

ONTARIO PROVINCIAL 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 ONTARIO PROVINCIAL POLICE
AND
PROVINCIAL CONSTABLE S.C. (Scott) HEARDEN, #11789

CHARGE:

DISCREDITABLE CONDUCT

DISPOSITION

Before: Superintendent Lisa Taylor

Appearances:

For the Prosecution: A/Inspector Rob Fournier
Ontario Provincial Police

Defence Counsel: Mr. Gavin May
Ontario Provincial Police Association

Hearing Date: May 12, 2021

This decision is parsed into the following parts:
PART I: OVERVIEW;
PART II: THE HEARING;
PART III: SUBMISSIONS, ANALYSIS and FINDINGS; and,
PART IV: DISPOSITION

PART I: OVERVIEW

Allegations of Misconduct

Provincial Constable (P/C) Scott Hearnden, #11789 is alleged to have committed discreditable conduct in that he was found guilty of an indictable criminal offence or a criminal offence punishable upon summary conviction, contrary to Section 2(1)(a)(ix) of the Code of Conduct contained in the Schedule to Ontario Reg. 268/10, as amended.

Amended Particulars of Allegations:

On June 1, 2018, Justice Riun Shandler found P/C Hearnden guilty of Assault, contrary to Section 266 of the *Criminal Code of Canada*. On June 20, 2018, he was sentenced and received a conditional discharge regarding this matter. P/C Hearnden was ordered to serve 12 months of probation and to complete 120 hours of community service as part of his sentencing. An appeal process commenced immediately following the sentencing. The appeal matter was dismissed in October 8, 2020.

The particulars leading to the finding of guilt for assault were as follows:

On Tuesday, June 30, 2015, at approximately 11:58 pm, the Ontario Provincial Police (OPP) were dispatched to a report of a three vehicle collision located in the eastbound collector lanes of Highway 401, just west of Keele Street, in the City of Toronto. A short time later, P/C Hearnden and P/C Otchere were updated that it was a report of a disabled vehicle, not a motor vehicle collision. P/C Hearnden and P/C Otchere arrived at the scene and spoke with several persons at the scene.

One of the people involved in the incident, J.S¹., was on the phone calling the Canadian Automobile Association (CAA) to attend the scene. When P/C

¹ Initials used to protect the privacy of the civilian witness

Hearnden and P/C Otchere arrived, J.S. got into his vehicle. P/C Hearnden approached the vehicle to speak with J.S. J.S. indicated for him to wait as J.S. was on the phone. The driver's side door of the vehicle was opened and P/C Hearnden leaned in to speak with J.S. J.S. shut the car door, subsequently hitting P/C Hearnden's knee. J.S. was forcibly removed from the vehicle by P/C Hearnden, physically restrained, detained before being released.

J.S. subsequently contacted the Special Investigations Unit (SIU) who conducted a criminal investigation related to the injuries sustained by J.S. As a result of the SIU investigation, on December 29, 2015, P/C Hearnden was charged with one count of assault cause bodily harm involving J.S.

The trial judge held that P/C Hearnden did not have any lawful authority for opening the vehicle door and that apart from the lack of lawful authority, he did not accept P/C Hearnden's account that he had been assaulted by J.S. In the trial judge's view, P/C Hearnden's account was *"illogical, contrary to common sense and not supported by any witness at the scene"*. As there was no assault by J.S., P/C Hearnden had no justification for forcibly removing J.S. from the vehicle and by doing so, P/C Hearnden committed an assault.

P/C Hearnden knew or reasonably ought to have known that his actions leading to his finding of guilt in this incident would likely bring discredit upon the reputation of the OPP.

Representation / Plea

In this matter, the parties are Mr. May who represented P/C Hearnden and A/Inspector Fournier who represented the OPP. On May 12, 2021 Mr. May on P/C Hearnden's behalf pleaded guilty (in absentia), to discreditable conduct. I found the officer guilty of this misconduct as outlined in the Notice of Hearing, based on clear and convincing evidence.

