

## **Peel Regional Police**

*Police Services Act* R.S.O. 1990, c. P. 15, as amended

IN THE MATTER OF a hearing held in accordance with section 76(9) of the Police Services Act into allegations of misconduct against Constable Navjot GARCHA #4230 of the Peel Regional Police.

### **Allegations**

Count One: Discreditable Conduct

Count Two: Neglect of Duty

### **Disposition**

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<b>Hearing Officer</b>	<b>Superintendent Dermot Coughlan</b> Peel Regional Police
<b>Prosecutor</b>	<b>Mr. Keegan Soles</b> Peel Regional Police
<b>Co-Prosecutor</b>	<b>Inspector Mark Noble</b> Peel Regional Police
<b>Member Representative</b>	<b>Mr. Bernard Cummins</b> <b>Mr. Andrew Adams</b> Peel Regional Police Association
<b>Date of Hearing</b>	<b>December 6, 2022</b>

## **PART I: OVERVIEW**

### **Allegations of Misconduct**

1. It is alleged that Constable Navjot Garcha #4230 a member of the Peel Regional Police, committed the following act of misconduct contrary to section 80(1)(a) of the *Police Services Act, R. S. O. 1990 c. P. 15*, as amended;

#### **Count One - Discreditable Conduct**

You are alleged to have committed Discreditable Conduct in that on June 1, 2021, you acted in a disorderly manner prejudicial or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the Peel Regional Police constituting an offence against discipline as prescribed in section 2(1)(a)(xi) of the *Code of Conduct, Ontario Regulation 268/10*, as amended.

2. It is alleged that Constable Garcha, a member of the Peel Regional Police, committed the following act of misconduct contrary to section 80(1)(a) of the *Police Services Act, R. S. O. 1990 c. P. 15*, as amended;

#### **Count Two – Neglect of Duty**

You are alleged to have committed Neglect of Duty in that on May 27, 2021, you, without lawful excuse, omitted to make necessary entries in a Peel Regional Police record constituting as offence against discipline as prescribed in section 2(1)(c)(viii) of the *Code of Conduct, Ontario Regulation 268/10*, as amended.

### **Background**

3. Constable Garcha appeared before me on December 6, 2022, in answer to a Notice of Hearing that was issued on June 21, 2022, alleging two counts of misconduct contrary to section 80(1)(a) of the *Police Services Act*, constituting two offences against discipline;

(1) Discreditable Conduct as prescribed in section 2(1)(a)(xi) of the *Code of Conduct, Regulation 268/10*, as amended, and

(2) Neglect of Duty, as prescribed in section 2(1)(c)(viii) of the *Code of Conduct, Regulation 268/10*, as amended.

### **Plea**

4. On December 6, 2022, Constable Garcha entered a guilty plea to one count of Discreditable Conduct and one count of Neglect of Duty. An Agreed Statement of Facts was tendered as Exhibit #6. Based on those facts and the confirmation by Constable Garcha that they were substantially correct, a finding of misconduct was registered.

## Decision

5. After examining and weighing the evidence presented, as the Hearing Officer, on December 6, 2022, I impose the following penalty on Constable Garcha #4230 of the Peel Regional Police for one count of Discreditable Conduct and one count of Neglect of Duty:

**Reduction in rank from 1<sup>st</sup> (first) Class Constable to 2<sup>nd</sup> (second) Class Constable for a period of 6 (six) months following which the officer will be returned to the rank of 1<sup>st</sup> (first) Class Constable, and, remedial training to be determined by the officer's Divisional Commander.**

6. The penalty was submitted in accordance with section 85(1)(f) of the *Police Services Act*.

## PART II: THE HEARING

### Exhibits

7. The Exhibits for this matter are as follows:

Exhibit #1	Delegation of Powers and Duties to the Hearing Officer (Superintendent Dermot Coughlan)
Exhibit #2	Prosecutor's Designation (Mr. K. Soles)
Exhibit #3	Prosecutor's Designation (Inspector M. Noble)
Exhibit #4	Notice of Hearing
Exhibit #6	Agreed Statement of Facts (including video of event from June 1 <sup>st</sup> , 2021)
Exhibit #7	Reference letter for Constable Garcha
Exhibit #8	Reference Letter from Mr. Raj Bacchus for Constable Garcha
Exhibit #9	Performance Evaluations for Constable Garcha
Exhibit #10	Defence – Book of Authorities - Penalty Submission
Exhibit #11	Prosecution – Book of Authorities - Penalty Submission

### Representation

8. In this matter, Mr. Bernard Cummins represented Constable Garcha, and Mr. Keegan Soles and Inspector Mark Noble represented the Peel Regional Police.

### Agreed Statement of Facts

9. The facts on this matter are substantially agreed upon by the parties to this Tribunal. The Agreed Statement of Facts, filed as Exhibit #6, states;

### Background

Constable Navjot Garcha #4230 has been a member of the Peel Regional Police since December 2017. At the time of the incident, he was assigned to 22 Division, B Platoon.

