

**Thunder Bay Police Service Discipline Hearing**  
**In the Matter of Ontario Regulation 268/10**  
**Made Under the Police Services Act, R.S.O. 1990,**

**And Amendments thereto:**  
**And**  
**In The Matter Of**

**The Thunder Bay Police Service**

**And**

**Detective William Wowchuk # 487**

**Detective Constable Brad Bernst # 340**

**Charge: Unlawful or Unnecessary Exercise of Authority**

**Before:**

**Superintendent (Retired) M.P.B. Elbers**  
**Ontario Provincial Police Adjudicator**

**Appearances:**

**Counsel for the Prosecution: Mr. Bernd Richardt**  
**Thunder Bay Police Service**

**Counsel for the Defense: Mr. Seth Weinstein**  
**Thunder Bay Police Association**

**Public Complainant: Mr. Richard Burns (self-represented)**

## Penalty Decision with Reasons

### The Hearing

Detective William Wowchuk #487 and Detective Constable Bernst # 340, after a four (4) day Hearing in Thunder Bay, Ontario were found guilty of Unlawful or Unnecessary Exercise of Authority on September 12, 2012.

The finding of guilt to the Unlawful or Unnecessary Exercise of Authority was pursuant to Section 2 (1) (g) (i) of the Code of Conduct contained in the Schedule to Ontario Regulation 268/10 as amended.

The Thunder Bay police officers that are charged with these offences are members of the street drug enforcement unit of the Thunder Bay Police Service. The officers were conducting surveillance on a residence in the city of Thunder Bay on September 07, 2011. A decision was made by the surveillance team to follow a vehicle away from the residence under police surveillance. As a result of that decision a male person, Richard Burns was arrested at the front door of the Money Mart located on Memorial Ave. Thunder Bay, Ontario.

Mr. Richardt, representing the Thunder Bay Police Service has asked for a range of penalty of reprimand to a loss of pay for two to three days for these officers.

Mr., Weinstein, representing Detective Wowchuk and Detective Constable Bernst has asked for a range of penalty of reprimand to loss of pay of four to five days.

Mr. Burns, the public complainant, who represented himself at the Hearing, did not attend the Disposition Hearing in Thunder Bay on October 10, 2012 to make any submission on penalty for these officers.

In Williams and the Ontario Provincial Police, the Commission identified three key elements a Hearing Officer must take into account when imposing a penalty. These include: the nature of the seriousness of the misconduct, the ability to reform or rehabilitate the officer and the damage to the reputation of the Police Force that will occur if the officer remained on the force.

Counsel in total has provided the Tribunal with eight (8) cases to offer assistance in determining an appropriate disposition.

They are found in Exhibits # 12 for the Prosecution and # 13 for the Defense.

I will not recite the cases in their totality, however I have read and considered the cases that I was provided by Counsel. As learned Counsel have stated, there are no cases found which parallel the case that is before me at present. The cases as provided are for guidance to the degree of Unlawful or Unnecessary Exercise of Authority.

The Blowes-Aybar case speaks to removing a person's freedom without just cause. Both Counsels have referred to this case in their submissions.

The Blowes-Aybar case is instructional to this point. As we all know, all cases are different in substance and fact. This being said, again it addresses the power a Police Officer possesses and the use or improper use of this power, can affect the Officer and tarnish the image and reputation of the Service for whom he/she is employed. In this circumstance it is the Thunder Bay Police Service.

The cases provided by Counsel can be considered as instructive in assisting the Tribunal to reach an appropriate disposition.

In Exhibit # 13 at Tab A, Mr. Weinstein has provided the Tribunal with nineteen (19) letters of support, commendations and letters of appreciation for Detective Wowchuk during his twenty three (23) years as a police officer with the Thunder Bay Police Service.

In Exhibit # 13 at Tab B, Mr. Weinstein has provided the Tribunal with six (6) letters of support and appreciation, along with two performance appraisals for Detective Constable Bernst during his eight (8) years of service as a police officer with Thunder Bay Police Service.

These letters can be considered as mitigating factors to consider in this disposition in relation to these two officers.

Accountability, ethical behaviour and conduct are at a standard much higher than the public we serve. It is generally known and an accepted fact that the law requires a higher standard of conduct with police officers in their private lives than the ordinary citizen.

Credibility, honesty, integrity are characteristics that are earned. As one elevates him / herself through the ranks of this organization those characteristics are more revered and treasured. It helps to create the professional image and excellence that the Thunder Bay police officers strive to maintain.

## **Disposition Considerations:**

A number of issues must be considered in Police Act disciplinary matters.

