



GREATER SUDBURY POLICE SERVICE DISCIPLINE HEARING

UNDER ONTARIO REGULATION 268/10

MADE UNDER THE POLICE SERVICES ACT, RSO 1990,
AND AMENDMENTS THERETO

IN THE MATTER OF THE GREATER SUDBURTY POLICE SERVICE
AND SERGEANT ARLINGTON MULLENS (92394)

Charge: *Discreditable Conduct, O.Reg. 268/10, s. 2(1)(a)(xi)*

DECISION

Hearing Officer: Superintendent (retired) Peter Lennox

Prosecutor: Mr. Joël Dubois

Defence Counsel: None; Sudbury Police Ass'n Agent Chad Boyd

Hearing Date: Friday, May 24, 2024

Decision Date: Friday, May 24, 2024 (written decision to follow)

PENALTY

Sergeant Arlington Mullens, 92394

DATE: SATURDAY, FEBRUARY 29, 2020

Retired Superintendent Lennox: Before commencing my penalty decision in this matter, I thank Mr. Joël Dubois (prosecutor) and Mr. Chad Boyd (vice-president of the Sudbury Police Association and agent to Sgt. Mullens) for their submissions, which have assisted me in reaching my decision.

There were two electronic appearances before the hearing date of May 24, 2024, which was set by mutual consent. The hearing was held through the Zoom application, and members of the public and of the media were welcome to attend.

Penalty

The penalty in this matter imposed under Clause 85(1)(c) of the Police Services Act will be a demotion to the rank of first-class constable for a period of six months, effective May 24, 2024. Following this period, the officer will return to the rank of sergeant, conditional on satisfactory performance of duty by the officer, as confirmed by the unit commander.

Summary

On Friday, May 24, 2024, Sergeant Arlington Mullens (92394) pled guilty and was found guilty of one charge of discreditable conduct, contrary to the Police Services Act, 1990. I note that the Police Services Act was repealed effective April 1, 2024, but that the new enabling legislation, the Community Safety and Policing Act, 2019, specifies that:

216 (1) Complaints made under the Police Services Act and hearings under section 25 of that Act shall continue to be dealt with in accordance with the provisions of that Act as they read immediately before the Act's repeal with

necessary modifications, subject to subsections (3) and (6) and to such other modifications as may be set out in the regulations.

I therefore find that I have the authority to continue this current hearing process under the authority of the *Police Services Act* despite its repeal.

The specific clause of the Code of Conduct within Ontario Regulation 123/98 that articulates the offence is 2(1)(a)(xi), which is “acts in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the police force”.

The particulars of the charge are found on the Notice of Hearing (see below). I note that the Notice of Hearing contains a “Notice of Increased Penalty” section that informs the respondent officer that “the penalty of demotion may be imposed if the misconduct ... with which you are charged is proved on clear and convincing evidence”.

The prosecutor and the respondent officer’s agent both made verbal submissions. The parties presented me with a joint submission on penalty (Exhibit 5, dated May 24, 2024), which submitted that:

- 1. The parties jointly submit that the appropriate disposition for the finding of one count of Discreditable Conduct is a demotion to the rank of First Class Constable for a period of six months, following which the Officer will return to the rank of Sergeant, conditional on satisfactory performance of duty by the Officer, as confirmed by the unit commander.*
- 2. The above penalty is submitted in accordance with section 85(1)(f) of the Police Services Act.*

I note that clause 85(1)(f) of the *Police Services Act* refers to forfeiture of time off, and that the clause that authorizes me to demote the police officer is clause 85(1)(c). As it seems clear to me that this is an oversight that would offend neither party, I find that the difference is immaterial to my conclusion.

I also realized after the hearing that Exhibit 2, the designation of the prosecutor, was for Ms. Lynda Bordeleau, who began the prosecution of this matter. She was later replaced by Mr. Joël Dubois. While I have no specific designation for Mr. Dubois, I am aware that he is a member of the same legal firm as Ms. Bordeleau, and there was no concern raised by either party about this apparent oversight. I find that this is also immaterial to my conclusion.

Neither party called witnesses to this matter, and only one case was submitted, Senior Constable Andrew Krug and the Ottawa Police Service, Ontario Civilian Police Commission (O.C.P.C.-03-001), January 21, 2003. The prosecutor referred me to paragraph 69 on page 21 of this finding, which lists 13 factors that must be taken into consideration when determining penalty. The prosecutor indicated that this list of factors was the only reason he was relying on Krug.