### **Count One – Discreditable Conduct**

1. On May 27, 2021, Constable Navjot Garcha (Constable Garcha) was working a night shift in uniform patrol in 22 Division, Brampton.
2. At approximately 10:10 pm, Constable Garcha observed a dark coloured Mercedes vehicle travelling at a high rate of speed going westbound on Bovaird Drive approaching Hurontario Street.
3. Constable Garcha estimated that the vehicle was travelling between 110 and 115 kms per hour in a 60 km per hour posted speed limit. He initiated a traffic stop and pulled over the vehicle on Hurontario Street, north of Bovaird Drive.
4. After speaking with the driver (K.G.) about why he was speeding, Constable Garcha explained to K.G. that his licence could be suspended and his car could be impounded for stunt driving because he was driving 50 kms over the posted speed limit.
5. Instead of seizing K.G.'s licence and impounding the vehicle, Constable Garcha asked K.G. if he was willing to meet him at 22 Division the following week. Constable Garcha explained that he would be holding the licence and would return it to K.G. on Tuesday when he attended at the Division.
6. On the morning of Tuesday June 1, 2021, after the end of shift parade, Constable Garcha met with K.G. and another male who turned out to be K.G.'s brother (C.K.), and instructed them to follow him outside.
7. Once outside of 22 Division and at the area of the sally port ramp which is a known exercise area for officers, Constable Garcha told K.G. that instead of charging him with stunt driving, he was going to have him do a fitness circuit.
8. Constable Garcha had K.G. run up and down the sally port ramp 20 times. It was not long before K.G. started to struggle. Constable Garcha yelled at K.G. to encourage and motivate him to complete the exercises. After 7 or 8 cycles, K.G. appeared to be exhausted and asked for a washroom and water break.
9. When K.G. returned from break, Constable Garcha had him do 50 pushups but when he saw K.G. struggling to do this, he gave him the option of doing jumping jacks while reciting out loud, "I will not speed".
10. During this set of exercises, Constable Garcha suggested that K.G.'s brother C.K. record it using a cellphone, so that they could show their family and laugh about it afterwards.
11. C.K. took out his cellphone and recorded this portion of the interaction. This video footage was provided to PRP Internal Affairs. A copy of it is appended to

this Agreed Statement of Facts.

- 12.K.G. could not complete the exercise and went inside to use the washroom.
- 13.Upon return, Constable Garcha let K.G. and his brother leave and he went back into the division.
- 14.K.G. felt humiliated, belittled as well as embarrassed. He also felt ill after completing all of the exercises and vomited on the car ride home. He called in sick and missed a day of work due to feeling ill.
15. The actions of Constable Garcha constitute Discreditable Conduct pursuant to s. 2(1)(a)(xi) of the prescribed Code of Conduct.

### **Count Two – Neglect of Duty**

16. On May 27, 2021, Constable Garcha was working a night shift in uniform patrol in 22 Division, Brampton.
17. At approximately 10:10 pm, Constable Garcha observed a dark coloured Mercedes vehicle travelling at a high rate of speed going westbound on Bovaird Drive approaching Hurontario Street.
18. Constable Garcha estimated that the vehicle was travelling between 110 and 115kms per hour in a 60 km per hour posted speed limit. He initiated a traffic stop and pulled over the vehicle on Hurontario Street, north of Bovaird Drive.
19. After speaking with K.G. about why he was speeding, Constable Garcha explained to K.G. that his licence could be suspended and his car could be impounded for stunt driving because he was driving 50 kms over the posted speed limit.
20. Instead of seizing K.G.'s licence and impounding the vehicle, Constable Garcha asked K.G. if he was willing to meet him at 22 Division on Tuesday in the following week. Constable Garcha explained that he would be holding the licence and would be returning it to the driver on Tuesday.
21. On the morning of Tuesday June 1, 2021, Constable Garcha met with K.G. and had an interaction.
22. Constable Garcha did not make any notes of the traffic stop or of the following meeting in his memo book.
23. The holding of the licence also constituted a seizure that was not in accordance with Peel Regional Police Directive I-B-617(F), Suspended / Prohibited / Ignition

Interlock, and Stunting offences, which provides direction to officers about how they are to proceed when laying a charge for stunt driving under s. 172 of the *Highway Traffic Act*.

24. The actions of Constable Garcha constitute Neglect of Duty pursuant to s. 2(1)(c)(viii) of the prescribed Code of Conduct.

10. I am satisfied on clear and convincing evidence as presented in the Agreed Statement of Facts that the actions of Constable Garcha constitute Discreditable Conduct as prescribed within section 2(1)(a)(xi) of the *Code of Conduct, Ontario Regulation 268/10*, as amended and constitute Neglect of Duty as prescribed within section 2(1)(c)(viii) of the *Code of Conduct, Ontario Regulation 268/10*, as amended.

