

**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 D.M. (Daniel) LAFONTAINE # 12334**

**CHARGES: DISCREDITABLE CONDUCT (1 count)  
NEGLECT OF DUTY (1 count)**

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**DISPOSITION WITH REASONS**

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**Before:** **Inspector Chuck Wesley**  
**Ontario Provincial Police**

**Counsel for the Prosecution:** **Inspector Charles Young**  
**Ontario Provincial Police**

**Counsel for the Defence:** **Mr. David Butt**  
**Ontario Provincial Police Association**

**Hearing Date:** **January 22<sup>nd</sup> 2019**

*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**

#### **COUNT # 1:**

Provincial Constable (PC) Lafontaine 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 Regulation 268/10, as amended.

The amended particulars of the allegations state:

During the morning hours of May 28, 2016 Kapuskasing Ontario Provincial Police (OPP) were called to investigate a serious assault. The victim received significant injuries and was transported to the hospital. The suspect had left the scene prior to the police arriving. The victim provided police with the name of the suspect, herein after referred to as CK.

Investigators were unable to locate CK prior to the end of their evening shift. Prior to the conclusion of their shift the investigators shared details of the assault with Acting Sergeant (A/Sgt.) Lafontaine and PC Belanger who were working days. Once reasonable and probable grounds were met to arrest CK these officers began to look for her. Their investigation caused them to attend an address at 110 Riverside Drive in Kapuskasing where they believed CK to reside.

Upon arriving at this residence these officers were met outside by a male herein after referred to as EW. The officers explained to him that they were there to speak with CK as a result of a police investigation. EW told the officers more than once that CK was not there and had not returned home from being out the prior evening. The officers observed a female in the residence who was holding a newborn infant in her arms. They asked EW who this individual was and EW verbally identified her as his girlfriend CW. Both CW and CK share the same first name. A/Sgt. Lafontaine and PC Belanger did not accept that this female was CW, instead they believed her to be CK. They approached the residence and asked to speak to her. She approached the door and the officers asked her if she was CK and she stated that she was CW. She was directed by the officers to give the infant to her boyfriend EW. Once CW

complied, A/Sgt. Lafontaine and PC Belanger stepped inside the door and pulled CW out of the residence against her will. They failed to confirm her identify despite her repeatedly stating that she was not CK. They also failed to advise her that she was under arrest and provide her with a caution and her rights to counsel.

A/Sgt. Lafontaine and PC Belanger pulled CW out of the residence and through a back gate. She attempted to resist going with these officers by clinging to the gate. The officers then pulled CW down the driveway. A/Sgt. Lafontaine was able to place a handcuff onto one of CW's hands during this period.

EW proceeded outside and stood by his girlfriend CW to, in his words "shield" her from the officers. Both A/Sgt. Lafontaine and PC Belanger retreated behind a vehicle parked in the driveway where they both pulled out their Conducted Energy Weapon (CEW), commonly known as a Taser, and displayed force presence by pointing their weapons at CW and EW.

CW's uncle had been upstairs in the residence and overheard CW repeatedly tell the officers she was not CK. He came outside and told the officers repeatedly that CW had a heart condition. At this time PC Belanger deployed the CEW on EW and engaged the weapon, immobilizing EW and causing him to fall to the ground.

## COUNT # 2

PC Lafontaine is alleged to have committed neglect of duty in that he, without lawful excuse, neglected or omitted to promptly and diligently perform a duty as a member of the OPP, contrary to Section 2(1)(c)(i) of the Code of Conduct contained in the Schedule to Ontario Regulation 268/10, as amended.

The amended particulars of the allegations state:

CW ran towards PC Belanger in a state of panic at which time he deployed the CEW on CW. The deployment immediately immobilized CW and she fell to the ground. After the first full cycle of deployment, PC Belanger deployed two more full five-second cycles of the CEW upon her. A data download of PC Belanger's CEW confirmed that he activated his CEW on CW for three full five-second cycles with a one-second interval between cycles. At no time between activations did CW attempt to get up from the ground. A/Sgt. Lafontaine did commit Neglect of Duty in that, being the senior officer and supervisor, he failed to intervene and direct PC Belanger to cease repeated deployment of the CEW to provide CW with an opportunity to respond to any commands given. CW was 15 years old at the time of this incident.

CW'S uncle requested that PC Belanger put his CEW away as his niece has a heart condition. Again, A/Sgt. Lafontaine failed to intervene and direct PC Belanger to cease deployment given these medical concerns.

Both CW and EW were subsequently taken into custody and transported to the local hospital to have the CEW prongs removed.

A/Sgt. Lafontaine further did commit neglect of duty when, as the supervisor, he failed to ensure further inquiries were made into the identity of CW, including the use of police databases. He would have averted the misidentification of CW. In failing to investigate the identity issue further, A/Sgt. Lafontaine arrested, assaulted and detained the wrong person.

Shortly after arriving at the hospital A/Sgt. Lafontaine and PC Belanger learned that they had made a wrong identification and that CW was not CK. At this time the officers realized that CW, her uncle, and EW were all being truthful in their repeated attempts to advise the officers that they had the wrong person.

A/Sgt. Lafontaine apologized to CW for the wrongful arrest and further added that she is going to be charged with resisting arrest. No charges were ever laid.

