

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

SERGEANT P.P. (PETE) RANCOURT, #7358

AND THE ONTARIO PROVINCIAL POLICE

**CHARGES: DISCREDITABLE CONDUCT AND UNLAWFUL OR UNNECESSARY
EXERCISE OF AUTHORITY**

Before: Superintendent Robin D. McElary-Downer

Ontario Provincial Police

Appearances:

Counsel for the Prosecution: Ms. Jodi-Lynn Waddilove

Legal Services Branch, MCSCS and MAG

Counsel for the Defence: Mr. Gavin May

Ontario Provincial Police Association

Penalty Submissions: April 9, 2013

REASONS FOR DISPOSITION

Finding of Misconduct

Sergeant P.P. (Pete) RANCOURT, #7358 pleaded not guilty, but was found guilty of one count of neglect of duty and one count of unlawful or unnecessary exercise of authority, contrary to the *Police Services Act*.

The incident that gave rise to the findings of guilt is found in my judgement dated December 13, 2012 and the lengthy details leading to my findings are not necessary to repeat. In summary, Sgt. RANCOURT was found guilty of the particulars outlined in the Notices of Hearing which alleged he:

- *Engaged in neglect of duty in that on or about October 24, 2010, he received information about an assault involving J. Morningstar and T. Morningstar. When learning of the location of J. Morningstar, he failed to obtain an arrest warrant; and, failed to communicate properly with the officers who attended to assist him.*
- *And further, on the same date, engaged in an unlawful and or unnecessary exercise of authority when he applied force upon J. Morningstar. As a result of his actions, A. Morningstar came to the aid of J. Morningstar and assisting officers also arrested and applied force to A. Morningstar.*

Penalty Positions

Ms. Waddilove, representing the Ontario Provincial Police (OPP) advised the OPP is seeking a forfeiture of twenty hours. The public complainants, Mr. James Morningstar and Mr. Andrew Morningstar submitted they are seeking Sgt. RANCOURT's dismissal. Mr. May, representing Sgt. RANCOURT, recommended a penalty at the lower end of twenty hours.

Exhibits

Exhibits tendered during the penalty submissions included:

Exhibit #12 – Book of Authorities

Tab 1: *Blowes-Aybar v. Toronto Police*, March 7, 2003 OCCPS

Tab 2: *Scholfield v. Metropolitan Toronto Police*, September 11, 1984, 2 OPR 613 (OPC)

Tab 3: *Brayshaw v. Ontario Provincial Police*, September 3, 1992, 2 OPR 937 (OCCPS)

Tab 4: *Andrews v. Midland Police Service*, May 1, 2003 OCCPS

Tab 5: *Hassan v. Peel Regional Police*, September 8, 2006 OCCPS

Tab 6: *Brudlo v. Toronto Police Service*, November 23, 2006 OCCPS

Tab 7: *Ontario Provincial Police v. Favretto*, [2004] OJ No. 4248 (Ont. CA)

Tab 8: *Williams v. Ontario Provincial Police*, (1995) 2 OPR 1047 (OCCPS)

Tab 9: *Harnett, MacLean and Robinson v. Peterborough Lakefield Community Police Service*, November 13, 2009 OCCPS

Tab 10: *Maguire v. Peterborough-Lakefield Community Police Service*, July 28, 2008 OCCPS

Tab 11: *Batista v. Ottawa Police Service*, May 8, 2007 OCCPS

Exhibit #13: Career Profile

Exhibit #14: Performance, Learning and Development Plan

Prosecution's Submissions

Ms. Waddilove filed a Book of Authorities marked as Exhibit #12.

Ms. Waddilove's submissions focused on public interest, seriousness and recognition of the seriousness of the misconduct, career history, deterrence, rehabilitation, damage to the OPP's reputation and consistency of penalty.

Ms. Waddilove submitted that public interest must be considered in each case. The objective of the *Police Services Act* is public protection and avoidance of unacceptable police conduct. This matter involved allegations brought forth by members of the public, the Morningstars, who were unlawfully arrested by Sgt. RANCOURT and his officers. The Tribunal was held because of their complaint to the OIPRD (Office of the Independent Review Director). She pointed to *Schofield*¹ where it states the misconduct must attract the appropriate penalty and *Andrews*² which stated the penalty must restore public confidence.

