

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

DETECTIVE SERGEANT JAMIE BALL #12923

DETECTIVE CONSTABLE JARRET ANDERSON #9894

DETECTIVE CONSTABLE JOE LADOUCEUR #11830

AND THE ONTARIO PROVINCIAL POLICE

CHARGE: DISCREDITABLE CONDUCT

DISPOSITION WITH REASONS

Before: Acting Superintendent Greg Walton
Ontario Provincial Police

Appearances:

Counsel for the Prosecution: Norm Feaver
Legal Services Branch, MCSCS and MAG

Counsel for the Defence: Mr. Gavin May for Detective Sergeant Ball
Ontario Provincial Police Association

Counsel for the Defence: Mr. George Joseph for Detective Constable Anderson and
Detective Constable Ladouceur
Ontario Provincial Police Association

Complainant: Joyce White on behalf of (son) John White

Hearing Date: June 01, 2015

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

PART I: OVERVIEW

Allegation of Misconduct

Notice of Hearings were presented before this tribunal for each of the officers, mutually charged with one count of Discreditable Conduct. Detective Sergeant Ball, (D/S Ball) Detective Constable Anderson, (D/C Anderson) and Detective Constable Ladouceur (D/C Ladouceur) each stand charged with Discreditable Conduct in that they 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 (OPP), contrary to section 2(1)(a)(xi) of the Code of Conduct contained in the Schedule to Ontario Reg. 268/10, as amended.

The particulars for D/S Ball are as follows:

- On or about November 28, 2013, you supervised the execution of a search warrant at a private residence, during which OPP members conducted searches of several vehicles, in breach of the judicial authorization that did not authorize the searching of vehicles.
- During the briefing prior to the search, you failed to ensure that members understood the judicial direction that no vehicle may be searched.
- After the warrant execution you notified your supervisor of the outcome and indicated to him that the warrant did not authorize the searching of vehicles but you failed to report that vehicles had been searched.
- You knew or ought to have known that your actions were discreditable

The particulars for D/C Anderson are as follows:

- On or about November 28, 2013, you participated in the execution of a search warrant at a private residence. During the briefing prior to the search you read and signed the warrant that clearly states the judicial direction that no vehicle may be searched.
- During the execution of the search warrant, you conducted searches of several vehicles while knowing that the search warrant did not authorize the searching of vehicles.
- You knew or ought to have known that your actions were discreditable.

The particulars for D/C Ladouceur are as follows:

- On or about November 28, 2013, you participated in the execution of a search warrant at a private residence. During the briefing prior to the search you read and signed the warrant that clearly states the judicial direction that no vehicle may be searched.
- During the execution of the search warrant, you conducted searches of several vehicles while knowing that the search warrant did not authorize the searching of vehicles.
- You knew or ought to have known that your actions were discreditable.

Plea

On June 1, 2015, D/S Ball, D/C Anderson and D/C Ladouceur pleaded guilty and were found guilty as charged.

Decision

After considering the submissions and examining the exhibits, I order that D/S Ball forfeit 32 hours, D/C Anderson forfeit 16 hours and D/C Ladouceur forfeit 16 hours. My reasons for this are as follows:

PART II: THE HEARING

Exhibits

The following exhibits were tendered during the hearing:

- Exhibit 9: Agreed Statement of Facts
- Exhibit 10: Prosecution Documents for Brief (all officers)
 - Tab 1: PLDP's and career profile D/C Anderson
 - Tab2: PLDP's and career profile D/S Ball
 - Tab3: PLDP's and career profile D/C Ladouceur
- Exhibit 11: Prosecution Case Book
 - Tab1: *Hartnett, MacLean, Robinson v. Peterborough Lakefield Community Police Service*, OCCPS, November 13, 2009
 - Tab 2: *OPP v. Covey*, March 31, 2004
 - Tab 3: *OPP v. Penrose*, (undated)
 - Tab 4: *OPP v. Rourke*, (undated)
 - Tab 5: *Dinsdale v. OPP*, OCCPS, December 30, 2004
 - Tab 6: *Orr v. York Regional Police*, OCCPS, March 26, 2001
 - Tab 7: *York Regional Police v. Amato*, October 9, 2013