Positions on Penalty

Mr. May and A/Inspector Fournier submitted a joint penalty proposal of a 30 hour forfeiture and mandatory training by the Provincial Police Academy on arrest authorities and procedures. This proposal was supported with submissions which are detailed in Part III of this decision.

Decision

Having reviewed and considered the submissions, I am satisfied the proposed penalty meets all the goals of discipline including to correct specific behaviour, to deter others from similar misconduct and to reassure the community. Based on the submissions, I accept that the proposed penalty is within the range of penalties imposed for misconduct of a similar nature.

In an email dated May 14, 2021, I sent an email to both parties thanking them for their efforts in resolving this matter. Further, I advised that I had considered the submissions and I acceded to the joint penalty proposal. In that email I included three e-learning courses that P/C Hearnden would be required to complete online.

I order P/C Hearnden forfeit 30 hours and undertake and successfully complete training by the Provincial Police Academy in respect to arrest authorities and procedures. This order is being made pursuant to section 85(1)(f) and 85(7)(b) of the *Police Services Act* respectively.

Part II: THE HEARING

Due to the ongoing State of Emergency in the province of Ontario in relation to the Covid-19 virus, the tribunal was held, in part, virtually. The prosecutor, reporter and I were in the hearing room and defence counsel, Mr. May, attended virtually. The documents provided to the tribunal were electronically received, reviewed and marked as exhibits.

Exhibits

The exhibits for this matter are listed as Appendix A.

Agreed Statement of Facts

At the commencement of the hearing, the prosecution and defence counsel jointly agreed to adopt the allegations as outlined in the Notice of Hearing as the facts to be relied upon.

Part III: SUBMISSIONS, ANALYSIS AND FINDINGS

Analysis

Public Interest

The prosecution submitted that the average person having knowledge of the circumstances before the tribunal would expect a higher standard from an experienced and respected officer and, I concur. The prosecution submitted that P/C Hearnden's actions have undermined the public trust. His decisions and actions were such that it could create a very troubling environment for the police.

The prosecution referred to Police Orders Section 6.10.3 which addresses Professionalism and Accountability including, in part:

- *Each employee should regard the discharge of duties as a public trust and recognize their responsibilities as a public servant. In carrying out duties, an employee is accountable for: promoting a positive professional image.*

I concur with the submissions of the prosecution. The charges before the tribunal are in relation to an assault on a motorist. The effectiveness of policing is highly dependent on the trust and support of the community and P/C Hearnden's actions have undermined this relationship and trust.

The standard to which police are held accountable by the community has never been higher. The public expects police officers to demonstrate patience, professionalism and a measured response. These descriptors do not characterize the encounter with J.S. in June 2015. This hearing appropriately addresses the need to demonstrate confidence in the police disciplinary process.

I find public interest an aggravating consideration.

Seriousness of the Misconduct

The prosecution outlined that P/C Hearnden's actions in the circumstances as outlined, when he removed the public complainant from his vehicle without grounds, brought his decision-making into question. His actions reflected poorly on him and on the OPP.

Seriousness is a fundamental consideration in penalty hearings. The matter before the tribunal involves an incident that took place in the public eye, with a member of the public. Due to a lack of understanding or possibly a disregard for his lawful authorities, P/C Hearnden set in motion the circumstances that led to an unlawful arrest and injuries to J.S., and to P/C Hearnden's finding of guilt in criminal court for assault.

I accept the comments of defence counsel that this matter does not involve a "bad" police officer but rather that P/C Hearnden became involved in a situation and it went 'sideways'. Defence counsel submitted that there was more to the story than what the tribunal has heard and I do not doubt that is the case. Situations of police encountering members of the public are not always positive and they can involve challenging circumstances and people in dynamic environments. However, regardless of negative attitudes displayed by certain members of the public, police officers must maintain their composure and act with respect and professionalism. I acknowledge and consider this matter does not involve prolonged or repeated misconduct over time and recognize police officers too, can have a bad day.

Overall, I find nature and seriousness of misconduct an aggravating factor.

