

**COBOURG POLICE SERVICE DISCIPLINE HEARING
IN THE MATTER OF ONTARIO REGULATION 268/10**

**MADE UNDER THE *POLICE SERVICES ACT*, RSO 1990,
AND AMENDMENTS THERETO;**

IN THE MATTER OF

COBOURG POLICE SERVICE

AND

CONSTABLE DAVID PERIARD #244

DISCREDITABLE CONDUCT

DISPOSITION

Before: Superintendent (Ret.) Greg Walton
Ontario Provincial Police

Counsel for the Prosecution: Ms. Jessica Barrow

Counsel for the Defence: Ms. Joanne Mulcahy

Hearing Date: November 8, 2023

Background

The Notice of Hearing alleged Constable David Periard, #244 of the Cobourg Police Service committed two counts of discreditable conduct. The hearing was scheduled to be held in-person over three days commencing November 8, 2023. On November 1, 2023, this Tribunal was informed that counsel had agreed on a resolution and only one hearing date was required.

Consequently, the hearing was held virtually on November 8, 2023. A new Notice of Hearing containing one count of discreditable conduct was presented and relied upon. After Constable Periard entered a plea of guilty to one count of discreditable conduct and was found guilty thereof; the two counts of discreditable conduct on the original Notice of Hearing were withdrawn at the request of counsel.

Allegation of Misconduct (amended)

Discreditable Conduct

It is alleged that Constable David Periard #244, 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.

Constable Periard committed discreditable conduct in that on July 23, 2021, while seconded to the Ontario Police College as an instructor, he acted in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the Cobourg Police Service constituting an offence against discipline, contrary to section 2(1)(a)(xi) of the Schedule "Code of Conduct," Ontario Regulation 268/10, as amended.

It was agreed upon by counsel that the Agreed Statement of Fact would also serve as the Particulars of Allegations. (see below)

Plea / Joint Penalty Position

Ms. Jessica Barrow represented the Cobourg Police Service as prosecutor. Constable Periard was represented by Ms. Joanne Mulcahy. Constable Periard entered a guilty plea to the one count of discreditable conduct as noted above.

Counsel made a joint penalty submission of a forfeiture of 10 days or 80 hours and supplementary training.

Agreed Statement of Fact (amended)

Constable David Periard joined the Cobourg Police Service in March 2001. In September 2019, Constable Periard was seconded to the Ontario Police College as an acting sergeant to instruct Police Vehicle Operations. At all material times Constable Periard was acting in a supervisory capacity at the Ontario Police College.

On November 27, 2019, Acting Sergeant Periard signed his secondment agreement with the Ontario Police College. It was acknowledged that while under secondment, Acting Sergeant Periard was to abide by the Ontario Police College's Rules of Conduct, Workplace Discrimination and Harassment Policy, and the College Resident Handbook. Acting Sergeant Periard also received mandatory training regarding the Cobourg Police Service Respectful Workplace Procedure AI-003 in September 2018.

On Wednesday June 23, 2021, Acting Sergeant Periard was instructing Police Vehicle Operations for the Basic Recruit Training Program. At approximately 4 p.m. Ontario Provincial Police Recruit Constable Baxter attended Police Vehicle Operations class which was his last class of the day. During this class he was in a vehicle with Recruit Constable Michael Bell (Hamilton Police Service) and Recruit Constable Matthew Boorman (Niagara Regional Police Service). Acting Sergeant Periard was instructing and was seated in the driver seat of this vehicle. Recruit Constable Baxter was seated in the front passenger seat of the vehicle.

While sitting in the vehicle they were watching a demonstration taking place on the Police Vehicle Operations track. Recruit Constable Baxter noticed that one of his pod mates, York Regional Recruit Constable Kienan Cheong was taking part in the demonstration.

Acting Sergeant Periard made an offensive comment to Recruit Constable Baxter about Recruit Constable Cheong. Neither Recruit Constable Bell nor Recruit Constable Boorman heard the comment.

After class, Recruit Constable Baxter approached Recruit Constable Cheong and told him about the comment. Recruit Constable Cheong was upset by this comment and notified Sergeant Stern and his class leader, Recruit Constable Lindsay Maharaj. Acting Sergeant Periard's comment brought discredit to the reputation of the Cobourg Police Service and constitutes discreditable conduct.

