

Peel Regional Police Discipline Hearing

In the Matter of

Ontario Regulation 268/10

Made Under the Police Services Act, RSO 1990

And Amendments Thereto

AND

In the Matter of the

Peel Regional Police

And

Constable Marc Asselin, #2735

Charge:	Discreditable Conduct
Before:	Superintendent David Downer
Appearances:	
Prosecutor:	Inspector Colleen Fawcett
Agent for the Officer:	Mr. Michael Sharp (PRPA)
Hearing Date:	June 22, 2011

REASONS FOR DECISION

Constable Marc Asselin #2735 it is alleged that you committed the following acts 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

You are alleged to have committed Discreditable Conduct in that between the 5th day of January 2010 and the 18th day of June 2010 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 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.

Plea

Constable Asselin pled guilty to the allegation of misconduct.

Agreed Statement of Facts

A statement of facts was agreed to by Mr. Sharp, representing Constable Asselin, and Inspector Fawcett, Prosecutor in this matter. The agreed statement of facts has been filed as an Exhibit #4 and outlines the following:

1. Constable Marc Asselin has been an officer with the Peel Regional Police since May 5, 2003. At all material times he was assigned to the Neighbourhood Policing Unit of 21 Division as a Community Station Officer. As part of his duties, Constable Asselin was responsible for investigating motor vehicle collisions that were reported to the Community Station by members of the public.
2. On January 5th, 2010 at approximately 2:25 p.m., Constable Asselin investigated a motor vehicle collision that had been reported to the Malton Community Station. Constable Asselin advised the driver that his vehicle was not driveable and would require a tow. Constable Asselin made arrangements with a non contract tow company on behalf of the driver to tow the vehicle from the Community Station parking lot.
3. On April 10th, 2010 at approximately 10:20 a.m., Constable Asselin was working in a uniform capacity at the Springdale Community Station where he investigated a motor vehicle collision that had been reported at that location. Constable Asselin advised the driver that her vehicle was not driveable and would require a tow. Constable Asselin made arrangements with a non contract tow company on behalf of the driver to tow the vehicle from the parking lot.

4. On June 12th, 2010, Constable Asselin was working in a uniform capacity at the Springdale Community Station. At approximately 3:00 p.m., Constable Asselin investigated a motor vehicle collision that had been reported at the Community Station. Constable Asselin advised the driver that his vehicle was not driveable and would require a tow. Constable Asselin made arrangements with a non contract tow company on behalf of the driver to tow the vehicle from the parking lot.
5. On June 18th, 2010, Constable Asselin was working in a uniform capacity at the Springdale Community Station. At approximately 2:30 p.m., Constable Asselin investigated a motor vehicle collision that had been reported at the station. Constable Asselin advised the driver that her vehicle was not driveable and would require a tow. Constable Asselin made arrangements with a non contract tow company on behalf of the driver to tow the vehicle from the parking lot.
6. On each occasion, Constable Asselin arranged to have Brian Odor of Brian's Towing, an affiliate of Legend Towing or Legend Towing itself, attend the Community Station and tow the vehicles. This tow company is not a tow operator under contract with the Peel Regional Police. Brian Odor and Constable Asselin know each other as they are neighbours, living across the street from each other in Georgetown.
7. Peel Regional Police Directive I-B-604(F) Vehicle Towing, Seizure and Release sets out the policy framework for the towing of vehicles. The following are relevant provisions:
 - D.4(b) Not indicate any preference towards, nor recommend any particular towing services, including contract tow companies.
 - E.3(a) When a vehicle requires towing, but the driver declines to select a specific tow company, the investigating officer shall; arrange for a tow as prescribed in section E.1 and E.2 of this Directive.
8. The actions of Constable Asselin in relation to the use of his neighbour's towing company is in violation of the directives of the Peel Regional Police and create a perception of preferential treatment and bring discredit to the reputation of Peel Regional Police.

