

**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  
THE ONTARIO PROVINCIAL POLICE**

**AND**

**PROVINCIAL CONSTABLE M.P. (Marc) JOUBERT, #11436**

**CHARGE:**

**DISCREDITABLE CONDUCT**

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**DISPOSITION**

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**Before: Superintendent Lisa TAYLOR**

**Appearances:**

**Counsel for the Prosecution: Mr. Chris DIANA  
Ministry of the Solicitor General**

**Counsel for the Defence: Mr. James GIRVIN  
Ontario Provincial Police Association**

**Counsel for the Public Complainant: Mr. Chris FLEURY  
Bonn Law**

**Hearing Dates: May 13 and June 17, 2019**

This decision is parsed into the following parts:

PART I: OVERVIEW;

PART II: THE HEARING;

PART III: SUBMISSIONS, ANALYSIS and FINDINGS; and,

PART IV: DISPOSITION

## **PART I: OVERVIEW**

### **Allegations of Misconduct**

Provincial Constable (P/C) Marc Joubert stands charged with discreditable conduct in that he 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 amended particulars of the allegations state:

It is alleged that on or about February 3, 2016 P/C Joubert, while on-duty and while in uniform and operating a marked OPP cruiser did;

- Pick up a civilian at the Rossmore Plaza in Prince Edward County at approximately 10:30pm and drive that individual to the Massassauga Point Conservation Area in a marked OPP cruiser for non-police matters.
- Use the OPP cruiser to sit inside and talk with this civilian about non-police related matters, in particular the affairs of his ex-wife. The conversation occurring from 10:30pm to 1:00am.
- On or about May 10, 2016 provide a Duty Report to Professional Standards Bureau (PSB) in which P/C Joubert admitted to having this meeting as described while on-duty.

Commencing sometime after November 2015 and continuing through to March 2016, P/C Joubert did;

- Utilize an OPP issued cellphone to fabricate and send personal text messages that were inappropriate in that the content was felt inappropriate and unwanted by the recipients.

- Use his OPP issued cellphone to fabricate conversations that he had personally read between his ex-wife's new boyfriend and another person knowing that these conversations were not true and could harm his ex-wife's current relationship.

During an interview with PSB on or about November 10, 2016, P/C Joubert again admitted to using his OPP issued cellphone to recreate text messages pertaining to his ex-wife's relationship.

Further, it is alleged that on or about November 10, 2016 P/C Joubert was lawfully ordered to a duty interview in which he was ordered to answer questions regarding the source of information related to a conduct allegation. PSB provided P/C Joubert the Respondent Officer Interview Caution.

- P/C Joubert fully acknowledged that he understood the order to answer questions of PSB relating to a conduct matter to which he read a written refusal letter that he had prepared prior to the interview.
- The PSB investigator cautioned P/C Joubert several more times during the interview regarding insubordination but P/C Joubert continued to refuse to answer the question.

PSB provided the opportunity for P/C Joubert to reflect on his decision to refuse to answer their questions regarding the source of his information.

- On or about November 18, 2016 PSB contacted P/C Joubert by phone directing that he provide this information and he verbally refused to answer questions of PSB.
- On or about February 16, 2017 the PSB investigator sent an email to P/C Joubert ordering him to reveal the name of his source and their contact information. P/C Joubert replied to the email, again refusing to provide an answer.

Further, it is alleged that during the month of February 2016 P/C Joubert sent his ex-wife approximately 60 text messages which included screen-shots of text messages, which P/C Joubert alleged were between her new boyfriend, Dr. Brown and two of Dr. Brown's former girlfriends. The former girlfriends alleged that P/C Joubert fabricated those messages.

It is alleged that P/C Joubert was less than forthcoming in that:

- On or about May 10, 2016 P/C Joubert provided a Duty Report to PSB in which he told PSB he used his OPP issued cellphone to recreate text conversations he personally read between Mr. Brown and another person. He reported he recreated the messages as the other party was not willing to share the actual text message with him. In doing this P/C Joubert was less than forthcoming.
- P/C Joubert was ordered to a Duty Interview on or about November 10, 2016 and asked to identify the source who, according to P/C Joubert had shown him text messages between the source and Dr. Brown. P/C Joubert provided PSB with a written refusal, stating “My off duty meetings, communication and correspondence with friends was given to me in confidence and clearly conveyed that they wanted no involvement in fear of revenge or retribution.” In submitting this response to PSB, P/C Joubert was less than forthcoming.
- During the Duty Interview P/C Joubert told PSB that the information contained in his Duty Report was the truth. In doing so, P/C Joubert was less than forthcoming.
- On or about March 6, 2017 P/C Joubert registered the sources as OPP Confidential Informants (CI). In doing so P/C Joubert knowingly submitted false information to mislead the investigation as no CI was used to obtain information as he alleges.
- An audit of the CI’s related to this matter was performed by Detective Sergeant O’Brien of the OPP Source Development and Management Unit. This audit determined that:
  - The individuals registered by P/C Joubert did not knowingly understand their position related to any offer of anonymity or privilege that may or may not have been given to them by P/C Joubert.
  - They did not know that they were given any status or privilege.
  - The individuals denied showing or providing any text message as alleged by P/C Joubert
- On or about December 21, 2017 PSB met with one of the individuals who was shown the text messages in question and this person advised that they did not show those messages or any text messages of that nature to P/C Joubert.
- On or about February 1, 2018 PSB met with the other individual who stated they have never shown or forwarded any text messages between him/her and Dr. Brown to P/C Joubert.

