

**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 JOHN (Scott) SIRISKA, #12733

CHARGE: Discreditable Conduct

DISPOSITION WITH REASONS

Before: Superintendent K.M. (Mike) Bickerton
Ontario Provincial Police

Counsel for the Prosecution: Mr. Jason Kirsh
Ministry of the Solicitor General

Counsel for the Defence: Mr. James Girvin
Ontario Provincial Police Association

Hearing Date: March 16-19, 22, 24, 2021

Decision Dates: April 27, 2021 (Found Guilty)
September 9, 2021 Disposition

Penalty Submissions: June 29, 2021

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

PART I: OVERVIEW

Parties to this Hearing

Parties to this Hearing include:

- Provincial Constable (PC) John Siriska, represented by Mr. James Girvin.
- Mr. Kirsh represented the Ontario Provincial Police (OPP).
- The Public Complainants, Mr. Sheehan and Ms. Clarkson, both self-represented.

Background

On March 16, 2021 PC Siriska, represented by his counsel Mr. Girvin, pleaded not guilty to the charge of discreditable conduct. Due to the Covid 19 pandemic the hearing was held in General Headquarters (GHQ) and, in part, via Skype. On April 27, 2021, PC Siriska was found guilty of misconduct as charged. Penalty submissions were made on June 29, 2021.

The underlying decision outlines in detail the behaviour resulting in PC Siriska being found guilty of discreditable conduct. PC Siriska was found to have used profane, abusive or insulting language and was otherwise uncivil to two members of the public. PC Siriska had engaged the involved persons in relation to a traffic stop. Although not part of the allegations, I determined the context of the confrontation was influenced by the enforcement scheme employed by PC Siriska that was, at best overzealous, and I found questionable.

Allegations of Misconduct *(edited)*

Provincial Constable (PC) Siriska was alleged to have committed discreditable conduct in that he did use profane, abusive or insulting language or was otherwise uncivil to a member of the public, contrary to Section 2(1)(a) of the Code of Conduct contained in the Schedule to Ontario Reg. 268/10, as amended.

Particulars of the allegation state:

On or about October 20, 2019, PC Siriska was on duty in the capacity of a frontline uniformed officer, assisting with scene security at or near the location of a serious motor vehicle collision. He was positioned in his unmarked police vehicle at Highway (Hwy) 93 just north of Robert Boulevard, in the village of Hillsdale. He is alleged to have committed the following misconduct:

- PC Siriska cordoned off the section of roadway normally travelled by motorists, with pylons, and positioned himself 294 metres north of that location.
- He felt the pylons were sufficient to mark the closure and stated words to the effect of “*I shouldn’t have to babysit an intersection*” when speaking with the Professional Standards

Bureau (PSB) investigator. He outlined that he had gone over and above the requirements in the Highway Traffic Act (HTA) to satisfy a road closure in that he placed five pylons, when only three were required.

- PC Siriska did not believe it was necessary to position his police vehicle closer to the location of the closure/pylons. He parked on the east side of the roadway and had a clear sight-line from his location to that of the motorists travelling in and around his closure. He subsequently charged seven motorists with 'Drive on Closed Highway' while at that location.
- PC Siriska did not request the Ministry of Transportation (MTO) to move their closure signage to the location of his pylons as he felt it was sufficient.
- PC Siriska observed a motorcycle stop for approximately 30 seconds on Robert Boulevard, facing east 'contemplating what to do.' He observed the motorcycle travel northbound on Hwy 93 through the pylons marking the closure.
- PC Siriska activated his emergency lights and intercepted the motorcycle approximately 250 metres north of the pylons, ordering the driver to pull over and turn off the bike.
- PC Siriska engaged in discussion with the driver, Mr. Sheehan, as there was some confusion on his part around the road closure. The driver stated that they (he and his passenger, Ms. Clarkson) were lost and didn't know how to get home and that they saw you sitting in the laneway and were driving toward you for directions. PC Siriska replied with words to the effect of *'the road is closed regardless of your interactions, you were not permitted to drive through the road closure.'*
- PC Siriska disregarded Mr. Sheehan's explanation for his traveling to your location and proceeding past the road closure and pylons.
- PC Siriska lectured the driver and explained to the PSB investigator that he speaks to everyone the same way, *'...like they are a 17 year old boy.'*
- Ms. Clarkson described PC Siriska as immediately aggressive, making such comments as *'what do you think you're doing?' 'You're driving through a road closure'* and when she and Mr. Sheehan both replied that they were trying to approach the cruiser PC Siriska responded with words to the effect of *'no, you weren't, what are you, stupid?' 'There's no way you could see me up here.'* In stating that they were new to the area PC Siriska responded with words to the effect of *'you've got a phone, you should've talked to somebody, figure it out.'*
- Both Mr. Sheehan and Ms. Clarkson allege they were met with extreme aggression and a lack of respect while seeking directions around a closed highway. Mr. Sheehan was upset that he was receiving a ticket and began using profane language toward PC Siriska. By PC Siriska's account, Mr. Sheehan continued on with his barrage and at that point, half way between the cruiser and the motorcycle, PC Siriska stopped, turned around, and said *'fuck, fuck you, that's how you talk to people? Grow up!'*, then re-entered the cruiser. Ms. Clarkson claims to have heard PC Siriska respond to Mr. Sheehan's comments with words to the effect of *'why don't you go fuck yourself.'*

