

**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

SERGEANT M.H. (Marc) GRAVELLE, #12091

CHARGE: Discreditable Conduct

DISPOSITION

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| Before: | Superintendent Mike Bickerton Ontario Provincial Police |
| Counsel for the Prosecution: | Ms. Claudia Brabazon Ministry of the Solicitor General |
| Counsel for the Defence: | Mr. Bill MacKenzie Ontario Provincial Police Association |
| Public Complainant: | Ms. Kareen Wong |
| Hearing Date: | May 17, 2021 |

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

PART I: OVERVIEW

Allegations of Misconduct

Sergeant (Sgt) Marc Gravelle is alleged to have committed discreditable conduct in that he did act in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the Ontario Provincial Police, contrary to Section 2(1)(a)(xi) of the Code of Conduct contained in the Schedule to Ontario Reg. 268/10, as amended.

Particulars of allegations:

It is alleged that Sgt Gravelle and his former spouse had been involved in a business transaction with Ms. Wong. A subsequent audit revealed he conducted the following searches on the Ministry of Transportation (MTO) database for a non-police purpose in relation to Ms. Wong:

- June 25, 2018 (12:37 am) driver's licence
- August 10, 2018 (1:04 pm) name, address and driver's licence
- November 2, 2018 (2:42 pm) driver's licence
- January 4, 2019 (3:27 pm) name, address and driver's licence address and photo
- April 4, 2019 (8:06 - 8:18 am) numerous queries of driver's licence, name, age, address and photo

In addition, it is alleged that an audit revealed he conducted the following search on the MTO database for a non-police purpose in relation to K.F., who was a tenant at Ms. Wong's residence:

- April 8, 2019 (8:48 am) licence plate, driver's licence and photo. This query occurred approximately 36 minutes after his former spouse served K.F. with legal documentation in a civil process.

It is further alleged that an audit revealed he conducted the following search on the Canadian Police Information Centre (CPIC) database for a non-police purpose in relation to Ms. Wong:

- June 26, 2018 (6:47 pm) name and criminal name index (CNI)

Sgt Gravelle's former spouse initiated a civil action against Ms. Wong and was having difficulty

locating her. Following his search on police databases Ms. Wong's address and K.F.'s name was articulated in the civil action documents and subsequently served.

It is alleged that he provided Ms. Wong's address and K.F.'s name to his former spouse for non-purposes.

- Sgt Gravelle is a sergeant and supervisor at a detachment and knew his actions were discreditable.
- Sgt Gravelle is aware that the OPP relies upon him to ensure searches and disclosure of this nature do not occur.
- Sgt Gravelle failed to make notes of his MTO and CPIC inquiries.
- It is further alleged that Sgt Gravelle was less than forthcoming with Professional Standards Bureau (PSB) investigators in relation to his communication with his former spouse. Specifically, when he was asked about telling her about K.F.'s identity, he responded with words to the effect – *I don't believe I supplied it to her.*
- Sgt Gravelle was less than forthcoming with PSB investigators in relation to K.F. when he told them words to the effect – *I ran him. I cannot say why, cannot recall.*
- Sgt Gravelle was less than forthcoming with PSB investigators when he used the passage of time and his lack of notes to explain why he was unable to confirm whether he shared the MTO and CPIC information with his former spouse regarding Ms. Wong and K.F.

Representation

In this matter, Mr. MacKenzie represented Sgt Gravelle and Ms. Brabazon represented the OPP. The public complainant, Ms. Wong participated throughout this process with the assistance of a paralegal, Ms. Wood.

Plea / Penalty Position

On May 17, 2021 Sgt Gravelle, represented by his counsel Mr. MacKenzie, pleaded guilty and was found guilty of discreditable conduct, based on clear and convincing evidence outlined in the Notice of Hearing. The hearing was held in OPP General Headquarters with some participants appearing via Skype, given the State of Emergency imposed in the Province of Ontario at the time due to the Covid-19 pandemic.

Mr. MacKenzie, Ms. Brabazon with the agreement of Ms. Wong submitted a joint penalty proposal of 40 hours forfeiture be imposed against Sgt Gravelle to be worked under the direction of his Detachment Commander. Parties supported this proposal with submissions which are detailed in Part III of this decision.

Decision

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

I order Sgt Gravelle forfeit 40 hours to be worked under the direction of his Detachment Commander/Regional Command. This order is being made pursuant to section 85(1)(f) of the *Police Services Act*.

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

At the commencement of the hearing, the prosecution and defence counsel indicated the Notice of Hearing would be adopted as the Agreed Statement of Facts (ASoF).

Part III: SUBMISSIONS, ANALYSIS AND FINDINGS

Oral Submissions

Prosecution; Ms. Brabazon

Ms. Brabazon explained the context of the misconduct as being a civil matter between Sgt Gravelle with his former spouse and the public complainant, Ms. Wong. The civil dispute arose following the sale of a recreational vehicle by Ms. Wong to Sgt Gravelle and his former spouse.