- Tab 8: *Cheung and McGrath v. Toronto Police Service*, OCCPS, April 23,2010
- Exhibit 12: Defence Book of Documents D/S Ball
 - Tab1: Letter of Reference Staff Sergeant E. Howells
 - Tab2: Letter of Reference Inspector D. Johnson
 - Tab3: General Information Forms
 - Tab4: Commendation
- Exhibit 13: *R. v Benz* [1986] ON CA
- Exhibit 14: *R. v Arviko, Cumor and Omar* [2010] ONSC
- Exhibit 15: Defence Book of Documents D/C Anderson
 - Not tabbed – contains PLDP’s, extensive positive correspondence in form of internal correspondence and General Information Forms
- Exhibit 15A: Anderson letter of reference by Sergeant E. Chwastyk
- Exhibit 16: Defence Book of Documents D/C Ladouceur
 - Not tabbed – contains PLDP’s, extensive positive correspondence in form of internal correspondence and General Information Forms
- Exhibit 16A: Ladouceur letter of reference by Mayor P. Hobbs
- Exhibit 16B: Ladouceur letter of reference by Inspector D. Johnson
- Exhibit 16C: Ladouceur letter of reference by Staff Sergeant J. Graham

Representation

In this matter, Mr. May represented D/S Ball, Mr. Joseph represented D/C Anderson and D/C Ladouceur while Mr. Feaver represented the OPP. Mrs. Joyce White attended in lieu of her son John White, complainant.

Agreed Statement of Facts

The facts of this matter are substantially agreed upon by the parties. The edited Agreed Statement of Facts states:

On November 27, 2013, a member of Greenstone OPP Detachment authored and received a tele-warrant issued by a Justice of the Peace (JP) authorizing the search of a private residence and property. The issuing JP made a penned notation on the face of the warrant that the warrant was authorized for the residence and property only and did “not” include any of the numerous motor vehicles and trailers named in the warrant. The JP also entered a penned notation at the bottom of page one of the warrant that "no vehicles may be searched". On the tele-warrant fax cover sheet that was sent along with the warrant, the JP wrote the following instructions: "Approved for

residence only. Motor vehicles may not be searched. Not enough evidence to corroborate items to be searched will be found. Appendix A is not same list of vehicles as stated on TW to search".

D/S Ball is the supervisor of the Organized Crime Enforcement Bureau (OCEB) Drug Enforcement Unit in Thunder Bay. On November 28, 2013, he supervised the execution of the search warrant and assisted in the search of the residence and property.

D/C Anderson is a member of the OCEB - Organized Crime Unit, in Thunder Bay. On November 28, 2013, he assisted in the search of the residence and property.

D/C Ladouceur is a member of the OCEB - Drug Enforcement Unit, in Thunder Bay. On November 28, 2013, he assisted in the search of the residence and property.

On November 28, 2013, D/S Ball, D/C Anderson and D/C Ladouceur, along with other OPP officers, attended the Greenstone OPP Detachment where a short briefing was held; the warrant was passed around, read by all present and signed by each officer. The fax portion comments submitted by the issuing JP was not presented or discussed at the briefing but verbal information was given that the suspect hid drugs in abandoned vehicles located on his property. At the briefing, D/S Ball failed to ensure that members understood the judicial direction that no vehicle may be searched.

During the execution of the warrant, D/S Ball walked to the back of the property and observed that there were no footprints to derelict vehicles; he did not search any of the vehicles but did look inside a trailer being used as a storage shed and also walked through a Quonset hut that had no doors. D/S Ball did not observe any other officers searching vehicles.