P/C Joubert ought to have known that he was being less than forthcoming in his responses to the PSB investigator's lawfully ordered Duty Report and Duty Interview regarding the authenticity of the text messages.

P/C Joubert ought to have known that his actions would bring discredit to the reputation of the OPP.

## **Representation**

In this matter, Mr. Girvin represented P/C Joubert; Mr. Diana represented the OPP; Mr. Fleury represented the Public Complainant, Dr. Brown.

## **Plea**

On May 13, 2019, P/C Joubert, accompanied by his counsel, pleaded guilty and was found guilty of discreditable conduct.

## **Positions on Penalty**

Penalty arguments were heard on June 17, 2019. The range of penalties put forth by all the parties varied significantly. Counsel supported their respective positions, as outlined below, with submissions that are summarized within Part III of this disposition.

Mr. Diana for the prosecution submitted that a demotion to fourth class constable is the appropriate penalty for this matter, with the specific range to be determined by me as the adjudicator after assessing all of the facts.

Mr. Girvin, as defence counsel, proposed that a forfeiture in the range of 30 to 60 hours was an appropriate penalty.

Mr. Fleury, representing the public complainant in this matter, sought P/C Joubert's dismissal, to be ordered within seven days.

## **Decision**

Having considered the submissions of counsel and the full circumstances of this matter, I order P/C Joubert demoted to fourth class constable for 18 months followed by the established progression through the constable rank gradations, incumbent on satisfactory evaluations, meeting or exceeding standards, to ultimately return to the rank of first class constable.

My reasons for the decision are as follows:

## **Part II: THE HEARING**

### **Exhibits**

The exhibits for this matter are listed as Appendix A.

### **Agreed Statement of Facts (ASoF)**

On May 13, 2019 the prosecution and defence counsel submitted an ASoF<sup>1</sup> that read as follows:

1. P/C Joubert is assigned to duties at Prince Edward County Detachment. He has been a member of the OPP since 2003.
2. On or about February 3, 2016 P/C Joubert, while on duty and while in uniform and operating a marked OPP cruiser, picked up a civilian J.G.<sup>2</sup> at the Rossmore Plaza in Prince Edward County at approximately 10:30pm. He subsequently drove that individual to the Massassauga Point Conservation Area in a marked OPP cruiser for non-police related matters.
3. P/C Joubert and J.G. sat inside the OPP cruiser from approximately 10:30pm to 1:00am and talked about non-police matters, in particular the affairs of his ex-wife, A.J.
4. In or about November 2015, P/C Joubert's ex-wife, A.J. commenced a romantic relationship with Dr. Marty Brown, the public complainant. From that time through to the ending of the relationship between A.J. and Dr. Brown, P/C Joubert engaged in a course of conduct whereby he sent unwanted and inappropriate text messages and e-mails to A.J., notwithstanding A.J.'s request for him to cease communicating with her. From February 2-3, 2016, P/C Joubert sent approximately 60 such text messages to A.J.
5. P/C Joubert sent these text messages with an OPP issued cellphone.

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<sup>1</sup> Exhibit 19: Agreed Statement of Facts

<sup>2</sup> Initials used to anonymize and protect privacy of involved person(s)

6. In a Duty Report dated May 10, 2016 P/C Joubert wrote, among other things, the following:

“Some of the texts to my wife were screen shots of actual conversations directly from the source sender to me. There were sources that advised me of their concerns about Marty Brown, and showed me conversations, but would not send me the conversation for fear of Marty Brown seeking revenge. Therefore, I did recreate and abbreviate conversations shown to me, to the best of my knowledge.”

7. In his compelled interview conducted on November 10, 2016, P/C Joubert confirmed that everything he wrote in the Duty Report was the truth. He said the following in his interview:

“Q. Okay. But in any event, these text messages that you said you’ve recreated between your work phone and your personal phone that have been purported to be Marty Brown and an ex, that you sent to your ex, A.J., were not, in your mind...?”

A: It is my belief they were authentic.

Q: That they are authentic.

A: To that source.

Q: That you just didn’t come up with this out of the thin air.

A: That’s correct.

Q: That you actually saw these messages and – and recreated them, at least to the best of your ability?

A: That’s correct.

Q: Okay. So it’s not like they’re fabricated out of thin air?

A: No, they’re not.

Q: You physically saw these messages?

