

**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 ADAM QUEMBY #9510**

**CHARGE: NEGLIGENCE OF DUTY**

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**DISPOSITION**

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**Before:** Superintendent K.M. Bickerton

**Counsel for the Prosecution:** Ms. Lynn Donnelly

**Counsel for the Defence:** Mr. William MacKenzie

**Hearing Date:** October 30, 2018

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**

### **Allegation of Misconduct**

Provincial Constable (PC) Quemby was charged with neglect of duty in that he, without lawful excuse, neglected or omitted to promptly and diligently perform a duty as a member of the Ontario Provincial Police (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 edited ASoF submitted by the parties reads as follows:

On or about June 13, 2015 it is alleged that the complainant, A.B.<sup>1</sup> reported a sexual assault. PC Quemby was on-duty at Northumberland OPP and as a member of the Crime Unit, responded to this incident. He committed the following neglect of duty in relation to his investigation, including:

- PC Quemby failed to properly and thoroughly investigate A.B.'s Sexual Assault allegations.
- PC Quemby made inappropriate and judgmental comments to A.B. during his interview with her.
- A.B. told PC Quemby about her level of intoxication, that she had experienced black outs, that her nose was plugged to force her mouth open and about her comments and attempts to stop what was happening.
- PC Quemby concluded because of some comments she made that she had consented to everything occurring to her, without properly investigating further.
- A witness who attended the OPP detachment with A.B. offered to provide a statement and PC Quemby told the witness words to the effect – I don't think we need it.
- PC Quemby failed to obtain photographs of A.B.'s injuries. When interviewed Professional Standards Bureau (PSB) PC Quemby advised he felt obtaining statements was irrelevant and not a priority, that he had already determined the sexual activity to be consensual. PC Quemby also indicated obtaining any phone records would not add value to the investigation.

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<sup>1</sup> Complainant's initials anonymized to protect their identity.

- PC Quemby failed to collect the Sexual Assault Examination Kit (SAEK) for more than 40 days despite being contacted by M.W.<sup>2</sup> who reminded PC Quemby that he had not collected it.
- M.W. further advised PC Quemby of her concerns with respect to the type of injuries she witnessed on A.B. at the time of her examination and referenced the injuries as red flags.
- When PC Quemby did collect the SAEK he failed to forward it to the Centre of Forensic Sciences for examination for blood/alcohol or for DNA analysis. PC Quemby told PSB the collection of the SAEK was not a priority, as it contained very little evidentiary value with respect to his investigation.
- In 2016 the SAEK was destroyed. The subsequent investigation into this matter was negatively impacted because the SAEK was no longer available.
- PC Quemby failed to arrest the suspects, provide them with their rights to counsel, caution them and interview them. It was August 7<sup>th</sup>, 2015 before PC Quemby approached two of the suspects in relation to obtaining a statement from them; which, they declined to provide.
- PC Quemby failed to seize A.B.'s leggings/tights for evidentiary purposes.
- PC Quemby failed to follow up on evidence at the scene or contact SOCO (Scenes of Crime Officer) for this purpose.
- PC Quemby failed to initiate warrant(s) to further the investigation.
- PC Quemby failed to follow up on information provided by A.B. that she thought it may have been recorded or that photographs may have been taken at the time.
- On or about July 30, 2015, during a meeting with D/Sgt. Andrea Enright they (Quemby and Enright) discussed the prospect of PC Quemby preparing a package for consultation with the Crown Attorney in relation to this investigation.
- On or about August 5, 2015 PC Quemby indicated he was conducting a few more interviews and then preparing a package to take to the Crown Attorney. PC Quemby's notes confirmed he left a message for D.C. <sup>3</sup> on this date.
- On or about August 14, 2015, PC Quemby communicated with D.C. and advised her he was still preparing the package for the Crown Attorney and told her he would talk to them in a couple of weeks.
- On or about September 11, 2015 D.C. contacted PC Quemby because she hadn't heard from him. PC Quemby told her words to the effect; there had been a discussion between the Crown Attorney and the detectives and it was determined there was not enough reasonable grounds to proceed with any criminal charges.

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<sup>2</sup> Anonymized witness

<sup>3</sup> A relative of the complainant anonymized to protect identity.

- PC Quemby was less than forthcoming with D.C. knowing he did not conduct a consultation with the Crown Attorney as discussed with D/Sgt. Enright.
- PC Quemby further told D.C. words to the effect; that the ability to consent was not entirely clouded by her level of intoxication, as she was able to recall certain things.
- PC Quemby left D.C. with the impression that the Crown Attorney supported or shared this view.
- PC Quemby confirmed with D.C. he had not processed the SAEK and that as a result of his conversation with M.W. there were no signs of rougher than normal sex.
- PC Quemby told D.C. this despite knowing M.W. did express her concerns to him about the injuries witnessed on A.B. when she was examined. And further that M.W. had referred to them as red flags; meaning injuries consistent with injuries known to have resulted from forced sexual activity or contact.