## **Submissions**

### **Submissions of the Prosecution – Mr. Soles**

11. The prosecution summarized the particulars of the allegation as set out in the Agreed Statement of Facts.
12. The prosecution proposed a disposition of a six (6) month demotion from First Class Constable to a Second Class Officer, and for Constable Garcha to successfully complete divisional training as directed by the Divisional Commander. The prosecution's position is this penalty reflects the factors that have been presented and it is reasonable, appropriate and consistent with penalties imposed in similar cases.
13. The prosecution presented the Tribunal with a Book of Authorities that contains eight tabbed indexes. The Book of Authorities is marked as Exhibit #11.
14. The prosecution referred to the disposition factors as set out in the matter of *Senior Constable Alexander Krug and the Ottawa Police Service (2003 OCPC-03-01)*. (Tab #1 of Exhibit #11).
15. The relevant disposition factors identified in the Krug decision and advanced by the prosecution in this matter include:
  1. Public interest;
  2. Seriousness of the misconduct;
  3. Damage to the reputation of the police service;
  4. Employment history;
  5. Specific and general deterrence;
  6. Ability to reform or rehabilitate the police officer;
  7. Effect on police officer and police officer's family;
  8. Consistency of disposition;
  9. Effect of Publicity.

16. Mr. Soles stated the circumstances of this case are unique. Although there are some comparable cases. The substance of the misconduct is the focal point.

### **Nature of the Misconduct**

17. The prosecution stated the nature of the misconduct involved the Constable Garcha conducting a traffic stop due to the driver operating a motor vehicle in excess of 50 kilometers per hour over the speed limited. The officer had the authority to seize and impound the vehicle and lay serious charges under the Highway Traffic Act (HTA). Yet, no HTA charges were laid, the vehicle was not seized.
18. Instead of laying HTA charges and following the process for the serious HTA offence, Constable Garcha seized the drivers license (DL) of the driver (K.G.) and instructed the K.G. to go to 22 Division, some four days later to retrieve his DL. The officer did not record any of this interaction with K.G. in his police notebook. This was a clear violation of Peel Regional Police (PRP) Directive 134(F) regarding a sworn Police Officer's duty to maintain current and accurate notebook entries.
19. On June 1<sup>st</sup>, 2022, K.G. and his brother C.K. went to 22 Division. Constable Garcha offered K.G. a choice of a HTA Part III Summons or participate in a fitness circuit. K.G. accepted the fitness circuit in lieu of receiving the PART III Summons. Constable Garcha went on to direct K.G. to run up and down the Divisions sally-port ramp, do jumping-jacks and push-ups. Constable Garcha did not have authority to do this.
20. During their interaction with Constable Garcha, K.G. and his brother (C.K.) felt that K.G. had no choice but to follow the option for a fitness circuit. K.G. was effectively detained at 22 Division. K.G. felt he could not leave, as there was an obvious power differential, with Constable Garcha being a sworn officer in a police uniform and at a police station. The officer had complete control and ultimate discretion under these circumstances.
21. Constable Garcha made comments toward K.G. as he put him through the fitness circuit. K.G. was allowed a break, then was directed to do push-ups on cement. He was told repeat the term "I will not speed any more" while being told to do jumping jacks.
22. Constable Garcha told K.G.'s brother to record the event so they could show it to their family. The recorded video was later sent to the O.I.P.R.D. by C.K.
23. K.G. was struggling with the exercises. Constable Garcha told him that he should not be struggling with minor exercises. He should take better care of his body, get in better shape. K.G. stated that he was feeling ill, sweating in his work clothes, that included work safety boots. Once he left the Division, K.G. vomited and missed a day of work.
24. The misconduct was characterized by the prosecution as a cruel hazing event.
25. In conclusion, Constable Garcha made no notebook entries on either date. The failure to take notes demonstrated that Constable Garcha had known his actions were improper. All sworn

officers are obligated to abide by the Code of Conduct. Constable Garcha did not and he failed in his obligation to be a proper ambassador for rule of law. Rather than following his police training, police directives, his decisions resulted in the humiliation of K.G. Ultimately, the actions of Constable Garcha were highly discreditable to PRP.

26. The Prosecution submitted the nature of misconduct was aggravating.

### **Public Interest and Damage to the Reputation of the Police Service**

27. A public complaint was initiated by K.G.'s older brother C.K. The brothers have shared their negative experiences with friends and family. The event was recorded, it is now a permanent record. It was recorded at a police station, with uniformed police officers in the video.

28. Constable Garcha's actions humiliated and belittled K.G. The actions put K.G.'s health at risk as Constable Garcha did not know the health status or medical history of K.G.

