

Peel Regional Police Discipline Hearing
Police Services Act R.S.O. 1990, c. P. 15, as Amended

IN THE MATTER OF
THE PEEL REGIONAL POLICE SERVICE
CONSTABLE RYAN ANDREWS #3864

Charge: Discreditable Conduct

Disposition

Hearing Officer

Superintendent Colleen Fawcett
Peel Regional Police

Co-Prosecutor for the Chief of Police

Inspector Barry Leslie
Peel Regional Police

Member Representative

Mr. Pierre Bernard
Peel Regional Police Association

PART I: OVERVIEW

Allegations of Misconduct

It is alleged that Constable Ryan Andrews #3864 (“Constable Andrews”), 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 Andrews committed Discreditable Conduct in that on December 19th, 2017, he was found guilty of a criminal offence under Pennsylvania State Law namely Disorderly Conduct and Harassment, that is an offence punishable upon summary conviction, in relation to an incident which occurred on or about December 10th, 2017, 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.

Background

Constable Andrews, of the Peel Regional Police Service, appeared before me on March 29th, 2018 in answer to a Notice of Hearing that was issued on March 20th, 2018, 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

On August 21st, 2018, Constable Andrews 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 #5 and read into the record. Based on those facts and the confirmation by Constable Andrews that they were substantially correct, a finding of misconduct was registered.

Decision

After examining and weighing all of the evidence presented, as the Hearing Officer I impose on Constable Ryan Andrews #3864 of the Peel Regional Police Service for one count of Discreditable Conduct:

A forfeiture of five (5), eight (8) hour days (40 hours) to be served (worked) at the discretion of the Divisional Commander.

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

PART II: THE HEARING

Exhibits

The Exhibits for this matter are listed as follows;

Exhibit #1	Delegation of Powers and Duties to the Hearing Officer
Exhibit #2	Co-Prosecutor's Designation (Inspector Barry Leslie)
Exhibit #3	Prosecutor's Designation (Ms. Sharon Wilmot)
Exhibit #4	Prosecutor's Designation (Ms. Lynda Bordeleau)
Exhibit #5	Agreed Statement of Facts
Exhibit #6	Joint Submission as to Penalty
Exhibit #7	Defence Book of Supporting Materials
Exhibit #8	Prosecution's Brief of Authorities

Representation

In this matter, Mr. Pierre Bernard represented Constable Andrews, and Inspector Barry Leslie represented the Peel Regional Police Service.

Agreed Statement of Facts

The facts of this matter are substantially agreed upon by the parties to this Tribunal. The Agreed Statement of Facts, filed as Exhibit #5, states;

Background

Constable Ryan Andrews has been a member of the Peel Regional Police Service since 2013. He is currently assigned to the 12 Division Neighbourhood Policing Unit.

Count One – Discreditable Conduct

On the night of Saturday December 9th, 2017, Constable Andrews and a group of friends were in the “entertainment district” in Pittsburgh, Pennsylvania, located on East Carson Street in the South Flats Region of the City.

Sometime after 1:30 a.m. on December 10th, 2017, Constable Andrews and a friend, AA left a nightclub where their group had been in attendance. AA had been asked to leave the premises by nightclub staff due to his intoxicated behaviour.

At around 1:37 a.m. Constable Andrews and AA encountered a lone male party, BB standing on the corner of East Carson Street and 7th Street. There was a verbal exchange between AA and BB, and Constable Andrews intervened in the conversation.

Shortly thereafter, the conversation escalated to the point where Constable Andrews shoved BB twice, and a physical altercation ensued between the three males.

At one point, BB attempted to punch Constable Andrews and AA, and Constable Andrews swung back. Constable Andrews' punch made contact with BB's head, knocking him backward to the ground.

Constable Andrews then mounted BB on the ground and delivered a number of further punches to his face and head area.

Pittsburgh Police officers were present in the area and immediately responded to the assault, attempting to separate Constable Andrews from BB. When Constable Andrews did not discontinue his actions, an officer from the Pittsburgh Police, deployed his conducted energy weapon (CEW) at Constable Andrews. The CEW deployment was unsuccessful and the officer ultimately employed force to remove Constable Andrews from BB.

Once Constable Andrews was removed from BB, additional officers were required to assist in gaining control of Constable Andrews and handcuffing him.

Constable Andrews was arrested and charged with Assault, and Resist Arrest, and was transported to the County Jail to be held for arraignment before a Magistrate. Following his formal arraignment, Constable Andrews was released from custody after posting bond.

On December 19th, 2017, Constable Andrews appeared before the Honourable Judge Jeffrey A. Manning in the Allegany County Magisterial District Court, and entered a guilty plea to the summary offences of Disorderly Conduct and Harassment, and a fine was assessed.

