



**PEEL REGIONAL POLICE DISCIPLINE HEARING**  
UNDER ONTARIO REGULATION 268/10  
MADE UNDER THE POLICE SERVICES ACT, RSO 1990,  
AND AMENDMENTS THERETO

IN THE MATTER OF THE PEEL REGIONAL POLICE  
AND SERGEANT PAUL BROWN

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

**PENALTY DECISION**

Hearing Officer: Superintendent (retired) Peter Lennox

Prosecutor: Ms. Sharon Wilmot

Defence Counsel: Ms. Joanne Mulcahy

Hearing Date: Monday, May 1, 2023

Decision Date: Monday, May 8, 2023

## PENALTY

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Peel Regional Police and Sergeant Paul Brown, 1889

### **DATE:**

#### **Retired Superintendent Lennox:**

There were several electronic appearances before the hearing date of May 1, 2023, which was set by mutual consent. The hearing was held in the hearing room at the Peel Regional Police (PRP) facility at 7150 Mississauga Road, Mississauga, Ontario.

The delegation of the hearing officer (Exhibit 1) and the designations of the prosecutors (Exhibit 2 for Ms. Sharon Wilmot, Exhibit 3 for Mr. Keegan Soles, and Exhibit 4 for Inspector Mark Noble) as well as the Notice of Hearing (Exhibit 5) were sent to me early in the process. The Agreed Statement of Facts (Exhibit 6) and the joint submission to penalty (Exhibit 7) were delivered and exhibit numbers were assigned at the start of the May 2 hearing.

Before the submissions began and at the request of the prosecutor, I ordered the first, third and fourth charges (two counts of insubordination and one of discreditable conduct) from the Notice of Hearing dated March 22, 2022, withdrawn. I also ordered withdrawn the charges on the Notices of Hearing dated August 11, 2022 (one count of discreditable conduct) and September 19, 2022 (one count of discreditable conduct). The charges against two other PRP members had been withdrawn on February 28, 2023, during a conference call and again at the request of the prosecutor.

Sgt. Brown was arraigned on the remaining charge of discreditable conduct, and pled guilty to the charge.

Also delivered to me at the hearing were the Brief of Authorities / Submissions on Joint Penalty prepared by the prosecutor and her PRP colleagues (Exhibit 8) and Materials Relied Upon by Sergeant Brown, prepared by defence counsel (Exhibit 9).

At the end of the hearing, both parties requested that I assess the penalty immediately. The prosecutor asked that, as an alternative, I deliver the penalty through a quick email. As I had not had the chance to review the written materials that I had been given on May 1 and asked to review, I declined to deliver an immediate verdict but committed to communicating my decision by email as soon as I was able. I did so the following day, on Tuesday, May 2, 2023.

Also at the end of the hearing, the prosecutor asked me to direct that Sgt. Brown's career history document, which contains sensitive and personal information provided by Sgt. Brown, not be included if any of the exhibits were requested by, or released to, anyone (such as members of the media) requesting access to exhibits. I agreed, and directed that Tab C of Exhibit 9 remain confidential and not be released without the consent of Sgt. Brown.

This document contains my written reasons for the decision I communicated on May 2.

### Finding

The penalty in this matter, imposed under Clause 85(1)(c) of the Police Services Act, will be a reduction in rank from sergeant to first-class constable for a period of twelve months, following which the officer will be returned to the rank of sergeant on the basis of satisfactory work performance to be determined by the officer's divisional commander.

### Summary

On Monday, May 1, 2023, Sergeant Paul Brown, 1889, pled guilty and was found guilty of one charge of discreditable conduct, contrary to the Police Services Act. The specific clause of the Code of Conduct articulating the offence is 2(1)(a)(xi), which reads "acts in

a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the police force of which the officer is a member”.

The particulars of the charge are found in the Notice of Hearing (see below).

Both the prosecutor, Ms. Wilmot, and defence counsel, Ms. Mulcahy, made verbal submissions and presented a joint position on penalty (Exhibit 7), which is:

*Reduction in rank from Sergeant to 1<sup>st</sup> (first) Class Constable for a period of twelve (12) months following which the officer will be returned to the rank of Sergeant on the basis of satisfactory work performance to be determined by the officer's Divisional Commander.*

*The above penalty is submitted in accordance with section 85(1)(c) of the Police Services Act.*

This penalty is within the range of penalties available to me under section 85 of the Police Services Act (PSA). I note that the Notice of Hearing (Exhibit 5) includes a notice of increased penalty on its second page:

*TAKE NOTICE that pursuant to section 85(4) of the Police Services Act, the penalty of demotion or dismissal may be imposed if the misconduct with which you are charged is proven on clear and convincing evidence.*

This notice is required by subsection 85(4) of the PSA for the jointly recommended penalty to be imposed.