29. The event was egregious. It was contrary to everything about policing, the training, a sworn officers performance expectations and standards of the Ontario Police Services Act. Police officers are champions for the public. This event was an abuse of power by Constable Garcha.

30. Financially, the actions of Constable Garcha caused harm for K.G. as he missed a day of work.

31. Should the matter become public, especially the video, there will be scrutiny by the media and public towards the PRP.

32. The Prosecution submits that the public interest and damage to the reputation of the police service are aggravating factors.

### **Employment History**

33. Constable Garcha has been a member of the Peel Regional Police since 2017. He has a good employment record and this factor is mitigating.

### **Rehabilitation**

34. The rehabilitation factor is mitigating as Constable Garcha has taken ownership of his actions. He has acknowledged that his misconduct towards K.G. was serious. He has indicated a guilty plea to misconduct early in this disciplinary hearing process.

### **Deterrence**

35. The prosecutor submitted that due to the gravity of misconduct by Constable Garcha, there needed to be serious consequences and a strong deterrence established. Police officers have clear rules and policies. These rules serve an important role. They govern police actions and to help to maintain public trust in policing. There is no place for unprofessionalism. The facts of



this case are all serious forms of misconduct. Constable Garcha failed to adhere to internal and provincial rules. There are laws specifically related to serious driving offences that were not followed. The officer did not make any notebook entries. There was a seizure of a driver's licence and a potential unlawful detention with corporal punishment.

### Consistency of Disposition

36. The prosecutor played the short video of the event at 22 Division. Constable Garcha was on the video making comments to K.G. Constable Garcha can be heard saying, "Louder, I can't hear you." K.G. was on the video repeating the term "I will not speed anymore," while doing jumping jacks. The prosecutor stated that it was pure hazing. Constable Garcha was not laughing. He was serious. Constable Garcha came across as arrogant.
37. Mr. Soles stated it was difficult to find comparison cases. There are strong neglect of duty cases regarding note taking with strong discreditable elements in same case. However, this misconduct case was unique.
- a. Tab #2: OPP v. Favretto, 2004: A dismissal case. An officer pointed a service firearm at another officer. The matter went to the Ontario Court of Appeal. Within the decision, it spoke to tribunals are not bound by their previous decisions. Each matter can be decided on its own merits.
  - b. Tab #3: PRP v. Lucas, 2021: Constable Lucas committed a criminal break and enter while on duty. The officer received a six-month demotion. Constable Garcha's actions were more serious. Constable Garcha directly harmed a member of the public. Further, Constable Lucas, had ten years of good standing police service and had been diagnosed with a mental health issue (PTSD).
  - c. Tab #4: PRP v. Freitas, 2021: Constable Freitas was off-duty when he misused his police authority to have a vehicle towed away from his private parking spot. The officer also used the CPIC data base during this misconduct. The officer received an eighty-hour penalty in a joint submission. Constable Garcha's misconduct is more aggravating. He had a direct confrontation with K.G. in misusing his police authority. Bullying behaviour are elements in his misconduct.
  - d. Tab #5: OCPC – Ottawa Police v. Thornborrow: Constable Thornborrow plea guilty to misconduct related to not serving traffic offence notices and not making notebook entries. OCPC spoke to a range in penalties that would be applicable when deciding an appropriate penalty in a particular matter. Within this matter, there was no public complainant. For Constable Garcha, he had administrative misconduct even without the direct contact with K.G.
  - e. Tab #6: OCCOPS – TPS v. Stone, 2007: Constable Stone received a two-year demotion when he failed to investigate a suspected impaired driver and later accepted hockey tickets from the driver (corrupt practise). The officer undermined the proper administration of justice. Constable Stone had twenty-six years of police experience with

a good performance history. In the present day, Mr. Soles suggested the penalty would have been higher for Constable Stone. Constable Garcha case has similar elements in that he failed to properly investigate a traffic offence.

- f. Tab #7: PRP v. Papegeorgious, 2016: Constable Papegeorgious entered a plea of guilty for discreditable conduct when he lied to a provincial prosecutor stating he did not have notebook entries related to a traffic offense. The Provincial Offense Notice was then withdrawn. The officer received a two-year demotion. The Constable Garcha case has similar elements where there was serious misuse of police power, a compromised integrity of the Justice System, and significant damage to the Peel Regional Police.
- g. Tab #8: OCPC – OPP v. Orser, 2017: Constable Orser distributed intimate images of his ex-girlfriend. The OCPC upheld the original Hearing Officer’s dismissal penalty. The decision spoke to consistency of penalty not being frozen in time. Responses should bear some connection to societal norms. Mr. Soles stated the case spoke to new technology and how it has opened up new avenues for bullying and shaming. The penalty for Constable Garcha should reflect present day norms.

38. Mr. Soles stated the damages are to the reputation of the police service and the harm caused to the victim. It needs to be denounced by the Service in unequivocal terms. Overall, the maintenance of public confidence in the police is important.