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

Positions on Penalty

The parties representing the Prosecution and Defence provided a joint submission with respect to penalty, tendered as Exhibit #6, dated August 21st, 2018. They propose that the appropriate disposition for the finding of one count of Discreditable Conduct is as follows:

A forfeiture of five (5), eight (8) hour days (40 hours) to be served (worked) at the discretion of the Divisional Commander.

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

Submissions

Member Representative – Mr. Bernard

Mr. Pierre Bernard, Member Representative for the Peel Regional Police Association, spoke on behalf of the officer and submitted that Constable Andrews was before the Tribunal accepting responsibility for one count of Discreditable Conduct. Constable Andrews accepts the Agreed Statement of Facts and the Joint Submission as to Penalty. Mr. Bernard, in his submissions, referenced the case of *Krug and the Ottawa Police Service (OCCPS, January 21, 2003)* that

speaks to key factors to consider when determining the penalty. Mr. Bernard outlined the factors that are relevant to the matter of Constable Andrews, and serve to support the proposed joint submission on penalty.

Recognition of the seriousness of the misconduct was addressed by Mr. Bernard. Constable Andrews quickly resolved the charges he was facing in the United States within ten days, by entering a guilty plea to summary offences. He has further pled guilty to the charge of Discreditable Conduct. By doing this, Constable Andrews has demonstrated that he fully recognizes the seriousness of his misconduct. He agrees that he has disappointed the Service, and he has apologized for his actions.

Mr. Bernard submitted that at the time of the misconduct, Constable Andrews was a First Class Constable with less than four years of policing experience. His employment history up to the date of the incident was more than positive, and he had no discipline history. He has three (3) commendations on file, and was a recipient of the 2016 Matt Parr Impaired Driver Apprehension Award. In April 2018, he was rewarded with a Chief's Management Group Challenge Coin for his assistance to the Strategic Gang Intelligence Team for several arrests, and the seizure of several weapons and illicit drugs. The officers involved including Constable Andrews were commended for their initiative, drive and dedication (Exhibit #7, Tab 1). Constable Andrews' personnel file also contains four internal letters of appreciation for involvement in volunteer and/or charitable endeavours (Tab 2). He also received three letters of appreciation for his excellent performance on the 2015 Festive Ride Program, his involvement in providing lifesaving CPR to a patient in cardiac arrest, and for his understanding of regulations and directives pertaining to suspect apprehension pursuit (Tab 3).

Mr. Bernard reviewed Constable Andrews' performance evaluations contained within the Defence Book of Supporting Materials (Exhibit #7, Tab 4). In the most recent evaluation from 2016-2017, it was noted by his Supervisor that, "Constable Andrews is a valued member on the platoon who is respected by his peers and supervisors. I have reviewed his personnel file, reports and performance statistics which indicate he is performing above expectations. His performance indicators far exceed the divisional average in terms of total number of arrests, charges where he is the designated officer in charge for impaired driving charges and drug arrests. Constable Andrews was nominated as a candidate for the Peel Regional Police Service officer of the year award, and the Dwayne Piukkala award. Constable Andrews has established himself as an informal leader on the platoon. Constable Andrews leads by example by his own performance motivating others to elevate their own. Constable Andrews' work ethic is an example to be followed".

Mr. Bernard further reviewed Constable Andrews' evaluation from 2015-2016, and his Supervisor stated that "Constable Andrews - possesses a strong work ethic and conducts himself professionally at all times. He is respectful to members of the public, his peers - and treats everyone with courtesy." Overall, the comments describe an employment history that has been excellent prior to the misconduct.

The potential to reform or rehabilitate was addressed by Mr. Bernard. Constable Andrews' positive employment history since hire has demonstrated that he has great potential to reform and

to rehabilitate his career and reputation. He will move forward in a positive way and continue to be a productive member of the Service as he has done since hire.

Consistency of disposition was addressed by Mr. Bernard and that there has been a number of Peel Regional Police Service discipline matters that involve off-duty assaultive behaviour which resulted in charges of Discreditable Conduct. However, he was unable to locate a case with exact circumstances as the matter before the Tribunal. Mr. Bernard submitted eleven (11) cases that are dated from 1993 to 2015 (Exhibit #7, Tabs 5). On average, the penalty consisted of a forfeiture of six and a half (6.5) days. Mr. Bernard added that the proposed penalty in the present case is consistent with previously decided Peel Regional Police Service cases. The joint penalty proposed has given consideration to all of the facts in issue and the particular details of the case.

Mr. Bernard concluded that the employment history of Constable Andrews is reflective of a productive officer with excellent potential, whose career has taken a downturn due to a lapse in judgment. Constable Andrews is a valued and respected member of the Peel Regional Police Service and the community. Constable Andrews accepts full responsibility for his actions, he has shown remorse, and he is embarrassed. Mr. Bernard submitted that the proposed penalty supports the circumstances and is mitigated by Constable Andrews' remorse, his employment history, and his potential to rehabilitate.