D/C Ladouceur, while searching the residence, obtained the keys for a Ford pickup truck parked outside next to the residence. He used the keys to unlock the truck and he searched the driver's area, centre console, under the seat and the back seat area. He also searched five or six inoperable vehicles on the property. He brushed off the snow and opened the doors and looked under the seats but did not open or look in the trunks. While still at the scene, D/C Ladouceur advised D/S Ball that he had searched a pickup truck, reasoning that case law and information relating to the suspect hiding drugs in vehicles authorized him to search the truck. D/S Ball agreed with this reasoning.

D/C Anderson personally searched approximately a dozen vehicles, including a U-Haul trailer and a recreation vehicle; they were all unlocked and no trunks were opened. There was lots of

snow around the vehicles and he knocked the snow off and looked inside them. He went inside the recreation vehicle and opened the cupboards. He searched at least two vehicles thoroughly.

D/C Ladouceur and D/C Anderson are experienced officers within OCEB that disregarded the very clear directions of the issuing JP and searched vehicles during the warrant execution.

D/S Ball, as the supervisor, failed in his duty at the briefing and during the search of the property to ensure that the officers understood and abided by the parameters of the warrant. After the warrant execution, D/S Ball notified his supervisor of the outcome and indicated to him that the warrant did not authorize the searching of vehicles but failed to report that vehicles had in fact been searched.

Positions on Penalty

Mr. May and Mr. George both submitted that the three officers would be well served by receiving reprimands as penalty while Mr. Feaver suggested a forfeiture of hours, specifically, 40 hours for D/S Ball and 24 hours respectively for D/C Anderson and D/C Ladouceur. In support, they made submissions with respect to mitigating and aggravating circumstances. These submissions are reflected in Part III of this decision.

Submissions

Prosecutor's submissions

The following is a summary of Mr. Feaver's submissions:

Mr. Feaver highlighted the fact, not only was D/S Ball the supervising officer responsible for the execution of the search warrant, he also participated in the illegal search of a trailer and walked through a Quonset hut. D/S Ball's failure to properly brief the search warrant team about the search restrictions and his inadequate report to his supervisor compound his situation. He notified his supervisor about the judicial restrictions placed upon the execution of the warrant but failed to speak to the fact that the vehicles were searched contrary to the direction of the JP. These are all aggravating factors for D/S Ball.

D/C Anderson and Ladouceur each searched vehicles on the property, knowing that was in contravention of the judicial authorization. There were other options available to them such as obtaining additional evidence to justify the request at a later time, seek legal advice prior to the execution of the warrant or simply abide by the restrictions imposed. By ignoring the written restrictions, Mr. Feaver suggested that

any evidence garnered during the search would have likely been ruled inadmissible during criminal proceedings.

One of the factors for consideration is to protect the public. In this matter, the complainant Mr. White was subjected to an unlawful search. In addressing public interest, Mr. Feaver stated that the public must be convinced that this hearing was a fair process. The public's belief in this discipline process is essential to reinforce their confidence. The actions of the officers involved in this matter demonstrate lack of respect for procedures and judicial process and they disrespected the public complainant specifically and the community they serve. Their behavior fell far below standards expected of the OPP. This is an aggravating factor as stated by Mr. Feaver.

With regards to the nature and seriousness of the misconduct, Mr. Feaver suggested that the action of the officers was deliberate. The position taken by the JP was very clear and the officers chose to ignore it. Mr. Feaver again suggested that any evidence gleaned from this search could very well be excluded had it headed to criminal court. The fact that D/S Ball ignored and failed to report the details of the search to his boss suggests that if not for the public complainant, we may not have known about this misconduct. Mr. Feaver held this to be serious and an aggravating factor.

When addressing the recognition of the seriousness of the misconduct, Mr. Feaver presented the guilty plea to be a slight to moderate mitigating factor. There is some recognition noted by the respective guilty pleas and subsequent efficient hearing, the caveat being not immediate pleas.