A/Sgt. Lafontaine further did commit Discreditable Conduct in that after learning that further information was available on police databases, he deliberately made misleading and inaccurate entries in his notes when he spoke with the Crime Sergeant in which he provided false information with respect to the events leading up to the wrongful arrest, assault and detention of CW and EW. In this discussion, A/Sgt. Lafontaine reported that he did check CPIC and Niche/RMS databases prior to attending 110 Riverside Drive. An audit of these databases revealed this to be incorrect and that any check by these officers was not completed until after the incident. A/Sgt. Lafontaine also reported that he only ever referred to the suspect by her first name in an attempt to lead the reader of the RMS entry to believe there was a misunderstanding of who the officers were referring to, since both CW and CK shared the same first name. This is not true as the involved parties were very clear in their repeated communication with these officers that they had the wrong person and surnames were part of their discussion. A/Sgt. Lafontaine also indicated in the same report that the officers were permitted access into the residence which is not true and is disputed by CW and EW. He reported that they placed an arm on CW and advised her that she was being detained. This also is not true. Evidence is clear that CW was not given her rights to counsel or caution or advised that she was under arrest prior to the officers taking physical control of her.

A/Sgt. Lafontaine did commit discreditable conduct in that he violated his responsibilities as a police officer when he falsely produced notes in such a fashion as to justify the unlawful arrests, when he provided false information to the crime supervisor with respect to the circumstances surrounding the arrest of CW, and when he unlawfully entered into a private residence. A/Sgt. Lafontaine was neglectful of his duties as a supervisor when he failed to intervene in the unnecessary deployment of the CEW upon CW, and when he failed to ensure proper steps were taken to confirm CW's identity prior to the unlawful arrest, use of force and detention of CW.

### **Plea / Penalty Position**

On January 22<sup>nd</sup> 2019 A/Sgt. Lafontaine, represented by counsel, Mr. David Butt, pleaded guilty to both counts. His plea was accepted by this tribunal.

On behalf of the OPP, Inspector Young and defence counsel, Mr. Butt submitted a joint penalty proposal of a four year demotion, including three years to third class and upon completion of this three year term to then return to second class and after one additional year, returning to first class constable. The prosecution for the OPP and defence counsel supported this penalty position with submissions that are detailed within Part III of this decision.

### **Decision**

As a result the officer's guilty plea and upon reviewing the Agreed Statement of Facts, A/Sgt. Lafontaine was found guilty of discreditable conduct and neglect of duty based on clear and convincing evidence contrary to the Code of Conduct contained in the Schedule to Ontario Regulation 268/10, as amended.

I see no reason to deviate from the sanction proposed and thereby order PC Lafontaine demoted to third class constable for a period of three years. Following this, PC Lafontaine will return to second class and after one additional year will be reinstated at the level of first class constable.

My reasons for the decision are as follows:

## **PART II: THE HEARING**

### **Exhibits**

The exhibits for this matter are listed in Appendix A.

## Agreed Statement of Facts

During the morning hours of May 28<sup>th</sup> 2016 Kapuskasing OPP were called to investigate a serious assault. The victim received significant injuries and was transported to the hospital. The suspect had left the scene prior to the police arriving. The victim provided police with the name of the suspect, herein after referred to as CK.

Investigators were unable to locate CK prior to the end of their evening shift. Prior to the conclusion of the shift the investigators shared details of the assault with A/Sgt. Lafontaine and PC Belanger who were working days. Once reasonable and probable grounds were met to arrest CK in relation to the assault, the officers began to look for her. Their investigation caused them to attend an address at 110 Riverside Drive in Kapuskasing, Ontario where they believed CK to reside.

Upon arriving at this residence these officers were met outside by a male, EW. The officers explained to him that they were there to speak with CK as a result of a police investigation. EW told the officers more than once that CK was not there and had not returned home from being out the prior evening. The officers observed a female in the residence who was holding a newborn infant in her arms. They asked EW who this individual was and he verbally identified her as his girlfriend CW. Both CW and CK share the same first name.

A/Sgt. Lafontaine and PC Belanger did not accept that this female was CW, instead they believed her to be CK. They approached the residence and asked to speak to her. She approached the door and the officers asked her if she was CK and she stated that she was CW. She was directed by the officers to give the infant to her boyfriend EW. Once CW complied, A/Sgt. Lafontaine and PC Belanger stepped inside the door and pulled CW out of the residence against her will. The officers failed to confirm her identify despite her repeatedly stating that she was not CK. They also failed to advise her that she was under arrest and provide her with a caution and her rights to counsel.

A/Sgt. Lafontaine and PC Belanger pulled CW out of the residence and through a back gate. She attempted to resist going with these officers by clinging to the gate. The officers then pulled CW down the driveway. A/Sgt. Lafontaine was able to place a handcuff on to one of CW's hands during this period.

EW proceeded outside and stood by his girlfriend CW to, in his words "shield" her from the officers. Both A/Sgt. Lafontaine and PC Belanger retreated behind a vehicle

parked in the driveway where they both pulled out their CEW, commonly known as a Taser, and displayed force presence by pointing their weapons at CW and EW.