Submissions of the Prosecution – Inspector Leslie

Inspector Leslie commenced his submissions by discussing 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. Inspector Leslie, in his submissions, referenced the case of *Krug and the Ottawa Police Service (OCCPS, January 21, 2003)* (Exhibit #8, Tab 1) that speaks to key factors to consider when determining the penalty. Inspector Leslie outlined the factors that are relevant to the matter of Constable Andrews, and serve to support the proposed joint submission on penalty. The relevant factors are the seriousness of the misconduct, public interest, damage to the reputation of the Police Service, recognition of the seriousness of the misconduct, employment history, need for deterrence, the ability to reform or rehabilitate the officer, and consistency of disposition. Inspector Leslie submitted that when dispositional considerations are balanced against the mitigating and aggravating factors specific to the case, the proposed penalty of a forfeiture of five (5) days is appropriate and reasonable.

With respect to the seriousness of the misconduct, Inspector Leslie submitted that any criminal conviction against a police officer is a serious matter. Constable Andrews was off duty during the misconduct and was quickly identified as an officer by the Pittsburgh Police Department who initially charged him with assault and resist arrest under Pennsylvania law. The altercation was a drunken brawl precipitated by BB's verbal reproaches, although it remains unknown precisely what was said. The altercation ended with Constable Andrews being subdued with a conducted energy weapon. Constable Andrews ultimately pled guilty to a summary offence of disorderly conduct and harassment. Summary offences are the least serious classification of criminal offence under Pennsylvania state law, and are generally subject only to a fine on conviction. Summary offences under Pennsylvania state law include disorderly conduct, underage drinking and traffic offences.

Inspector Leslie addressed the factors of public interest and damage to the reputation of the Peel Regional Police Service. Constable Andrews' conduct involved a member of the public who was coincidentally also an off-duty member of the Pittsburgh Police Department. The damage to the reputation extended not only to the people that witnessed the assault but to the numerous officers who had to employ force to gain control, and arrest him. Further, Constable Andrews was convicted in court, and therefore his actions were made part of a public record. While it is clear that BB was the first party to engage Constable Andrews in the verbal altercation, Constable Andrews was the first to escalate the matter to a physical altercation, and had to be subdued by the Pittsburgh Police Department. This is unacceptable behaviour of a member of the Peel Regional Police Service and not in the public interest.

Inspector Leslie addressed the factor of employment history. Constable Andrews has been a member of the Service for approximately five (5) years. He has no disciplinary history. Constable Andrews has several commendations on his file and this incident appears to be out of character for him.

Inspector Leslie addressed the officer's acceptance of responsibility and rehabilitative potential. Constable Andrews has pled guilty in the present proceedings and has accepted full responsibility for his actions. In addition, Constable Andrews pled guilty in the criminal proceedings at the earliest opportunity. The swift guilty pleas are a significant mitigating factor. There are a number of factors pointing toward positive rehabilitative potential. Constable Andrews has quickly and fully accepted responsibility for his actions. He has shown signs of remorse and has had a brief but promising career with the Service.

General and specific deterrents were addressed by Inspector Leslie as they are considered relevant in the case. It is important that the penalty act as a reminder to Constable Andrews of the seriousness of his actions. Further, the penalty ought to serve as a reminder to other members of the Service that criminal conduct is always serious misconduct, and will be penalized accordingly.

Consistency of disposition was addressed by Inspector Leslie with reference made to cases within the Prosecution's Book of Authorities (Exhibit #8). The cases provide an appropriate range in penalty as no two cases are identical in facts. The penalty range extends from a low level forfeiture to a demotion and dismissal. Although any assault and arrest is a serious issue, given that the criminal charges were reduced to a fine, the officer's unblemished history, and his acceptance of responsibility, a demotion or dismissal would be inappropriate. The proposed penalty will have a significant effect on the officer, and will meet the requirements for deterrence both specific and general. It is submitted that this penalty appropriately factors in the mitigating and aggravating circumstances.

Submissions of Constable Andrews

Constable Andrews addressed the Tribunal and advised that he is extremely remorseful for his actions. He apologized to his family, the Peel Regional Police Service, and to the Tribunal. He is embarrassed by his behaviour, and assured the Tribunal that such behaviour would not happen again. He will continue to be motivated and work hard with a professional approach for the Peel Regional Police Service.