Decision

Constable Periard entered a guilty plea to one count of discreditable conduct. The Agreed Statement of Fact confirmed by Constable Periard, provided clear and convincing evidence of misconduct; consequently, I found Constable Periard guilty of discreditable conduct. I can see no judicious reason to deviate from the joint penalty position proposed, as such, Constable Periard will forfeit 10 days and will participate in training as deemed fitting by the Chief of Police.

Reasons

Constable Periard's conduct is no longer in question, what must be determined is whether the proposed sanction is appropriate: does the joint penalty position strike a balance between community expectations, fairness to Constable Periard and the needs of the organization?

I am not bound by the joint penalty submission, however, to reject it, I would have to find that it is outside the reasonable range of available penalties for similar misconduct, and that it conflicts with commonly held proportionality considerations.

Commonly held disposition factors provide guidance to assist with the determination of an appropriate sanction for *Police Services Act* disciplinary matters such as this. I will review those which were relied upon by counsel in this matter.

Public Interest

The public views police services as being in a position of high trust and accountability. It is important that police services demonstrate to the public that their members are held to this high standard. The community has an interest in knowing that its experienced police officers lead by example, showing newer, younger officers the importance of integrity, inclusivity, and professionalism.

The public has an interest in ensuring police officers maintain a high standard of conduct and that behaviour resulting in misconduct, attracts an appropriate sanction from the respective employer. The public has an interest in knowing that when police officers behave in a manner which violates the attributes and ethics that are essential to professionalism in policing, that those officers are held accountable appropriately. Anytime a police officer is found guilty of misconduct, it has the potential to adversely affect the reputation of their employer in the eyes of the public.

Constable Periard's misconduct did not occur in public view, but it was in the presence of young, impressionable officers and if the public becomes aware of his behaviour, I am confident they will be upset and disappointed to say the least. A significant sanction which corresponds to the seriousness of the misconduct is required to satisfy the public's interest; ensuring that officers are held accountable, thereby re-instilling their trust in the Cobourg Police Service.

I find public interest to be significant aggravating factor.

Nature and Seriousness of the misconduct

I note that the specific utterance made by Constable Periard was not presented as evidence but I am unconcerned, the exact communication is not essential; the Agreed Statement of Fact showed that it was "an offensive comment" which concerned Recruit Constable Baxter so much that he felt it warranted to inform Recruit Constable Cheong. As the intended target of the comment, Recruit Constable Cheong was so upset that he informed his supervisor and also his class leader.

I agree with the submission of Ms. Barrow that the environment at the Ontario Police College makes it challenging for subordinates to report supervisor misconduct due to the inherent power inequity. It must have been difficult for the recruit officers to risk their personal reputations and potential livelihoods, not knowing how their complaint would be received or perceived. This not only speaks to their character, but also to the seriousness of the misconduct.

Making an offensive comment at any time can be considered serious misconduct, but Constable Periard was on-duty, operational, in a position of trust and authority when he made the disparaging remark, and he did not make it to a peer, he made the utterance to a subordinate in the presence of two other subordinate members. His position goes beyond that of trust, he was a mentor to the officers involved, a teacher, and a senior police officer in an acting sergeant capacity; the type of leader the recruit members are expected to respect and emulate.

Exhibit #6 is a joint Book of Authorities. In the matter of *Berger and Toronto Police Service*, 2007 ONCPC 8 (CanLII), the Commission stated:

... as the Hearing Officer noted, the Appellant was an experienced supervisor, a respected middle manager responsible for the guidance, coaching and leadership of the officers in his Unit, consistent with Service directives... We agree that this elevates his actions beyond a situation in which a reprimand would be an appropriate penalty.

Constable Periard's behaviour betrayed the expectations of the public, the Cobourg Police Service, the Ontario Police College, and the members he was meant to instruct. All employers in the Province of Ontario, especially police services, are expected to create an environment of respect and inclusivity, where all members are made to feel welcomed. Constable Periard's comments could have caused the involved members to question the integrity of their new profession, an unnecessary and unsatisfactory beginning to their respective careers.