When addressing the seriousness of the misconduct and public interest, Ms. Brabazon suggested these were aggravating factors. Sgt Gravelle repeatedly, over an extended period of time, used police databases containing highly confidential information to advance his personal interests in the civil matter. Ms. Brabazon indicated this would be

shocking to the public because they rely on the police to conduct themselves above reproach and carry out their duties with professionalism.

Sgt Gravelle's guilty plea, acceptance of the facts as alleged and the proposed penalty showed that he has recognized the seriousness of his misconduct. Ms. Brabazon suggested no other cases were closely comparable to this matter but she was satisfied the proposed 40 hours was within the range of available penalty for similar misconduct.

Ms. Brabazon suggested Sgt Gravelle's positive employment history was indicative of an employee who could reform and rehabilitate from his misconduct and benefit from progressive discipline. This was Sgt Gravelle's first disciplinary offence. Ms. Brabazon felt that the repetitiveness of Sgt Gravelle accessing the databases was aggravating.

With respect to specific and general deterrence, Ms. Brabazon suggested this decision will serve to remind Sgt Gravelle and other OPP members of the importance of respecting confidentiality and trust with respect to databases.

Regarding damage to the reputation of the OPP, Ms. Brabazon submitted Sgt Gravelle's misconduct has already had an adverse impact on Ms. Wong and others who may have found out about the misconduct. The public would find such behaviour upsetting should they become aware of the misconduct and further damage would result.

Defence: Mr. MacKenzie

Sgt Gravelle is a 14 year member with no history of prior discipline. Acknowledging the misuse of databases is serious misconduct and the joint submission of 40 hours is consistent with other matters beginning at 24 hours and up.

Sgt Gravelle has entered a guilty plea which should be afforded considerable mitigation. Sgt Gravelle has acknowledged his wrongdoing and there are civil proceedings ongoing between him and Ms. Wong.

Mr. MacKenzie pointed out the positive career Sgt Gravelle has had and cited a number of "exceed" ratings on his evaluations along with accolades and other favourable documentation. This misconduct is a blip in an otherwise excellent career and Sgt Gravelle has acknowledged his misconduct and is prepared to move from it.

Public complainant: Ms. Wong

Ms. Brabazon read a statement prepared by Ms. Wong outlining the impact these events have had on her. The following are some of the points identified.

As a result of Sgt Gravelle's actions leading to the misconduct Ms. Wong has been fearful of the police. She took measures including having security cameras installed at her home and was afraid to drive to work for fear of being arbitrarily pulled over by the police. The ongoing civil matter related to the misconduct resulted in Sgt Gravelle indicating to others that Ms. Wong had committed criminal acts which she had not.

Ms. Wong outlined what she described as "relentless" efforts by Sgt Gravelle and others to come after her. *Ms. Wong provided details of the civil matter for context which I need not delineate further except to acknowledge that some events exacerbated her personal circumstances.*

Ms. Wong was stunned at the number of times Sgt Gravelle had "run her information" i.e. on police databases and she feared for her own safety and that of her children. Ms. Wong was further concerned that Sgt Gravelle had other OPP officers making inquiries on his behalf. Ms. Wong was further troubled by the fact that Sgt Gravelle shared the information he received by his improper inquiries with others, including his former spouse. During this time Ms. Wong was faced with extraordinary and heart breaking personal tragedy not related to but certainly not aided by the goings on with Sgt Gravelle.

Ms. Wong cited the oath Sgt Gravelle took and felt that he had violated it by his misconduct. Ms. Wong remains anxious about the OPP and continues to live in fear of repercussions that Sgt Gravelle will come after her and her family.

Commentary/Analysis

A reader, looking at the facts of this case in consideration of Ms. Wong's concerns, might reflect on her feelings as being overstated or exaggerated. For context, Ms. Wong is black. The relationship between the black community and the police remains strained due to real and perceived bias, prejudice, and, in some cases, systemic racism by the police toward members of the black community. Too many tragic events have occurred and have been vividly portrayed in the media justifiably creating further feelings of fear, mistrust and anger. It is a sad state when, in 2021, members of our communities continue to hold fear and mistrust of the police simply because of the colour of their skin.

The OPP and other Police Services have taken a strong stance against biased and racist attitudes and behaviours of their employees. Bias and racism are strongly repelled by the OPP and are viewed as offensive, repugnant and intolerable. With this said I acknowledge that Police Services in Canada, including the OPP must continue to work to repair relationships and continue to rebuild and re-establish trust with racialized and other marginalized communities.