Mr. Feaver referenced exhibit #6 to review the employment history of D/S Ball, D/C Anderson and D/C Ladouceur. In summary, all officers have strong and positive Performance, Learning and Development Plans and are considered to be assets to the OPP and OCEB specifically. Mr. Feaver acknowledged that this incident appears to be 'atypical behavior'.

Mr. Feaver is not concerned about the officers' ability to reform. He referred to them as dedicated officers with no previous misconduct who appear to have made a poor decision but one that they can easily recover from.

Mr. Feaver spoke to the need for specific deterrence and indicated that the suggested hours to be forfeited of 40, 24 and 24 respectively is not excessive or unreasonable in order to achieve this goal. Generally, all OPP members need to understand this is unacceptable behavior and won't be tolerated. Detective Constables and Detective Sergeants are always subject to greater scrutiny at their respective ranks. The

public and the complainant Mr. White need to be reassured this is taken seriously and the OPP will abide by search warrant direction. This reassurance needs to apply to all stakeholders of the OPP.

Mr. Feaver's position is that the reputation of the OPP has been damaged significantly by this incident. There is a public complainant who has been adversely affected and of even more concern is that Judges and JPs could conclude that OPP officers may not follow direction on warrants. This is offered as an aggravating factor.

Mr. Feaver presented brief summaries of the submitted cases for consideration as guidelines for disposition consistency however admitted there were no specific cases that parallel these facts. However, he suggested the case of *Hartnett, MacLean, Robinson v. Peterborough Lakefield Community Police Service*, most closely mirrors the circumstances in this matter. That case also involved three senior officers who conducted an unlawful search at a residence which resulted in no appeal of the penalty which was forfeiture of five days' time (40 hours) for neglect of duty and discreditable conduct. In *Orr v. York Regional Police*, the involved officer refused to provide a statement resulting in a penalty of 24 hours which was upheld upon appeal related to the charge of insubordination. Mr. Feaver noted the similarity in that this officer disobeyed an order and he likened that to disobeying the judicial direction in this case.

The eight hours forfeited in the *York Regional Police v. Amato* case for failing to carry out a lawful order of a supervisor should be used as a low water mark he suggested.

Mr. Feaver highlighted a quote on page 18 of *Cheung and McGrath v. Toronto Police Service*; "On the latter point, we agree that the public expects police officers to respect private property. When this does not occur, the public has a right to be concerned and discredit to the reputation of a police service may arise. We note that the actions of Constables Cheung and McGrath on August 15, 2006 generated both a public complaint and judicial criticism." Mr. Feaver submitted this file as having reasonably similar circumstances in that it involved the unlawful entry to a residence. He again drew the inference that judicial criticism would have stemmed from these facts if the authorizing JP was aware of this unlawful search and that it was unlikely evidence would have been admitted at a criminal proceeding.

Mr. Feaver concluded by recapping; three very good officers' committed serious misconduct and all are pleading guilty. Although he is seeking increased penalty for D/S Ball due to his role as supervisor which deserves higher punishment, the penalty sought for each is fair and appropriate.

Mrs. Joyce White's submissions

Mrs. White spoke on behalf of her son, the complainant who did not attend personally and a brief summary of her comments follows; Mrs. White provided an overview of her son's predicament and stated that although her son was not at home at the time the warrant was executed, he was still affected by the three hour search. Property was disheveled and a car battery drained. In terms of comments specific to penalty, Mrs. White was content to reply on the position taken by Mr. Feaver.

Defence submissions regarding D/S Ball

Mr. May submitted Ex #12, a book of documents that included numerous positive General Information Forms (233-10) and two letters of reference in support of D/S Ball. Combined with the positive comments contained in the PLDP's these documents epitomize characters of strong leadership, he is described as being honest and forthright.