## **Representation**

Mr. MacKenzie represented PC Quemby and Ms. Donnelly represented the OPP. The Public complainant A.B. was present and was not represented by counsel.

## **Plea**

On October 30, 2018, represented by Mr. MacKenzie, PC Quemby entered a plea of guilty and was subsequently found guilty of neglect of duty.

## **Positions on Penalty / Submissions**

Ms. Donnelly and Mr. MacKenzie proposed a joint penalty submission of forfeiture of 80 (eighty) hours

## **Decision**

Following the guilty plea and upon reviewing the ASoF I find there is clear and convincing evidence to support a finding of guilt of neglect of duty against PC Quemby, contrary to section 2(1) (c) (i) of the code of conduct contained in the *Schedule to Ontario Regulation 268/10* as amended. I accept the joint penalty submission and order PC Quemby forfeit 80 hours pursuant to section 85(1)(f) of the *Police Services Act (PSA)*. PC Quemby will be required to work these 80 hours in consultation with his detachment commander.

## Part II: THE HEARING

### Exhibits

The exhibits for this matter are listed as Appendix A.

At the commencement of the hearing the prosecution and defence counsel submitted an ASoF the edited version of which is captured above. The Notice of Hearing will be revised to mirror the ASoF.

## Part III: SUBMISSIONS, ANALYSIS AND FINDINGS

### Issue:

PC Quemby pled guilty to neglect and consented to the ASoF after they were read before the tribunal by Ms. Donnelly. Based on clear and convincing evidence, I found PC Quemby guilty of misconduct.

The only issue remaining is whether the joint penalty proposal of 80 hours meets the goals of the discipline process. The proposed sanction must strike a balance between community expectations, fairness to PC Quemby, and the needs of the OPP.

Not specifically addressed by the parties, I am reminded of *R. v. Anthony-Cook*, a criminal case which ruled on joint penalty submissions. Essentially the court found such submissions are to be given deference by the trier-of-fact unless, through acceptance, it would bring the administration of justice into disrepute. Although it was not tendered as an exhibit and this is not a criminal matter, I am familiar with this case and I turn my mind to this instructive decision when presented with a joint penalty submission. Both Ms. Donnelly and Mr. MacKenzie referenced jurisprudence including the *OPP and PC Tyler Johnson*<sup>4</sup> in relation to joint submissions.

In this decision I will address those disposition considerations which were deemed relevant by prosecution and defence counsel. I will determine whether or not the factor is aggravating, mitigating, or neutral and ultimately, I will determine, when appropriate, the weight to be applied to each consideration.

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<sup>4</sup> Exhibit 11: *OPP and PC T. Johnson*, July 31, 2018, A/Supt. Hegedus

## Analysis

### *Public Interest*

PC Quemby has a duty to ensure all investigations are conducted in a professional and thorough manner. In this instance, PC Quemby demonstrated poor judgement in choosing to ignore evidence available to him. The ASoF outlines a number of extremely poorly conducted areas of the investigation. Mr. MacKenzie pointed out that PC Quemby improperly made his own credibility assessment of the complainant that tainted his approach to his responsibilities. Mr. MacKenzie reminded the tribunal that the police need only to form reasonable grounds to lay a charge and assessment of reasonable prospect of conviction (RPC) determinations are the responsibility of the Crown Attorney. He suggested that, in the matter before this tribunal, PC Quemby took it upon himself to apply the RPC test and, as a result, PC Quemby “dropped the ball” i.e. mishandled many areas of the investigation.

Ms. Donnelly pointed out in *Bressette and The OPP*<sup>5</sup> the accepted principle in police disciplinary matters that:

“the penalty must reassure the public that such conduct is unacceptable and will be subject a significant penalty.”

The high public interest component in the investigation of sexual assault incidents is clear and cannot be overstated. It is more than reasonable for the public to expect police officers to be thorough, ethical and professional when they conduct all types of investigations. It is of the utmost importance that victims/survivors of sexual assault are treated with empathy, compassion, respect and are made to feel like they are believed and supported. This applies to all sexual assault investigations not just the ones that conclude or are otherwise anticipated to result in criminal charges.

In this case A.B., who attended the hearing and addressed this tribunal, clearly communicated she was made to feel that she was not believed and that she received biased judgement from PC Quemby. Sadly, this only served to make A.B. feel further victimized.

The public expects the OPP to hold its members accountable when they commit serious misconduct of this nature. I find public interest is clearly an aggravating factor of significant weight but is reasonably addressed by the proposed sanction.