In regard to the seriousness of the misconduct, Ms. Waddilove said that similar to *Hassan*³, Sgt. RANCOURT's misconduct was deliberate. It was proven Sgt. RANCOURT attended the Morningstar residence with the intent to arrest and that he failed to obtain an arrest and *Feeney* warrant. The seriousness of the misconduct was further aggravated due to the injuries sustained by the Morningstars, injuries that they continue to suffer from today.

Specific to recognition of the seriousness of his misconduct, Ms. Waddilove submitted there is no clear indication that Sgt. RANCOURT is remorseful and has accepted responsibility for his misconduct. This is most evident in his email exchanges with the Crown Attorney and Detective Sergeant Houliston, emails that he lied in to avoid recognition of his misconduct. His emails were indicative of an officer shielding his actions – rather than taking responsibility for them.

Ms. Waddilove turned to Sgt. RANCOURT's employment history and tendered his Career Profile and Performance, Learning and Development Plan (PLDP), as Exhibits #13 and #14 respectively. She advised he started his career in 1988 and at the time of the incident had twenty-two years of experience. She submitted his unblemished career should not serve as a mitigating factor because his conduct fell below the rank of sergeant.

In regard to rehabilitation, Ms. Waddilove referred to the question asked in *Favretto*⁴ – What is the likelihood of recurrence? She submitted that Sgt. RANCOURT has been a police officer for twenty-two years, and while his behaviour appears to be poor, she thought he could recover from it provided he accepted responsibility.

Ms. Waddilove turned next to deterrence. She submitted she did not believe a sanction of twenty hours was excessive, but rather sufficient enough to deter Sgt. RANCOURT from similar misconduct. It will

¹ Exhibit #12, Tab 2

² Exhibit #12, Tab 4

³ Exhibit #12, Tab 5

⁴ Exhibit #12, Tab 7

also make other members aware that the OPP will not tolerate conduct such as this and that their conduct is always under great scrutiny.

Ms. Waddilove spoke of the damage to the OPP's reputation and referred the Tribunal to *Williams*⁵. She submitted two things needed to be considered. First the damage to the OPP's reputation and second the damage if the officer remains a member. In this case, she pointed out that Sgt. RANCOURT's unlawful arrest and force has resulted in the loss of public trust. This in turn has tarnished the OPP's reputation in the small communities of Blind River and Mississauga First Nation. It is clear the public's view of the OPP has been damaged and reputation tarnished.

Ms. Waddilove spoke of the importance of consistency in penalty and pointed to *Harnett*⁶, *Maguire*⁷ and *Batista*⁸, but reminded the Tribunal one is not bound by previous decisions.

Ms. Waddilove closed by saying that Sgt. RANCOURT committed serious misconduct and a sanction of twenty hours was reasonable and measured.

Public Complainants' Submissions

Ms. Waddilove then made submissions on behalf of the public complainants. It was submitted that the incident has had a serious impact on themselves, their family and the Mississauga First Nation community. They pointed to the number of community members present at the Tribunal in show of support. The Morningstars advised that any apology at this stage was too late.

The incident has affected the Morningstars' perception of the OPP and officer, and if the officer is not dismissed it sends a message that the OPP does not take matters seriously when a senior officer makes a mistake. The incident makes them question the OPP's motivation in other unrelated incidents. The Morningstars do not envy the decision the Tribunal needs to make.

Defence's Submissions

Mr. May submitted Sgt. RANCOURT is the father of two and married. He has twenty-five years of service and was promoted to Team Leader in 2008. Sgt. RANCOURT's Career Profile is indicative of a valued member, one who has received many commendations over the span of his career. Mr. May pointed to Sgt. RANCOURT's PLDP and submitted it represents a solid officer, one not prone to making mistakes. For these reasons, he asked the Tribunal not to dismiss Sgt. RANCOURT's employment history for an incident that spanned thirty minutes.