CW's uncle had been upstairs in the residence and overheard CW repeatedly tell the officers she was not CK. He came outside and told the officers repeatedly that CW had a heart condition. At this time PC Belanger deployed the CEW on EW and engaged the weapon, immobilizing EW and causing him to fall to the ground.

CW ran towards PC Belanger in a state of panic at which time he deployed the CEW on CW. The deployment immediately immobilized CW and she fell to the ground. After the first full cycle of deployment, PC Belanger deployed two more, full five-second cycles of the CEW upon her. A data download of PC Belanger's CEW confirms that he activated his CEW on CW for three full five-second cycles with a one-second interval between cycles. At no time between activations did CW attempt to get up from the ground.

A/Sgt. Lafontaine committed neglect of duty in that, being the senior officer and supervisor, he failed to intervene and direct PC Belanger to cease repeated deployment of the CEW to provide CW with an opportunity to respond to any commands given. CW was 15 years old at the time of this incident.

CW's uncle requested that PC Belanger put his CEW away as his niece has a heart condition. Again, A/Sgt. Lafontaine failed to intervene and direct PC Belanger to cease deployment given these medical concerns.

Both CW and EW were subsequently taken into custody and transported to the local hospital to have the CEW prongs removed.

A/Sgt. Lafontaine committed a further neglect of duty when, as the supervisor, he failed to ensure basic inquiries were made into the identity of CW, including the use of police databases. He would have averted the misidentification of CW. In failing to investigate the identity issue at a basic level, A/Sgt. Lafontaine arrested, assaulted and detained the wrong person.

Shortly after arriving at the hospital, A/Sgt. Lafontaine and PC Belanger had it confirmed that they had made a wrong identification and that CW was not CK. At this time the officers realized that CW, her uncle, and EW were all being truthful in their repeated attempts to advise the officers that they had the wrong person.

A/Sgt. Lafontaine apologized to CW for the wrongful arrest and then told her, despite his actions and negligence, that she was going to be charged with resisting arrest. Fortunately, intervention occurred and no charges were ever laid against CW.

A/Sgt. Lafontaine continued in a negligent and discreditable manner in that, after learning that further information was available on police databases, he deliberately made misleading and inaccurate entries in his notes and when he spoke with the Crime Sergeant in which he provided false information with respect to the events leading up to the wrongful arrest, assault and detention of CW and EW.

In his discussion, A/Sgt. Lafontaine reported that he did check CPIC and Niche/RMS databases prior to attending 110 Riverside Drive. An audit of these databases revealed this to be blatantly false and that any check by these officers was not completed until after the incident. He also reported that he only ever referred to the suspect by her first name in an attempt to lead the reader of the RMS entry to believe there was a misunderstanding of who the officers were referring to since both CW and CK shared the same first name. This is not true as the involved parties were very clear in their repeated communication with these officers that they had the wrong person and surnames were part of their discussion.

A/Sgt. Lafontaine also indicated in the same report that he and PC Belanger were permitted access into the residence which is not true and is disputed by CW and EW. He reported that they placed an arm on CW and advised her that she was being detained. This also is not true. Evidence is clear that CW was not given her rights to counsel or caution or advised that she was under arrest prior to the officers taking physical control of her.

A/Sgt. Lafontaine also committed discreditable conduct in that he violated his responsibilities as a police officer when he falsely produced notes in such a fashion as to justify the unlawful arrests, when he provided false information to the crime supervisor with respect to the circumstances surrounding the arrest of CW, and when he unlawfully entered into a private residence. He was neglectful of his duties as a supervisor when he failed to intervene in the unnecessary repeated deployment of the CEW upon CW, and when he failed to ensure proper steps were taken to confirm CW's identity prior to the unlawful arrest, use of force and detention of CW.

On August 25, 2017 A/Sgt. Lafontaine pled guilty prior to evidence having to be called. Honourable Justice A. Buttazzoni found A/Sgt. Lafontaine guilty of two counts of Assault. On count one he received a suspended sentence, probation for two years and 180 hours of community service. The community service to be completed within the first 18 months of the probation.

On count two, he received a suspended sentence and probation for two years to be served concurrent to count one.

The officer has been absent the workplace on approved medical absence since the incident, in addition to being on suspension. He has recently provided satisfactory information indicating he is able to return to work.

### **PART III: SUBMISSIONS, ANALYSIS AND FINDINGS**

#### **Issues**

A/Sgt. Lafontaine will hereinafter be referred to as PC Lafontaine. This tribunal accepted PC Lafontaine plea of guilty to discreditable conduct and neglect of duty. The facts surrounding his misconduct are not in dispute. The only issue to be addressed is whether or not the proposed sanction is appropriate; does the proposed four-year demotion in rank strike a balance between community expectations, fairness to PC Lafontaine and the needs of the organization?

#### **Analysis**

Although not mentioned in this proceeding by either the prosecution or defence counsel, I am aware of the Supreme Court of Canada decision, *Anthony-Cook* and I am guided by the perspective taken by the court. In order to reject this proposed sanction, the proposed penalty must go so far beyond what is considered to be a reasonable range that it brings the administration of justice into disrepute. I was not presented with any jurisprudence for consideration by either the prosecution or defence in this matter.