39. The mitigating circumstances include Constable Garcha having no disciplinary history on his employment record. He has recognized the seriousness of his misconduct by showing remorse and explaining his actions. Constable Garcha entered a guilty plea early in the process.

#### **Evidence of the OIPRD Complainant, C.K. (Brother of K.G.)**

40. C.K. drove his brother, K.G., to 22 Division, as Constable Garcha had possession of K.G.’s driver’s licence. They did not know what to expect when they went to 22 Division. They were not prepared for what happened. He thought K.G. would get a stern lecture. As he watched his brother interact with Constable Garcha and saw the attitude of Constable Garcha as he put K.G. through the exercises, C.K. got angry and upset. He knew his brother was compelled to follow Constable Garcha’s instructions. He felt that K.G. was trapped and at the mercy of the officer.

41. C.K. advised that K.G. suffered from bow-footedness. K.G. had his work clothing and work footwear on, not exercise apparel.

42. C.K. was caught off-guard by the imbalance of power at the police station. He stated the whole experience was disheartening considering he had never had a negative interaction with a police officer before. Constable Garcha appeared to be “nonchalant– cocky.” He was not considerate of their feelings. Looking back on the event, he could not believe “what happened had happened.”

43. C.K. advised that he believed the drivers licenced would be returned in exchange for a scolding and lecture instead of a ticket. His brother did receive a significant benefit for attending 22

Division and doing the fitness circuit. In that there were no charges, no court summons, his vehicle had not towed and impounded.

### **Submissions from Mr. Chio, K.G.'s Counsel.**

44. Mr. Chio suggested a penalty in the range of a demotion for one year and a loss of pay for thirty days.
45. Mr. Chio stated that public interest is an aggravating factor in this case. The event occurred at a police station, the officer was in uniform, and other uniformed police officers were in the area. Constable Garcha told C.K. to record the event and then show to their family. The event occurred early in the morning, 6:00 – 7:00 a.m. The event almost amounted to an unlawful detention.
46. General and specific deterrence is an aggravating factor as there needs to be strong message sent to the officer and others.
47. Mr. Chio spoke to the Prosecutions Brief of Authorities, Tab #8: *OCPC – OPP v. Orser, 2017*. He highlighted paragraphs 57 and 58. The case speaks to responses to misconduct should bear some connection to societal norms and how technology has opened up new avenues for bullying and shaming, humiliation and abuse. Constable Garcha made specific negative comments about K.G.'s weight and health.

### **Submissions of the Defence – Mr. Cummins**

48. Mr. Cummins stated that it was reasonable to conclude that K.G. felt compelled to stay and complete the fitness routine. The actions of Constable Garcha were not appropriate. However, his actions were a product of good faith and a lack of emotional maturity. Constable Garcha has since received counselling and has matured.
49. The gravity of the misconduct is mitigated by the fact there was no physical assault on K.G. And the financial benefits to K.G. by Constable Garcha's actions were enormous.
50. Mr. Cummins spoke to the prosecution's evidence as it related to the seriousness of the discreditable misconduct. Constable Garcha never told K.G. that he could not leave, nor did he tell K.G. that he was being detained. At the police station, K.G. was offered an alternative to being charged with a provincial offence by Constable Garcha.
51. Mr. Cummins stated that Constable Garcha had a similar interaction with an Ontario Provincial Police officer, prior to becoming a sworn officer. The OPP Officer had Constable Garcha do push-ups in lieu of receiving a traffic ticket. That event was viewed by Constable Garcha as a positive interaction at that time.
52. Regarding lack of notebook entries by Constable Garcha, Mr. Cummins spoke to a 2012 misconduct case by Chief B. Foley, Stirling-Rawdon Police Service. It was recognized that a bad decision was motivated by good faith. Constable Garcha did not want to charge K.G. His bad decision was motivated by good faith.

53. For the factor of damage to the reputation of the police service, Mr. Cummins stated that there was no evidence before the tribunal that suggest the reputation of the Peel Regional Police was damaged by the actions of Constable Garcha.
54. For the deterrence and rehabilitative factors, there is no need for a specific deterrence and the officer has accomplished rehabilitation. Constable Garcha co-operated with investigators. He gave a statement, he participated in drafting a statement of facts for this tribunal, he indicted a guilty plea at the earliest opportunity. These factors all show remorse. Constable Garcha has attended counselling.
55. In response to the prosecutions consistency of disposition comments, the PRP v. Lucas case, the conduct of Constable Lucas was motivated by self-interest. Self-interest was clearly aggravating. Constable Garcha was not motivated by self-interest. Constable Lucas committed a criminal offence. The criminal charges were withdrawn, in exchange for a PSA conviction.
56. Mr. Cummins suggested that bullying and shaming did not exist in this case. Regardless of Constable Garcha's intention, the misconduct in the case is high end. However, the intention of the officer was to counsel, teach, and give K.G. a break.
57. Regarding Mr. Cho submissions, "blatant use of authority," Mr. Cummins suggests it was just poor judgement. Constable Garcha is guilty of neglect for no notebooks entries. The penalty should be in the range of eight hours.
58. For the effect on the officer factor, Constable Garcha is 29 years old. He was hired by Peel Regional Police in 2017. He is married for one year, has a university degree. He does not have discipline on file. This would be a tremendous financial cost to Constable Garcha and his family.