PART III: DISCUSSION

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. Both the Prosecution and Defence in their submissions referred to Commission case law and specifically the number of factors to be considered when determining the appropriate penalty. The case of *Williams and the Ontario Provincial Police (OCCPS, December 4, 1995)* highlights three important elements to be considered by the Tribunal, which are the nature and seriousness of the misconduct, the ability to reform or rehabilitate the officer, and damage to the reputation of the Police Service. 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 Andrews are as follows:

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

It has been clearly established that misconduct was committed by Constable Andrews. On December 19th, 2017, Constable Andrews entered a guilty plea for the summary offences of Disorderly Conduct and Harassment contrary to the Pennsylvania state law. This conviction resulted from an incident which occurred on December 10th, 2017, when he was off duty. Constable Andrews received a fine as a result.

Seriousness of the Misconduct

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.

Constable Andrews' misconduct entails a serious incident that resulted in a criminal conviction. Constable Andrews was involved in an altercation while he was off duty in Pittsburgh, Pennsylvania. The altercation was precipitated by BB's verbal reproaches to Constable Andrews that had offended him, however it remains unknown precisely what was said. BB then attempted to punch Constable Andrews and AA, and Constable Andrews swung back. Constable Andrews' punch made contact with BB's head, knocking him backward to the ground. The altercation ended with Constable Andrews being subdued with a conducted energy weapon. Constable Andrews ultimately pled guilty to the summary offences of Disorderly Conduct and Harassment. Constable Andrews holds a position of trust to the public as a police officer which is in effect at all times whether on or off duty.

Recognition of the Seriousness of the Misconduct

In regards to the recognition by the officer of the seriousness of the misconduct, Constable Andrews pled guilty at the earliest opportunity in the criminal proceedings and to the *Police Services Act* charge of Discreditable Conduct. Through Mr. Bernard's submission and that of Constable Andrews to the Tribunal, Constable Andrews has demonstrated remorse and an understanding of the seriousness of his conduct. Constable Andrews has taken full responsibility for his actions and has learned from his experience. The Tribunal is assured that he will not be in such a position in the future.

Public Interest

Police officers are expected to obey the laws, regardless of circumstances or context. 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 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 confidence is eroded and 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 Andrews. It must also provide a strong message to other officers that considerable sanctions will result for those who may contemplate similar misconduct.

Damage to Reputation of the Police Service

The damage to the reputation of the Peel Regional Police Service is a consideration in the determination of a disposition. There was no evidence introduced to the Tribunal that there was media attention highlighting Constable Andrews' incident. However, Constable Andrews was arrested and charged by another Police Service, the Pittsburgh Police Department, who became aware that Constable Andrews was a member of the Peel Regional Police Service. Constable Andrews appeared in a public court and his charges became part of the court's public record. Anytime an officer is charged criminally and/or convicted of a criminal offence, the Police Service's reputation is undermined. This is an aggravating consideration for the disposition.

Employment History and Potential for Reform or Rehabilitation

Constable Andrews has been a police officer with the Peel Regional Police Service for five (5) years. Mr. Bernard submitted the Defence Book of Supporting Materials (Exhibit #7) which contains performance appraisals ranging from 2015 – 2017 for Constable Andrews' work performance, and commendations. I have reviewed all of the documentation and conclude that these are mitigating considerations for the disposition. Constable Andrews' acceptance of responsibility indicates that he appreciates the impact of his actions. Constable Andrews addressed the Tribunal and submitted that he was remorseful for his actions and has learned from his error in judgment and that it will never be repeated. He will continue with a professional approach to serve the Peel Regional Police Service. These factors combined support the likelihood of his rehabilitation or reform.

Specific and General Deterrence

In this case, specific deterrence is likely an objective which has already been met. Constable Andrews has indicated on several occasions that he fully appreciates and accepts responsibility for the seriousness of his actions and is willing to accept an appropriate penalty as a result. 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 Andrews, the public, and throughout the Police Service that such misconduct is viewed seriously and will not be tolerated. With regards to general deterrence, a formal Hearing process and subsequent disposition will send a clear message throughout the Police Service that the misconduct is viewed seriously.

Consistency of Disposition

Consistency of Disposition was addressed by Inspector Leslie and Mr. Bernard in their submissions. I have reviewed the eleven (11) cases provided in the Defence's Book of Supporting Materials (Exhibit #7, Tab 5), and the three (3) cases provided in the Prosecution's Book of Authorities (Exhibit #8). In my opinion, the cases submitted 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 totality, the penalty in this case is mitigated by Constable Andrews' employment history, acceptance of responsibility, recognition of the seriousness of the misconduct, and his ability to reform and rehabilitate.

PART IV: DISPOSITION

Constable Andrews' 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 are 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

For the noted reasons, on one (1) count of Discreditable Conduct, as the Hearing Officer I impose on Constable Ryan Andrews #3864 of the Peel Regional Police Service:

A forfeiture of five (5), eight (8) hour days (40 hours) to be served (worked) at the discretion of the Divisional Commander.



December 19, 2018

Colleen Fawcett #1395, Superintendent
Peel Regional Police – Hearing Officer

Date