To assist me in determining the suitability of this sanction, I will rely upon commonly held proportionality considerations relevant to this particular matter:

#### **Public Interest**

##### *Submissions:*

The prosecution submitted that Section 6(10) of Ontario Provincial Police (OPP) Police Orders speaks to professionalism and the necessity for each employee to regard the discharge of their duties as a public trust and to recognize their responsibility as a public servant. In carrying out their duties, employees are accountable for behaving above reproach both on and off duty by not bringing discredit upon the reputation of the OPP,

promoting a positive, professional image and serving with honesty and integrity in a manner that places public interest above personal interest. The prosecution further stated that the public interest in this case was undermined by PC Lafontaine when he failed, as an acting supervisor, to ensure that he and the other officer were acting on accurate information. The officers failed to respect and protect the rights of two youths under the laws of Canada regarding safety, security and entry into a dwelling. Further, he failed, as an acting supervisor, to ensure compliance with the law and with the use of force directed towards two youths that had no involvement whatsoever in their investigation. When this was established, he still advised the youths that they would be criminally charged for their actions.

The prosecution presented that PC Lafontaine failed as an OPP member and as an acting supervisor in his lack of personal integrity when he communicated misinformation with respect to what occurred when he reported to his supervisor. PC Lafontaine also lacked personal integrity with respect to being less than forthright in police reports and in the making of notes. These actions required the two youths to attend court as witnesses in relation to the criminal charges against PC Lafontaine, subsequent to his actions. The prosecution submitted that PC Lafontaine's behaviour was aggressive and unacceptable and when confronted, untruthful.

Defence counsel submitted their agreement with the prosecution's submission with respect to public interest and advised that the prosecution set out the particulars of their joint submission. Defence counsel also submitted that there was extensive back and forth with multiple levels of involvement and after careful consideration, defence counsel endorsed what the prosecution had presented in all respects, both aggravating and mitigating and asked the Tribunal to consider everything said in support of this joint submission. Defence counsel was in support of the sanction being proposed and submitted that PC Lafontaine is an excellent officer whose career should not end.

### *Analysis and Findings:*

Public Interest is of great significance and this is directly related to the trust the public has in police officers. There is a very high level of expectation from the public in relation to honesty and integrity with respect to the actions of police officers. The police cannot effectively provide public safety without this trust. There is also a greater level of expectation and accountability as police officers develop themselves to fill leadership roles.

The actions of PC Lafontaine in this incident are particularly egregious because they infringed on the fundamental rights of members of the public. He demonstrated a lack of judgement and integrity as a result of his failure to take appropriate investigative steps which led him to an interaction with two youths where he failed to listen to the involved individuals. As an acting supervisor he stood by and failed to intervene when a CEW was utilized against

two youths. Upon recognizing the issue of mistaken identity, PC Lafontaine then compounded his misconduct by attempting to cover up his initial misconduct.

This misconduct has undermined the public interest and public confidence in the police and I subsequently find that Public Interest is a significant aggravating factor for consideration.

### Nature and Seriousness of Misconduct

#### *Submissions:*

The prosecution submitted that the actions of PC Lafontaine are of a serious nature and that his actions reflect poorly on himself and on the OPP and seriously negatively impact OPP and Indigenous community relations.

Defence counsel submitted that the actions of PC Lafontaine in this incident were anomalous from his documented, exemplary work history and that he has accepted the seriousness of the misconduct and is accountable by pleading guilty at this Tribunal.

#### *Analysis and Findings:*

As outlined in the Agreed Statement of Facts, PC Lafontaine exhibited a significant lack of judgement by failing to follow basic investigative procedures that led to his interaction with two youth.

Through his actions, PC Lafontaine violated his responsibilities as a police officer when he falsely produced notes in such a fashion as to justify the unlawful arrests, when he provided false information to the crime supervisor with respect to the circumstances surrounding the arrest of the youth and when he unlawfully entered into a private residence. PC Lafontaine was neglectful of his duties as a supervisor when he failed to intervene in the unnecessary deployment of the CEW and when he failed to ensure proper steps were taken to confirm the youths' identities prior to the unlawful arrest, use of force and detention them.

The actions of PC Lafontaine in this incident led directly to the negative results of his interaction with two youth and resulted in two criminal code convictions of assault against this officer. These criminal code convictions are aggravating factors that support the seriousness of the misconduct in this matter and will impact the officer's effectiveness in testifying in future court matters.

Defence Counsel has submitted that the actions by PC Lafontaine represent atypical behaviour and while I am mindful of this, the severity of this misconduct is significantly mitigating.

Based on the fact that PC Lafontaine was in a supervisory position at the time of this misconduct, the impact that this misconduct had on the lives of two youth and the fact that his actions led to criminal convictions, I find the nature and seriousness of the misconduct to be a significant aggravating factor in this matter.

### Recognition of the Seriousness of Misconduct

#### *Submissions:*

The prosecution has acknowledged that PC Lafontaine took responsibility for his actions. He plead guilty and was found guilty of two criminal counts of assault, albeit just prior to evidence being called at trial; the prosecution noted that this was far from the first opportunity to do so and proposed that this subsequently does not warrant the full appreciation or mitigation afforded those accepting responsibility in the first instance. Prosecution acknowledged that PC Lafontaine pled guilty in relation to his *Police Services Act (PSA)* misconduct citing this as a very positive step. The prosecution considered the recognition of the seriousness of the misconduct as a neutral to slightly mitigating factor.