There was an agreed statement of facts (A.S.F.) in this matter (Exhibit 4), which the prosecutor read into the record. The facts of the matter, as quoted in the A.S.F., are as follows:

[Quote]

1. Sergeant Arlington Mullens commenced his duties with the Greater Sudbury Police Service on January 3, 2006.
2. During the relevant timeframe described below, Sergeant Mullens was assigned to Patrol Operations, Platoon "A".
3. On March 19, 2022, while off duty, Sergeant Mullens attended Costco, located at 1465 Kingsway Boulevard, Sudbury, for shopping purposes.
4. Sergeant Mullens was alone. Once he was done selecting various items, he proceeded to the self-checkout lanes to process his order.
5. While using the self-checkout, the kiosk that Sergeant Mullens was using started flashing and displayed an "incorrect weight" error.
6. Upon inspection by a Costco employee of the items that were previously scanned by Sergeant Mullens and placed by him in the area of the self-checkout reserved for scanned items, a t-shirt was selected by the employee for closer examination.

7. The employee determined that the t-shirt, which covered a Cutco Santuko carving set (the “Knife Set”), had been scanned by Sergeant Mullens, however the Knife Set, valued at \$179.99, had not.
8. The actions of Sergeant Mullens as described above:
 - a. were irresponsible;
 - b. could reasonably be perceived by members of the public as an attempt to shoplift;
 - c. have brought discredit upon the reputation of Sergeant Mullins and of the Greater Sudbury Police Service; and
 - d. constitute Discreditable Conduct.

[End quote]

Prosecution Submissions

The prosecutor, Mr. Dubois, began by stating that there would be a guilty plea followed by a joint submission to penalty. He read in the Agreed Statement of Facts (A.S.F.) and, based on that statement, I found that I had clear and convincing evidence that the case for discreditable conduct had been made out, and found Sgt. Mullens guilty of discreditable conduct.

The joint submission to penalty was also read in by Mr. Dubois.

The prosecutor then drew my attention to Senior Constable Alexander Krug and Ottawa Police Service (OCPC, September 30, 2002 – Exhibit 8), and specifically to paragraph 69 on page 21 of the decision. This paragraph outlines the accepted factors that adjudicators must consider when determining penalty. I took those factors into account in my analysis and decision, below.

The prosecutor submitted that Sgt. Mullens began working for the Greater Sudbury Police Service on January 6, 2006, and was promoted to the rank of sergeant on January 8, 2022.

He indicated that the public interest is an applicable factor for penalty in this matter, as police officers – and particularly supervisors – are held to a higher standard than other members of the community, and that the respondent officer's actions have a direct impact on the community's confidence in policing and in the Service.

With respect to the seriousness of the misconduct, the prosecutor reminded me that both parties had referred to it as "irresponsible". The respondent held supervisory rank, and his actions could be perceived as an attempt to shoplift. These submissions lead to the misconduct being considered to be serious, and the prosecutor suggested that the recommended penalty takes that seriousness into account.

The prosecutor submitted that the recognition of the seriousness of the misconduct by the respondent is mitigating to penalty, as the officer pleaded guilty to the discreditable conduct at the first opportunity, indicating that he is aware of the seriousness of his transgression.

The prosecutor turned to Sgt. Mullens' employment history, and indicated that he had submitted documentation on two informal disciplinary matters (Exhibits 6 and 7). As the incidents described in the exhibits took place after the incident at Costco, they cannot be used for consideration of progressive discipline. That said, the prosecutor submitted that they are aggravating to penalty as part of the officer's employment history.

Specific and general deterrence are among the factors under consideration, and the prosecutor pointed out that the goal of the discipline process is to ensure that further misconduct by the respondent does not occur. It also sends a message to other members of the Service that they are held to a higher standard of behaviour, particularly supervisors.

The prosecutor submitted that, as the officer is taking responsibility for the misconduct, the Service believes that the officer can be rehabilitated. He submitted that this is mitigating to penalty.

As this misconduct took place in a Costco store, it was in view of the public, which means that the public will be aware of it and that knowledge will have an impact [on the officer and the Service], which, the prosecutor submitted, is aggravating to penalty.

Finally, the prosecutor suggested that while he is submitting no specific cases to ensure consistency of disposition, a reduction in rank for six months is consistent with penalties found in the case law.

This concluded the prosecutor's submissions.

Defence Counsel Submissions

Mr. Chad Boyd of the Sudbury Police Association acted as agent for Sgt. Mullens, who was otherwise unrepresented. Mr. Boyd underscored the respondent's participation in [which I interpret as cooperation with] the discipline process, and submitted that the respondent was under personal distress during the time in question as he was dealing with significant issues within his personal life.