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<sup>5</sup> Exhibit 15: *PC C.J. Bressette and the OPP*, OCPC 14-07, June 3, 2014

### *Seriousness of Misconduct*

This is serious misconduct. Ms. Donnelly outlined OPP policy clearly requires officers to conduct themselves professionally and to be particularly thorough with respect to sexual assault investigations. PC Quemby fell woefully short of these expectations as detailed in the ASoF. His misconduct left the complainant feeling re-victimized and feeling like she did not experience justice. The complainant rightfully felt let down by PC Quemby and let down by the OPP.

As stated above, PC Quemby seemed to apply the “*reasonable prospect of conviction test*” (RPC) a test for the Crown Attorney alone to address, not the police. The proper test is for the police to consider whether there are *reasonable grounds* and PC Quemby seemed to have missed that in this matter. PC Quemby also conducted a credibility assessment of the complainant, possibly based on the fact that they had been drinking at the time of the alleged sexual assault. His credibility assessment and improperly applying the RPC test resulted in his overlooking or disregarding a number of important investigative avenues available to him.

The shoddy investigation was exacerbated by PC Quemby being less than forthcoming when consulting with or discussing this investigation with others.

The seriousness of the misconduct is weighty and aggravating.

### *Recognition of the Seriousness of the Misconduct.*

PC Quemby has pled guilty to misconduct. His guilty plea is an important recognition of the seriousness of his behaviour and it demonstrates remorse for his actions. His guilty plea resulted in A.B. not having to testify and relive an extremely traumatic event in her life. In addition to pleading guilty, PC Quemby made a heartfelt apology to A.B., the community, and to the OPP.

The police disciplinary process is focused on accountability and correcting errant behaviour. I yield mitigation to PC Quemby for his participation in this process. I find PC Quemby has accepted responsibility by entering a plea of guilty, by assenting to an Agreed Statement of Facts and an agreed penalty. His cooperation has ensured witnesses were not subjected to testify before this tribunal and, as previously stated, and the complainant not having to relieve a troubling and painful event.

I grant deference to officers who take accountability for their *Police Services Act* charges and resolve such matters expeditiously, with minimal impact to others involved. PC Quemby took direct accountability for his actions by entering a plea of guilty. He directly

addressed A.B., the tribunal, and the OPP with an apology, further demonstrating remorse for his misconduct. I give further mitigation for this sincere apology. I am satisfied that PC Quemby recognizes the seriousness of his misconduct.

I consider recognition of the seriousness of misconduct to be a strong mitigating factor for consideration.

### *Employment History*

The resolution reached by the parties and presented to this tribunal was reached only a short time prior to commencement i.e. the day/evening prior. As a result a full career profile could not be prepared. The evaluation included in exhibit 10 indicated that PC Quemby met or exceeded all performance standards. There are positive comments contained in the evaluation with respect to PC Quemby's leadership, contributions, and for mentoring of a junior officer.

There were a number of notations provided recognizing PC Quemby's commitment, operational successes, and contributions to the detachment and OPP goals. I specifically noted a letter from a citizen thanking PC Quemby for his help and compassion following the unexpected death of the author's husband.

There is nothing before me that would cause me to conclude that the behavior related to this misconduct is anything but anomalous for PC Quemby. I expect that this process has and may continue to cause PC Quemby to reflect upon and learn from this apparently isolated transgression and the behavior will not likely be repeated.

I consider PC Quemby's ability to rehabilitate is a mitigating factor.

### *Specific and General Deterrence*

Specific and general deterrence is required. I find it unlikely PC Quemby will repeat this type of misconduct. I am satisfied that the proposed joint penalty of 80 hours will send a clear message to PC Quemby and to other members of the OPP that this type of misconduct will not be tolerated and that this type of behaviour will result in a significant but appropriate sanction.

### *Effect on the Officer and His Family*

80 hours is a significant sanction and equates to two weeks' pay or two weeks of work without pay. This is somewhat mitigating as there is a financial loss or equivalent associated with the proposed sanction. I do conclude, upon review of submissions from

Ms. Donnelly and Mr. MacKenzie, that the proposed penalty is proportionate.

### *Consistency of Disposition*

As previously stated, this is a joint submission on penalty following a plea of guilty and I am mindful of the *Anthony- Cook and OPP and PC T. Johnson* decisions.

Ms. Donnelly submitted and referenced several cases also relied upon by Mr. MacKenzie. (See exhibits 11-21). The cases spoke to consistency considerations and procedural considerations. I have carefully reviewed the material provided and will not analyze the cases individually herein. I am satisfied that the proposed sanction falls within a range that is consistent with reasonably comparable previously adjudicated matters.