### **Public Interest**

59. Mr. Cummins stated the questioned asked in this factor is would the public be offended? Did the misconduct create high risk? Mr. Cummins stated that high risk does not exists in this case. The misconduct was ill conceived. There are no elements of deceit. The event was motivated by good faith. He had no personal gain or advantage; it was not based on malice, nor part of a pattern of misconduct.

### **Recognition of Seriousness of Misconduct.**

60. Constable Garcha submitted an agreed statement of facts. He plead guilty and was apologetic. These speaks to his recognition of the seriousness of the misconduct.
61. Constable Garcha was well regarded within the workplace. As a reference Mr. Cummins spoke to a number of documents contained within Exhibit #9:
  - a. Tab #1: Positive email from Staff Sergeant Leadbeater.
  - b. Tab #2: Commendation from Superintendent McKenna.

- c. Tab #3: 2018 Exemplary Attendance Certificate.
- d. Tab #5: Positive Supervisory comments in 2020 PADP
- e. Tab #6: Positive Supervisory comments in 2019 PADP

62. Mr. Cummins presented the Tribunal with a Book of Authorities marked as Exhibit #10.

### **Consistency of Disposition**

63. Mr. Cummins referred to Exhibit #10, for the following cases:

- a. Tab #1: OCPC – Ottawa Police v. Thornborrow, 2018: Constable Thornborrow plead guilty to misconduct related to not serving traffic offence notices and not making notebook entries. OCPC spoke to a range in penalties that would be applicable when deciding an appropriate penalty in a particular matter. And no single factor is paramount over others and the factors are intended to be flexible, contextual and may evolve over time. Mr. Cummins stated that the misconducts should be equally weighted.
- b. Tab #2: TPS v. Constable Smith 2020: Constable Smith was found guilty in a criminal court of assault cause bodily harm. He was given a conditional discharge and six-month probation. He was demoted for six months. The officer had positive employment and good rehabilitation. These factors mitigated the disposition.
- c. Tab #: OPP v. Constable Hearden, 2021: Constable Hearden plead guilty in a criminal court to minor assault. He received probation for twelve months. Penalty was thirty hours and internal training on procedures. Constable Hearden's actions towards the victim were more significant than that of Constable Garcha's actions. Constable Garcha did not act out of anger or retribution.
- d. Tab #4: OPP v. Constable Siriska, 2021: Constable Siriska used heated and profane language when interacting with a motorist, which was aggravating. Mr. Cummins advised that this case had the same principle, the member of the public felt shame. Penalty was twenty-four hours. The case does not have similarities on facts, but the difference being Constable Garcha did not use profane language, he was trying to teach K.G. an important lesson of not speeding.
- e. Tab #5: PRP v. Constable Trlaga, 2020: Constable Trlaga plead guilty to Discreditable Conduct. The arrest was a reprisal. The penalty was one hundred and sixty hours. The officer used racially charged language in the cruiser with the arrested party. The officer was discriminatory. The prosecution had been seeking dismissal. The actions of Constable Garcha were in good faith, it was not a reprisal towards K.G.
- f. Tab #6: OCPC – TPS v. Nobody, 2018: The involved officer was convicted in a criminal court for assault with a weapon (police baton). The officer received a suspended sentence in criminal court. The Hearing Officer assessed a penalty of a forfeiture of five days.
- g. Tab #7: OCPC – Durham Police v. Constable Johnson, 2019: Constable Johnson

slapped a handcuffed person. It was deemed a reprisal and the officer had an anger management issue. Mr. Cummins stated that this matter was deemed a serious misconduct, yet the OCPC felt a twenty-hour penalty was appropriate.

64. Mr. Cummins position on an appropriate penalty for Constable Garcha was in the range of a five-day penalty.

### **Constable Garcha Statement to the Tribunal**

65. Constable Garcha stated that he admitted guilt at earliest opportunity. He has apologized to everyone. He has always been completely honest. He has sent personal letters to the complainants. He knows that his actions towards K.G. were not indicative to what the Peel Regional Police represent.
66. In 2011, and prior to joining Peel Regional Police, he had an interaction with an OPP Officer. In lieu of receiving a traffic ticket, that officer asked Constable Garcha to do 50 push-ups. Constable Garcha knew that the OPP Officer recognized that if he was issued a traffic ticket it would be an inconvenience. Constable Garcha remembered this positive interaction and did not want K.G. subjected to the mandatory licence suspension, insurance premium increase, and paralegal costs. “In good faith I came up with an alternative” to issuing a Part III summons.