Mr. May reminded the Tribunal of his submission last November 2012, in regard to the Notices of Hearing being a subset of one another and asked that the penalty assessed be dealt with as one misconduct, not two.

Mr. May submitted that while it is unfortunate the Morningstars sustained injury, the Tribunal found that regardless of whether or not Sgt. RANCOURT had a *Feeney*, the physical altercation likely would have

⁵ Exhibit #12, Tab 8

⁶ Exhibit #12, Tab 9

⁷ Exhibit #12, Tab 10

⁸ Exhibit #12, Tab 11

happened. He reminded the Tribunal of the comments made in regard to the creditability of the Morningstars and Mr. Chiblow.

Mr. May urged the Tribunal to see the misconduct for what it was. Sgt. RANCOURT was actively investigating a domestic assault. He learned James Morningstar was leaving the residence in thirty minutes so he skipped a step and went to the residence. There was no personal gain for Sgt. RANCOURT; he was essentially doing his job. Mr. May agreed that getting the paper first was important, but asked the Tribunal not to lose sight that it was a domestic assault Sgt. RANCOURT was investigating.

Mr. May closed by saying the appropriate penalty range in matters like this is reprimand to twenty hours and he asked the sanction be assessed in the lower range. He submitted that dismissal is totally unreasonable.

Prosecution's Response

Ms. Waddilove submitted this is a matter of more than just skipping a step as suggested by Mr. May. Sgt. RANCOURT did not follow protocol and his actions resulted in injury and this cannot be lost in the process.

Discussion

As I consider the issue of penalty, I will first speak to the nature and seriousness of the misconduct. Without exception, every officer is legally and ethically bound to perform their duties within the legislative and common law framework of the law. In the matter at hand, Sgt. RANCOURT was found neglectful in his duty in that he failed to obtain an arrest and entry (*Feeney*) warrant and his neglect resulted in the unlawful arrest of the Morningstar brothers.

The seriousness of an unlawful arrest cannot be understated. Police are afforded significant powers to remove an individual's freedom, and it is for this reason they are expected to exercise their arrest authorities with the greatest due diligence, care and caution. Misconduct of this kind is at the high end of the spectrum and unless mitigated, warrants a severe sanction.

I take into consideration Sgt. RANCOURT was investigating a serious incident – one which involved domestic violence. I take into consideration Sgt. RANCOURT did not delay his investigation, in fact he made contact with the victim as soon as he came on shift. I also have taken into consideration his mistaken belief that the suspect would depart his residence shortly. Additionally, there was no indication that Sgt. RANCOURT's action was based on malicious intent. In fact, I found his approach with James Morningstar respectful and perhaps 'soft' before the altercation broke out. These factors help mitigate the seriousness of the misconduct and will be weighed accordingly.

Sgt. RANCOURT admittedly was very familiar with arrest and *Feeney* warrants. His notes were sloppy and he submitted a vaguely written crown brief. He failed to properly communicate with Constable Ariss, which included amongst other things, the potential for firearms to be on site. Sgt. RANCOURT's conduct fell far below standard of what is expected of a seasoned officer, one who carries the rank of sergeant. These aggravating factors weigh heavily in my decision.

I agree with Ms. Waddilove that public interest is a significant consideration in this penalty disposition. The allegation of misconduct came forward by three members of the public, two of whom were deemed

public complainants – the same two who were unlawfully arrested. Given the significant powers and authorities granted to a police officer, they as well as the greater public expect police not to fault on their powers of arrest, given the incidental restrictions that flow from removing one’s freedom.

I heard from the public complainants and the resultant distrust and lack of confidence they now have in the OPP. One may attempt to whittle Sgt. RANCOURT’s misconduct down to ‘missing a step,’ but that would be wrong because it is more than that. It amounted to an officer infringing the rights of individuals and that destroys public trust – something so many officers work hard to maintain. Leveraging an appropriate sanction on Sgt. RANCOURT will send the message to those wronged that the OPP does not condone his misconduct.