Neither party called witnesses.

The facts in this matter are not in dispute. The following is taken from the Agreed Statement of Facts, dated May 1, 2023 (Exhibit 6):

[Quote]

Sergeant Paul BROWN #1889 has been a member of Peel Regional Police (PRP) since August 26, 1996. He has been a sergeant since April 2011. He has no prior disciplinary record but instead has an unblemished employment history.

April 16, 2021

1. On April 16, 2021, Sergeant Paul Brown #1889 was working a day shift and was directed by 12 Division Staff Sergeant Stephen Murphy to attend Hufs Gym [sic] located at 700 Dundas Street East in Mississauga in order to monitor and keep the peace at an anti-mask/anti-lockdown protest which Mississauga By-Law was monitoring.
2. This stemmed from a police assistance request made by Mississauga By-Law who were in the process of obtaining a 'cease and desist' order and court injunction to lawfully close the premises under the *Emergency Management and Civil Protection Act* O. Reg. 821 ("EMPCA"). However, Sergeant Brown was not aware of that.
3. While at the protest, Sergeant Brown was captured on video closely interacting, taking photos and hugging anti-mask protesters without wearing any personal protective equipment (PPE).
4. Sergeant Paul Brown's actions drew the attention of a television reporter. The television reporter voiced and published his concerns regarding Sergeant Brown's actions, and his failure to address the reporter's COVID safety concerns. The reporter did acknowledge that Sergeant Brown was courteous and professional during their interaction.
5. At one point a protester was seen aggressively approaching the reporter, unmasked and screaming in his face, despite the reporter requesting her to stop. The reporter asked Sergeant Brown for assistance, who responded by telling the reporter that his presence was agitating the protestors.

6. Sergeant Brown instructed the female protestor and other protestors not to interact with the reporter.
7. During this time Sergeant Brown was also captured on video stating that he did not agree with the *EMCPA* regulations and mask restriction and was in favour of the anti-lockdown protest.
8. Sergeant Brown also said on a video from the Huf's Gym posted on Instagram that he was unwilling to assist Mississauga By-Law with any *Re-Opening of Ontario Act, 2020 (ROA)* or *EMCPA* compliance enforcement. Specifically, Sergeant Brown was recorded stating "...if by-law comes this is what I've been telling them. Anytime they have asked us to assist with enforcement, that simply, that if you go in there, I can't, I can't ensure your safety". He further went on to state, "Right, and I'm not coming in there to ensure your safety. I'll just call an ambulance for you if something happens. And that usually gets them to think, well fuck maybe I shouldn't go in there right now".
9. The videos were posted on social media and generated significant media attention.

*[The following paragraph was added to the Agreed Statement of Facts by the prosecutor, who read it to me during the hearing.]*

- 9a. Sergeant Brown acknowledged to Peel Regional Police Professional Standards that his conduct at Huf's Gym might have eroded public confidence in Peel Regional Police's willingness to enforce the law.
10. Sergeant Brown also advised Peel Regional Police Professional Standards during his compelled interview that his intention had been to maintain the peace to avoid a volatile situation and he had not been trying to advance an anti-mask or anti-lockdown agenda.

May 15, 2021

11. On May 15, 2021, while off duty and still under investigation for the incident that occurred on April 16<sup>th</sup>, 2021, Sergeant Brown attended the

'World Wide Rally for Freedom' at Queen's Park located at 110 Wellesley Street West, Toronto.

12. At the time of the rally, there was a third province wide state of emergency declared and a stay-at-home order in effect as of April 8, 2021 at 12:01 am, made pursuant to the *EMCPA*.
13. The rally was in protest of the legality of the *EMCPA* and *ROA* legislation. Sergeant Brown confirmed to PRP Professional Standards that he personally believed the stay-at-home order was unconstitutional.
14. Sergeant Brown was introduced to the crowd by the Master of Ceremonies (MC) as Sergeant Paul Brown, and presented as a supporter of the anti-lockdown movement. The introduction included a statement by the MC that "the police are on our side everybody". Sergeant Brown did not speak.
15. Sergeant Brown was captured on video shaking hands and interacting with protesters and participating in the demonstration without wearing any PPE.
16. At no time during the rally did Sergeant Brown ever speak publically.
17. Sergeant Brown acknowledged to Professional Standards that his attendance at the rally might have eroded public trust and confidence that the police were willing to enforce the law. However, it remained his position that in his opinion, he was one of the only officers who was upholding his oath by protecting the protesters' *Charter* rights and that his actions were overall perceived as positive by his supporters.