Constable Periard abused his position of power and authority by subjecting his subordinates to the offensive utterance. In so doing, he failed to abide by the Ontario Police College's Rules of Conduct, Workplace Discrimination and Harrassamrnt Policy, and the Cobourg Police Service Respectful Workplace Procedure.

As noted, an offensive comment is never acceptable but the seriousness of such behaviour is compounded when a real person is identified as the target of the utterance. In this instance, through no fault of their own, recruit officers were placed in uncomfortable and unnecessary circumstances; having to report the behaviour and having to deal with it all on a personal level.

I find Constable Periard's conduct troubling, but I note that it was an isolated incident, it was not consistent with a pattern of disturbing behaviour which would have elevated the seriousness of the misconduct. Nonetheless, I find Nature and Seriousness of Misconduct to be a significant aggravating factor.

Employment History

Ms. Barrow submitted that Constable Periard's successful and unblemished lengthy career was a significant factor when considering the most fitting penalty. I was not provided with annual performance plans; Ms. Mulcahy submitted that the Cobourg Police Service does not operate in that manner. I did receive 12 of Constable Periard's commendations and 11 military commendations and an overview of his work experience.

It is clear that Constable Periard has been a well-respected member of the Cobourg Police Service for the past 22 years. I accept the submission from counsel that Employment History is a mitigating factor for consideration.

Recognition of the Seriousness of the Misconduct / Ability to Rehabilitate

This matter was not resolved expeditiously but it was medical concerns which arose adversely affecting scheduling issues. Regardless, I am encouraged by the fact that

Constable Periard has taken responsibility for his actions by entering a guilty plea, acknowledging the facts in issue, and agreeing to a significant penalty. I am also encouraged by the fact that in 2021 Constable Periard successfully obtained a certificate for Respect in the Workplace training and in 2022 he completed Managing Unconscious Bias training. This is behaviour which illustrates recognition of his misconduct and his commitment to ensuring it is behaviour which will not be repeated.

Ms. Mulcahy submitted that Constable Periard is very remorseful for his actions. Constable Periard addressed the Tribunal and apologized to the Cobourg Police Service for his behaviour.

As this was an isolated incident, based on Constable Periard's positive employment history and his very apparent willingness to take relevant training, I am satisfied that he has a strong recognition of the seriousness of his misconduct and it is unlikely that he will repeat this type of behaviour.

Recognition of the Seriousness of Misconduct and the Ability to Rehabilitate are mitigating factors for consideration.

Deterrence

I am satisfied that for the most part, specific deterrence has already been addressed; Constable Periard's secondment to the Ontario Police College was rescinded resulting in the loss of his acting sergeant status and correlating salary. I accept that it was a role which he excelled in and relished; having lost this secondment as a direct consequence of his actions acts as a strong specific deterrence. Nonetheless, Constable Periard must be reminded that if he were to commit misconduct of this nature in the future it would likely result in a more severe sanction.

It is crucial that Constable Periard's penalty serve as a general deterrent for all members of the Cobourg Police Service and members from other police services who are seconded to the Ontario Police College. All members must understand the power that offensive words can carry and the pain they can inflict; when this occurs, the sanction imposed must be commensurate with the seriousness of the misconduct. Members must know that they will be held accountable accordingly; the penalty imposed in this matter must correspond to the seriousness of the misconduct. This type of behaviour cannot be tolerated, when it occurs, it will result in a significant sanction.

This is an aggravating factor for consideration but I am satisfied the joint penalty proposed by counsel adequately addresses Specific and General Deterrence.

Damage to the Reputation of the Cobourg Police Service

Police services in Ontario work diligently to develop a positive public image; building strong, trusting relationships between police services and the communities they serve is essential. There was no indication that this matter received media attention, but this penalty factor is based on the damage that would likely occur should the public become aware of all the circumstances.

I accept that the damage is minimized by the fact that it was an isolated matter and the error in judgement must be balanced with the credit Constable Periard has brought to his employer over the years. However, whenever a police officer commits misconduct of this nature, it not only negatively impacts the reputation of the respective police service involved but also all police services across Ontario, especially in this instance considering members from multiple police services were involved.

