

**IN THE MATTER OF**  
**ONTARIO REGULATION 268/10**  
**MADE UNDER THE POLICE SERVICES ACT, R.S.O. 1990**  
**AND AMENDMENTS THERETO**

**AND**

**IN THE MATTER OF**  
**THE ONTARIO PROVINCIAL POLICE**

**AND**

**PROVINCIAL CONSTABLE S.T. (STEVEN) BARBER, #12047**

**Hearing Date:** Monday, May 1, 2013  
**Charge:** Discreditable Conduct  
**Before:** Superintendent Anne McConnell

**Counsel for the Prosecution:** Mr. Christopher Diana  
  
Legal Services Branch, Ministry of Community  
Safety and Correctional Services

**Counsel for the Defence:** Mr. Gavin May  
  
Ontario Provincial Police Association

**Public Complainant:** Mr. Oliver Reichl

## **Reasons for Decision**

Provincial Constable S. T. (Steven) Barber, #12047 has been charged with one count of Discreditable Conduct contrary to Part V, section 80(1)(e) of the *Police Services Act*.

The particulars of the allegation are:

Provincial Constable Barber tried to coerce a complainant to withdraw a public complaint under the *Police Services Act*, and indicated that doing so may result in a “break or a withdrawal” of a speeding ticket.

## **Plea**

P.C. Barber pled guilty to the allegation of discreditable conduct..

## **Agreed Statement of Facts**

Mr Diana, prosecutor in this matter; Mr May, representing P.C. Barber; and with consultation and agreement by the Ontario Independent Review Director as this was a directed hearing, submitted an agreed statement of facts. This was tendered by Mr Diana and marked as exhibit #6 (it can also be found in the book of authorities, tab #1, exhibit #7).

On December 30, 2010, Constable Steve Barber pulled over the public complainant on the Thousand Island Parkway for speeding. Constable Barber believed that he smelled alcohol on the public complainant and subsequently detained him in the back of his police cruiser. While detained, Constable Barber searched the public complainant’s vehicle for alcohol. The public complainant complied with Constable Barber’s roadside demand for a breath sample. The reading on the device was zero. Constable Barber gave the public complainant a ticket for speeding, 33 km/h in excess of the speed limit.

On June 23, 2011, the public complainant filed a public complaint with the Ontario Independent Review Director (“OIPRD”) alleging wrongful detention and search by Constable Barber.

On August 3, 2011, the public complainant attended court to respond to his speeding ticket. While waiting for his matter to be called, he was approached by OPP Constable Kevin Lamacraft, who was known to him as an acquaintance. He advised Constable Lamacraft that he was in court to respond to a speeding ticket issued by Constable Barber. Upon the suggestion of Constable Lamacraft, the public complainant went into a meeting room with Constable Lamacraft to meet Constable Barber to discuss the ticket. The public complainant discreetly turned on an audio recorder that resembled a pen. Neither Constable Lamacraft nor Constable Barber was aware that the meeting was being recorded.

The meeting lasted approximately 30 minutes. While there was initial discussion about the speeding ticket and the search of the public complainant’s car, Constable Barber tried repeatedly to convince the public complainant to withdraw his complaint to the OIPRD. Constable Barber also expressed a strong desire to take a course on drug recognition that was in jeopardy as a result of the public complaint. In exchange for having the complaint



“BARBER: I have no problem with giving somebody locally that’s tryin’ to make a go of it in rough times, a break, but now I want one and you know what I want. I know you can read between the lines.

COMPLAINANT: Yeah, you that thing withdrawn.

BARBER: At the end of the day it doesn’t bother me but I really just don’t want to have to deal with it anymore. It’s all submitted. It’s done with but like...” (Page 12)

\* \* \* \* \*

“BARBER: So y...you want a break, I want a break. You think about that. Fair enough?” (Page 13)

\* \* \* \* \*

“BARBER: So you want a break from me - - I want a break from you, that’s why. Do you understand me?” (Page 14)

\* \* \* \* \*

“BARBER: You want a break from me? I want a break from you and I don’t mean like in two months - - like shortly. If you put this over for as quick as you can, I’ll help you out. We’ll get it maybe down to no points, maybe. You know what I want now.” (Page 15)

\* \* \* \* \*

“BARBER: Well, I know it is. Here I am trying to be a drug recognition expert for people driving on the highway and this comes in two weeks ago - - denied. I’m not goin’ on that course now and I’ve wanted that for three years. So I think you can understand why I’m very frustrated and there’s a chance, if that goes away, I might be able to get back on it. It’s being set in the Maricopa County Jail if you look it up.