He asked that I consider that the respondent is undergoing medical treatment, and also that he has participated in the disciplinary process despite being on medical leave. He underscored that while he knew of several officers who will not participate with the disciplinary process while on medical leave, the respondent has participated in order to get through the process in a positive manner.

I note that Mr. Boyd made no submissions to disagree with those of Mr. Dubois.

Prosecution Response

The prosecutor did not respond to defense counsel's submissions.

Analysis and Decision

The behaviour that led to Sgt. Mullens' charges is not in dispute. The plea of guilty and joint penalty submission tell me that the parties agree to what transpired on March 19, 2022, and that it constitutes serious misconduct.

The task before me now, therefore, is to determine whether the penalty suggested jointly by the prosecutor and defense counsel is appropriate, and, if not, whether I am justified in substituting another penalty.

I have heard the submissions of both parties, and have considered the matter in light of the factors or categories recognized (through Krug, above, and as articulated by Peter Ceysens in Legal Aspects of Policing). The prosecutor mentioned several of these factors specifically, and I have considered others, below.

Public Interest

I agree with the prosecutor that public interest is a factor in this matter. It is crucial in our society that the community have trust and confidence in the Service specifically, and in policing generally. Misconduct such as that to which Sgt. Mullens has pleaded guilty has a strong potential to undermine that trust and confidence. I also agree that police officers, and especially police supervisors, are held to a higher standard of conduct and accountability than others in society.

The potential impact on the public interest is aggravating to penalty in this matter.

Seriousness of the Misconduct

The prosecutor indicated that Sgt. Mullens' actions could be perceived as an attempt to shoplift. Shoplifting is a form of theft, and theft is an offence under the Criminal Code. While I have no evidence that the respondent was ever charged criminally over this matter, I find that the potential criminality of this matter tends to increase the seriousness of the misconduct. That seriousness is not denied by either party to this matter (the prosecutor indicated that both parties consider it to be "irresponsible"), and is exacerbated by the respondent's supervisory rank.

I find that the seriousness of the matter is aggravating to my consideration of penalty.

Recognition of the Seriousness of the Misconduct

I accept the position of the parties that Sgt. Mullens has accepted responsibility for his misconduct, as evidenced by an early guilty plea. This factor is therefore mitigating to penalty.

Disability and other Relevant Personal Circumstances

While the respondent officer's agent has indicated that Sgt. Mullens is on medical leave and was under personal distress and dealing with significant issues within his personal life at the time the misconduct was committed, I have been given no specific reason to believe that a disability or personal circumstances exist that would inform or impact my penalty decision.

I have no evidence that disability or personal circumstances led to this misconduct, but only that the officer was dealing with difficult personal issues when the misconduct took place.

This factor is therefore neutral to penalty.

Provocation

I have no evidence to indicate that the respondent was in any provoked into the behaviour that led to misconduct charges.

This factor is neutral to penalty.

Procedural Fairness Considerations

Neither party has raised issues of procedural fairness. Sgt. Mullens has had the benefits and protections of the police tribunal system and of his police association, and this matter has proceeded expeditiously.

This factor is neutral to penalty.

Employment History

No documentary evidence such as commendations or evaluation documents has been submitted in this matter.

I was provided with two negative personnel documentation forms. I accept the prosecutor's position that it is not appropriate to use them for progressive discipline, as both events took place after the incident at Costco

The prosecutor also submitted that they are aggravating to penalty, as they indicate that this misconduct did not necessarily occur in isolation. I understand this position, but find that any effect the subsequent misconduct has in my decision on the Costco matter is minimal at best, as these reports did not exist at the time of the respondent's misconduct in this matter.

That said, the apparent behavioural trend is disturbing, and I strongly encourage Sergeant Mullens to take whatever action or seek whatever support he requires to prevent further recurrence of misconduct.

I wish him well as he undertakes to deal with his personal circumstances, and to invoke the support of a health team to do so.

Potential to Reform or Rehabilitate the Police Officer

I accept the prosecutor's submission that the Service believes that Sgt. Mullens can be rehabilitated. This position is reinforced by Sgt. Mullens' plea of guilty, which he entered early in the process.

This is a mitigating factor to penalty.

Effect on the Police Officer and Police Officer's Family

Any penalty I impose, whether in accordance with the joint submission or not, will have an impact on the officer and his family by decreasing his income. I find, however, that the officer has brought this on himself through his misconduct.