Mr. May presented D/S Ball as a dedicated officer who continues to maintain professionalism and integrity. Mr. May stated that during this incident, the officers considered their options and came to the wrong conclusion, honestly believing they had authority to conduct the search of the vehicles in question. Mr. May took exception to Mr. Feaver's assertion that any evidence obtained would have been excluded and suggested it would be a triable issue. Mr. May submitted *R. v. Benz* to support this position. In any event, the decision to search was not a malicious one and therefore minimizes the seriousness of the conduct. Mr. May conceded he was unable to locate a similar case to provide guidance but was steadfast in his position a reprimand would satisfactorily address disposition principles when considering all the facts combined with the very positive personnel file of D/S Ball.

Mr. May indicated that although D/S Ball is an experienced officer, he had not received the drug interdiction course at the time of this incident. While the officers considered their options at the time, he provided *R. v. Arviko, Cumor and Omar* as a potential training guide for the future. He suggested this is much more of a training issue than one that requires a harsh penalty. D/S Ball did not deliberately snub an order; he relied on his experience to make an educated decision, just one that was incorrect. He is aware he was wrong which can be seen in his plea and suggested that training could be part of the disposition which should be in the form of a reprimand as opposed to the loss of hours.

Defence submissions regarding D/C Anderson and D/C Ladouceur

Mr. Joseph represented D/C Anderson and D/C Ladouceur and took the same position as Mr. May; the sanction should be in the form of a reprimand. Mr. Joseph provided brief overviews of the officers' personal and professional lives and asked that I review and rely upon the supporting exhibits which show them as shining examples of what the OPP should expect in their officers.

Mr. Joseph stated the guilty pleas are indicative of remorse and shows accountability and responsibility for their actions. Mr. Joseph indicated that clearly the officers knew they required a warrant to search the residence and property and lawfully sought one. He stated that they discussed their options and D/C Ladouceur believed he was able to lawfully rely upon case law to justify the search of the vehicles. This is a difference of legal opinion suggesting just because a JP didn't provide the authority to search, doesn't underline judicial scoring. Other authorities could have justified a search despite the comments of the JP, adding if the warrant was silent on the issue of the vehicles, they would have had every right to search them.

Mr. Joseph went on to suggest that the complainant being not at home at the time of the search is a mitigating factor and also pointed out there is a lower expectation of privacy when it comes to searching a vehicle as opposed to a residence. He highlighted some of those searches were cursory, nothing more than clearing snow from vehicle windows to allow for visual observations. Mr. Joseph pointed out that although the officers did not abide by the direction of the JP, no one was arrested and no one lost personal liberties. Mr. Joseph asked that I look at their actions as a momentary lapse of judgement and to acknowledge their unwavering commitment to law enforcement.

Mr. Joseph stated although consistency is a laudable goal, the problem being, offences can take shape in a variety of means from accidental to nefarious intent. In this particular matter, the fact they ignored the direction of the issuing JP is mitigated by the belief they had authority to do so. Mr. Joseph commented on the guilty pleas so late in the proceedings being a result of that belief. The officers never took issue with the facts, but rather in whether their position was legally justifiable or not.

In terms of deterrence, this process has already created anxiety and stress for each of the officers and they have suffered in spades already. He reiterated his position that a reprimand is warranted in this case which could be accompanied by a training component.

D/S Ball's submissions

Although D/C Anderson and D/C Ladouceur were content with Mr. Joseph's representation, D/S Ball addressed the tribunal by apologizing to the OPP for his error in judgement. He stated it was never his intent to bring discredit to his team, OCEB or the OPP. He took responsibility for his actions and spoke about his passion for his job and his team. He stated he takes his investigations seriously and will move forward from this negative experience, using it as a positive learning tool.

PART III: ANALYSIS AND FINDINGS FOR DISPOSITION

Summary of Misconduct

A summary of misconduct is condensed as follows:

On November 28, 2013 D/S Ball, D/C Anderson and D/C Ladouceur executed a search warrant at the residential property of John White. The issuing JP added in writing in three different notations that the warrant did not include searching the vehicles on the property. The officers, aware of this caveat proceeded to search said vehicles. In addition, D/S Ball as the supervisor failed to ensure the direction was adhered to and failed to disclose same to his supervisor.