COMPLAINANT: When’s the date for that?

BARBER: The end of the year.

COMPLAINANT: Oh, the course is at the end of the year?

BARBER: Yeah.

COMPLAINANT: Okay.

BARBER: But here I am now and I gotta take care of all this.” (Page 18 and 19)

\* \* \* \* \*

“BARBER: So you want a withdrawal - - I want a withdrawal. If I get it you’ll probably get yours ‘cause everybody gets one break from me around the area, at least one - - but after you get stopped for - - in Rockport for speeding, if I stop you only once then you - - they always get a break the first time, unless something happens or I’m not treated with respect. That’s, that’s the different.” (Page 22)

\* \* \* \* \*

“BARBER: So I don’t know what you’re gonna do. Oliver but I know what I’ll do if you do what, what I think you’re gonna do - - I hope you do - - ‘cause I want that damn course. I’ve been looking for it for a long time.” (Page 24)

Following this meeting, the speeding charge was adjourned. The public complainant was ultimately convicted of the offence in his absence.

On August 25, 2011, Detective |Sergeant Mark Allison of the OPP’s Professional Standards Bureau interviewed the public complainant by telephone. The public complainant recounted the December 30, 2011 (Note: should be 2010) traffic stop and advised of the comments made by Constable Barber during the meeting at the courthouse on August 3, 2011. He did not inform Detective Sergeant Allison that he had recorded the conversation at the courthouse.

Detective Sergeant Allison took a compelled statement from Constable Barber on September 29, 2011. Detective Sergeant Allison asked about the traffic stop and the search of the vehicle. He also asked about the meeting at the courthouse. Constable Barber denied that he asked to have the complaint withdrawn. He also denied any discussion about a course or about how a public complaint could hurt his chances to take a course. Constable Barber advised that his conversation with the public complainant was five minutes in duration and was about why he stopped the public complainant and searched his vehicle. In fact, the conversation was approximately thirty minutes in duration, most of which was spent discussing Constable Barber’s desire to have the complaint withdrawn, including discussion about a course Constable Barber wanted to take.

On November 7, 2011, the public complainant received a letter and a copy of an investigative report from Detective Sergeant Allison substantiating the original complaint, less serious in relation to the allegation of Improper Search and Improper Detention. The investigative report indicated that Constable Barber had denied discussing withdrawal of the complaint during the conversation at the courthouse.

On February 14, 2012, the public complainant complained to the OIPRD that Constable Barber had tried to coerce him to have the June 23, 2011 complaint withdrawn and alleged that Constable Barber had lied to Detective Sergeant Allison in his account of the conversation at the court house on August 3, 2011.

### **Finding**

As a result of the plea and the facts as agreed, Constable Barber was found guilty of Discreditable Conduct contrary to the Code of Conduct contained in the Schedule to Ontario Regulation 268/10, as amended.

### **Submissions**

The parties presented a joint submission on penalty. The proposed penalty in this case was a demotion from 1<sup>st</sup> class constable to 2<sup>nd</sup> class constable for a period of six (6) months.

#### a) Prosecution

Mr. Diana offered a book of authorities that was marked as exhibit #7 in support of his penalty submissions. The book contained four (4) tabs and included two cases (tabs 2 and 3) and a career profile (tab 4) for Constable Barber.

Mr. Diana outlined his submissions based on the issues or factors considered by adjudicators in *Police Services Act* matters and delineated in Paul Ceysens' text *Legal Aspects of Policing* (Salt Spring Island: Earls Court Legal Press, 1994) and summarized in his fully annotated *Ontario Police Services Act*. Mr. Diana presented his penalty submissions on twelve of these factors as follows:

#### 1. Public Interest

Mr. Diana indicated this factor is a consideration as this case originated from a public complaint. He said the penalty must be proportionate to the conduct demonstrated. In addition the penalty must ensure public confidence is held. Mr. Diana said that this does not mean that the public must be satisfied by the outcome but that a detached observer who is aware of the facts should be satisfied that the penalty is appropriate and sufficient to inspire confidence in the process.

#### 2. Seriousness of the misconduct

This is serious misconduct based on the facts presented. The conduct goes to the heart of the officers' integrity. The officer tried to bargain away an earlier complaint in order to be able to go on a drug recognition course. Mr. Diana said he was unaware of any previous history of this kind, there does not appear to be a prior pattern. Mr. Diana said the six (6) month demotion recognizes the seriousness of the misconduct.