I have not been made aware that this penalty will cause undue hardship to any party, and note that the penalty is the result of a joint submission. This factor neither aggravates nor mitigates the penalty.

Consistency of Disposition

I was surprised not to have been presented with cases involving similar facts. Reviewing previous comparable cases, especially recent ones, and the penalties attached to them can be very helpful in ensuring that the penalty is consistent with previous penalties imposed by other hearing officers. As I often hear in the context of

the tribunal that “consistency is the hallmark of fairness”, and as I believe this to be true, I considered asking counsel to research the matter further.

I did not take that action as it is my belief, based on my experience in police tribunals, that the joint penalty submission is not unreasonable in the circumstances and in the context of earlier findings.

For an adjudicator in my position to deviate from a joint submission, moreover, would require an extraordinary justification that I do not believe exists in this case.

The joint penalty submission is, in my opinion, consistent with matters of comparable seriousness across Ontario.

Specific and General Deterrence

As Sgt. Mullens has pleaded guilty to the charge promptly, I am satisfied that the requirements of specific deterrence have been addressed.

I trust that this conviction and the penalty that accompanies it will be made known across the Service. The principle of general deterrence will therefore also be served as members will perceive that the Service will not tolerate behaviour like Sgt. Mullens demonstrated during the Costco incident, and that such behaviour will result in penalties commensurate with the nature and magnitude of the misconduct.

Systemic Failure and Organizational/Institutional Context

I have been given no reason to believe that any systemic or organizational failure has impacted on this matter. This factor is neutral to penalty.

Damage to the Reputation of the Police Force

The misconduct in this matter took place in a large retail outlet, and was detected by employees of the facility. It may have been detected by other onlookers or witnesses, but I have been given no information on that.

As at least some community members (i.e., Costco staff and potentially nearby customers) are aware of the misconduct and were placed in the uncomfortable position of having to deal with it, I find that there was damage to the reputation of the Service. This is an aggravating factor to penalty.

Effect of Publicity

I noted during the hearing that one person whom I know to be a member of the media and another unidentified person were present on the Zoom call.

At the time of writing, I am not aware of the total media coverage or its impact. I have already found, however, that there has been damage to the reputation of the Service, and this will only be made worse if the incident is reported widely in the media.

While this factor is beyond the control of the respondent, it is somewhat aggravating to penalty.

Loss Resulting from Unpaid Interim Administrative Suspensions

I was made aware of no unpaid administrative suspension in this matter. This consideration is therefore not relevant.

Finding

I have reviewed the mitigating and aggravating factors and considered the submissions of defence counsel and the Service prosecutor carefully. I have determined the penalty in this matter.

I gave substantial consideration to this penalty and undertook a thorough review of the submissions of both parties. I also considered whether specific and general deterrence would be served by this joint proposal and whether the faith of the public in the Service and in the Tribunal would be impacted negatively.

Based on the considerations above, I find that I do not have reason to deviate from the joint submission, and I accept it.

The penalty in this matter imposed under Clause 85(1)(c) of the Police Services Act, therefore, will be a demotion to the rank of first-class constable for a period of six months, effective May 24, 2024. Following this period, the officer will return to the rank of sergeant, conditional on satisfactory performance of duty by the officer, as confirmed by the unit commander.

A handwritten signature in black ink, appearing to be 'Peter Lennox', with a stylized flourish extending to the right.

Peter Lennox
Superintendent (retired)
Hearing Officer

Dated and released (electronically) on July 1, 2024

APPENDIX

LIST OF EXHIBITS

Sgt. Arlington Mullens, 92394
Greater Sudbury Police Service

1. Letter of Delegation – Hearing Officer (Retired Superintendent Peter Lennox)
2. Letter of Designation – Prosecutor (Ms. Lynda Bordeleau)
3. Notice of Hearing to Sergeant Arlington Mullens, 92394
4. Agreed Statement of Facts, dated May 24, 2024
5. Joint Submission to Penalty, dated May 24, 2024
6. Informal Resolution Report – Sgt. Arlington Mullens by Sgt. Kevin O’Shaughnessy – November 3, 2022 [exhibit number applied after the hearing]
7. Discipline (Informal Resolution) Report – Sgt. Arlington Mullens by Sgt. N. McNamara – July 28, 2023 [exhibit number applied after the hearing]
8. Senior Constable Alexander Krug and the Ottawa Police Service, January 21, 2003 – File OCPC-03-001 – Excerpt (Page 21) [exhibit number applied after the hearing]