- PC Siriska's elevated state of anger and coming within inches of Mr. Sheehan's face frightened Ms. Clarkson, as PC Siriska appeared to have trouble regaining his composure. She was fearful his interaction was going to result in a physical confrontation, as was Mr. Sheehan.
- PC Siriska immediately began writing notes on the dash pad to capture what Mr. Sheehan was saying, and as Mr. Sheehan was about to pull away he said 'have a nice night fuck face!' to which PC Siriska responded with '*grow up, you idiot*', returning to his position north of the pylons.
- PC Siriska described his common practice of interaction to the PSB investigator as straight forward, all business, with 99% of people he stops getting a ticket, no warnings, to the point, direct, a person's criminal or driving history having no bearing on his enforcement action; he treats everyone the same.
- Of note, later that evening, a member of the public contacted the OPP to advise that people were confused about the road closure and were getting lost in the residential area of Hillsdale.

PC Siriska knew or reasonably ought to have known his actions in this matter were discreditable.

My purpose now, having found PC Siriska guilty is to consider submissions of the parties and to arrive at an appropriate disposition that is reasonable and fair to PC Siriska while addressing the needs of the community including the public complainants, and the needs of the OPP.

Position on Penalty

Mr. Girvin, on behalf of PC Siriska, suggested the range from a reprimand up to 24 hours would be appropriate. Mr. Kirsh, on behalf of the OPP proposed 30 hours. The public complainants, Ms. Clarkson and Mr. Sheehan declined to make specific submissions as to sanction.

Decision

PC Siriska is assessed 24 hours to be worked under the direction of his detachment commander/regional command under section 85(1)(d) and (e) of the *PSA*. In addition, PC Siriska will be required to complete training related to effective, professional, and sensitive communications. The exact training will be determined by, under the supervision of, and to the satisfaction of the Office of Professionalism, Respect, Inclusion and Leadership (OPRIL). This is in accordance with the provisions of section 85(7) (b) of the *PSA*.

My reasons for the decision are as follows:

PART II: THE HEARING

Exhibits

The exhibits for this matter are listed in Appendix A.

The following analysis is based on evidence available to me, submissions of the public complainants, the prosecution and defence counsel as well as my personal knowledge through training and experience. To assist me in this process, I will rely upon commonly-held proportionality considerations relevant to this matter. In my analysis, mitigating and aggravating factors will be balanced and weighed where possible and appropriate. The goal of discipline is not simply to punish but to correct errant behaviour. The facts and PC Siriska's guilt were earlier addressed and determined by this tribunal.

In finding the most appropriate sanction, I must strike a balance between the expectations of the community, the standards of the OPP, and fairness to the subject officer. The aim of the discipline process includes to correct errant behaviour, deter others from similar misconduct, and uphold public trust.

Although not specifically provided or addressed by the parties, I am aware, through experience and training, of the importance of proportionality in a disposition. In his book *Legal Aspects of Policing*¹, Paul Ceyssens explained:

It is a "fundamental proposition" that a disposition must be proportionate to the misconduct, "given due regard to those special considerations applicable to service in the police force."