3. Recognition of the seriousness of the misconduct  
The officer has pled guilty to this matter and is accepting a significant penalty. There has been no apology to date but the guilty plea amounts to limited mitigating circumstances.
4. Handicap and other relevant personal circumstances  
There is no indication that this is a factor for consideration.
5. Provocation  
There is no evidence that provocation is a factor for consideration.
6. Employment History  
Employment history is a standard disposition consideration. Provincial Constable Barber was appointed to the OPP on January 1, 2007. Mr. Diana referred to tab #4, book of submissions, exhibit #7. This contained a Performance, Learning and Development Plan (PLDP) covering the period of January 1, 2012 to January 1, 2013 and was authored by Sergeant Fitzpatrick. The document includes supervisors' comments. Comments by the sergeant include the following;  

PC Barber continues to demonstrate his abilities in traffic enforcement with his productivity. In the past few months he has shown maturity and readiness of a member with his years of service. He has faced some professional adversity in the past couple months; yet he is ready for duty and accepts all tasks and assignments with a positive attitude. His efforts on the Platoon are greatly appreciated. I would support any request P/C Barber has in relation to his goals of Traffic Management.

S/Sgt. Cary Churchill made the following comments:  
I concur with Sergeant Fitzpatrick's comments and applaud Steve's positive attitude during this period of adversity. A professional and positive attitude will always work in your favour. I commend Steve on his commitment to the traffic duties that he fulfills within the detachment and support his desire for the TMO position.

Mr. Diana indicated that Constable Barber has no previous discipline record. While the officer does not have many years of experience, his clear record and the comments made by his supervisors in a recent performance evaluation are mitigating factors.
7. Potential to Reform or Rehabilitate

Mr. Diana indicated that the supervisor comments on Constable Barber's recent performance evaluation bode positively for the officer. In addition, there is no evidence that the behaviour displayed during this misconduct is a fundamental character flaw that would prevent rehabilitation of the officer.

8. Effect on Police Officer and Police Officer's Family

Mr. Diana spoke about the impact on Constable Barber and his family. He indicated that the officer's reputation has been affected and the officer will experience a significant financial loss of salary with a six (6) month demotion.

9. Consistency of Disposition

Mr. Diana referred to two cases (summarized below) as found in the book of submissions, tabs two (2) and three (3). Mr. Diana indicated that he had trouble finding any case that was on point. These two cases are the closest he could find. He suggested that because the cases provided limited assistance, it is for the hearing officer to consider what they believe to be appropriate.

I. Ontario Police Commission Appeal – Constable John Robertson vs Metropolitan Toronto Police, February 15, 1985.

Constable Robertson was charged with discreditable conduct in that he tried to influence officers to not respond to any calls or complaints at a stag he was holding. He was demoted two ranks from 1<sup>st</sup> class constable to 3<sup>rd</sup> class constable.

The officer was convicted criminally for obstruction of justice. This case was obviously more serious than Constable Barber's matter, as Constable Robertson was criminally convicted.

II. Constable B. (Bruce) Quevillon vs The Ontario Provincial Police, April 18, 2011

This case was an OPP matter involving a conflict of interest. The officer conducted a police investigation involving his girlfriend's father, travelling into another province, without proper authorization or notification to his supervisor. The officer was demoted to 2<sup>nd</sup> class constable for a period of three (3) months.

10. Specific and General Deterrence

The prosecutor said the penalty must send a clear message that this kind of behaviour is not abided. The officer, while we can't determine if this misconduct is out of character, does have a performance evaluation that indicates he is moving in a positive direction. If this kind of misconduct were to occur again, the OPP would likely be seeking dismissal. As a specific deterrent, the penalty is severe enough to send a message that this conduct is not tolerated, as much as a penalty can deter an officer.

11. Damage to the reputation of the police service

A case of this nature does cause damage to the reputation of the Ontario Provincial Police. Mr. Diana said the lack of integrity in this matter led to the public complaint. He said if the penalty were not significant enough it would further damage the reputation of the OPP.

12. Effect of Publicity

Mr. Diana is not aware of any publicity in this matter. It would be a consideration if there were some publicity.

b) Public Complainant

Mr. Reichl indicated that he concurred with the penalty proposed. He said he had one concern and that is in relation to the financial costs of pursuing this matter. He said there is a monetary loss to the tax payer, the public, and as such he wanted the tribunal to be aware this is a concern. He said he can't quantify what he believed the cost would be.

c) Defence

Mr. May presented some additional information about Constable Barber. He is twenty-nine years old, single, with no children. He attended Sir Sandford Fleming College in 2004 and 2005 for police foundations. Before policing he was a Border Services officer for two (2) years. He joined the OPP as a cadet in 2006 and became an officer in 2007. He presently works for the Thousand Island Detachment and he has no prior disciplinary record.