#### February 11, 2022

18. On February 19<sup>th</sup>, 2022, Peel Regional Police Professional Standards Investigators became aware of a photograph depicting members of the PRP participating in the "Freedom Rally" which occurred in Ottawa. The photograph had been posted in a member's social media account and depicted the Officers, along with a citizen, holding a Canada Flag and a

“thin blue line” flag. During this time frame, Ottawa had declared a state of emergency due to the protestor occupation, requiring the deployment of police resources including the PRP Public Safety Unit.

19. Investigation had revealed that Sergeant Brown, while off duty along with two other members of Peel Regional Police as identified in the photograph, had attended the Freedom Convoy rally on February 11, 2022.
20. Sergeant Brown did not identify himself as a police officer nor were there any interactions with the Ottawa Police Service on February 11, 2022.
21. The actions of Sergeant Paul Brown constitute Discreditable Conduct under 2(1)(a)(xi) of the prescribed Code of Conduct.
22. Sergeant Brown fully cooperated with the Professional Standards investigations.
23. Sergeant Brown has no prior disciplinary record.

[End of quote]

On hearing and reading the Agreed Statement of Facts, I found that I had clear and convincing evidence that the charge of discreditable conduct had been made out, and found Sgt. Brown guilty of that offence.

### Analysis

The behaviour that led to Sergeant Brown’s conviction is not in dispute. The plea of guilty in this tribunal and joint penalty submission tell me that the parties agree about what occurred, and that those actions constitute serious misconduct.



Below, I will consider the commonly accepted penalty factors in light of the oral and documentary submissions of the parties. To avoid repetition, the submissions of both parties are considered within the relevant penalty-factor sections.

The prosecutor reminded me of the factors, and referred to Krug and the Ottawa Police Service [Exhibit 8, Tab 1]<sup>1</sup> as her authority. She indicated that from her perspective the most pertinent of the factors are:

- Seriousness of the Misconduct
- Public Interest
- Damage to the Reputation of the Police Force
- Employment History
- Deterrence
- Ability to Reform or Rehabilitate the Officer
- Consistency of Disposition
- Recognition of the Seriousness of the Offence

### *Seriousness of the Misconduct*

The prosecutor submitted that the seriousness of the matter is exacerbated by the repetitive nature and repeated acts of poor judgement, which brought into doubt Sgt. Brown's ability to perform his duties impartially and pursuant to the law. At the call at the HUF Gym, Sgt. Brown, as an experienced and trusted supervisor, was called to assist a law enforcement partner with a protest that was under way in the middle of the pandemic.

The by-law office was seeking a cease-and-desist order against the protesters, who were in violation of a provincial act, and wanted Sgt. Brown's assistance in doing that. Instead, Sgt. Brown was seen hugging the protesters while not

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<sup>1</sup> Case names are abbreviated in the text. More complete information is available in the appendix.

wearing personal protective equipment (PPE), even though at that time he was obliged by PRP to use PPE.

Sgt. Brown noticed that a reporter at the scene was approached aggressively at the scene by a protester, but rather than intervening, he told the reporter that he was agitating the protesters. It appeared that Sgt. Brown was there to support protesters as he believed that the state was contravening Charter rights. This was captured on video by both protesters and the media.

The prosecutor submitted that what was most aggravating about Sgt. Brown's behaviour was that he stated that not only would he not enforce the law but that he could not guarantee the safety of by-law officers providing enforcement. He said that the best he could do was to call an ambulance for anybody needing one. She submitted that this diminished the trust not only of the public, but also of colleagues and partners in law enforcement and public safety who are obliged to keep each other safe while undertaking public duties.

Then, while still under investigation and having gained some notoriety, Sgt. Brown attended the rally at Queen's Park, even though a stay-at-home order had been issued that was being enforced by the Toronto Police Service. The rally was in protest against the Re-Opening Ontario Act (ROA) and the Emergency Management and Civil Protection Act (EMCPA). The prosecutor pointed out that these were both laws within Sgt. Brown's mandate, and it was his duty to enforce them.