Proportionality is arguably the most complex of the five principles that govern the process of crafting an appropriate disposition, and requires three decisions:

- *First, a decision-maker must identify which disposition considerations are relevant to the matter in question.*
- *Second, a decision-maker must determine whether the relevant disposition considerations are mitigating or aggravating or neutral.*
- *Third, the decision-maker must properly balance...the identified relevant considerations in accordance with the factual background of the matter and the competing interests...*

As I conduct my analysis, I must carefully consider this guidance and weigh all of the relevant disposition factors in the context of PC Siriska's misconduct. I agree with Mr. Girvin's

¹ Excerpt, Ceyssens, Paul. *Legal Aspects of Policing*

submission regarding the view that sanction considerations should include contemplation of corrective measures and not simply focus on punitive outcomes.

I am also aware that in police disciplinary decisions it can be challenging to find past decisions with comparable facts that are directly on point. There are often unique, sometimes subtle considerations that distinguish one matter from another. Consistency has been identified in jurisprudence as the *hallmark of fairness* and similar misconduct should be treated in a similar fashion while recognizing sanctions or dispositions must be tailored to the individual case under consideration.

Submissions:

Public Interest

Mr. Kirsh suggested the public interest was an aggravating factor citing *Saxon*² and Police Orders sections 6.10.1 and 2.37.

In *Saxon* OCPC wrote:

On the latter point, we agree that the public expects police officers to be held to the highest level of civil conduct. When this does not occur, the public has a right to be concerned and discredit to the reputation of a police service may result. In this case many witnesses spoke to the inappropriate behaviour of Sergeant Saxon.

The underlying facts in *Saxon* are not principally on point but the general notion in this paragraph applies to the matter of PC Siriska. Public interest is a key consideration in every police discipline matter. Police officers are held to a high standard of conduct. When an officer falls short of the expectations in regard to respect and professionalism, it serves to undermine confidence in the service.

PC Siriska's wholly unwarranted misconduct as described in detail in the corresponding decision began early on in his interactions with Ms. Clarkson and Mr. Sheehan and continued until PC Siriska drove away. The incivility and language exhibited by PC Siriska could only serve to harm public interest and shake public confidence.

I find the public interest an aggravating factor.

² Exhibit 28 – Prosecution BOA, Tab 7 – *Saxon v. Amherstburg Police Service*, [2011] ONCPC 2

Seriousness of the Misconduct

I have acknowledged that this was serious misconduct on the part of PC Siriska as described in detail in the underlying decision. PC Siriska's sustained behaviour included the use of profane, insulting and demeaning language with a driver and passenger of a vehicle involved in a traffic stop. This was not an isolated slip of the tongue nor a momentary lapse of judgement. PC Siriska's inappropriate communications began shortly after he engaged the driver and passenger and continued until his interaction was complete. PC Siriska acknowledged a portion of his behaviour and, some time after the incident, apologized for it while being evasive and appearing less than forthcoming about other aspects of his behaviour. I have determined that the behaviour acknowledged by PC Siriska, on its own, was discreditable.

Mr. Sheehan, the driver, became confrontational and behaved inappropriately as well. There is no excuse for Mr. Sheehan's behaviour but it was in response or reaction to the behaviour displayed by PC Siriska. I do not consider Mr. Sheehan's behaviour as provocation. I note that in *Bernardon*³ the officer was deemed to have "incited" a member of the public's behaviour. PC Siriska's behaviour is considered to have *incited* Mr. Sheehan's less than composed reaction. I do not consider Mr. Sheehan to have provoked PC Siriska's behaviour, on the contrary. For this incident to have been in relation to a traffic stop of a couple out for a weekend motorcycle ride is additionally concerning. This was not a tactical or high risk situation where officers have been cleared from discipline for using aggressive and profane language.

I consider the nature and seriousness of the misconduct to be aggravating.

Recognition of the Seriousness of the Misconduct

PC Siriska acknowledged some of the behaviours described in allegations of misconduct against him while denying others. He apologized for at least some of his behaviour. While certainly not optimal, a partial acknowledgement of wrongdoing is certainly more obliging than a complete denial if the denial were untruthful. PC Siriska did, at least minimally, acknowledge that *some* of his behaviour was wrong.