### **1. Public Interest**

It is important to consider the public interest. It is common knowledge that the public holds police in a position of high trust and accountability. Detective Wowchuk and Detective Constable Bernst were found guilty of Unlawful or Unnecessary Exercise of Authority. At the time of their indiscretion one was a twenty three year seasoned police officer who was the supervisor of the unit and the other was an eight year member of the service. As I have previously stated in my decision of this case, it is my belief that an arrest was not warranted. The decision was made by the surveillance officers to arrest in mere seconds over their police communication system after observing three vehicles enter the laneway without any positive knowledge as to where the vehicle or persons in the vehicles attended in that laneway.

It is therefore extremely important that the Thunder Bay Police Service demonstrate that members will be held to that standard.

### **2. Seriousness of the Misconduct**

Any deceptive or aberrant behaviour displayed by a police officer in any police service is serious.

The public confidence in the police is one of an expectation that the law will be upheld.

Detective Wowchuk and Detective Constable Bernst conduct was unprofessional and they abused their authority. They performed an unnecessary arrest which culminated in injury to the complainant. The injuries were not serious and the complainant, Mr. Burns did not address the injuries immediately after the arrest, however it is known there were minor injuries sustained to him. As I stated in my decision, when an arrest is unnecessary and an individual's right to freedom has been removed, however briefly, that matter is serious. The arrest of Richard Burns was unnecessary. His personal freedom was removed. He was assaulted and handcuffed. His injuries were minor, but unnecessary. He could not leave voluntarily until he was released unconditionally by Detective Wowchuk and Detective Constable Bernst. This is a significant action against him by the Thunder Bay Police Service.

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

The actions of Detective Wowchuk and Detective Constable Bernst have affected their careers. I believe both officers understand that today. Mr. Weinstein has indicated that this was an isolated incident in these officer's careers, however I believe that these officers see clearly how their actions and lack of professionalism have dictated the shortcomings that bring them before me today. The public observes and evaluates the Police 24-7. We, as individuals and as a professional organization must be mindful of this fact. Our members, while on patrol and off duty, must conduct themselves in a professional manner at all times.

### **4. Employment History**

Detective Wowchuk joined the Thunder Bay Police Service in 1989. He has received numerous accolades during his career and has spent a majority of his career in the criminal investigation field. He is a highly respected officer of the service and was promoted to his position as supervisor of the drug unit in 2010.

Detective Constable Bernst is an eight year veteran of the Service with his last three years in the drug unit. He also has numerous accolades on file and along with Wowchuk contributes significantly to the community. Bernst also has acted as an acting Sergeant in the unit while Wowchuk is away.

As was noted in Exhibits #13, Tab A and B they have received numerous letters of appreciation and commendations for work in which they have excelled.

The totality of work performance acts as a mitigating factor in my decision.

### **5. Need for Deterrence**

It is necessary to consider general deterrence for all members. The penalty must reflect that the Thunder Bay Police Service will not tolerate unacceptable behaviour. The rule of an investigation is to provide the Community with investigations that provide the utmost of policing excellence, diligence and thoroughness. A quality investigation is warranted. Nothing less can be accepted or tolerated.

There must be specific deterrence for members to send a message that individuals will be held accountable for their conduct while considering the mitigating factors of positive work record performed by these two officers the Thunder Bay Police Service must deliver a penalty that not only prevents a recurrence, but also adequately protects the public.

General deterrence in this situation offers the Adjudicator in this matter the opportunity to remind all members of this organization that an arrest of an individual is a significant action against that person and it cannot and should not be exercised or performed casually or especially when it is unnecessary.

#### **6. Ability to Reform or Rehabilitate the Officer**

Detective Wowchuk and Detective Constable Bernst acted in a manner that is clearly unacceptable of a Police Officer.

Unlawful or Unnecessary Exercise of Authority is a serious offence that cannot be tolerated in this organization. The possibility of recurrence or whether or not this matter is an isolated instance as Defense Counsel has suggested must clearly be examined.

Short of dismissal, it is unknown to this Tribunal or the Thunder Bay Police Service whether this conduct will continue by these officers. The proposed penalty submissions submitted by Counsel in this matter suggest to me that the officers can be rehabilitated with an appropriate disposition penalty.

#### **7. Damage to the Reputation of the Force**

The Conduct exhibited by these officers while on duty in Thunder Bay will cause damage to the reputation of the Thunder Bay Police Service.

It is unknown to me to what the extent of publicity or the knowledge of the events is to the residents of Thunder Bay. This was a Hearing where the Press and media outlets were in attendance on every day reporting on the day's events. To some degree it does not matter as the incident has affected all involved and has caused damage to the organization.