Finding

As a result of the plea and the facts as agreed, Constable Asselin was found guilty of Discreditable Conduct on June 22, 2011, contrary to section 2(1)(a)(xi) of the Code of Conduct, Regulation 268/10, as amended.

Submissions

Both Inspector Fawcett and Mr. Sharp agreed that the appropriate penalty in this case would be eight (8) days forfeiture to be served (worked) at the discretion of the Divisional Commander, pursuant to section 85(1)(c) of the Police Services Act.

In support of the agreed submission as to penalty, Inspector Fawcett began by tendering the case of Krug and the Ottawa Police Service – OCCPS 2003 as Exhibit #6.

Krug reflects the thirteen elements for consideration in assessing an appropriate penalty. Enunciated in Krug, at page 13, the appropriate factors for consideration are:

- a) Public Interest;
- b) Seriousness of the misconduct;
- c) Recognition of the seriousness of the misconduct;
- d) Employment history;
- e) Need for deterrence;
- f) Ability to reform or rehabilitate the police officer;
- g) Damage to the reputation of the police force;
- h) Handicap and other relevant personal circumstances;
- i) Effect on police officer and police officer's family;
- j) Management approach to misconduct in questions;
- k) Consistency of disposition;
- l) Financial loss resulting from unpaid interim administrative suspension;
- m) Effect of publicity.

Inspector Fawcett reviewed what she argued were the aggravating factors when examining the conduct of Constable Asselin. She submitted the incident flowed from a failure to follow the rules, policies and procedures that are in place to safeguard the integrity of court proceedings and other public processes. In this case, there was a conflict of interest that consequently gives rise to the public interest and expectations that were not met.

Inspector Fawcett submitted that Constable Asselin's failure to follow the rules and procedures of this Service is serious in nature. Inspector Fawcett submitted that officers must be seen to be above reproach in their dealings with the towing industry and utilize the appropriate contracted tow services as required by the directive.

In examining the mitigating circumstances, Inspector Fawcett submitted Constable Asselin has recognized the seriousness of his misconduct. This is demonstrated by his desire to plead guilty from the onset.

Inspector Fawcett outlined that Constable Asselin has been an officer with this organization for over eight years with no documented disciplinary issues in his employment file. She stated that

he has received one Police Service's Board Award, two commendations, and six letters of appreciation in his file.

Inspector Fawcett concluded by stating Constable Asselin's employment record, and recognition of his misconduct deserves full mitigating credit. Inspector Fawcett submitted that she is confident Constable Asselin can make a positive contribution and can continue to have a productive career within the organization.

Inspector Fawcett submitted that taking all into consideration, Constable Asselin's misconduct warrants a penalty of eight (8) days forfeiture to be served (worked) at the discretion of the Divisional Commander.

Mr. Sharp began his submissions by stating that Constable Asselin has been at 21 Division since 2003 and is presently in the Neighbourhood Policing Unit. He advised that Constable Asselin had a fundamental misunderstanding of the towing directive, but has recognized the errors of his ways and accepts full responsibility. Constable Asselin understands the reason for the Directive and its purpose not to show preferential treatment or favouritism. His plea of guilty at the earliest opportunity is a mitigating factor.

Mr. Sharp stated that Constable Asselin has 8 years' service as an officer with Peel Regional Police. He is married with two young daughters. Mr. Sharp agrees that the suggested penalty would reflect consistency within the Service and is appropriate under the circumstances. He stated that Constable Asselin should be given full credit for his plea today.

Mr. Sharp tendered a compilation of documents as Exhibit #7 which contained details of one Police Service's Board Award, three commendations, three letters and five memorandums of recognition and appreciation.

Findings on Penalty

I wish to thank Inspector Fawcett and Mr. Sharp for their submissions in this matter.

As outlined in *Krug*, when deciding appropriate penalty in police disciplinary matters there are key elements to be considered by a tribunal. They include the nature and seriousness of the misconduct, the ability to reform or rehabilitate the officer and the damage to the reputation of the police service. There are other factors that may also be considered by a tribunal in assessing recognition of the seriousness of the misconduct; the officer's employment history and public interest as well as general and specific deterrence, and consistency of penalty.