I recognise PC Siriska was well within his rights to put forth a defence to the allegations against him. In doing so, an officer must exercise caution in providing evidence that goes against their interest. This may explain PC Siriska's lack of an explicit recognition of the seriousness of the misconduct. PC Siriska does not benefit from the mitigation often afforded when missteps are clearly acknowledged, nor for reasons stated, can the lack thereof be considered aggravating.

I consider the recognition of the seriousness of the misconduct to be a neutral factor.

³ Exhibit 28 – Prosecution BOA, Tab 6 – *Bernardon v. Windsor Police Service*, [23May2012]

Damage to the Reputation of the OPP

The prosecution and the public complainants suggested that PC Siriska's misconduct has and/or is likely to cause damage to the reputation of the OPP. The extent of actual damage that has occurred was not directly addressed in submissions and cannot be quantified. There was some indication during the hearing that members of the public had been discussing the road closure on social media. Concerns were expressed in relation to some confusion regarding the road closure but there was no direct indicia that the reputation of the OPP was under scrutiny.

Clearly the reputation of the OPP was harmed in the minds of the public complainants but I do not consider them dispassionate or detached in this regard. I am aware police disciplinary tribunals are open to the public and hearing decisions are generally considered public documents. The media often reports on police disciplinary matters and there is potential for PC Siriska's misconduct to become more widely known.

It is well established in the law that the test to assess discreditable conduct is for the hearing officer to take the view of a dispassionate reasonable person fully apprised of the same facts and circumstances in the same situation to assess whether the conduct in question was discreditable. In assessing future potential damage to the reputation of the OPP through a similar lens, I find it highly likely the reasonable dispassionate person would find the manner in which PC Siriska interacted with Mr. Sheehan and Ms. Clarkson would be viewed as shameful to the point where significant damage to the reputation of the OPP would result. As addressed elsewhere, PC Siriska's behavior leading to misconduct was sustained throughout his interaction with two citizens. PC Siriska's behavior offended public expectations of the conduct and deportment expected by police officers and fell well below the standards expected by the OPP.

I find that damage to the reputation of the OPP could be more significant if PC Siriska is not held appropriately accountable. Actual and potential future damage to the OPP is aggravating.

Employment History

Mr. Girvin suggested PC Siriska's employment history is significantly mitigating and I agree.

PC Siriska's performance evaluations⁴ contain a number of "exceeds" ratings indicating he has been performing above prescribed performance standards in many areas while meeting standards in others. Mr. Girvin highlighted a number of positive comments from PC Siriska's supervisors with respect to his work ethic and commitment to traffic enforcement.

I am favourably persuaded by PC Siriska's employment history. It bodes well for his risk of re-

⁴ Exhibit 28 – Prosecution BOA, Tab 8 – Performance Learning & Development Plans 2017-2018, 2018-2019, 2019-2020

offending and begs optimism that he will learn from this experience and benefit from the resulting sanction and training. Officers who have performed well prior to brushes with discipline can exemplify their resilience, professionalism, and personal pride by quickly returning to the same level of performance they established prior to misconduct. I certainly hope that PC Siriska can demonstrate that he is such an employee and that he can move quickly toward putting this matter behind him and not repeating similar behaviour. PC Siriska's past performance is indicative of an officer who has the ability to do just that.

I consider PC Siriska's performance history to be significantly mitigating.

Potential to Reform and Rehabilitate

PC Siriska's work ethic and commitment as described by his supervisors in performance evaluations are generally indicative of an officer who can learn from his disciplinary experience and return to his productive contributions. The training requirement of this disposition is expected to aid PC Siriska in areas related to effective communication, deportment, and sensitivity. Comments made by PC Siriska such as references to having a "bi-polar moment" and speaking to people like they are "17 year old boys" along with the misconduct as outlined were indicative of a diminished or at least dubious level of understanding of the effect of his words and behaviour on others. I am also concerned as PC Siriska, indicated that other driver's had "lost their shit" with him and he gave recent examples. I am not so naïve as to suggest it is unusual for drivers stopped for traffic violations to be upset with the officer but I got the impression this had occurred recently and frequently with PC Siriska. The descriptive quote suggests drivers were beyond upset or argumentative with PC Siriska. In fairness, this was not explored in great depth in evidence and I must be clear that I am merely surmising with regard to required training; not drawing a conclusion.