The facts in issue are not in dispute however a difference of opinion lies in the appropriate sanction. The prosecution is seeking a forfeiture of 40 hours in the case of D/S Ball and 24 hours for D/C Anderson and D/C Ladouceur respectively, while defence counsel sees a reprimand as fitting. In determining the appropriate penalty I must strike a balance between the expectations of the community, the needs of the organization and fairness to the subject officers.

I have identified three issues to guide me in this decision;

1. Was the disobedience malicious or an honest misinterpretation of authority? If it was an honest belief of their authority should this become a training issue?
2. Must D/S Ball's sanction be greater than that of his subordinates in order to satisfy penalty principles?
3. Is the request for a reprimand appropriate considering the mitigating circumstances raised by Defence? If a forfeiture of hours is determined, what is the appropriate number of hours to be forfeited?

To guide me through this process, I will analyze the facts using a variety of commonly held disposition considerations.

Public interest

The public expects professionalism and integrity from police officers serving their communities. These principles are set out in section 42 of the *Police Services Act (PSA)* and echoed in section 6:10: of OPP Police orders. Each member must regard the discharge of their duties as a public trust and must recognize their responsibilities as a public servant. In carrying out their duties an employee is accountable for serving with honesty and integrity, in a manner that places public interest above personal interests. D/S Ball, D/C Anderson and D/C Ladouceur fell far short of their duty when they failed to abide by the judicial direction of the issuing JP without first taking the necessary steps to ensure that they had the lawful authority to do so.

The delicate relationship between the police and the judiciary must be acknowledged as one of the most significant for any officer let alone those detectives who frequently seek arrest/search warrants among other judicial authorizations. To risk breaching the mutual professional respect without seeking guidance from a peer, supervisor or Crown counsel is a jeopardy that cannot be taken lightly. I find that this negligence undermined the trust of the complainant, the public and potentially, judiciary partners and must be considered an aggravating factor.

Nature and seriousness of the misconduct

The failure to abide by the direction of an issuing JP on a search warrant cannot be accepted as anything but a serious misconduct. At issue is the intent of the involved officer in doing so. On face value, the complete disregard for the direction they received upon receipt of the search warrant is concerning to say the least. The fact that all officers were fully aware of the position of the JP is not in question nor is the fact that the officers conducted a search in direct contravention of this order. D/S Ball failed to reiterate this position when briefing the search team. This compounds his predicament.

D/S Ball, D/C Anderson and D/C Ladouceur take the position that they believed their position was supported by case law. I did not hear any evidence that suggested any circumstances changed once they had executed the warrant on the residence such as gleaning new information to justify searching the vehicles. Nor did I hear any evidence to suggest that exigent circumstances existed which would speak to the vehicle searches. If, upon receipt of the edited warrant they held there was case law to support searching these vehicles, there must have been sufficient opportunity to review the case law they believed

existed to support this position. It is not clear to me at what point in time they decided to search the vehicles but even if it was a conversation at the residence, the scene was secure and ample time existed to seek clarification from any number of sources. This is an aggravating factor.

Defence counsel suggested that I consider lack of training as an issue. I will apply common sense to this notion. All three officers are very experienced and well thought of as documented in their respective files. D/S Ball began his career in 1991 was promoted to the rank of Sergeant in 2010. D/C Anderson is a warrant service entry instructor in Northwest Region and has been an acting Detective Sergeant. His file includes supervisor comments encouraging him to seek further developmental opportunities. D/C Ladouceur is the least experienced officer at 14 years but six of them have been in the Drug Enforcement Unit. Among his extensive training, he received the drug investigator techniques course in 2011, has completed over 100 tactical entries and presented over 100 operational plans. All three officers are to be recognized for their exemplary careers thus far, ones that have been based on strong leadership and respected decision making skills. Any officers of limited experience, let alone officers with this level of expertise, are expected to follow the guidelines and restrictions as contained in judicial authorizations. This is well established and understood within the policing community. I do not find that lack of training should be held out as rationale for this conduct.

