] Mr. Banton referred to four impaired cases involving four Peel Regional Police members, in his Book of Relative Disposition (Exhibit #7) to demonstrate consistency in disposition in support of the joint penalty. The decisions (Exhibit #7, Tab 1-4) reveal the Members share similar employment tenure with limited to no discipline. The cases occurred between 2013 and 2018 with penalties ranging between six and twelve month demotion, with the latter being subject to a six-month review on the basis of satisfactory work performance as assessed by the Divisional Commander. Mr. Banton submits that on the foundation of these cases that the penalty tendered is appropriate.
- [26] In relation to Damage to the Reputation of the Police Service, Mr. Banton submits that Halton Regional Police Service provided a media release with information regarding the arrest of Constable O'Shea on January 21, 2019, which consisted of his indiscretion in two sentences.
- [27] In relation to general and specific deterrence, Constable O'Shea accepts the financial impact the demotion will have and impact it will have on his career as he will be ineligible for promotion for five years.
- [28] Mr. Banton submitted that Constable O'Shea has been employed with Peel Regional Police for sixteen (16) years. He is currently assigned to 12 Division Uniform Patrol. He has worked at the Lakeshore Community Station, NPU and has accumulated over two thousand (2000) hours as an Acting Sergeant while in Uniform Patrol.
- [29] Mr. Banton reviewed Constable O'Shea's employment history and performance evaluations contained within the Defence Book of Employment History (Exhibit #8). The material contains notations of three (3) commendations and thirteen (13) letters of recognition. Mr. Banton added that the commendations received (Exhibit #8, Tab2), recognize Constable O'Shea's communication strengths and engagement.
- [30] Constable O'Shea's previous Police Service's Act (PSA) is in Exhibit #8, Tab #5. Mr. Banton submits that Constable O'Shea was fully co-operative with the PSA investigations during the previous matter and with this current matter.

- [31] Mr. Banton reviewed Constable O'Shea's performance evaluations contained within the Defence Book of Employment History (Exhibit #8). In the most recent evaluation from 2017-2018 (Exhibit #8, Tab #1), it was noted by his Supervisor that Constable O'Shea exceeded expectations in some competencies as an overall rating. Constable O'Shea's Supervisor comments highlight his leadership, dedication and trustworthiness. The Supervisor also makes reference to Constable O'Shea being utilized as an Acting Sergeant on a regular basis and makes comment to his demeanour to be a quiet and calm presence who cares about teaching and coaching his co-workers.
- [32] Mr. Banton concluded that Constable O'Shea driving impaired was a mistake that he will never forget. It has already resonated with him with mobility hardships, financial constraints and missed work opportunities. Mr. Banton submitted that the proposed penalty is appropriate when considering the seriousness of the misconduct and is mitigated by Constable O'Shea's recognition of the seriousness, the limited public interest, employment history, potential to rehabilitate and the consistency of other similar misconduct.

Submissions of the Officer - Constable O'Shea

- [33] Constable O'Shea addressed the Tribunal and apologized for his actions. He feels terrible for not only himself and his family, but also to Peel Regional Police, which has given him the opportunity to sustain a happy, healthy and proficient life. He indicated that this year has been extremely difficult both personally and professionally and that his decision to drive home can never be undone. He further states that he is a positive person in that knowledge is power, and despite this major setback, he has used this opportunity to learn, grow and inspire. He again apologized and was deeply remorseful for his actions and he looks forward to the next stage in his life and career.

PART III: ANALYSIS AND FINDINGS

- [34] The extent of informative detail before the Tribunal is limited to what is listed in the Agreed Statement of Facts, and submissions made by the Prosecution and Defence. I have reviewed all of the information and evidence that was submitted.
- [35] The Prosecution referred to Commission case law in her submissions, and specifically the number of factors to be considered when determining the appropriate penalty. The case of *Krug and the Ottawa Police Service (OCCPS, January 21, 2003)* addresses the aggravating and mitigating factors to consider when determining the penalty, and that there is no requirement that any one factor be given more weight than another. The factors that I find relevant to focus on in assessing the misconduct of Constable O'Shea are as follows:
- Seriousness of the Misconduct
 - Public Interest
 - Damage to the Reputation of the Police Service

- Employment History
- Recognition of the Seriousness of the Misconduct
- Potential to Reform or Rehabilitate the Police Officer
- Specific and General Deterrence
- Consistency of Disposition

[36] It has been clearly established that misconduct was committed by Constable O'Shea. On March 27, 2019, Constable O'Shea plead guilty of Operating a Conveyance While his Ability to do so was Impaired by Alcohol contrary to section 320.14(1)(a) of the *Criminal Code* and for Refusing or Failing to Provide a Breath Sample contrary to section 320.15(1) of the *Criminal Code* in relation to an incident on January 19, 2019. Constable O'Shea received a \$1000 fine on Operating a Conveyance While his Ability to do so was Impaired by Alcohol; \$2000 fine for Refusing or Failing to Provide a Breath sample and a 12 month *Criminal Code* Driving Prohibition.