PC Siriska did offer a tempered and less than complete acknowledgement of and apology for his behaviour. Despite the apparent prevarication he did acknowledge at least some wrong doing. This offers hope that PC Siriska can benefit from further insight and introspect and that he is willing to exercise these virtues, at least to a degree. There were times when PC Siriska's versions of events were inaccurate, did not ring true or were, at least, less than completely forthright which brought the reliability of his evidence into question. This causes some consternation as to his inclination or desire to reform but this cannot be quantified.

I return to PC Siriska's documented past performance as a guide and, with a degree of hopeful optimism, I find PC Siriska has the ability to reform. I cannot, however, address his willingness to do so.

I find PC Siriska's ability to reform is mitigating but I cannot assign this significant weight for reasons stated.

Specific and General Deterrence

PC Siriska needs to understand that misconduct of this nature has consequences and the sanction must be appropriate and fair and must aid PC Siriska in appreciating the significance of his transgression.

In terms of general deterrence directed at all OPP officers, I agree that other officers also need to understand there are significant consequences for this type of behavior. It will be clear that misconduct such as this will not be tolerated by the OPP nor the public. A strong but appropriate penalty should serve to prevent others from engaging in similar misconduct and remind all members the high standard expected of police officers. All OPP tribunal decisions are posted on the OPP intranet and can be viewed by all members; thereby satisfying general deterrence.

Specific and general deterrence are both necessary and will be satisfied by a fair, reasonable and meaningful sanction and I consider this to be a neutral factor.

Effect on the Officer and His Family

PC Siriska will be required to work 24 hours without pay in addition to satisfying a training component. Working 24 hours will have an impact on PC Siriska and his family in that he will not be remunerated for his time spent at work while serving those hours. I find that, while not unimportant or insignificant, the impact of this on PC Siriska and his family will be minimal.

Mr. Girvin indicated that, as a result of PC Siriska being found guilty of misconduct, he will not be recommended for promotion for a period of time. This is an unfortunate outcome of PC Siriska's behaviour resulting in a finding of misconduct. I do not consider this to be a mitigating factor per se, as promotion in the OPP, as with most other organizations, is an earned opportunity rather than a right or a given. The limited eligibility of PC Siriska for promotion is a regrettable but temporary outcome of his misconduct. No OPP employee seeking promotion is guaranteed success regardless of whether or not they have a history of discipline. Once this matter is sufficiently behind him PC Siriska can compete for promotion as others with disciplinary missteps have successfully done.

I consider any impact of this disposition on PC Siriska and his family to be minimal.

Consistency of Disposition

I have previously addressed the challenges in arriving at an appropriate disposition. There are no tables, charts, formulae, or other tools available to a hearing officer that will enable perfection in arriving at a sanction. The importance of consistency cannot be overstated and similar misconduct should attract a similar sanction. The challenge is considering the uniqueness of matters under consideration that distinguish one case from another. My decision must be

reasonable given all of the information available to me with attention to the specific factors of PC Siriska's case and how they might parallel or be dissimilar to other comparable matters. If possible I will consider a range of available outcomes while acknowledging, from training and experience, discreditable conduct convictions present with an extremely wide range of outcomes, again, dictated by case facts.

Mr. Girvin has suggested that an appropriate range under the circumstances before me range from a reprimand to 24 hours. Mr. Kirsh proposed 30 hours as the appropriate disposition.

*Prosecution Case Analysis*⁵

Karklins v. Toronto Police, 1998 (97-11-030)

This is a rather dated decision. The behaviours are somewhat analogous in that the officer was uncivil to members of the public following a traffic stop. *Karklins* behaviour as alleged was graver than PC Siriska in that at one point *Karklins* apparently made reference to shooting someone in the head in what read to be a highly inappropriate attempt at presenting an analogy. Officer *Karklins* received 24 hours.

Saxon v. Amherstburg Police Service, 2011 ONCPC 2

I did not find this matter particularly on point and of limited assistance with respect to consistency of penalty. In the ONCPC decision, penalty was not specifically considered.