In regard to recognition of the seriousness of the misconduct, Mr. May is correct in saying Sgt. RANCOURT exercised his fundamental right to have a hearing and it cannot be held against him. That being, other evidence existed that pointed to his failure to take responsibility for his misconduct and I refer to his email to the Crown Attorney. Sgt. RANCOURT embellished the facts suggesting exigent circumstances existed – when they did not. His email carried a tone of incivility and in essence he waved his finger at the Crown’s decision, rather than accept he had made a mistake. This weighs heavily as an aggravating factor in the penalty considerations.

I turn to Sgt. RANCOURT’s employment history. Other than this one incident, Sgt. RANCOURT’s career has been unblemished. He has been the subject of many accolades over the span of his twenty-two plus years when this matter came to light. He was ranked “Meets Performance Standards” in his most recent PLDP⁹. However, he is a sergeant and with that comes the added responsibility to lead by example. Arresting individuals in a home without proper authority, sloppy notes and a vaguely written brief fall short of leading by example. I find Sgt. RANCOURT’s employment history and his position as a ranking officer in the OPP both aggravating and mitigating.

The words of the public complainants were not lost on this Tribunal. As I sat and listened to Ms. Waddilove make final submissions on their behalf, the reality of the situation, and by that I mean the personal impact on the Morningstars, cut deep. I am not convinced that this Tribunal could offer a more meaningful deterrence to Sgt. RANCOURT than what was accomplished by the complainants. To know one’s misconduct has caused a community to lose confidence in their police is a heavy burden to shoulder.

Unfortunately, not all officers heard the submission, nor did my summary capture the potent effect of their words. The penalty leveraged against Sgt. RANCOURT will send a strong message to others that sanction will follow those who fail to execute their duties within the framework of the legislation.

In police discipline matters, it has been said many times and many different ways that consistency of penalty in like matters is the hallmark of fairness. I have been referred to three cases of similar fact where the penalties ranged from reprimand to five days.

A summary of the cases is as follows:

In *Hartnett, MacLean and Robinson*¹⁰, the officers were found guilty of discreditable conduct and neglect of duty after they entered an apartment without first obtaining a *Feeney* authorization.

⁹ Exhibit #14

¹⁰ Exhibit #12, Tab 9

They were sanctioned five days and it was not disturbed upon appeal.

In *Maguire*¹¹, the officer was sanctioned five days after being found guilty of neglect of duty after he failed to file an arrest report and crown brief. The officer's prior discipline record aggravated his sanction.

In *Batista*¹², the Commission upheld a reprimand after the officer was found guilty of deploying his taser unnecessarily on a person in custody.

I am satisfied upon review of these cases that the penalties proposed by counsel are within range. In particular to Ms. Waddilove's proposal, her submission falls on the low side of mid-range. After weighing the seriousness of Sgt. RANCOURT's misconduct, I find it fair and measured. However, I cannot agree to the disposal of both findings of guilty as one, as I believe a formal sanction on each is warranted.

Sgt. RANCOURT was found guilty of two counts of misconduct. The genesis of his misconduct was found in his neglect to obtain the proper authorization to enter and arrest James Morningstar. The unlawful arrest of James and Andrew Morningstar flowed as a by-product of his neglect. For this reason, I will append the heavier sanction to the neglect and lesser to the unlawful arrest.

Disposition

I have carefully considered the facts presented in this matter. In light of the seriousness and bearing in mind the weight I have placed on the mitigating and aggravating circumstances, I order the following sanction be imposed:

1. Specific to the neglect of duty, Sgt. RANCOURT will forfeit twenty hours pursuant to ss 85(1)(f) of the *Police Services Act*, R.S.O. 1990.

Specifically, he is required to work an additional twenty hours and this will be completed at the earliest opportunity and in consultation with his Detachment Commander. I expect this sanction to be completed within three months.

2. Specific to the unnecessary exercise of authority, Sgt. RANCOURT will receive a reprimand, pursuant to ss 85(7)(a) of the *Police Services Act* and this will be delivered at the earliest opportunity.



Robin D. McElary-Downer
Superintendent
OPP Adjudicator

Date decision electronically delivered: April 24, 2013

¹¹ Exhibit #12, Tab 10

¹² Exhibit #12, Tab 11