Recognition of the Seriousness of Misconduct

The processes related to police disciplinary hearings are inherently extremely stressful for the respondent officers. By addressing his misconduct head on, through a guilty plea and with an agreed penalty when P/C Hearnden is in fact, away from the workplace, shows integrity and strength.

One of the principles governing the determination of an appropriate disposition is the presumption of the least onerous sanction and that a remedial or corrective disposition is favoured over a punitive one. I find this proposed disposition represents a balanced approach, keeping the above principles in mind.

Given P/C Hearnden's plea and the full circumstances, I find mitigation is due in relation to recognition of seriousness of misconduct.

Employment History

The tribunal was provided with three annual Performance, Learning and Development Plans (PLDP) starting in 2016 and ending in 2020 (the 2017-2018 PLDP was not included). P/C Hearnden has been a police officer since 2005 and at the time of the incident had approximately ten years of service. I would concur, having

reviewed the PLDPs provided, that P/C Hearnden takes his chosen profession seriously.

Mr. May outlined P/C Hearnden's personal family circumstances and it would appear he has a supportive network. He completed a Police Foundations/ Law and Security Program before he began working in a manufacturing job for 20 years. It was after this time that he became a police officer. He worked for three years as an auxiliary officer before joining as a full time OPP officer. He has worked in the Highway Safety Division throughout his career.

P/C Hearnden was described as a solid officer who exceeded in various categories. I find these comments are fully supported by the PLDPs provided. Clearly, P/C Hearnden had a strong desire to become a police officer and I applaud his efforts to do so after having invested considerable time in another career.

The comments that stand out in the PLDPs provided, paint the picture of a valued, respected and contributing member of the OPP include the following:

From the 2016-2017 PLDP, the comments of his supervisors included:

PC Hearnden participates in active Leadership of the Platoon. He encourages the participation of all members of his platoon to provide input into the platoon operations and response to incidents. He values the opinions of all his members, and supports the decision of the platoon. Where necessary, he will provide the rationale for decisions made from outside the groups influence. He has an ability to recognize the strength of each platoon member, and values their contributions. He will take every opportunity to learn from the experiences and knowledge that each member brings to his platoon.

PC Hearnden contributes to the overall success of the detachment goals and objectives by learning to foster strong relationships within the Detachment Team. He participates and offers advice and insight to complex problems. He will put the needs of the group or another above his own to ensure success, and offers assistance and advice freely. PC Hearnden works collaboratively with his fellow shift members to identify obstacles and challenges that affect cohesive within group, and works towards promoting a highly effective team and unity within the detachment.

As the Platoon supervisor, I have a direct reporting relationship with PC Hearnden. He continually puts the needs of the group above his own to ensure success and offers assistance and advice freely. He never hesitates to offer

his assistance at incidents, and will often volunteer to take the lead on an investigation. He requires minimal supervision, and can be counted on to perform his duties beyond expectations without direction or guidance. He is valued as a contributing member of the Platoon, and more significantly, the Detachment. Scott, thank you for your contributions and efforts, the successes achieved by our Detachment would not have happened without your direct input!

PC Hearnden is an experienced and very competent OPP officer. He always looks professional and treats his colleagues and members of the public with respect. He consistently contributes to detachment and OPP goals and contributes to highway safety on every shift. Thank you for your continued dedication Scott!!

In the 2018-2019 evaluation, the comments included:

PC Hearnden is receiving an “EXCEEDS” in the area of “Teamwork”. While on administrative duties, PC Hearnden assisted the detachment with cruiser maintenance and he assisted with tasks assigned to him. PC Hearnden also assisted the court officers with the court briefs and general court tasks. On March 21, 2019, PC Hearnden received a commendation from the court officer acknowledging the efforts of PC Hearnden who took the lead in “utilizing his organization and time management skills to gather information from several sources while managing his regular assigned workload” to provide the 2020 Officer availability for the Criminal Courts.