Bernardon v. Windsor Police, 2012

There are some similarities in the behaviour of *Bernardon* and PC Siriska including aspects of incivility and that *Bernardon* was said to have incited a citizen into a confrontation. Officer *Bernardon*, who's misconduct appeared more serious than PC Siriska's, pled guilty and was demoted for 1 month. The finding of guilt and sanction was upheld on appeal to ONCPC. The officer's guilty plea likely resulted in mitigation, however, they received a much more significant sanction than will PC Siriska.

D'Souza v. Toronto Police Service and Berger, 2007 ONCPC 10

Officer *D'Souza* was found to have *muttered* an offensive comment that provoked a confrontation with a motorist. In the heat of that exchange, the officer issued a questionable ticket. The penalty imposed for issuing that ticket was loss of five days. On appeal ONCPC reduced the penalty to three days or 24 hours. In their decision, ONCPC cited other matters in their analysis of appropriate penalty. I see no need to specifically recreate them here except to

⁵ Exhibit 28 – Prosecution Book of Authorities, Tabs 1-7

indicate that the analysis was helpful and offered insight and guidance regarding range of penalty and related tenets.

I find the underlying facts in *D'Souza* to be analogous in that following a traffic stop the officer was uncivil and issued a questionable ticket. ONCPC identified what read as a singular offensive comment made ("*muttered*") by officer *D'Souza*. The matter of PC Siriska is distinguished by the fact that he made a number of uncivil and inappropriate comments over a sustained period up to the point where PC Siriska drove off. I find the misconduct of PC Siriska was more involved than that of *D'Souza*.

Ho v. York Regional Police, 2014

The underlying facts in *Ho* are not particularly analogous to those in PC Siriska's matter although *Ho* did involve incivility and completely inappropriate verbiage used toward young persons. Officer *Ho* received a deduction of 39 ½ hours and a requirement to attend training. If on a scale, I would find officer *Ho*'s misconduct to have been more serious than that of PC Siriska's.

Keating v. Sault Ste. Marie Police, 2020

Officer *Keating* pled guilty to one count of discreditable conduct and one count of neglect of duty. His misconduct involved the use of insulting, antagonizing and threatening language. The neglect of duty involved not honouring an arrested person's right to counsel. I consider officer *Keating*'s misconduct to have been more serious than that of PC Siriska. I take into account that officer *Keating* pled guilty and there was a joint submission on penalty. The hearing officer noted in his decision that, but for the guilty plea and an agreed statement of facts, he would have entertained a more severe sanction.

Keating was assessed 12 hours on each count. I find the matter of some assistance as I consider what a general range of penalty might be. I view the *Keating* matter with the knowledge that if the matter was resolved as described and there is a clear indication that the hearing officer would have considered a more severe sanction notwithstanding the resolution placed before him.

Quinn v. Ontario Provincial Police, 2018

PC *Quinn*'s misconduct stemmed from a civil rental agreement while he was off duty. He was found to have used profane, abusive or insulting language toward a member of the public and threatened them with criminal charges.

PC *Quinn* was self-represented and chose to plead guilty at the earliest opportunity. He was assessed at 30 hours.

I take some guidance from this matter in that 30 hours is within the range for incivility although the underlying facts are not comparable.

*Defence Case Analysis*⁶

D'Souza v. Toronto Police Service and Berger, 2007 ONCPC 10

Analysis Above

Dingman v Ontario Provincial Police, 2003 CanLII 85813 ONCPC

I find the *Dingman* matter distinct from the matter before me. ONCPC identified “a history” between PC *Dingman* and a tow truck driver. The tow truck driver was identified as having incited or had been attempting to provoke PC *Dingman*. Nonetheless PC *Dingman* abused his authority and improperly arrested the tow truck driver and was found guilty of misconduct.

The case presented is an appeal of conviction. The sanction of a reprimand was not disputed nor analyzed. I do not have the underlying decision before me to assess how the sanction of reprimand was arrived upon. For this reason the case is minimally of assistance. I accept that in some cases of discreditable conduct a reprimand may be appropriate.

Kokot v. Ontario Provincial Police, 2011

PC Kokot's misconduct dated back to 2010 when he attended a bar, off duty, and in an intoxicated state. He behaved disruptively and at one point, grabbed hold of a bar employee. The matter was resolved with an Agreed Statement of Facts and agreed position on penalty. PC Kokot was assessed 24 hours.