This, I hope, will provide context to Ms. Wong's sentiments which I have taken very seriously. I must also be clear that there was no evidence or even the slightest inkling that Sgt Gravelle's misconduct was driven or influenced in any manner by racism nor did Ms. Wong allege that it was. Ms. Wong's race does, however, provide insight into her continued apprehension.

I have offered Ms. Wong my personal assurance, on behalf of the OPP, that she need not fear further repercussions from Sgt Gravelle nor any member of the OPP as a result of her coming forward as a public complainant in this matter.

Sgt Gravelle pleaded guilty to discreditable conduct and assented to the Agreed Statement of Facts after they were read before the tribunal. Based on clear and convincing evidence, I have found Sgt Gravelle guilty of misconduct.

The only issue remaining is whether the joint penalty proposal of *40 hours to be worked* meets the goals of the discipline process. The proposed sanction must strike a balance between community expectations, fairness to Sgt Gravelle, and to Ms. Wong, as well as the needs of the organization.

I was 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 specifically tendered as an exhibit, I am familiar with this case and I turn my mind to this instructive decision when presented with a joint penalty submission.

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 the appropriate weight to be applied to each consideration.

Analysis

Public Interest

As noted by the prosecution, Sgt Gravelle's conduct was in stark contrast to the expectations placed on any officer and clearly violated the trust placed in him by the community and by the OPP. Sgt Gravelle accessed OPP databases to further his own personal interest in accessing confidential information regarding Ms. Wong. In doing so, Sgt Gravelle violated Ms. Wong's privacy and caused undue angst including fear of further repercussions from Sgt Gravelle and/or the police.

The public has high expectations of OPP members and the public trust is eroded when an officer's conduct fails to meet these expectations. I find Sgt Gravelle, given his rank and tenure, would certainly have been cognizant of the organizational rules and policy on the use and misuse of police databases. The OPP has clearly communicated professional expectations in this respect. The public would expect much more professional conduct and restraint from a police officer. When the public interest has been offended in this regard the public would expect Sgt Gravelle to be held appropriately accountable for his actions. A significant sanction should go a long way towards reassuring Ms. Wong and the public that the OPP will not abide behaviour of this nature by its employees.

Public Interest is aggravating and weighty.

Seriousness of the Misconduct

As outlined in the ASoF Sgt Gravelle used his position as a police officer to advance his position in a civil dispute involving the purchase of a recreation vehicle from Ms. Wong. He accessed databases in the manner described, violating the rights and trust of Ms. Wong and the community at large and used the information in furtherance of a completely personal matter unrelated to any bonafide police issue. Considerable personal information can be accessed by police officers as we are clearly in the age of electronic storage. As pointed out by the prosecution, Sgt Gravelle did this more than once over a period of time.

The seriousness of the misconduct is aggravating and weighty.

Recognition of the Seriousness of Misconduct

The prosecution submitted the OPP looks to its members to take responsibility for their actions. Sgt Gravelle has acknowledged his error in judgement and his guilty plea is indicative of his recognition of the seriousness of the misconduct. The prosecution submitted this acceptance of responsibility is a mitigating factor. Sgt Gravelle addressed this tribunal and Ms. Wong in what presented as a genuine apology for his behaviour knowing that it was wrong and had a negative impact on Ms. Wong. For reasons addressed elsewhere, I am uncertain of the impact Sgt Gravelle's apology will have from Ms. Wong's perspective.

I consider Sgt Gravelle's apology and acknowledgement of his wrongdoing to have been genuine and unambiguous. Indeed, Sgt Gravelle appeared humbled by his behaviour leading to misconduct. In my mind Sgt Gravelle's apology and unequivocal acknowledgement of his discreditable conduct bodes very well for him as it would for any person with respect to diminished concern that his/their misconduct will be repeated.

The disciplinary process is focused on accountability and correcting errant behaviour. I

acknowledge mitigation for Sgt. Gravelle's full participation in this process and resolution. I find Sgt Gravelle 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.

I admire and respect officers who take responsibility for their misconduct and resolve such matters with minimal impact to others involved.

I consider recognition of the seriousness of misconduct to be a mitigating of considerable weight.

Employment History

Up to the point that this misconduct occurred, Sgt Gravelle had been an exemplary employee who was promoted at a relatively early stage in his career. This is indicative of an officer who has performed extremely well. His counsel, Mr. MacKenzie, identified a number of highlights in Sgt Gravelle's career including his exemplary performance evaluations and numerous accolades.

Sgt Gravelle's positive employment history is undisputed and is mitigating and weighty.

Ability to Reform/Rehabilitate

Sgt Gravelle has pled guilty to his misconduct, acknowledged his wrongdoing through an ASoF, has an exceptional employment history prior to his misconduct and has apologized for his behaviour. We cannot predict the future with certainty, with that said, the constellation of factors outlined cause me to consider Sgt Gravelle as highly likely to learn from his mistakes and not repeat similar behaviour.