### **PART III: ANALYSIS**

67. The extent of informative detail before the Tribunal is limited to what is listed in the Agreed Statement of Facts, and by the submissions made by the prosecution and defence with their supporting materials. I have reviewed all of the information and evidence that was submitted.
68. In their submissions, both the prosecution and defence referred to Commission case law and specifically, to a number of factors to be considered when determining the appropriate penalty. The case of *Senior Constable Alexander Krug and the Ottawa Police Service (2003 OCPC-03-01)* it addresses the aggravating and mitigating factors to be considered when determining the penalty, and that there is no requirement that any one factor be given more weight than another.
69. The factors that I find relevant to focus on in assessing the misconduct of Constable Garcha are as follows:
- a. Public interest;
  - b. Seriousness of the misconduct;
  - c. Damage to the reputation of the police service;
  - d. Employment history;
  - e. Specific and general deterrence;
  - f. Ability to reform or rehabilitate the police officer;
  - g. Effect on police officer and police officer’s family;
  - h. Consistency of disposition;

## **Public Interest**

70. There are strong public interest elements in this matter. The effectiveness of policing is highly dependent on trust and support from the community. An average member of the public having knowledge of the circumstances before this Tribunal would expect a higher standard of performance by Constable Garcha. His actions undermine the relationship of public trust.
- a. Constable Garcha misused his authorities when he coerced K.G. into attending a police station to do calisthenics in lieu of Highway Traffic Act (HTA) charges and potential financial consequences related to the HTA charge.
  - b. Constable Garcha alleged K.G. had committed a serious driving offence that could have resulted in serious consequences. The public would expect Constable Garcha to use his lawful authority to properly deal with the serious driving offence.
  - c. Constable Garcha's actions heavily deviated from established police Directives with regard to Highway Traffic Act investigations and responsibilities for a sworn officer to maintain current and accurate notebook entries.
71. Societal norms evolve over time. Present day, the standard to which a police officers are held accountable by the community have never been higher. The public has little tolerance for misconduct and unprofessionalism from police officers. Therefore, a disposition in this matter must be fair to the officer while ensuring the confidence from the community in its police and the police discipline process is maintained.
72. I find public interest to be an aggravating consideration.

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

73. The Peel Regional Police have a strong interest in preventing harm to its reputation. Overall, the reputation of policing can be easily damaged from negative publicity related to any police event, weather it is on duty or off duty behaviour by a sworn officer. Transparency in a formal police disciplinary process is an important aspect in maintaining a positive reputation and credibility. Therefore, all matters of police tribunals are in the public realm and can be accessed by media and other public groups.
74. There is a public expectation that Constable Garcha will be held accountable for his actions. Constable Garcha committed a serious misconduct in misusing his authority when he coerced K.G. into doing calisthenics. Anyone becoming aware of the circumstances in this matter and anyone viewing the video will be alarmed by the actions of Constable Garcha towards K.G.
75. The circumstances in this matter are unique. The matter has the potential to attract negative publicity that will damage the reputation of the Peel Regional Police.
76. K.G., his brother, C.K., and their family have been negatively affected by the actions of

Constable Garcha. This demonstrates that the reputation of the Peel Regional Police has been damaged.

77. I find damage to the reputation of the police service to be an aggravating consideration

### **Seriousness of the Misconduct**

78. Constable Garcha demonstrated poor judgement and misused his authority.

79. A patrol officer is required to make dozens of decisions on policing matters during the course of their duties. It is important for an officer to recognize that the organization understands that police officers do make mistakes. It is improbable that every decision will be perfect. However, it was not a singular poor decision by Constable Garcha. There were multiple poor decisions made, over a period of two separate days by the officer. Constable Garcha's actions on the second day, in particular, aggravated the original event.

80. Constable Garcha investigated K.G. for a traffic violation. He had appropriate police powers and discretionary options available when originally dealing with K.G. Instead, he chose to misuse his police authority by seizing K.G.'s DL and then directing K.G. to attend a police station, four days later.

81. Using discretion during the course of a police officer's duties is an important aspect of policing. Using good judgement when applying discretion have positive benefits to police and their community relationships. However, there are community safety issues that limit an officer's ability to use discretion. Roadway safety and specific driving offences have aspects where police discretion is limited. Based on the presented evidence at this Tribunal, I make the assumption that the driving behaviour of K.G. should have warranted formal action by Constable Garcha. The fact that he did not take formal action speaks directly to the seriousness of the misconduct.