The fact that PC Kokot, was drunk, identified himself as a police officer and then physically accosted a bar employee was more serious than the behaviour of PC Siriska. The matter of PC Kokot was resolved as described and the officer's plea was afforded a degree of mitigation.

Mulville and Azaryev v. York Regional Police Service, 2017 CanLII 19496 ONCPC

In this matter two relatively inexperienced officers attended a residence multiple times in relation to a noisy party attended by teenagers. The officers arrested a youth without proper grounds and, among other things, the youth was recording them. The underlying facts are noticeably distinguishable from the matter of PC Siriska.

A hearing officer found both officers guilty of unlawful arrest and officer *Mulville* guilty of discreditable conduct. ONCPC upheld conviction for both officers for unlawful arrest and

⁶ Exhibit 27 – Defence Book of Authorities, Tabs 1-7

dismissed the charge of discreditable conduct against *Mulville*. Additionally, ONCPC reduced the sanctions imposed by the hearing officer to a reprimand and training for *Mulville* and training for *Azaryev*. ONCPC identified errors on the part of the hearing officer including not applying established legal tests for example, in relation to discreditable conduct.

I do not find the underlying facts analogous to those in the matter of PC Siriska. There are distinguishing factors, not the least of which is that ONCPC dismissed the discreditable conduct conviction. Officers *Mulville* and *Azaryev* appeared to have been inexperienced officers who clearly made mistakes but were not depicted in the decision to have been excessively uncivil and were not behaving in an overtly antagonistic or provocative manner. Some of the behavior of the youths at the party seemed to have been antagonistic or at least unfriendly and aloof to the presence of and requests made by the officers. I do not find the scenario faced by *Mulville* and *Azaryev* to be reasonably and fairly compared to the traffic stop scenario of PC Siriska. To revisit a point made earlier, ONCPC made it clear that in the matter of officers *Mulville* and *Azaryev*, the disciplinary offence of discreditable conduct was not made out.

Pacitto v. Toronto Police Service, 2004 CanLII 77205 (ON CPC)

Officer Pacitto's misconduct dates back to 2001. His misconduct involved an off duty shopping purchase where he tried to pay for several purchases at a store on December 23, 2001 using a \$100 bill. He was advised that store policy prohibited the clerk from accepting the \$100 bill, became very vocal and was adamant that he be permitted to pay for his purchases with the disputed bill, as it was Canadian currency; became upset, started swearing, yelling, using the "f" word and called the stores employees "bitches"; made the store employees nervous, flustered, panicky, scared, intimidated and frightened; he refused to leave the store when repeatedly requested to do so by mall security; engaged in a physical confrontation with the mall security officer resulting in a bystander being inadvertently struck on the head.

Following his hearing and upheld on appeal officer Pacitto was assessed five days or 40 hours. ONCPC upheld the sanction indicating it was within the range of available penalties. Officer Pacitto's behaviour was considerably more serious than that of PC Siriska and resulted in a more substantial disposition.

Penner v. Parker, Koscinski and Niagara Regional Police Service, 2005 ONCPC 5

Officers *Parker* and *Koscinski* were found guilty on appeal of unnecessary arrest. Their penalties were; *Parker*, four days or 32 hours and *Koscinski*, two days or 16 hours. Their misconduct did result in the arrest of and physical altercation with *Mr. Penner* which I consider to be more serious than the misconduct before me.

In their analysis ONCPC addressed the provocation by *Mr. Penner* as it contributed to the events through his confrontational behavior. In the matter of PC Siriska it was he who initiated the disharmonious repartee with Mr. Sheehan. I have acknowledged, as did Mr. Sheehan that this does not excuse his (Mr. Sheehan's) behavior that day but it was in response to the uncivil behavior of PC Siriska.

Finding

I have acknowledged the *Police Service Act* sanctions for similar offences vary greatly depending on distinguishing factors and often nuanced issues that separate each case. To reiterate, my goal, indeed my obligation, is to arrive at an appropriate and reasonable disposition that addresses the needs of the OPP, the Community, and the officer.