Mr. May referred to the document found in tab 4 in relation to Constable Barber's performance evaluation. He said that the officer was facing professional adversity during this period of time, but was seen to accept tasks and be a productive officer in spite of this situation. He said the year-long performance review has shown the officer's capabilities during a difficult time. He said that the behaviour in this case was a "one off" situation and there is no indication that the officer has a predisposition for this kind of conduct.

Mr. May presented exhibit 8, a performance evaluation for the year of January 2011 to 2012 authored by Sergeant Larouche. He said Constable Barber listed several courses in the Learning and Development Plan in efforts to reach his goals and head down his career path. His supervisor indicated that Constable Barber had shown dedication to traffic management and was in support of Constable Barber's goals. Constable Barber was seen as a high performer and asset to his platoon. His supervisor wrote,

During this evaluation period P/C Barber has demonstrated his strength as a traffic officer. P/C Barber was very proactive in his approach to traffic and supported this by laying more charges than any other member on C platoon...I believe that with P/C Barber's attitude, skills and experience with traffic, he will be successful in achieving his goal of becoming a

member of a traffic enforcement unit or a detachment Traffic Management Officer.

Mr. May said the past two years annual evaluations show what Constable Barber is capable of in the future, and this must be a consideration, when determining the appropriate penalty.

Mr. May indicated Mr. Diana said that the officer had not made an apology. Mr. May said that it is his job to express regret and remorse, not the officers. He said this is a part of this process and the guilty plea is a show of the officer's remorse and this should be fully considered as a mitigating factor.

Mr. May said the annual reviews show that Constable Barber is goal oriented and chose a path for himself, which in fact got him into hot water and before this tribunal. But this was momentary and not reflective of his overall conduct, particularly given the last two years of performance reviews. The officer was very young and is very remorseful for his actions. He has a promising career ahead and the penalty in this matter should not have a crushing effect on the officer.

Mr. May did not have any cases to present regarding consistency of penalty. He did not find that the cases provide by Mr. Diana were on point. He said the first case resulted from a criminal conviction. He said this matter should stand on its' own and the penalty should be appropriate to these circumstances.

Mr. May said that regarding public interest, the matter had been reviewed by the OIPRD and they felt the penalty was appropriate in the circumstances.

Regarding specific and general deterrence, Mr. May said a short, sharp period of demotion was appropriate. He said the penalty should not be so significant as to prevent the officer from continuing with his career aspirations. He said the penalty addresses the seriousness but also allows the officer to be a valued employee and productive member of the OPP. He said the penalty proposed sends a message to other officers that the behaviour is not appropriate. It also has a financial impact on the officer.

Mr. May spoke briefly regarding Mr. Reichl's submission. He said it is tempting to try to craft a penalty to account for the monetary impact of incidents. But each incident is different and one number or one penalty does not account for the uniqueness of each event. He used the example of cruiser damage. Values of the damage can range from \$100 to thousands. It is not fair to assess a penalty based on the damage amount. It is more appropriate to look at the misconduct as a whole, to look at the officer and their ability to reform.

Mr. May said the penalty proposed by the prosecution and supported by the OIPRD is appropriate to the circumstances.

## **Decision**

I have weighed and balanced the submissions and thank everyone for their presentations regarding the agreed statement of facts and the joint penalty proposal.

Provincial Constable Barber pled guilty and has been found guilty of Discreditable Conduct in that he tried to coerce a complainant to withdraw a public complaint under the *Police Services Act* in exchange for a break or withdrawal of a speeding ticket. On August 3, 2011, Constable Barber met with the public complainant at the courthouse as the complainant waited to attend court. Constable Barber had issued a speeding ticket to the complainant on December 30, 2010. Constable Barber had no idea he was being audiotaped by the public complainant when he tried numerous times during their 30 minute conversation to convince the man to withdraw his complaint. Constable Barber's reasons for this were for personal gain in that it would improve his chances to attend a drug interdiction course he had sought for some time. During their conversation Constable Barber told the complainant they could help each other out. In trying to coerce the complainant to withdraw the complaint in exchange for consideration on this traffic ticket, Barber said, "...I'm all about the brotherhood..." as the complainant had worked briefly in provincial enforcement. The public complainant adjourned his matter before the courts after their conversation. The complainant was eventually convicted of the offence in his absence.