Defence counsel submitted that PC Lafontaine has recognized the seriousness of the misconduct by pleading guilty before the Tribunal and accepting the sanctions proposed in the joint submission. Defence counsel further submitted that this has had a significant impact on PC Lafontaine. The officer pled guilty and was convicted in the criminal matter. Defence counsel further submitted that PC Lafontaine has accepted responsibility for this misconduct matter and has worked very hard to be in a position to return to regular full duties and to fulfill his role as a productive officer with the OPP.

#### *Analysis and Findings:*

PC Lafontaine pled guilty to this misconduct matter alleviating the need for a full hearing and witness testimony and this is a mitigating consideration. I concur with the prosecution that although PC Lafontaine eventually accepted responsibility for his actions, he waited until the last moment with respect to his criminal charges. As such, I am unable to give the full mitigation I would have had he pled guilty at the first opportunity in both the criminal and *PSA* matters. I also recognize the submission by defence counsel and I am impressed that the officer has pled guilty to the misconduct and I find that this is a positive step toward accepting responsibility for his actions.

I find recognition of the seriousness of the misconduct represents a slightly mitigating factor for consideration in this matter.

## Employment History

### *Submissions:*

Prosecution presented two evaluations and a career profile that described PC Lafontaine as a valued officer by all standards. Prosecution has submitted that this officer's employment history is a very mitigating factor for consideration.

Defence counsel has submitted that PC Lafontaine's employment history shows that he is an exemplary officer and that he displayed a broad range of skill sets which he referred to as hard skills in addition to the soft skills of teamwork, commitment to the OPP, taking the initiative and leadership. Defence counsel also submitted that this was an obvious and large departure from a well-established pattern of excellence.

### *Analysis and Findings:*

In the evaluation from September 2015 (Exhibit 22) his immediate supervisor commented, "I have rated PC Lafontaine as exceeds in the area of teamwork. Over the course of this reporting period PC Lafontaine has continued to be a dedicated member of the ERT team and he continually puts his personal needs aside for the benefit of the team. Not only have I seen this from PC Lafontaine during ERT deployments but on platoon also." On this same evaluation OPP North East Region director of support commented, "There are some examples of excellent police work in this evaluation. It is obvious he is a leader on his platoon and the ERT program."

In the evaluation from November 2016 (Exhibit 23) his supervisor commented, "I believe he has been a valuable asset to our team and pleasant to work with." Another comment was, "it is encouraging to work with Prov. Const. Lafontaine as he leads by example and inspires those around him to strive to be better." The Detachment Commander added the following comments: "He has demonstrated a high level of knowledge and skill and was provided with an opportunity to work as an Acting Sergeant. He also maintained his status on ERT and was always available for calls. He has shown a great deal of commitment in this regard."

PC Lafontaine's commitment and dedication is quite evident throughout the evaluations presented by prosecution. All of his supervisors and second level managers comment on his work ethic and how he leads by example which conforms with the submission by defence counsel. Although leading an exemplary career, the expectations of a leader and those seeking promotion are held to an even higher standard. PC Lafontaine's misconduct demonstrates an inability to maintain this high level of expectation for someone aspiring to be promoted to a Sergeant. This can be overcome however with a concerted effort to

ensure he continues to act with integrity and display the leadership qualities expected of a Sergeant with the Ontario Provincial Police.

Based on the exemplary performance evaluations presented in this matter I find that PC Lafontaine's employment history represents a very mitigating factor for consideration in this matter.

### Potential to Rehabilitate or Reform

#### *Submissions:*

Prosecution has submitted that PC Lafontaine's actions in this matter appear to be an anomaly based on the information outlined in his performance evaluations. In addition to this, prosecution submitted that the officer was a valued member of Kapaskasing and South Porcupine Detachments and that he was an ERT member, DRE expert, breathalyzer technician, SFST officer and past OPPA President. Prosecution submitted that by all accounts PC Lafontaine was a fully engaged officer who was just beginning to assume a role as a supervisor with some degree of regularity however it was while in a supervisory capacity that this misconduct occurred. Prosecution also commented that moving forward, PC Lafontaine needs to re-establish himself as an officer and must demonstrate integrity at all times. Failing this, any further serious misconduct will result in PSB prosecutions seeking his immediate dismissal from the OPP. Prosecution has submitted that this is his opportunity to demonstrate to the OPP and citizens of Ontario that he is able to uphold the principles and commitments of his oath of office. His employment history and organizational engagement demonstrate that he has a great deal of potential to have an outstanding career and that he has the full support of the OPP as he moves forward. Prosecution submitted that this is a mitigating factor.