During his recent return to the road, PC Hearnden initiates many RIDE, speeding and seatbelt initiatives outside of the provincial traffic initiatives. PC Hearnden is quick to answer calls in his zones and assists his team members when needed. He engages his colleagues [sic] in enforcement initiatives that target the “BIG 4”.

[He is a] competent officer who can be relied upon...

[He] is an above average officer. He is highly regarded and trusted by his peers and chain of command.

Throughout the PLDPs provided to the tribunal, P/C Hearnden has received “exceeds standard” ratings including in the area of *Commitment to Detachment Goals, Communication Skills and Teamwork* (2016-2017) and for *Technology and Teamwork* (2018-2019). P/C Hearnden’s contributions were recognized by his

detachment commander including the following comments:

I agree with Sgt Pincoe's comments, I have had the opportunity to observe PC Hearnden's work. He is always professional, requires minimal supervision and can be counted on to perform his duties beyond expectation. He is a leader on his Platoon and outside the detachment he is a valued OPP driving instructor. Please keep up the great work!!

P/C Hearnden should be proud of the contributions he has made to the OPP to date. His sense of commitment, and his leadership and teamwork attributes were clearly evident throughout the PLPDs. Having carefully considered the submissions of both parties and having reviewed the PLDPs, I find employment history is a strong mitigating factor.

Potential to Reform

Having reviewed P/C Hearnden's employment history, it is clear he is a respected and valued member of the OPP. The comments therein indicate his high level of professionalism, positive attitude and putting the needs of others before his own. These are all attributes one wants in a good police officer, attributes which P/C Hearnden has demonstrated consistently. P/C Hearnden has no record of prior misconduct and has a very positive employment history.

Defence counsel provided some background including that the officer has been off due to a Post-Traumatic Stress Disorder (PTSD) diagnosis which is recognized by the Workplace Safety Insurance Board (WSIB). The officer's focus is on recovery and his doctors thought it was in the officer's best interest to move forward with his disciplinary matters. I commend the officer for his strength and resilience to work through his struggles. I am happy he has addressed this misconduct matter and I am hopeful that it will provide some positive advancement in his determination to move forward in his life and career.

P/C Hearnden has taken accountability for his misconduct. As a police officer and adjudicator, I am aware of the challenges faced by officers at the 'side of the road,' when tensions and emotions are high. Police officers are human, not perfect. It is now time for P/C Hearnden to put this matter behind him and continue on with his positive career when he is able.

I find P/C Hearnden's potential to reform a mitigating consideration.

Specific and General Deterrence

Specific deterrence is always important in misconduct of this nature. The forfeiture of hours will remind P/C Hearnden of the importance of not exceeding his lawful authorities as he conducts his policing duties and interacts with the public. I find that refresher training in relation to these authorities will instill knowledge and confidence in P/C Hearnden to ensure misconduct of this nature does not occur again.

In terms of general deterrence this disposition will serve as a message to all officers that misconduct such as this will not be tolerated by the OPP. The community expects a high level of knowledge and professionalism and anything less will serve to undermine the trust of the community.

I find the proposed penalty sufficiently addresses the goals of specific and general deterrence.

Damage to the Reputation of the Police Service

All matters of formal police misconduct are in the public realm. The media often seek and obtain records of police discipline and when that happens they will be aware of the full circumstances including that P/C Hearnden was a highly performing and a valued member of the OPP. Despite this, I find the overall circumstances will sully the reputation of not only P/C Hearnden but the OPP as well.

It is important for officers to recognize that the organization understands officers can make mistakes. Perfection is not expected but accountability is. This is now a learning opportunity for P/C Hearnden. The public should also be aware that officers can make mistakes, be held appropriately accountable and then move forward in one's career. Mistakes do not define any one of us, it is how one learns and moves forward that matters.

Overall, I find damage to the reputation of the police service somewhat aggravating.

Consistency of Disposition

The prosecution did not provide the tribunal any jurisprudence to support the joint penalty position. However, A/Inspector Fournier noted that the OPP has a responsibility to be fair and consistent. After a full consultation and discussions with defence counsel, it was submitted the penalty being proposed was fair and appropriate. I am satisfied that is the case.