I have no doubt that if the public became aware of this matter, they would be disappointed in Constable Periard's behaviour, and by association, the Cobourg Police Service's reputation would be damaged as they would be portrayed in a negative light. The public expects police officers to always behave in a professional manner. Constable Periard's behaviour fell well below that standard; therefore, the public expects a corresponding sanction to be levied. It is important that the sanction imposed corresponds to the seriousness of the misconduct; an inadequate penalty or a sanction that is too excessive, could also damage the reputation of the employer.

I find that Damage to the Reputation of the Cobourg Police Service is an aggravating feature, but the proposed sanction adequately addresses this issue.

Consistency of Penalty

Counsel submitted three cases for my consideration. In *Lewin and Toronto Police*, 2001 CanLII 56733, the officer who held the rank of sergeant, made disparaging remarks about women on multiple occasions in the presence of a probationary female officer. The Commission upheld the penalty imposed of 15 days or 120 hours. I find this matter quite helpful; the officer was not a teacher, but he was a leader, holding the rank of sergeant at the time that he made offensive, sexist remarks in front of a subordinate officer.

Different from this matter is the repetition of offence and the fact that the officer contested the allegations at hearing. Constable Periard has demonstrated remorse and the ability to rehabilitate, mitigating factors which did not exist in *Lewin*. The case suggests to me that the forfeiture of 10 days is not only reasonable, but within the range of penalties,

consistent with other, similar matters. I note that *Lewin* is over 20 years old and the public's tolerance for behaviour of this nature has decreased over time; it is entirely possible that today, the penalty would be greater than the 15 days imposed then.

In the matter of *Bennett and the Ontario Provincial Police*, May 5, 2021, the hearing officer accepted the joint penalty position and imposed a sanction of 40 hours for making sexually explicit comments in the presence of other members. I accept that Constable Periard's situation was more serious considering he was in a position of trust and authority as a teacher at the Ontario Police College and the members involved were not just his subordinates but vulnerable due their status as recruits.

In the matter of *Toronto Police Service and Sljivo and Saris*, January 20, 2028, the officers entered guilty pleas and in addition to training components and volunteer hours to be worked, were sanctioned 40 hours and 16 hours respectively. One officer had made disparaging comments about a member of the public diagnosed with Down Syndrome and the second officer participated in the conversation. The hearing officer accepted the joint penalty position following a guilty plea.

I find that all three cases were helpful in establishing the range of available penalties as that of between five and 15 days or 40 and 140 hours.

Conclusion

Constable Periard entered a guilty plea, agreed to the facts in issue and agreed to forfeit 10 days, equivalent to 80 hours, and attend training as required. His recognition of the seriousness of his misconduct is mitigating as is his strong employment history, and the likelihood of his rehabilitation. Given the aggravating features that also exist, I am satisfied that the sanction proposed is balanced, fair, and satisfies the principles governing the appropriate determination of a disposition.

I accept that the reference to training is vague but I am satisfied with the wording proposed because it allows the Chief of Police to consider the training courses that Constable Periard has already taken and to determine what if any other relevant training would be beneficial.

Disposition

Constable Periard pleaded guilty and was found guilty of discreditable conduct based on clear and convincing evidence. After weighing all aggravating and mitigating factors, I find the proposed sanction meets the goals of the discipline process; it strikes a balance between community expectations, fairness to Constable Periard, and the needs of the Cobourg Police Service.

I order Constable Periard to forfeit 10 days (80 hours). Constable Periard, in consultation with the Chief of Police, must work the hours during time off, or relinquish hours from vacation or similar banks where hours are accrued annually.

Furthermore, I order Constable Periard to receive additional training relevant to the behaviour in question at the discretion of the Chief of Police.

This order is made pursuant to section 85(1)(f) and 85(7) of the *Police Services Act*, R.S.O. 1990. This decision was also provided orally on November 8, 2023, with the understanding these written reasons were to follow.



Greg Walton
Superintendent (Ret.)
Ontario Provincial Police

Date electronically delivered: November 10, 2023