It is our commitment and the Public's expectation that we the Thunder Bay Police Service conduct ourselves 24-7, three hundred and sixty five days of the year with a degree of professionalism and commitment for policing excellence. Nothing less is acceptable.

#### **8. Handicap and Other Relevant Person Circumstances**

There are no considerations before this Tribunal that are apparent or give cause for consideration.

## **9. Effect on the Police Officer's Family**

There is no doubt that Detective Wowchuk and Detective Constable Bernst will suffer from the penalty disposition to be imposed. Dismissal, Demotion, forfeiture of hours will have an impact on Detective Wowchuk and Detective Constable Bernst.

I have given this situation serious consideration in determining an appropriate disposition.

## **10. Management Approach for Misconduct**

The Thunder Bay Police Service has a clearly defined Performance Management Program and Disciplinary Process. Due to the serious nature of this misconduct, while on duty, I have not given undue consideration for this issue. The Thunder Bay Police Service does not condone or accept this type of behaviour from its officers.

## **11. Provocation**

There are no considerations before the Tribunal that are apparent or give cause for consideration. I am aware of the systematic abuse argument that Mr. Burns wished to raise at the outset of this Hearing. Through the testimony received and the deceptive testimony provided by Mr. Burns concerning the day in question, and in taking into consideration the reason for this complaint as initially portrayed by the complainant to the Office of the Independent Review Director I find that there is no reason to consider systematic abuse as an aggravating consideration in my disposition consideration.

## **12. Procedural Fairness Considerations**

There are no considerations before this Tribunal that are apparent or give cause for consideration.

### 13. Consistency of Penalty

I have considered the eight (8) cases presented to me by Counsel. As I communicated earlier in this disposition the cases presented to me are not on point, however they were instructive for disposition considerations.

In Schofield vs. Metro Toronto Police (1994) the Commission stated:

*“Consistency in the discipline process is often the earmark of fairness. The penalty must be consistent with the facts and consistent with similar cases that have been dealt with in earlier occasions.”*

In Hrycyszyn vs Ontario Provincial Police (1993) the Commission created the standard that a Sergeant would be held to a higher standard than a Constable. Detective Wowchuk has been a Sergeant since 2010 and is in charge of the Thunder Bay Street Drug Unit.

It is still my view that the Blowes - Aybar case resembles this case the most. In the other cases presented by Counsel there were guilty pleas entered and admissions of wrongful arrest by the officers. I also realize that the officers have their right to a Hearing. Arguments were also put forth to the Tribunal on the length of service of the officers involved and in most cases it was junior. In this case I have a senior officer who is a Sergeant with twenty-three (23) years' service and an eight year Detective Constable. Again the cases are instructive to this Tribunal for disposition considerations.

I believe the officers have learned a great deal from this entire process and must consider this element in my disposition considerations.

The disposition of this matter must reflect the serious nature of Detective Wowchuk and Detective Constable Bernst actions.

If it were not for the positive performance evaluations and numerous letters of appreciation the disposition would have been more severe.

Striving for consistency in a disposition is a balancing act, involving a number of considerations that speak to the specifics of the misconduct, the environment in which the misconduct occurred, the action or inaction of the management of the service and other issues.



**Disposition:**

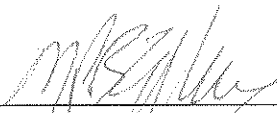
**In light of the seriousness of these allegations, and bearing in mind all the evidence before me, Detective Wowchuk will forfeit eight (8) hours from his vacation bank or other leave credits pursuant to section 85 (1) (e) of the Police Services Act.**

**This means you will attend your office on either rest days or annual leave days and work the prescribed hours until eight hours have been accomplished. The timeline to complete these hours will be issued by your Supervisor.**

**Further, you will receive remedial training with the Policies of the Thunder Bay Police Service as required and deemed necessary by your immediate supervisor in consultation with Senior Command of the Thunder Bay Police Service.**

**In light of the seriousness of these allegations, bearing in mind all the evidence before me, Detective Constable Bernst will receive a Reprimand pursuant to section 85 (1) (g) of the Police Services Act to be administered by a member of the Senior Command of the Thunder Bay Police Service.**

**Further, you will receive remedial training with the Policies of the Thunder Bay Police Service as required and deemed necessary by the immediate supervisor of the Sergeant in charge of the street drug unit in consultation with Senior Command of the Thunder Bay Police Service.**

  
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**M.P.B. Elbers, Superintendent  
(Retired)**

**October 23, 2012  
Date**