The cases submitted, highlight the wide range of sanction assessed and the varying circumstances considered. As indicated, I have considered all matters and I find the *D'Souza* matter, for one, to be analogous in that it involved the officer muttering a comment and issuing a questionable ticket. Officer *D'Souza* had been charged with three counts of misconduct stemming from the same transaction; two counts related to his interaction with a driver and one count for not attending court. ONCPC varied the sanction from five days and assessed the officer three days or 24 hours. In PC Siriska's case he made a number of uncalled-for comments that were certainly audible and were not made in a manner I would consider muttering.

In this matter the prosecution asked for 30 hours while defence counsel suggested a reprimand to 24 hours would be the appropriate range. I consider 30 hours to be within but toward the high end of the range I consider reasonably available based on evidence and submissions. Conversely, I find a reprimand untenable in consideration of the evidence.

As stated previously, PC Siriska has an excellent employment history and is a valued member of the OPP. Notwithstanding his positive employment record PC Siriska, from the onset of his interaction with Mr. Sheehan and Ms. Clarkson, was quarrelsome, provocative, and insulting and he sustained this behaviour until his departure from the traffic stop. I have further reservations arising from PC Siriska's equivocations and unreliable accounts of what occurred. I have found PC Siriska does not benefit from the mitigation afforded to officers who accept accountability forthrightly and without evasion.

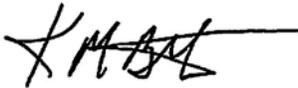
For reasons stated I find 24 hours is reasonably within the range of available sanctions. Due to comments made in evidence and during the investigation, addressed elsewhere in this and the underlying decision, I find PC Siriska would benefit from training related to effective, professional, and sensitive communication.

Conclusion

PC Siriska's behaviour toward Mr. Sheehan and Ms. Clarkson was completely unacceptable and can never be tolerate nor abided. To his credit, PC Siriska is a hardworking and valued employee of the OPP which has mitigated his disposition. Mr. Girvin suggested this was an isolated incident and out of character for PC Siriska. From his employment history I am optimistic, with a degree of caution, that this is the case and PC Siriska will learn from this experience and soon put this matter behind him.

PART III - Disposition

PC Siriska is assessed 24 hours to be worked under the direction of his detachment commander/regional command under section 85(1)(d) and (e) of the *PSA*. In addition, PC Siriska will be required to complete training related to effective, professional and sensitive communications. The exact training will be determined by, under the supervision of, and to the satisfaction of the Office of Professionalism, Respect, Inclusion and Leadership (OPRIL). This is in accordance with the provisions of section 85(7) (b) of the *PSA*.



K.M. (Mike) Bickerton
Superintendent
OPP Adjudicator

Date electronically delivered: September 9, 2021

Appendix 'A'

- Exhibit 27 – Defence Book of Authorities
 - Tab 1 – OPP SOP Uniform Selection [3Nov2020]
 - Tab 2 – *Pacitto v. Toronto Police Service*, [2004] ONCPC 4
 - Tab 3 – *Mulville and Azaryev v. York Regional Police*, [2017] CanLII 19496
 - Tab 4 – *D'Souza v. Toronto Police Service*, [2007] CanLII 89244
 - Tab 5 – *Penner v. Parker, Koscinki and Niagara Regional Police*, [2005] ONCPC 5
 - Tab 6 – *Dingman v. Ontario Provincial Police*, [2003], CanLII 85813
 - Tab 7 – *Kokot v. Ontario Provincial Police*, [17Aug2011]
- Exhibit 28 – Prosecution Book of Authorities
 - Tab 1 – *Karklins v Toronto Police Service*, [1998]
 - Tab 2 – *Keating v. Sault Ste Marie Police*, [31Aug2020]
 - Tab 3 – *Quinn v. Ontario Provincial Police*, [26Jan2018]
 - Tab 4 – *Ho v. York Regional Police*, [10Feb2014]
 - Tab 5 – *D'Souza v. Toronto Police Service*, [2007] ONCPC 10
 - Tab 6 – *Bernardon v. Windsor Police Service*, [23May2012]
 - Tab 7 – *Saxon v. Amherstburg Police Service*, [2011] ONCPC 2
 - Tab 8 – Performance Learning & Development Plans 2017-2018, 2018-2019, 2019-2020