Not only was Sgt. Brown present, she continued, but he was introduced by the master of ceremonies (MC) at the rally as "Sergeant Brown" and a supporter of the movement. She allowed that Sgt. Brown did not speak, but pointed out that he did not deny any of the statements made by the MC, including a comment that Sgt. Brown's presence indicated that the police "were on their side". This, she submitted, had the effect of eroding public confidence in the police.

By committing these acts, Sgt. Brown demonstrated that, despite being under investigation for related matters, he believed that his personal beliefs about the constitutionality of the current laws outweighed his duties and responsibilities.

In a third incident, Sgt. Brown then attended the “Freedom Convoy” in Ottawa, as a supporter of the event, with two other PRP members. The “Freedom Convoy” had a worldwide impact. It had a negative impact on Ottawa and its citizens and a tremendous number of police resources were needed to remove the protesters.

The prosecutor submitted that for Sgt. Brown to join a protest at which his fellow police officers were working to address an unlawful event showed that he felt himself to be above the law due to what she called his misguided views.

She referred to this as serious, and as repeated actions that amount to an aggravating factor to penalty.

Defence counsel, while agreeing that the matter is serious and that the seriousness of the matter is aggravating to penalty, submitted that there are other factors that I should take into account when considering penalty.

After pointing out that society is in a different place today than it was when the incidents involving Sgt. Brown took place, she also submitted that Sgt. Brown has acknowledged in his apology that he should not have engaged in personal discussions when on a work assignment, and that he would turn back the clock if he could. She submitted that he was courteous and professional at the HUF Gym, and that he intended to maintain the peace and avoid a volatile situation. She suggested that his efforts did, in fact, prevent events from escalating.

She also submitted that I can see from the record that his conduct was out of character, and that Sgt. Brown typically acts appropriately at protests and rallies.

With respect to the rally at Queen’s Park, counsel reminded me that the sergeant was off duty and that he has a constitutional right to protest. She took the

position that others used him at that rally even though he never identified himself and was never identified as a member of the PRP. She acknowledged, though, that this event involved “bad timing”, as he was under investigation already for the HUF Gym incident and it would therefore be assumed that he was from Peel.

I find Sgt. Brown’s actions troubling. Clearly, Sgt. Brown has a right to his own views and values, but allowing them to lead him to neglect his duty, as he did at the HUF gym, and to tarnish the reputation of his police service in a very visible and public way, as he did at the protests, is unconscionable.

Sgt. Brown’s rank and position increase the seriousness of his actions. The PRP and the community have the right to expect that supervisory police officers will ensure lawful and effective performance of duty, not impede it. Supervisory officers, moreover, are expected to be positive examples to other members, and the example that Sgt. Brown set at the gym and at both protests was a very negative one.

The effect of his actions will be discussed in more detail below, but I find that the seriousness of those actions is highly aggravating in my consideration of his penalty.

### *Public Interest*

The prosecutor underscored that the public interest is an important factor in the consideration of penalty. The fact that Sgt. Brown’s behaviour and activities did damage to the reputation of the PRP, she said, is not in question, and Sgt. Brown must understand (and now does understand) that police officers must enforce laws fairly and impartially, as it is not the role of the police either to make the laws or to decide if they are constitutional. She called this “fundamental to public trust in policing”.

She referred me to Packer and the Metropolitan Toronto Police [Exhibit 8, Tab 5] as a valuable discussion of an officer's obligation to enforce impartially despite personal views. Packer is a case in which a Toronto officer refused direction from his sergeant, staff sergeant and superintendent to keep the peace and prevent offences outside a facility in which abortions were performed, and which was the site of substantial protests at the time, because of his personal beliefs with respect to abortions. During this period, the Supreme Court of Canada was determining the legality of abortions. Initially Const. Packer was ordered to resign, but the penalty was reduced by OCPC to gradation in rank from first- to fourth-class constable.

The prosecutor drew my attention in particular to paragraphs 37 through 44 of the OCPC's decision in Packer, which underscore an officer's duty to enforce the law. Paragraph 37 is worth quoting, in part:

*It is the duty of a constable to treat all persons equally. Personal conscience is, of course, unobjectionable and indeed desirable but cannot be permitted to effect [sic] duty.*

The following paragraphs underscore that a constable's duty is to the law, and must be performed without regard to conscience. I know of my own knowledge that this can place police officers in difficult positions and be difficult to accept, but it is fundamental that duty "must be performed without regard to conscience" [paragraph 38]. The OCPC found that "there is no nexus between Constable Packer's belief regarding abortion and the duty he was ordered to perform" [paragraph 43]. "It is not possible for the management of a police force to relieve a constable of what we see as the basic and fundamental duty of that office" [paragraph 44].