### *Damage to the Reputation of the OPP*

A member of the public, A.B., was deeply affected and negatively impacted by the way she was treated and the poor quality of investigation conducted by PC Quemby. There were other members of the public including A.B.'s family who became aware of the details of this matter and the investigative shortcomings.

This was a serious allegation of a very serious criminal offence involving a sexual assault. The reputation of the OPP has been damaged.

The results of police disciplinary hearings in Ontario are public processes often reported on in the media. When/if that were to happen the reputation of the OPP will be further tarnished.

I consider damage to the reputation of the OPP to be an aggravating factor.

### *Conclusion*

This disposition should serve as a reminder to PC Quemby and all OPP members that we have an obligation, indeed a duty to investigate crime with all of the investigative techniques, avenues and resources available to us. We cannot allow our hunches or speculation regarding outcomes to result in shortcuts being taken and to miss collecting valuable evidence through error or omission.

From the rank of Constable and through the chain of command, we share this responsibility. Procedures, policy, and accepted practice must always be followed, without exception, with proper oversight and accountability. Robust policy, prescribed procedures, practices and accountabilities were in place at the time of PC Quemby's

misconduct, but somehow, as alluded to by Mr. MacKenzie, there was a gap that allowed PC Quemby to continue down an erroneous path.

Anecdotally we know that sexual assault is under-reported by victims/survivors for a myriad of reasons which include fear of how they might be treated by police and the justice system. Those who do report have personal motivations for doing so which may include personal empowerment, validation, offender accountability, and perhaps a chance to try to avert the offender from harming others.

In this case A.B. had the courage to come forward to report the incident. Her experience with PC Quemby left her feeling many emotions including the sense of being re-victimized. A.B., her family, and the community were let down by PC Quemby and by extension, the OPP. As I did in the hearing, on behalf of the OPP, I sincerely and unequivocally apologize to A.B. for this and genuinely hope that her healing process continues with success.

In conclusion, I do find the proposed sanction meets the goals of the discipline process. It strikes a balance between community expectations, fairness to PC Quemby and the needs of the OPP. I am satisfied the proposed sanction is within the appropriate range and therefore, I find no reason to disturb the joint penalty submission.

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

I find there is clear and convincing evidence to support a finding of guilt of neglect of duty against PC Quemby, contrary to section 2(1) (c) (i) of the code of conduct contained in the *Schedule to Ontario Regulation 268/10* as amended. I accept PC Quemby's guilty plea and the joint penalty submission. I order PC Quemby forfeit 80 hours pursuant to section 85(1)(f) of the *Police Services Act (PSA)*. PC Quemby will be required to work these 80 hours in consultation with his detachment commander.

2019-08-12

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Signed by: Mike Bickerton M (M)

Date: August 12, 2019

Superintendent K.M. Bickerton

OPP Adjudicator



## Appendix “A”

The following exhibits were tendered preliminarily or during the hearing:

- Exhibit 1: Delegation of Adjudicator - Supt. Taylor
- Exhibit 2: Designation of Prosecutor - Insp. Young
- Exhibit 3: Delegation - All Officers
- Exhibit 4: Delegation of Adjudicator - Supt. Walton
- Exhibit 5: Designation of Prosecutor - Insp. Doonan
- Exhibit 6: Designation of Prosecutor - Insp. Tovell
- Exhibit 7: Designation of Prosecutor - Ms. Lynn Donnelly
- Exhibit 8: Delegation of Adjudicator - Supt. Bickerton
- Exhibit 9: Agreed Statement of Facts
- Exhibit 10: PC Quemby Employment History
- Exhibit 11: *OPP and PC T. Johnson*, July 31, 2018, A/Supt. Hegedus
- Exhibit 12: Excerpt (p 312-317) from Fully Annotated Ontario Police Services Act, Paul Ceysens, Scott Childs
- Exhibit 13: *OCCPS and Constable Antonio Pacitto*, March 22, 2004 OCCPS #04-03
- Exhibit 14: *OPP and PC James Pigeau*, January 30, 2018 Supt. Greg Walton,
- Exhibit 15: *Provincial Constable C.J. Bressette and the OPP*, June 3, 2014 OCPC 14-07
- Exhibit 16: *OPP v Favretto*, [2004] O.J. No. 4248
- Exhibit 17: *PC Schofield and the Toronto Police*, October 29, 1984 OCCOS #84-12
- Exhibit 18: *Sgt. G.S. Bettcher and the OPP*, June 17, 2016 D/Insp. K.M. Bickerton,
- Exhibit 19: See Exhibit 11 (duplicate submission)
- Exhibit 20: *PC Turgeon and the OPP*, July 20, 2012 OCPC QUEMBY#12-11,
- Exhibit 21: *OPP and PC Maggrah*, June 30, 2017 Supt. Taylor