On September 29, 2011 when Constable Barber was compelled to provide a statement to Detective Sergeant Mark Allison about the conversation with the complainant, he denied he asked the complainant to withdraw his complaint for consideration on the traffic ticket. He told the investigator that the five minute conversation was about the traffic stop and search of the complainant's vehicle. It was later revealed that the complainant had taped the conversation, portions of which are included in the agreed statement of facts.

In deciding the appropriate penalty in police disciplinary matters there are key elements to be considered by a tribunal. One such consideration is the seriousness of the misconduct. This is a serious matter in that Constable Barber attempted to obstruct or interfere with the course of justice for personal gain. This is a significant aggravating factor. He breached the public trust by using his "public office" in a corrupt way. I do not agree with the defence that Constable Barber's misconduct was "momentary" as when asked to provide a statement about his conversation with the complainant, he denied trying to coerce the complainant to withdraw his complaint. I do recognize however, that both the conversation with the complainant and the compelled statement were in relation to one matter and not two separate matters of discreditable conduct. I am satisfied as well, that Constable Barber has now recognized the seriousness of his misconduct. The fact that both the public complaint and the traffic offence proceeded through their course of justice mitigates the seriousness of the misconduct as well.

Public interest and potential damage to the reputation of the Ontario Provincial Police must be considered in deciding this matter. The misconduct arose from Constable Barber's attempt to undermine the public complaint process and a provincial offence matter. This reduces the trust and confidence the public has in the police and the public complaint process that was put in place to ensure officers are accountable for their actions. The public must have confidence that the disposition fits the conduct discovered. The OIPRD have reviewed this matter and are supportive of the proposed penalty. The public complainant as a party to the hearing had an opportunity to express his agreement with the proposed penalty. He did comment on the cost of the process as a factor he was concerned about.

There must be a clear message this kind of misconduct that goes to the heart of public confidence will not be tolerated. Specifically for the officer, he needs to understand that this kind of decision making and behaviour affected the public trust and is directly contrary to his oath of office and the penalty for such conduct will be severe. Constable Barber was a relatively junior officer when he tried in 2011 to change the course of justice during his meeting with the public complainant at the courthouse. As stated by Mr. Diana, it is unknown if this behaviour is the result of a character flaw, but we do know that it was for personal gain. We expect officers to conduct themselves with the upmost of integrity regardless of career aspirations and desire for personal advancement. As a general deterrence the penalty must show the OPP holds their officers to a high standard and they must conduct themselves with integrity and make sound and just decisions that enhance public confidence.

The effect of the penalty on the officer is a consideration in this matter. The officer's reputation has been affected and Constable Barber will need to build trust and confidence in his decision making. There is no evidence that a period of demotion will result in undue hardship other than the actual impact of the financial loss.

Constable Barber has been an officer since January 1, 2007. There is no previous misconduct noted on his employment history. To the contrary, there were two very positive performance evaluations submitted for my consideration. His supervisors commended Constable Barber on his productivity and dedication during the two years of the evaluations and during this time of personal adversity. His supervisors were very supportive of his professional goals towards a traffic management position, even though his ambition and determination towards this goal may have been partly to blame for his misconduct. The supervisors praised Constable Barber for his commitment, and his positive and professional attitude.

Constable Barber's clear discipline record, his relatively brief career, and the positive comments by his supervisors are mitigating considerations for the tribunal. These factors speak to the likelihood that this kind of behaviour will not reoccur and the officer should be given the opportunity to redeem himself and demonstrate that this misconduct was a departure from his normal behaviour.

There were two cases presented regarding the consideration of consistency of discipline. While these cases do not provide the tribunal with a perfect example of consistency, the Robertson case does involve an obstruct justice misconduct, more serious in that a criminal conviction was registered, that resulted in a two rank demotion. Constable Barber was not convicted of obstruct justice, but the circumstances of his misconduct revolved around attempts to interfere with the justice process in exchange for personal consideration. A period of demotion therefore would be consistent in considering this kind of conduct and sends a strong message that this kind of conduct will not be tolerated and will result in serious penalties but at the same time recognizes Constable Barber's clear record and potential for a positive policing future.

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 Barber. In light of the mitigating and aggravating circumstances, the seriousness of this allegation and keeping in mind the evidence placed before me, the penalty assessed to Constable Barber is six (6) months demotion from 1<sup>st</sup> Class Constable to 2<sup>nd</sup> Class Constable.

This matter is concluded.

Anne McConnell  
Superintendent  
Waterloo Regional Police Service

Disposition Date: May 27, 2013