The prosecutor commented that an officer may have personal views about politics, but also has an obligation to put aside those beliefs when conducting his or her duties, including enforcing the law. It is her position that Sgt. Brown's actions were detrimental not only to the Service, but for other police officers

tasked with enforcing the law during a difficult period for all of society. I infer that she meant that this is contrary to the public interest, and I agree.

Defence counsel agreed that the public interest is an aggravating factor, as is evident from the Agreed Statements of Fact, she made additional submissions with respect to the seriousness of the matter, which are reflected in that section, above.

The Packer case is relevant to both consistency of penalty and to considerations of the public interest. It is in the public interest that police services and their members demonstrate what we read in the Peelian Principles (1829) as “absolutely impartial service to law”; police authorities who do not demonstrate impartial service impact the trust and confidence the public can have in its police, which is certainly contrary to the public interest. If members of the public doubt the impartiality and effectiveness of the police, it has the effect of eroding the community’s confidence in its police, which is also contrary to the public interest.

I find that the public interest is substantially aggravating to penalty in this case.

### *Recognition of the Seriousness of the Misconduct*

Before the submissions to penalty began, Sgt. Brown stood and addressed the Tribunal. He read a prepared statement in which he identified himself as a proud member of the Peel Regional Police. He apologized to the Service for the discredit he caused to the reputation of the Service. He acknowledged that he should not have engaged in political or personal discussions when responding to a work assignment. He specified that if he could do it again, he would have handled the call at the HUF Gym differently. He also stated that he would not have attended the events in Ottawa or Queen’s Park. He expressed confidence in the ability of the Peel Regional Police to enforce the law.

Later, the prosecutor allowed that Sgt. Brown's comments were welcome, and moved toward mitigating the impact that was felt during the COVID lockdown.

Defence counsel reminded me of Sgt. Brown's apology, and that he has acknowledged that his actions at the HUF Gym and his attendance at the rallies may have eroded public trust. She took the position that the sergeant has learned a lot from the [discipline] process, including that his attendance at the rallies brings discredit to the Service. She indicated that he cooperated with the Professional Standards investigation, and admitted his actions to them.

Counsel told me that Sgt. Brown is a proud person, and that the numerous letters in Exhibit 9 do not include letters from fellow officers because he was ashamed of his actions and did not want them to be included.

She said that the sergeant has acknowledged his mistake, and asked me to consider it in the context of his entire employment history.

I accept that Sgt. Brown's guilty plea and expressions of remorse are indicators that Sgt. Brown does recognize the seriousness of his misconduct and, like the prosecutor, I have no reason to believe that the apology he read to the Tribunal is not sincere. This recognition, reinforced by his cooperation with investigators and his statements of remorse, are very important considerations with respect to Sgt. Brown's future usefulness as a supervisory police officer.

I find Sgt. Brown's recognition of the seriousness of his misconduct to be mitigating to penalty.

### *Disability and other Relevant Personal Circumstances*

Defence counsel provided me with a document entitled Career History, prepared by Sgt. Brown [Exhibit 9, Tab 9C]. This is the document that I was asked to ensure remained confidential, so I will not repeat specifics from it here. Suffice it

to say that the document outlined particularly challenging events in Sgt. Brown's career as well as significant milestones from it. I was given no conclusions to draw from this document.

I understand that police work is challenging, and occasionally upsetting. While I respect that these incidents are real and that they have had an effect on the sergeant, I have been given no reason to believe that the stressors Sgt. Brown has experienced throughout his career had any direct connection with the events at issue in this matter. Considering its early complexities, this matter proceeded expeditiously.

This factor is neutral to penalty.

### *Provocation*

I have been given no evidence that Sgt. Brown was provoked in any way to behave as he did, or to take the actions he did. This factor is neutral to penalty.

### *Procedural Fairness Considerations*

Neither party has raised issues of procedural fairness. Sgt. Brown has had the benefits and protections of the police tribunal system and of very experienced counsel.

Procedural fairness is neutral to the determination of penalty.