82. Further, four days later, Constable Garcha had an opportunity to make the proper decision when he again interacted with K.G. Instead, Constable Garcha coerced K.G. into doing calisthenics. I accept the evidence that K.G. was given a choice by the officer. However, it was a limited choice. Ultimately, this was an egregious misuse of authority by Constable Garcha.

83. I find the seriousness of the misconduct to be an aggravating consideration.

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

84. I find that Constable Garcha has recognized the seriousness of his misconduct in this matter. His guilty plea at an early stage of these proceedings coupled with his apology and acceptance of responsibility for his mistake are important factors when considering the appropriate penalty.

85. I find his recognition of the seriousness of his misconduct to be a mitigating factor.



### **Employment History**

86. The employment history of Constable Garcha is positive and a mitigating factor for consideration. There has been no evidence presented of previous discipline for my consideration. The information forwarded by defence in Exhibit #9 Tab #1 is very encouraging and illustrates an officer that has made valuable contributions to the community and to the Peel Regional Police.

### **Ability to Reform or Rehabilitate**

87. I accept the position of the defence that Constable Garcha believed that he was acting in good faith and that the misconduct was the result of poor judgement. The actions of Constable Garcha were not intended to be malicious. Constable Garcha believed that his interactions with K.G. would ultimately have a positive effect on him. This aspect does speak to the lack of maturity and poor judgment demonstrated by Constable Garcha. However, it does not mitigate the seriousness of the misconduct.

88. Constable Garcha actions throughout the discipline process have demonstrated he is motivated to learn from these mistakes. He is motivated to improve his performance as a police officer. Constable Garcha has acceptance all responsibility for his actions. He has a positive employment history supported by positive documentation contained in Exhibit #9.

89. I find that Constable Garcha has the ability to reform or rehabilitate and it is a mitigating factor for consideration.

### **Specific and General Deterrence**

90. Specific and general deterrence are disposition factors that need to be considered in police misconduct matters. A specific deterrence will assist in preventing similar behaviour by the individual officer in the future. The imposed penalty will result in a significant financial impact on Constable Garcha. In addition, the demotion will result in a loss of status amongst his peers.

91. General deterrence is intended to remind all police officers that they are expected to uphold their sworn duties and be professional at all times. A fair yet appropriate penalty in this matter should be a reminder to Constable Garcha that his actions, misusing his police authority, was serious misconduct. It should also remind all officers that they will be held accountable and there will be consequences to misconduct.

### **Effect on Police Officer and Family**

92. The effect on officer will be significant. A reduction in rank will have a negative financial effect on Constable Garcha and his family. In the short term, a reduction in rank will affect the officer's career advancement opportunities and put him at a disadvantage during internal job posting competitions. However, under these circumstances, Constable Garcha committed serious misconduct, and as such, the penalty must be proportionate.

### **Consistency of Disposition**

93. The prosecutor and defence have provided different submissions on penalty in this matter.
94. I have reviewed both Book of Authorities from the prosecution and defence. The exercise of reviewing previous decisions is very important when considering the disposition factor of consistency of disposition. Every case is unique and finding a specific previous matter that speaks to the current factors is always a challenge.
95. The submitted cases were helpful. There was a broad range of dispositions in the cases. The unique facts in this matter make this a serious misconduct. As such, a disposition in this matter must be fair, consistent, one that addresses relevant disposition factors.
96. I note that in the matter *Constable Krug and the Ottawa Police Service (2003 OCPC-03-01)*. (Tab #1 of Exhibit #11), “*There is no requirement that any one factor be given more weight than another. The seriousness of the offence alone may justify dismissal. Aggravating factors can serve to diminish the weight of any mitigating factors.*”
97. The mitigating factors in this case are very real and meaningful. However, I find that when I place the mitigating and aggravating factors on a scale, the aggravating factors far outweigh the mitigating circumstances. The disposition in this matter must reflect this.
98. Specific to this case, the factors that are most significant and must be reflected in the penalty imposed on Constable Garcha are:
- a. Public interest
  - b. Seriousness of the misconduct
  - c. Damage to the reputation of the police service

### **PART IV: DISPOSITION**

99. The penalty addresses the need for specific and general deterrence. It provides the necessary balance between the public interest, the interests of Constable Garcha and the interests of the Peel Regional Police. This penalty assures the public and the policing community that the Peel Regional Police is prepared to impose appropriate sanctions on officers when their behaviour falls short of the expectations.

**Penalty**

100. For the noted reasons, on the one (1) count of Discreditable Conduct and one (1) count of Discreditable Conduct, I impose on Constable Navjot Garcha #4230 of the Peel Regional Police Service:

**Reduction in rank from 1st (first) Class Constable to 2nd (second) Class Constable for a period of 6 (six) months following which the officer will be returned to the rank of 1st (first) Class Constable, and, remedial training to be determined by the officer's Divisional Commander.**

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Superintendent Dermot Coughlan  
Peel Regional Police – Hearing Officer

Date: 2023-02-06