However, it is important to recognize notebook entries included detail of vehicle searches which leads me to conclude the officers were not looking to conceal the fact that they breached this judicial order. I did not hear that the officers intentionally caused damage or acted in a disrespectful manner at the residence and by all accounts they executed a search warrant in a professional manner other than the issue at hand. I find the officers, although erroneously based, searched the vehicles based on the premise they were lawfully afforded to do so. This is a mitigating factor.

It is acknowledged D/S Ball did not disclose this to his supervisor but I draw little inference from it. It could have been as simple as an oversight or it could have been intentional but I cannot be definitive either way. Had he lied when asked or had the officers made attempts to hide or deny the fact the vehicles were searched, it would be concerning. Nonetheless, the very foundation of rank structure within police services is based on tiered levels of accountability which in this case, lies with D/S Ball. The ultimate decision to affect the vehicle searches falls as his responsibility. D/S Ball had the final word and could have had his subordinate officers stand down or seek definitive clarification on the case law to be relied upon and chose not to do so. Additionally, D/S Ball was responsible for the operational briefing in advance of the warrant execution. At that time it was his responsibility to ensure members understood

the judicial direction and he failed to do so. These are aggravating factors to be applied to the sanction against D/S Ball.

Recognition of the seriousness of the misconduct

D/S Ball, D/C Anderson and D/C Ladouceur all pleaded guilty to this misconduct and agreed to the facts in issue which clearly speaks to recognition of their error in judgement. Either through counsel, or directly, each officer took full ownership of their role and acknowledged it was an error in judgement which they would learn from moving forward. This is a mitigating factor.

Employment history

D/S Ball, D/C Anderson and D/C Ladouceur were described by counsel as 'shining examples of what it means to be OPP officers'. They have exemplary personnel files which support this assessment. Their files contain numerous commendations, glowing annual evaluations and positive supervisor comments.

Staff Sergeant Erik Howells authored a letter of reference for D/S Ball specifically to address this tribunal where he refers to him as being competent, compassionate, professional, honest and forthright.

Sergeant Ed Chwastyk drafted a reference letter specific for this Hearing on behalf of D/C Anderson. Having known D/C Anderson for 16 years, he described him as having a commitment to duty and professionalism and accountable for his actions and D/C Anderson is being encouraged to seek leadership positions.

D/C Ladouceur submitted letters of reference specific for this Hearing from the Mayor of Thunder Bay Keith Hobbs, Anishinabek Police Service Inspector Derek Johnson and Staff Sergeant Jim Graham. Each individual has known D/C Ladouceur for a number of years and they each voice praise for him using terms such as credible, professional and having integrity. Staff Sergeant Graham lauded D/C Ladouceur for being ethical and conscientious.

The employment history of these three officers is a significant mitigating factor which helps me conclude that this conduct was a momentary lapse of judgement.

Damage to the OPP's reputation

I stress my concern about the harmful impact this action may have on the trust of the complainant, the public and additionally, the judiciary. Although the complainant was not in attendance for this Hearing,

he was represented by his mother who expressed their apprehension and misgivings about police based on this experience. The OPP's embarrassment is compounded when the position of the public and judiciary are also taken into consideration and is recognized as an aggravating factor.

Need for deterrence

Specific and general deterrent are aggravating factors which must be balanced with consistency of disposition. The disposition must reinforce the position of the OPP, that this behaviour will not be tolerated and all members must understand that similar acts of this type of misconduct will be met with severe consequence.