Defence counsel has submitted that PC Lafontaine has taken full responsibility for this incident and has not backed away from his personal accountability. Defence counsel has also submitted that, based on PC Lafontaine's exemplary work record, this day was an anomaly and suggested that the tribunal should not be giving a promising member the ultimate penalty of dismissal for such an anomaly. Defence counsel submitted that the right thing for the officer, and for the OPP, is to provide PC Lafontaine with an opportunity to continue to serve the public and the OPP and that the public should continue to benefit from his potential. Defence counsel advised that through consultations with the OPP and through shared documents PC Lafontaine is now fully capable and prepared to return to full duties. Defence counsel summarized that this was not a position that was taken lightly and that it was carefully explored by all parties involved in this disposition.

### *Analysis and Findings:*

Upon reviewing the submissions by both prosecution and defence and in consideration of that this was out of character for PC Lafontaine I feel that there is a very high probability for rehabilitation. Although extremely challenging to restore, I find that PC Lafontaine has not completely lost the trust of the OPP. I base this on the officer's exemplary employment record as evidenced in his Performance Evaluations (Exhibit 22 and 23). PC Lafontaine will have to demonstrate a tremendous amount of diligence and integrity to earn the trust that he lost through his actions.

In consideration of his employment history, positive documentation and the efforts he has made to be able to return to full operational duties I feel that this represents a significant mitigating factor.

### Specific and General Deterrence

#### *Submissions:*

Prosecution has submitted that with respect to specific deterrence the steps taken by the OPP to communicate to him that this behaviour is unacceptable, the penalty being sought and the expectations upon him moving forward have been fully understood. With respect to general deterrence the facts of this case and the organizational response will act as an appropriate general deterrence and that misconduct of this magnitude will result in significant sanction. Prosecution has submitted that both specific and general deterrence represent a neutral factor in this matter.

Defence council has submitted that PC Lafontaine has been sufficiently deterred and that the tribunal can be confident that the anomaly of this incident based on his exemplary work performance will not reoccur. Defence counsel ensured this based on what has transpired between the incident and now citing that PC Lafontaine has a deep commitment to the OPP, commitment to his service to the community and commitment to law enforcement in general. He cares very deeply about OPP values and he has taken a hard look at the reality of the day of the incident and has accepted the mistakes he has made. Defence counsel advised that during the criminal matter, the officer found it very challenging to find himself on the opposite line of the law to which he is use to serving. Defence counsel also submitted that this resulted in PC Lafontaine being disabled for mental health reasons. Defence counsel further submitted that despite this PC Lafontaine worked as hard on this mental illness as he has throughout his career and is now fully prepared to return to regular duties. Defence counsel advised that it is a credit to PC Lafontaine's character that he was able to reach the stage where both prosecution and defence counsel can agree to his full return to duties. Defence counsel further submitted that there is no need to specifically deter beyond what

has been done and that PC Lafontaine feels keenly the impact of his mistakes and that the OPP and the public can expect great things because he is capable and can deliver.

*Analysis and Findings:*

Upon review of these submissions, I believe that the sanction imposed will address both specific and general deterrence. The sanction is sufficiently severe to convey to both members of the OPP and members of the public that conduct of this nature will not be tolerated by the OPP. I find that specific and general deterrence are both neutral factors in this matter.

Damage to the Reputation of the OPP

*Submissions:*

Prosecution has submitted that the misconduct in this case involved two youths from an Indigenous Community and that the OPP have worked long and hard to build trust within all Indigenous Communities. Prosecution further submitted that misconduct like this undermines that established trust in an instant and that undermining the trust and confidence in these relationships is clearly unacceptable to everyone. Prosecution has submitted that the damage to the reputation of the OPP in this matter is an aggravating factor.

Defence counsel has submitted that PC Lafontaine has recognized the position of the victims of this incident and that his actions have impacted all of the hard work done by the OPP to cultivate positive relationships with Indigenous Communities. Defence counsel further submitted that PC Lafontaine feels this more deeply than most because his mother is Metis, his father-in-law is Metis and he has obtained a certification in Aboriginal Studies. Subsequently, defence counsel submitted that PC Lafontaine identifies more closely than many the need to reconcile with Indigenous Communities and the crucial role police play in this reconciliation. Further to this defence counsel submitted that PC Lafontaine has studied the negative impact of colonialism in policing and other professions and the impact this has had on Indigenous Communities. Defence counsel further submitted that PC Lafontaine holds this closely not just by virtue of his job, but by virtue of who he is as a person and that this has provided him with insight, commitment and a great deal of potential moving forward.

*Analysis and Findings:*

Positive relationships between the police and the public are built on trust and this is pivotal to ensuring public safety. When police actions damage this relationship, it is very difficult to

regain the trust of the community. The OPP has committed to establish and maintain positive, trusting relationships with the citizens of Ontario and this is no more apparent than in established relationships with Indigenous Communities. I appreciate the additional insight that PC Lafontaine has regarding the relationship between the OPP and Indigenous Communities and this provides him with the perspective to understand the implications of his actions. The misconduct in this incident occurred in a small Indigenous community and, although a single event, PC Lafontaine's actions will have a significant impact on the relationship between the OPP and this Indigenous community. As such, the damage that was caused by PC Lafontaine's misconduct is an aggravating factor in this matter.

### Handicap or Other Relevant Personal Circumstances

#### *Submissions:*

Prosecution submitted that they were unaware of any handicap or relevant personal circumstance that would have contributed or mitigated the behaviour of PC Lafontaine.