Defence counsel helpfully provided some cases that guided my analysis including *Smith v OPP*,² *Hussain*³, *Pearsall v OPP*⁴, *Potter v OPP*⁵ and *Rancourt v OPP*.⁶

Hussain dealt with a court finding of guilt in respect to an open hand assault on a person in custody. Notably, the officer was off-duty when he assisted security officers with the arrest. There was no accompanying disposition analysis but I found reference to *Hussain* in *Potter* which noted the officer received a 40 hour sanction.

Smith involved an assault on a fully restrained male who was legitimately in custody. The officer received a 40 hour forfeiture as a sanction. I find the matter at hand no more serious than the circumstances in *Smith* despite it involved a legally justified custody issue unlike the current matter.

In *Pearsall*, the officer was making a lawful arrest, used too much force and broke the tooth of person in custody. That disposition was from 2008 and given public expectations are higher in the current environment and the fact *Pearsall* involved a lawful arrest, then the 20 hour sanction in that matter would demarcate the lower end of a range of appropriate penalties.

Potter was a 2016 disposition wherein the officer received a 16 hour sanction related to unlawful force in controlling a prisoner. *Potter* is distinct from the matter at hand as it dealt with a person lawfully in custody and was in the act of gaining control. I find it not particularly helpful in my current analysis.

Although there are no circumstances exactly on point with the current matter, I am satisfied that that 30 hours is appropriate and within the range for misconduct of a similar nature.

Conclusion

I find the proposed penalty meets the all the goals of discipline including to correct specific behaviour, to deter others from similar misconduct and to reassure the community. Given the jurisprudence provided, I am satisfied the proposed penalty is within the range of penalties imposed for misconduct of a similar nature.

² Exhibit 8 – Defence BOA: Tab 1 – *P/C T. Smith v OPP*, [30Apr2013]

³ Exhibit 8 – Defence BOA: Tab 2 – *P/C A. Hussain v OPP* – NOH and ASoF

⁴ Exhibit 8 – Defence BOA: Tab 3 – *P/C B. Pearsall v OPP*, [13Nov2008]

⁵ Exhibit 8 – Defence BOA: Tab 4 – *P/C M. Potter v OPP*, [3May2016]

⁶ Exhibit 8 – Defence BOA: Tab 5 – *Sgt Rancourt v OPP*, [24Apr2013]

PART IV: DISPOSITION

I order P/C Hearnden forfeit 30 hours and undertake and successfully complete training by the Provincial Police Academy in respect to arrest authorities and procedures. This order is being made pursuant to section 85(1)(f) and 85(7)(b) of the *Police Services Act* respectively.

2021-08-13

X 

Lisa Taylor
Superintendent, OPP Adjudicator
Signed by: Lisa Taylor LS (M)

Superintendent Lisa Taylor
OPP Adjudicator

Date: August 13, 2021

Appendix A

The following exhibits were tendered during the hearing:

- Exhibit 1: Delegation – Adjudicator Superintendent Taylor
- Exhibit 2: Delegation – Adjudicator Superintendent Bickerton
- Exhibit 3: Designation – Prosecutor Inspector Young
- Exhibit 4: Designation – Prosecutor Inspector Doonan
- Exhibit 5: Designation – Prosecutor A/Inspector Fournier
- Exhibit 6: Designation - All Officers
- Exhibit 7: Performance Learning Development Plans, 2016-2017, 2018-2019, 2019-2020
- Exhibit 8: Defence Book of Authorities:
 - Tab 1 – *P/C T. Smith v OPP*, [30Apr2013]
 - Tab 2 – *P/C A. Hussain v OPP* – NOH and ASoF
 - Tab 3 – *P/C B. Pearsall v OPP*, [13Nov2008]
 - Tab 4 – *P/C M. Potter v OPP*, [3May2016]
 - Tab 5 – *Sgt Rancourt v OPP*, [24Apr2013]