Ability to reform or rehabilitate the police officer

As previously stated, the involved officers have excellent reputations within the OPP. They are remorseful and have continued to exude professionalism since this incident. I see no reason for this attitude to change and I expect each officer to not only fully recover, but to learn and grow from this experience.

Consistency

Counsel in this matter was unable to submit cases specifically on point to assist me in determining the appropriate penalty. Defence counsel did not make any case submissions in support of their position of reprimand as appropriate penalty. I will speak to some of the considerations I appropriated from the cases submitted by prosecution;

Hartnett, MacLean, Robinson v. Peterborough Lakefield Community Police Service involved the search of a residence without consent or lawful justification. I note the similarity in that the officers in these matters are senior officers with significant experience, expected to have a strong understanding of the law. Mr. Feaver asked that I draw similarity in the fact that there was a blatant disregard for the residents in each case, however as I stated earlier, I believe D/S Ball, D/C Anderson and D/C Ladouceur made a significant error in judgement as opposed to a wilful act of defiance. Therefore the penalty I impose should fall short of the 40 hours levied to Hartnett, MacLean and Robinson.

OPP v. Covey and *Dinsdale v. OPP* provided some assistance in terms of addressing increased penalty for the officer with greater responsibility and provided a range of hours although for dissimilar circumstances.

OPP v. Penrose and *OPP v. Rourke*, were not helpful. They were submitted to me as guidance should I take the position D/S Ball, D/C Anderson and D/C Ladouceur committed deliberate acts of misconduct, which I do not accept.

Orr v. York Regional Police was helpful to me as insofar as a penalty of 24 hours was considered appropriate for disobeying a lawful order, as was the eight hours in *York Regional Police v. Amato*. I agree with Mr. Feaver in assessing eight hours as a low water mark for disobeying an order. Regardless of D/S Ball, D/C Anderson and D/C Ladouceur's assertions that they based their decision on a mistaken understanding of case law, I can see the parallel to unjustifiably disobeying a lawful order.

If *York Regional Police v. Amato* provides a low water mark and *Hartnett, MacLean, Robinson v. Peterborough Lakefield Community Police Service* is a high water mark; then I see *Cheung and McGrath v. Toronto Police Service* as mid-range at 24 hours.

In taking my mind to the key issues I find that the behaviour of the involved officers was not malicious but an honest misinterpretation of authority. However, I am disturbed by the careless and thoughtless manner in which this authority was applied. To challenge the position taken by the JP without confirming their interpretation of supported case law is inexcusable. This is not a training issue; it was simply a sensible conclusion that somehow escaped all three officers.

D/S Ball was the officer in charge of the team briefing, the execution of the search warrant and the subsequent management of the scene. His rank comes with increased responsibility than that of his subordinates and therefore greater expectations of him by the OPP. D/S Ball's sanction must be more significant than that of his subordinates in order to satisfy penalty principles.

PART IV: DISPOSITION

In my analysis, I found the evidence clear and cogent that D/S Ball, D/C Anderson and D/C Ladouceur committed serious misconduct. I have carefully weighed the mitigating and aggravating factors presented and find that a reprimand falls short of what the public would expect considering the seriousness of the conduct, rather I find the loss of hours is appropriate, measured and fair.

D/S Ball is ordered to forfeit 32 hours, pursuant to section 85(1)(f) of the *PSA*. Specifically, he is required to work 32 hours, to be completed at the earliest opportunity, in consultation and approval of his unit commander.

D/C Anderson is ordered to forfeit 16 hours, pursuant to section 85(1)(f) of the *PSA*. Specifically, he is required to work 16 hours, to be completed at the earliest opportunity, in consultation and approval of his unit commander.

D/C Ladouceur is ordered to forfeit 16 hours, pursuant to section 85(1)(f) of the *PSA*. Specifically, he is required to work 16 hours, to be completed at the earliest opportunity, in consultation and approval of his unit commander.



Greg Walton
Acting Superintendent
OPP Adjudicator

Date decision electronically delivered: June 22, 2015