### *Employment History*

The prosecutor acknowledged the length of Sgt. Brown's career [about 26 years at this point], and that he was, up until the occurrences we are examining here, a very valued PRP member with a good reputation as a leader and supervisor. He



also has no previous discipline record. She said that this is a mitigating factor to penalty. On the other hand, she reminded me that this hearing is about ongoing and repeated events in the face of a serious situation faced by the community.

She said that Sgt. Brown's career history "cuts both ways"; that is, while his career has been honourable to date, he is regarded as a leader and an experienced sergeant, and as such was expected to have the skills and experience needed to demonstrate the values the Service expects of all members. He failed to do so in these instances.

Defence counsel provided me with a substantial amount of information about Sgt. Brown's career history, both in her verbal submissions and in Exhibit 9.

Referring to his Employee Profile Report [Exhibit 9, Tab A], she pointed out that he has spent about 3000 hours as an acting staff sergeant at 12 Division, and called him "a real leader" there. To put this into perspective, I note that the number of hours a full-time worker typically serves each year is between 1820 and 2080.

She also pointed to his résumé [Exhibit 9, Tab B], which list his professional and volunteer accomplishments. I note from that document that he was made a coach officer while only second class, which I know is not a common occurrence. I note that he was a member of the Tactical and Rescue Unit for several years, and that when he returned to the field at 21 Division, he spent a substantial period of time as an acting sergeant before being promoted to the rank permanently in 2011. The résumé also indicates that he has volunteered in hockey, lacrosse and at an elementary school since 2017.

I read the career history document prepared by Sgt. Brown, but again will not quote from it here due to the request of the parties that it remain confidential. Defence counsel asked me to define Sgt. Brown by that document rather than by the mistakes he has committed recently. She submitted that this document is evidence of incidents of heroism, as well as ones that he and his colleagues will

never forget. He not only responded to difficult calls and incidents himself, but also “kept his platoon together” following difficult or traumatic situations.

Counsel submitted that Sgt. Brown’s performance evaluations [Exhibit 9, Tabs D1 through D5] indicate that the HUF Gym incident was out of character. She underscored his managers’ comments throughout and emphasized that they portrayed him as a solid leader and mentor who makes sound decisions. She said that the comments underscore his leadership, decision-making, teamwork and interpersonal abilities. I read the appraisals, and found them to be very positive. The most recent evaluation (from 2020), in particular, indicated that he exceeded the required competency levels in all categories. The comments called him a leader, a mentor, reliable, someone who makes good decisions, and a supervisor with a positive attitude. He is defined as approachable, and as having excellent relationships with subordinates while also ensuring that their work is of high quality and that any problem behaviours are corrected. Special mention is made of his ability to address community protests. His earlier appraisals are to the same effect, though the most recent one stands out.

Counsel directed me to about 45 positive letters [Exhibit 9, Tabs E6 through E51], nine of which cover events when Sgt. Brown held supervisory rank. The letters are all positive, sometimes praising Sgt. Brown individually and sometimes as part of a team. Some are for police work, and others for ancillary activities such as supporting the United Way and other charity and community work.

There are twelve internal commendations, five of which were for exemplary attendance. He received the Police Exemplary Service Medal in 2017, and was named 21 Division Employee of the Year and Employee of the Month. Counsel submitted that Sgt. Brown’s excellent file represents a significant mitigating factor.

I found Sgt. Brown’s work record, as well as his personal account of his career, most encouraging. I trust that, having recognized and acknowledged his more

recent errors, he will continue to provide quality service to the PRP and its community, both over the next year and on the restoration of his rank.

I find that Sgt. Brown's employment history is mitigating to penalty.

### *Potential to Reform or Rehabilitate the Police Officer*

Both the prosecutor and defence counsel submitted that the potential to reform or rehabilitate Sgt. Brown is strong. The prosecutor commented that his acceptance of responsibility, employment history and expressions of remorse are positive considerations in this area. She accepted his apology as sincere, and expressed the Service's expectation that he will return as a valued supervisor within the PRP.

Defence counsel endorsed the prosecutor's submissions in this area.

I share the perspective of both counsel that, while serious, this behaviour is uncharacteristic of Sgt. Brown. I add to that his recognition of his errors and his apology, and find that there is a high likelihood that Sgt. Brown will, in fact, reform himself. I find this mitigating to penalty.

### *Effect on the Police Officer and Police Officer's Family*

Defence counsel provided me with facts about Sgt. Brown and his family. He is 49 years of age and has been a PRP member since 1996. He had worked as a cleaner for the Service before that. He has joint custody of two children, aged 12 and 10, and is a hands-on parent, volunteering with lacrosse and hockey in his community.