Constable Asselin has pled guilty and been found guilty of Discreditable Conduct in that on four different occasions; dated, January 5, 2010, April 10, 2010, June 12, 2010, and June 18, 2010 Constable Asselin arranged to have Brian Odor of Brian's Towing, an affiliate of Legend Towing or Legend Towing itself, attend a Community Station and tow vehicles that Constable

Asselin stated to the drivers that their vehicles were not drivable due to a minor collision being reported.

He acted improperly in relation to this matter in that;

- he did not follow the policy of Directive 1-B-604(F) Vehicle Towing, Seizure and Release
- he did not utilize the use of a contracted tow company as required by the Directive.

The nature and seriousness of the misconduct are relevant to the facts of this case and have significant weight in my penalty decision. Constable Asselin utilized a neighbour's tow company that was not a contracted tow service of Peel Regional Police. This was clearly a position of conflict and indicated a preference towards a particular towing service. Constable Asselin's recommendation of a specific company and failure to use a contract tow company was in direct violation of the Directive.

Public interest and damage to the reputation of the Peel Regional Police considerations are necessary in this matter. The public must have confidence the Peel Regional Police will conduct all towing processes in a fair, objective and in an unbiased manner. Constable Asselin by using a neighbour's tow company was not in a position to do this. He had a conflict of interest. He was too closely connected to the tow company. Any layperson looking from the outside in would see this as a conflict of interest. I consider Constable Asselin's failure to utilize a contract towing company a serious misconduct which could likely bring damage to the reputation of the Peel Regional Police. In order to maintain public confidence, the penalty must reflect that Peel Regional Police does not tolerate this type of behaviour and significant sanctions will follow those who engage in this type of misconduct. I agree with Inspector Fawcett's submission that Constable Asselin's misconduct placed Peel Regional Police's reputation at potential risk.

General and specific deterrence considerations are necessary when determining the appropriate penalty disposition. In this matter, it is necessary to consider both. The penalty disposition must send a clear message to all officers that they are expected to carry out their duties at all times in a fair, unbiased, ethical manner, and follow the direction of the Peel Regional Police Directives. The standard of conduct for all police officers is by nature higher than what is expected of others. Officers must understand they will be held accountable and face significant sanctions when they fall short of these expectations.

I am satisfied that specific deterrence for Constable Asselin can be limited. Evidenced by his desire to plead guilty from the onset, I believe he fully appreciates his behaviour was unacceptable and has taken full responsibility for the misconduct. I have taken this into consideration as a mitigating circumstance.

To assist in determining Constable Asselin's ability to reform, I have reviewed his employment history. Constable Asselin has 8 years of service with this organization as an officer and no prior history of discipline. The numerous letters of appreciation on file, commendations and Police Service's Board Award are indicative of an individual who is committed to his duties as a police officer, who strives to do the right thing and goes above and beyond putting the right foot

forward. I agree with Mr. Sharp's submission that Constable Asselin exercised poor judgment in this matter and his conduct can best be attributed to an aberration of character. Constable Asselin has enjoyed what otherwise has been a productive career. Taking all into consideration, I am confident that Constable Asselin can move past this matter and be a valuable employee and service provider to the residents of Peel. I consider Constable Asselin's positive employment record and ability to reform significant mitigating circumstances which have weighed heavily in my disposition consideration.

Disposition

I have carefully considered the facts presented in this matter and conclude there is clear and convincing evidence to support a finding of guilt of Discreditable Conduct against Constable Asselin. In light of the mitigating and aggravating circumstances, the seriousness of this allegation and bearing in mind all the evidence placed before me, I impose on Constable Asselin #2735 a penalty of forfeiture of eight (8) eight (8) hour days, to be served (worked) at the discretion of his Divisional Commander, pursuant to Section 85(1)(c) of the *Police Services Act*, R.S.O. 1990.



Superintendent David Downer
Peel Regional Police
Hearing Officer

Dated: August 3, 2011