Defence counsel submitted that the particulars of this incident are something that must be viewed in greater context and this is not an incident of someone going rogue. Defence counsel further submitted that there are contextual factors that are personal and systemic that may not justify but will provide the Tribunal with a greater understanding of what PC Lafontaine was experiencing at the time of the incident. Defence counsel advised that they are not pushing blame but are attempting to provide a contextual understanding so that when prosecution says that this is an individual who has the full support of the organization and that the organization is expecting great things, PC Lafontaine is capable and can deliver.

Additionally, defence counsel submitted that the day in question was anomalous from what was normal behaviour for this member. Leading up to this event PC Lafontaine was dealing with an enormous personal load. One year prior his cousin murdered his aunt and that his uncle then took his own life. This was an enormous family tragedy and PC Lafontaine was still dealing with that event at the time of this incident. He has a family with young children and at the time of the incident he had relocated 2 hours away for his wife's employment and PC Lafontaine was processing his grief away from his family. Further to this, defence counsel provided a policing context of the day of the incident. There were an additional one thousand people in the community as a result of an evacuation from another community. Subsequently, the calls for service had increased to five hundred and this placed high demands on the officers working in the community. A typical platoon at this detachment normally consisted of four officers with one sergeant but on this day there were only two

officers in addition to PC Lafontaine who was an acting sergeant at the time. Due to the high volume of calls PC Lafontaine and one other officer were left to manage the calls that day.

Defence counsel also submitted that PC Lafontaine was fulfilling his acting sergeant role and, although it was a credit to him for taking on these responsibilities, defence counsel submitted that he had not received any formal training or mentorship for this role.

Defence Counsel submitted that on the day of the incident there were a number of systemic and personal factors that came together and characterized this as a terrible day that good people encounter.

### *Analysis and Findings:*

Defence counsel has provided information about PC Lafontaine that I feel does help to explain the marked departure of his actions on the day of the incident. To help put into perspective the actions of PC Lafontaine on the day of the incident I am relying on the information presented by prosecution through the performance evaluations and through prosecution's willingness to support PC Lafontaine to continue as a member of the OPP. Both prosecution and defence counsel have referred to the incident as being anomalous from what was historically demonstrated by an exemplary officer and I feel that the information provided by both parties does support this. Although certainly not exonerating PC Lafontaine from his actions during the incident, I do feel that the extenuating personal circumstances presented by defence counsel do represent a mitigating factor in this matter.

### Consistency of Disposition

#### *Submissions:*

Prosecution submitted that the consistency of disposition is always a key element to maintaining discipline. Although no jurisprudence was submitted, prosecution confirmed that through a review of jurisprudence and in discussion with defence counsel that the joint penalty is within the range of penalties of a level for similar misconduct and that it meets the goals of the discipline process. Prosecution submitted that this was a neutral factor in this matter.

Defence counsel has submitted that the penalty is in line with other dispositions and that this sends an appropriate general message. Defence counsel submitted that this penalty will not be easy to bear, considering the financial impact on PC Lafontaine and his young family and affirmed that the demotion sends a significant message. Defence counsel further submitted that this has had a personal impact on PC Lafontaine's leadership and referred to his

personnel evaluation from November 2016 (Exhibit 23) in that right after the incident he still established himself as a leader in a new detachment. Defence counsel submitted that this speaks to PC Lafontaine's ability to come in to new situation to start fresh and to make a difference quickly and that this is one of best indications that this penalty fits. Additionally, defence counsel submitted that this accentuates PC Lafontaine's ability to come back from a difficult situation and that he can come into a new situation and start fresh and excel. Defence counsel summarized this by submitting that for all of these reasons PC Lafontaine is somebody who should be with OPP, somebody who should continue to serve the public, and someone who can and will be committed going forward to doing everything he can to support reconciliation with Indigenous Communities. Defence counsel summarized his comments by encouraging the Tribunal to consider these factors carefully and to accept this joint position.

#### *Analysis and Findings:*

Consistency represents one of the basic principles of the discipline process. In consideration of this, I have been presented with a joint penalty submission that both prosecution and defence counsel have taken great efforts to ensure that the Tribunal understands the time and consideration that went into obtaining this joint submission. I appreciate the efforts that went into providing a joint penalty submission and in taking guidance from *Anthony-Cook* I accept the consistency of disposition as a mitigating factor.

#### Effect on Police Officer and Police officer's family

Prosecution has submitted that the impact of the penalty may result in a hardship to the officer and his family but submits that it is appropriate and within the range considering the seriousness of the misconduct involved.

Defence counsel has submitted that PC Lafontaine has accepted responsibility for his actions and has taken this very hard. Defence counsel submitted that five days after his arrest for the criminal matter PC Lafontaine's wife received a cancer diagnosis. Defence counsel further submitted that at the time PC Lafontaine was going through this challenging period he was also supporting his wife through life threatening cancer and now he is present and back to work. Defence counsel submitted that somebody that can come through all that darkness and someone who has the full support of the OPP means that there can be great expectations for what PC Lafontaine is able to accomplish.