Seriousness of the Misconduct

[37] Police officers are held to a higher standard of ethical conduct and moral character. Good moral character is a standard before a candidate becomes a member of a Police Service which remains a necessary trait throughout a police officer's career. It is expected that police officers will conduct themselves at all times in accordance with the *Code of Conduct*.

[38] Constable O'Shea's misconduct involves a serious incident that resulted in two *Criminal Code* convictions. Constable O'Shea holds a position of trust to the public as a police officer which is in effect at all times whether on or off duty. Constable O'Shea abused that trust that comes as a result of the powers that he is entrusted with.

[39] The actions of Constable O'Shea operating a vehicle while impaired by alcohol are very concerning. There is no doubt that engaging in such an illegal and dangerous act is very serious misconduct. Constable O'Shea's conduct was not only unlawful but exhibited extremely poor judgment and a blatant disregard for public safety, the law, and his duties as an officer. He then, on two occasions, refused to provide a breath sample and was subsequently charged and convicted for this *Criminal Code* offence. These two Criminal convictions resulted in a \$1000 fine on the Operating a Conveyance While his Ability to do so was Impaired by Alcohol charge; \$2000 fine for Refusing or Failing to Provide a Breath Sample charge and a twelve (12) month *Criminal Code* Driving Prohibition. I concur with Ms. Orabovic that Constable O'Shea's actions were dangerous, illegal and jeopardized the safety of himself, the involved Halton Regional Police Service officers and members of the community. Whether on or off duty, Constable O'Shea, like all officers, is expected to obey the laws when operating a vehicle. When it is a police officer who commits such offences, it brings the profession of policing into disrepute. This is an aggravating consideration for the disposition.

Public Interest

- [40] Police officers are expected to obey the laws, regardless of circumstances or context. Impaired Driving and Refuse/Fail to Provide a Breath Sample are crimes that police deal with frequently and are relied upon to investigate and charge offenders. A considerable amount of resources are spent by police services to address and prevent impaired driving from occurring. It is therefore a serious matter when a police officer is involved in such an offence as it erodes the public's confidence in the Service.
- [41] The crux of all police disciplinary matters is the consideration for public interest. The public are entitled to expect a high ethical standard of conduct from police officers and for officers to act responsibly and professionally at all times whether in their personal or professional lives. When those chosen to protect and serve the public fall short of the public's expectations, the officer must be held accountable. After an officer engages in serious misconduct, the disposition assessed must be applicable and transparent and serve to denounce the behaviour to ensure public confidence and maintain trust. The disposition in this matter must meet the public's expectations and it must serve to prevent recurrence by Constable O'Shea. It must also provide a strong message to other officers that considerable sanctions will result for those who may contemplate similar misconduct. As a result, of the above reasoning, I find this to be an aggravating factor.

Damage to Reputation of the Police Service

- [42] The damage to the reputation of the Peel Regional Police Service is a consideration in the determination of a disposition. Mr. Banton advised that Halton Regional Police Service had issued a media release on January 21st 2019, consisting of a two line sentence relating to the arrest of Constable O'Shea. Additionally, Constable O'Shea was investigated and charged by another Police Service in another jurisdiction. Anytime an officer is charged criminally and convicted of a criminal offence or a provincial offence, the officer's name becomes part of the public record and therefore the Police Service's reputation is undermined. The fact that a police officer drove under such conditions jeopardizing public safety along with the other involved factors would no doubt bring discredit to the Police Service through the lens of the general public. This is an aggravating consideration for the disposition.

Employment History

- [43] It has been submitted that Constable O'Shea has been a police officer with the Peel Regional Police Service for fifteen (15) years. Constable O'Shea does have a previous Neglect of Duty charge from 2015 but the circumstances are not related. Mr. Banton submitted the Defence Book of Employment History (Exhibit #8). The Book contains a performance appraisal ranging from June 2017- June 2018 for Constable O'Shea's work performance, three commendations, twelve letters of recognition and his education/training. I have noted that Constable O'Shea has

had a positive employment history which has been reflected by his Supervisors in his evaluation. I have reviewed all of the documentation and conclude that these are mitigating considerations for the disposition.