Counsel pointed out that this penalty will result in a loss of about \$16,099 in salary, which will have a substantial impact considering the high costs of commodities and high interest rates in the current economy.

I acknowledge that this penalty will have an impact on the officer and his family, but find that the loss is a direct result of actions to which Sgt. Brown has pled guilty. This factor is therefore neutral to penalty.

### *Consistency of Disposition*

The prosecutor provided me with six previous cases in Exhibit 8.

Krug, from 2003 and mentioned above, lists a series of factors that should be considered with respect to penalty. I note that the facts in Krug are substantially different from those here, so I did not consider it in my deliberations on penalty.

Howard and the Durham Regional Police, which is dated December 4, 2022 (five months before this hearing), involves a police officer who attended a rally and spoke about her disagreement with COVID regulations. She also made disparaging comments about her colleagues and managers, said that she was ashamed of her service, and disclosed a confidential police matter about a call for service.

I note on reading the case that she referred to her fellow DRPS members as “brainwashed” about COVID. All of this was published and garnered media attention. I also note that Const. Howard made a video in support of the Freedom Convoy, in uniform and in a police vehicle, about three months later. This resulted in hundreds of emails to the chief’s office, three complaints, many calls and social media comments, and media enquiries to the DRPS.

Const. Howard pleaded guilty and was reduced from first- to second-class constable for three months.

Retired Superintendent Greg Walton made a statement in his finding to which the prosecutor directed me and which is worth repeating here, at least in part:

*I find the conduct very troubling. Police services across Ontario made their positions and expectations very well known to their members and to the public during the COVID-19 pandemic; officers were expected to maintain and enforce public safety measures and abide by the restrictions in place.*

This case is quite similar to our current matter, though Const. Howard was not a supervisor and her service was only something more than four years.

The prosecutor then directed me to another recent case, dated October 6, 2022. Neilson and the Ottawa Police Service [Exhibit 8, Tab 3], involves a constable donating a sum of money to the Freedom Convoy. While this did involve media attention, it was still found to be misconduct, and I note from the finding of retired Superintendent Chris Renwick that the officer, who had about 10 years of service, tried to donate money through an online source. When that money was returned due to a policy of GoFundMe, the officer repeated the donation through another source. This happened over a period of several days.

The penalty was a forfeiture of 40 hours and participation in a restorative justice process.

While Neilson does not reflect the current matter as closely as Howard does, it still represents values contrary to those of the Service and to PRP policy and the public interest. It has a connection with the COVID pandemic, and therefore is at least somewhat relevant.

In Harnam and the Durham Regional Police, Const. Howard's spouse, Const. Harnam, posted a photograph of Const. Howard in uniform, provided the email of the chief of police, and encouraged readers to support Const. Howard by

communicating with the chief. I note from the finding by retired Superintendent Morris Elbers that the Instagram post to Const. Harnam's 118 followers (and an unknown number of re-posts) resulted in hundreds of emails to the office of the chief. This matter was not a joint submission; the prosecutor recommended a penalty of 90 hours and defence counsel suggested a reprimand. Supt. Elbers recognized that Const. Harnam was trying to support his spouse, but imposed a penalty of 60 hours. Again, as in Neilson, the similarity of this matter to Sgt. Brown's conduct is not as close as in Howard, but it does reflect the same concerns as does Neilson.

The prosecutor also returned to Packer and the Metropolitan Toronto Police, which resulted in a gradation in rank from first- to fourth-class. The details of that matter are dealt with earlier in this document.

While the prosecutor made no verbal submissions on Pitter and Alviano and the College of Nurses of Ontario, I note that it is a judicial review at Divisional Court of a matter in which two people who identified themselves as nurses made Facebook posts questioning mask mandates. There was also a speech questioning the use of vaccines. The nurses claimed that, under the freedom-of-expression provisions of the Charter, they were entitled to express unpopular opinions. They were found to have spread misinformation and the court directed that they be cautioned, that they attend remedial training, and that they pay costs to the College totalling \$31,500. I note that, while this is a payment of costs rather than a penalty, the amount to be paid by each nurse approximates the financial element of the penalty faced by Sgt. Brown.

The prosecutor submitted that in light of all of these cases, the aggravating and mitigating circumstances make a one-year demotion for Sgt. Brown reasonable, and that the penalty will address the officer's ability to rehabilitate and also serve as a reminder to the sergeant and others of the seriousness of this type of misconduct.