#### *Analysis and Findings:*

I agree with prosecution and defence counsel that this penalty will have an effect on PC Lafontaine and his family but I feel that it is necessary given the severity of the misconduct. I

am mindful of the information provided by defence counsel and I appreciate the considerable effort that PC Lafontaine has put into dealing with very significant personal factors, his efforts to overcome these factors and his commitment to returning to full operational duties as a police officer with the OPP. I do not find that this presents an extenuating economic impact and thus find this to be a neutral factor.

### Management approach

Prosecution submitted that management initiated a fair and thorough investigation into the incident and that thorough consultations occurred within the organization regarding the misconduct involved and the joint penalty position.

Defence counsel submitted that there was a fair process initiated by OPP management and that the joint penalty submission is evidence of PC Lafontaine's acceptance of this fair process.

### *Analysis and Findings:*

I have been presented with very thorough and thoughtful information by both prosecution and defence counsel with regards to the investigative steps taken to arrive at the joint penalty submission before the Tribunal. I find that this is a neutral factor in making my decision in this matter.

### **Conclusion**

In considering the full set of circumstances and taking all of the information presented to me into account, I find the submissions made today support that this joint penalty is within the acceptable range for similar misconduct and that it is fair and appropriate. I accept the joint penalty submission with respect to PC Lafontaine. I appreciate that this has been a difficult and challenging time for PC Lafontaine and I feel that what I have been presented with during the hearing are circumstances that are anomalous from everything else we know about the officer. By all accounts, PC Lafontaine has consistently demonstrated commitment and dedication to the OPP and to the public we serve. The officer has demonstrated himself to be a leader in a front line capacity, as an ERT member and in representing other members through the OPPA.

In this hearing I was presented with information related to PC Lafontaine's commitment to teamwork as illustrated in the performance evaluations that were submitted as exhibits and the comments by his sergeants, detachment commanders and North East Regional Command all articulate this.

This in no way exonerates PC Lafontaine's actions on the day in question. The extent of the misconduct presented is very significant and will have an impact on OPP relationships with Indigenous Communities. The misconduct itself and attempts to conceal the extent of it are very serious, however it has been presented to me that PC Lafontaine has demonstrated accountability for his actions. I am very mindful of the personal circumstances that impacted PC Lafontaine's ability to effectively perform his duties on the day in question.

I have taken into consideration the impacts of PC Lafontaine's decisions and actions on the day of this event and the mitigating information outlined in his evaluations that outline an exemplary career up to this point.

PC Lafontaine is a member who can suffer adversity and yet come back to perform his duties as a police officer in an exemplary fashion. He has been recognized for his leadership and commitment in his performance evaluations. It has been presented to me that his fellow officers will look to him for leadership and guidance as he progresses throughout the rest of his career. I would suggest that PC Lafontaine should take advantage of this, and to use these experiences to help support and guide his peers.

#### **PART IV: DISPOSITION**

I find Provincial Constable Lafontaine guilty of discreditable conduct and neglect of duty based on clear and convincing evidence.

I order Provincial Constable Lafontaine demoted to third class constable for a period of three years. Upon conclusion of that three year period, Provincial Constable Lafontaine will return to second class constable and after one additional year be reinstated at the level of first class constable.

This order is pursuant to section 85(1)(c) of the *Police Services Act*, R.S.O. 1990.

08/07/19

X Chuck Wesley

Signed by: Chuck Wesley CJ (M)

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Chuck Wesley  
Inspector  
OPP Adjudicator

Date electronically delivered: 21 June 2019



## Appendix A

The following exhibits were tendered during the hearing:

- Exhibit 1: Delegation – Adjudicator, Superintendent Taylor
- Exhibit 2: Designation – Prosecutor, Inspector Young
- Exhibit 3: Delegation – All OPP officers
- Exhibit 4: Delegation – Adjudicator, Superintendent Walton
- Exhibit 5: Designation – Prosecutor, Inspector Doonan
- Exhibit 6: Designation – Prosecutor, Inspector Tovell
- Exhibit 7: Khan and York Regional Police Service
- Exhibit 8: Delegation – Adjudicator, Superintendent Bickerton
- Exhibit 9: Delegation – Adjudicator, Superintendent Taylor
- Exhibit 10: Designation – Prosecutor, Inspector Young
- Exhibit 11: Delegation – All OPP officers
- Exhibit 12: Designation – Prosecutor, Inspector Doonan
- Exhibit 13: Designation – Prosecutor, Inspector Tovell
- Exhibit 14: Delegation – Adjudicator, Superintendent Bickerton
- Exhibit 15: Delegation – Adjudicator, Inspector Wesley
- Exhibit 16: Designation – Prosecutor, Inspector Young
- Exhibit 17: Designation – Prosecutor, Inspector Young
- Exhibit 18: Correspondence – Ashley Akers of Brown and Fabris Law office to Prosecutor, Inspector Young
- Exhibit 19: Agreed Statement of Facts - Inspector Young
- Exhibit 20: Proceedings at Trial - Prosecutor, Inspector Young
- Exhibit 21: Career Profile of PC Lafontaine - Prosecutor, Inspector Young
- Exhibit 22: Performance, Learning and Development Plan of PC Lafontaine dated 17 September 2015 – Prosecutor, Inspector Young
- Exhibit 23: Performance, Learning and Development Plan of PC Lafontaine dated 25 November 2016 – Prosecutor, Inspector Young