Recognition of the Seriousness of the Misconduct

- [44] In regards to the recognition by the officer of the seriousness of the misconduct, Constable O'Shea pled guilty at the earliest opportunity to the *Police Services Act* charge of Discreditable Conduct. Through Mr. Banton's submission and his own submissions to the Tribunal, Constable O'Shea clearly demonstrated remorse and an understanding of the seriousness of his conduct. Constable O'Shea addressed the Tribunal and apologized to everyone affected by his misconduct, in particular he acknowledged the Peel Regional Police Service, and all the parties to the Tribunal. Constable O'Shea indicated he takes from this experience that knowledge is power and he has used this opportunity to learn, grow and inspire. He again apologized for his actions and looks forward to the next stage of his life and career. Constable O'Shea's recognition of the seriousness of his misconduct is a mitigating consideration.

Potential for Reform or Rehabilitation

- [45] Constable O'Shea's acceptance of responsibility indicates that he appreciates the impact of his actions. Constable O'Shea submitted to the Tribunal that he has learned from his actions and looks forward to moving on to the next stage of his life and career. I concur with Ms. Orabovic and Mr. Banton that Constable O'Shea has demonstrated his likelihood of rehabilitation through his acceptance of responsibility, expression of remorse and positive employment history. These factors combined demonstrate this is a mitigating consideration.

Specific and General Deterrence

- [46] In this case, specific deterrence is likely an objective which has already been met. Constable O'Shea has already indicated he fully appreciates and accepts responsibility for the seriousness of his actions and is willing to accept an appropriate penalty as a result. The penalty proposed in the joint submission would undoubtedly have a financial impact on Constable O'Shea. The demotion also represents a loss of status amongst his peers and the embarrassment and inconvenience of his driving prohibition. The balance to be reached in addressing specific and general deterrence is to ensure that any penalty imposed not be overly punitive while sending a clear message to Constable O'Shea, the public, and throughout the Peel Regional Police that such misconduct is viewed seriously and will not be tolerated. With regards to general deterrence, a formal Hearing process and a subsequent disposition will send a clear message throughout the Police Service, to our policing partners, and the general public that such misconduct is viewed seriously and officers will be held accountable.

Consistency of Disposition

- [47] Consistency of Disposition was addressed by Ms. Orabovic and Mr. Banton in their submissions. I have reviewed the eleven (11) cases provided by Ms. Orabovic in the Book of Authorities (Exhibit #6) and the four (4) cases provided by Mr. Banton in the Defence Book of Relative Disposition (Exhibit #7). The cases are comprised of both Commission and Peel Regional Police Service decisions. I concur with Ms. Orabovic and Mr. Banton that the case law establishes a range of reduction in rank for similar factual cases. The length of the reduction in rank is dependent on the unique factors relevant to each case, and whether there is previous discipline. With this in mind, the decisions were helpful in confirming that the proposed penalty is fair considering the specific circumstances. In my opinion, the cases reiterate the important point that misconduct of this nature must be taken seriously. It is critical for the Service to address the concept of deterrence through dispositions which foster the continuance of public confidence. In the present case there are a number of mitigating factors which support the proposed penalty which include Constable O'Shea's employment history, his acceptance of responsibility, recognition of the seriousness of the misconduct, and his ability to reform and rehabilitate.

PART IV:DISPOSITION

- [48] Constable O'Shea's acceptance of responsibility by pleading guilty indicates that he appreciates the impact of his actions. I have 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. In addition to those factors previously considered, this penalty addresses the need for specific and general deterrence. It provides assurance to the public and policing community that the Peel Regional Police Service is prepared to impose sanctions on officers when their behaviour falls short of the expectations of the Service. I concur with the joint submission being suggested in this case as it is entirely appropriate.

Penalty

- [49] For the noted reasons, on the one (1) count of Discreditable Conduct, as the Hearing Officer, I impose on Constable D'Arcy O'Shea #2807 of the Peel Regional Police Service:

A reduction in rank from First Class Constable to Second Class Constable for a period of nine (9) months, following which the officer will be returned to the rank of First Class Constable on the basis of satisfactory work performance to be determined by the officer's Divisional Commander.

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



September 10th, 2019

Lisa Hewison #1921, A/Superintendent
Peel Regional Police – Hearing Officer

Date