I find also that Sgt. Brown's rank and position, and the fact that the Service relied on him to carry out his duties not only as a police officer but also as an experienced and trusted supervisor, justify and require a more substantial penalty than in the other cases. I note that Const. Howard, after a guilty plea, was reclassified to second-class constable for three months, but she did not have the supervisory position or responsibilities borne by Sgt. Brown. A more substantial penalty is needed in this matter. I agree with defence counsel that the proposed penalty is not contrary to the public interest and will not bring police administration into disrepute.

Defence counsel pointed to Howard as the most relevant case, which she portrayed as more serious in some ways as Const. Howard spoke publicly, attacked her police service, made videos in uniform and related confidential matters. She acknowledged, however, that Sgt. Brown's supervisory rank and leadership role justified the more substantial penalty he will face. I agree.

### *Specific and General Deterrence*

The prosecutor's opinion is that both specific and general deterrence are important in this matter. She focused on general deterrence, submitting that this case involves a very public set of circumstances that were viewed not only by the community but also by members of the PRP. While there was certainly some confusion during the pandemic, the penalty in this matter needs to communicate that police officers are responsible for upholding Ontario's and Canada's laws regardless of individual personal views, and that they cannot avoid that responsibility just because they disagree with the law, or because that duty is inconvenient. The existence of the pandemic situation at the time of these events makes this message particularly important. Allowing the police to choose what to enforce is contrary to the principles of policing, and to life in a democratic society.

Defence counsel placed less emphasis on the importance of specific deterrence in light of what Sgt. Brown has undergone during the discipline process, but she took no issue with the importance of general deterrence, as Sgt. Brown's actions are well-known across the PRP. She submitted that the recommended penalty will have a deterrent effect on police officers in Peel.

Sergeant Brown will be facing a substantial penalty for his actions, and has pleaded guilty quickly, apologized, cooperated with the investigation and expressed remorse. I am content that this penalty will satisfy the factor of specific deterrence.

I agree with both parties about the importance of general deterrence. Reducing a twelve-year sergeant to the constable rank for a year will send a clear message to anyone familiar with Sgt. Brown's misconduct that this behaviour will not be tolerated. I am content that this penalty will address general deterrence.

### *Systemic Failure and Organizational/Institutional Context*

I have been given no indication of any institutional or organizational failure that impeded the fair treatment of Sergeant Brown in this matter. This factor is neutral to penalty.

### *Damage to the Reputation of the Police Force*

The prosecutor pointed out (during her comments about the public interest) that the incident at the HUF Gym and the two protests Sgt. Brown attended were widely covered on social media. A member of the media was directly impacted outside the gym. The video of him at the gym garnered many hits on Twitter and resulted in complaints and comments from community members. While certain individuals may have agreed with the sergeant in their comments, this does not change his obligations as a police officer. The prosecutor underscored that the



incident was known to the community, including other PRP members, and impacted not only the reputation and trust of Sgt. Brown personally, but also of PRP officers generally.

Defence counsel acknowledged that Sgt. Brown's actions brought discredit, but pointed out that Sgt. Brown has acknowledged that fact and apologized to the Service.

Sgt. Brown's acknowledgement and apology, however, do not reverse the damage that has been done to the reputation of the police service, or to the trust and confidence that the community can be expected to have in its police. This is dealt with under "Public Trust", above. The damage Sgt. Brown did to the reputation of the PRP is an aggravating factor to his penalty.

#### *Effect of Publicity*

This factor is covered in "Damage to the Reputation of the Police Force", above.

#### *Loss Resulting from Unpaid Interim Administrative Suspensions*

There was no unpaid administrative suspension in this matter. This consideration has a neutral effect.

#### Finding

I have reviewed carefully the mitigating and aggravating factors and considered the submissions of the Service prosecutor and defence counsel, as well as the documents with which I was provided. My conclusions are reflected in the sections above. I find that I do not have sufficient reason to depart from the joint penalty submission.

The penalty in this matter, imposed under Clause 85(1)(c) of the Police Services Act, therefore, will be a reduction in rank from sergeant to first-class constable for a period of twelve months, following which the officer will be returned to the rank of sergeant on the basis of satisfactory work performance to be determined by the officer's divisional commander.

A handwritten signature in black ink, appearing to be 'Peter Lennox', written in a cursive style.

Peter Lennox  
Superintendent (retired)  
Hearing Officer

Dated and released (electronically) on Monday, May 8, 2023