I consider Sgt Gravelle's ability to reform and rehabilitate and diminished likelihood of recidivism to be mitigating.

Specific and General Deterrence

Specific deterrence is required in this matter. Sgt Gravelle conducted himself in a manner that was not acceptable to the public, significantly offended Ms. Wong and violated the policy and expected comportment of the OPP. Sgt Gravelle has acknowledged that he knew he should not have accessed the databases for other than authorized reasons, yet he did so.

In terms of general deterrence, all officers need to understand that behaviour similar to this misconduct will not be tolerated by the OPP without exception. There is clear policy and

internal communications concerning OPP database access and the use directed at maintaining the integrity of what is private and highly confidential information. There can be no grey area in this regard. No employee can abuse the trust placed in them by the people we serve to respect and maintain the integrity of information contained in any police accessible, not otherwise public, data. Those who do, regardless of rank or title, will be held accountable and will be subject to discipline.

The public needs to see that officers are held accountable to uphold the high professional and ethical standards expected of them. Sgt Gravelle has accepted full responsibility for his misconduct and I am hopeful he has learned many lessons throughout this process and would conduct himself differently in the future. Sgt Gravelle must be cognizant of the fact that should he commit further misconduct in the future, a more significant sanction would be the likely result.

When viewing this misconduct disposition, other officers will understand that such behaviour will not be tolerated by the OPP. This penalty sends a meaningful message that officers must conduct themselves to a higher standard at all times.

I find that the proposed sanction adequately addresses both specific and general deterrence.

Damage to the Reputation of the Police Service

The behaviour outlined in the ASoF involved distinct actions taken by Sgt Gravelle over a period of time. The violation of public trust and specifically that of Ms. Wong is substantial. Certainly the reputation of the OPP has been damaged in the mind of Ms. Wong. I am unaware of the extent to which the public is aware of Sgt Gravelle's misconduct. I infer that, should the public become aware of Sgt Gravelle's behaviour, from the perspective of a reasonable and dispassionate person in the community, further damage to the reputation of the OPP would result.

Damage to the reputation of the OPP is aggravating.

Consistency of Disposition

Ms. Brabazon, on behalf of the OPP, provided cases for my reference (see appendix "A") with respect to consistency while acknowledging there are rarely cases that are directly on point. For this reason, while I have reviewed the submissions, I have not embarked on a detailed written analysis of the decisions provided. The cases provided are generally assistive but are quite distinct from the misconduct of Sgt Gravelle including the fact that the offending officers were constables.

I am satisfied with and accept the oral submissions and assurances of Ms. Brabazon and Mr.

MacKenzie, both highly experienced and respected counsel, that they were satisfied the proposed sanction was reasonably within the range of suitable penalties.

The proposed sanction was made jointly and, in deference to *Anthony-Cook*, there is no evidence upon which I could conclude that accepting the joint proposal would bring the administration of justice into disrepute.

Conclusion

As outlined in submissions, Ms. Wong was significantly negatively impacted by the misconduct of Sgt Gravelle. Ms. Wong had to endure unrelated personal tragedy during the time period the misconduct was ongoing and since. I have addressed Ms. Wong's ongoing concerns elsewhere in this decision.

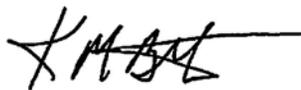
On behalf of the OPP, I apologize to Ms. Wong for how she was made to feel and the negative impact one of our officers had on her and her family. I am hopeful that Ms. Wong, in time, will be able to put these unfortunate events behind her and begin to trust the police again.

I expect that Sgt Gravelle has learned from this experience and will continue to put this matter behind him and return, if he hasn't already, to the high performing and productive employee he has proven he is capable of being.

PART IV: DISPOSITION

I order Sgt Gravelle forfeit 40 hours, to be worked under the direction of his Detachment Commander/Regional Command.

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



Mike Bickerton
Superintendent
OPP Adjudicator

Date electronically delivered: August 30, 2021

Appendix “A”

The following exhibits were tendered during the hearing:

- Exhibit 1: Delegation – Adjudicator, Superintendent Taylor
- Exhibit 2: Delegation – Adjudicator, Superintendent Bickerton
- Exhibit 3: Designation – Prosecutor, Inspector Doonan
- Exhibit 4: Designation – Prosecutor, Inspector Young
- Exhibit 5: Designation – Prosecutor, A/Inspector Fournier
- Exhibit 6: Delegation All Officers
- Exhibit 7: Designation – Prosecutor, Ms. Brabazon
- Exhibit 8: Career Profile Package
- Exhibit 8: Prosecution cases re: Consistency of Penalty
 - *Hampel v Toronto Police Service*, [2008] ONCPC 6
 - *Gauvin v Ontario Provincial Police*, [10May2021] OPPHD
- Exhibit 9: Ms. Wong Impact Statement