A: Yes, I did”

8. P/C Joubert was less than forthcoming in his Duty Report and interview in respect of those text messages. P/C Joubert neither recreated nor abbreviated conversations shown to him. Neither source showed him any conversations on their respective phones. Neither source forwarded P/C Joubert conversations which he then forwarded to A.J. Neither recognized the text messages that were created which purported to involve Dr. Brown. Both J.G. and the other source indicated that Dr. Brown does not communicate in the fashion portrayed in those text messages. Without the knowledge and consent of either source, P/C Joubert fabricated text messages purportedly involving Dr. Brown in an effort to make him look bad to A.J. The intention of the text messages was to disparage the character of Dr. Brown and to assist in the breaking up his relationship with A.J. P/C Joubert referred to specific traits and habits of Dr. Brown that he learned from his sources in an effort to bolster the credibility of his texts. P/C Joubert used information he heard from various sources, though he did not see this information in any specific messages but wrote the texts based on information he heard and shared that in texts with A.J.
9. Following his Duty Report on May 12, 2016, PSB asked P/C Joubert to “advise who your source is regarding the text messages that you observed and then recreated and sent to A.J.” On May 24, 2016 PC Joubert wrote the following in response: “I am not prepared to disclose my source. They did want to send me the text, but did not want to get involved and had concerns about Marty’s reaction. As I can see now why! They also shared it with me in confidence.”
10. In his interview on November 10, 2016 P/C Joubert was asked on a number of occasions to identify the source of this information:

“Q: Who was the person that showed you those text messages between themselves and Marty Brown?

A: As previously acknowledged, J.G. was one of my sources...I will not be divulging any further sources to this complaint...

Q: Okay, You are fully aware of what I read to you prior to the interview and prior to the questions, that you could be charged with insubordination if you fail to answer my questions, is that correct?

A: I understand, that’s correct.

Q: Okay. But you still refuse to answer my question?

A: Yes...



Q: Okay. At this time, it's still going to be your decision to refuse to answer the question regarding who the source of that text message is?

A: Yes.”

P/C Joubert confirmed in that interview that the conversation that he recreated between Dr. Brown and an ex-girlfriend came from that one source.

11. On November 18, 2016, PSB contacted P/C Joubert by phone directing that he provide this information. P/C Joubert refused to identify his source.
12. On February 16, 2017, PSB made another attempt to obtain the identity of the source from P/C Joubert. Again, he refused to provide that information.
13. As a result of information given to PSB by P/C Joubert in respect of J.G. and his other source, PSB sought the direction of Detective Sergeant O'Brien of the Provincial Operations Intelligence Bureau. Based on the information he received directly from P/C Joubert and PSB (which received its information from P/C Joubert as well), he arranged to have the two sources numbered as confidential informants.
14. In his email to PSB dated May 24, 2016 and in his interview on November 10, 2016, P/C Joubert indicated that the information about Dr. Brown referred to in the texts was provided to him by the sources in confidence. In his interview, he stated: “My off-duty meetings, communication and correspondence with friends was given to me in confidence, and clearly conveyed that they wanted no involvement, in fear of revenge or retribution.”
15. P/C Joubert was less than forthcoming in indicating that the sources had given the information in confidence. Neither J.G. nor the other source asked to be a confidential informant. Neither asked to remain anonymous. Neither indicated they wanted no further involvement. Neither asked for it to be kept secret.
16. P/C Joubert spoke with Sergeant Major Warren who directed him to Sgt. McGillis in respect to the Confidential Informer process. J.G. and the other source were inappropriately signed up as confidential informants as a result of the information he provided. The OPP has subsequently revised its policy in respect of confidential informants as a result.

## Part III: SUBMISSIONS, ANALYSIS AND FINDINGS

### Issue

Having found clear and convincing evidence existed to support a finding of guilt of discreditable conduct against P/C Joubert, the remaining issue is in respect to the appropriate penalty to be imposed.

### Analysis

The following analysis is based on the submissions of the prosecution, defence counsel and counsel for the public complainant. To assist me in this process, I will rely upon commonly held proportionality considerations relevant to this matter. In my analysis, mitigating and aggravating factors will be balanced and weighed.

I start my analysis keeping in mind that my task is to ensure any disposition imposed, fully accords with the governing principles of an appropriate sanction. The jurisprudence is clear in how to assess a suitable disposition when misconduct has been established.

The following five principles guided me throughout my analysis:

1. *The penalty must concur with the actual purpose of police discipline:*
  - *The police service's interest in maintaining discipline*
  - *The rights of the respondent officer to be treated fairly*
  - *The public interest, confidence and expectations of high standards*
2. *The process must focus more on rehabilitation and correction than punishment.*
3. *The penalty meted out should be the most favourable in the circumstances.*
4. *The penalty should be proportionate to the circumstances and balance aggravating and mitigating factors.*
5. *Police officers are held to a higher standard of conduct compared to others.*<sup>3</sup>

Further, I was guided by the words of the Ontario Civilian Police Commission (OCPC or the Commission) in *Favretto v OPP*<sup>4</sup> citing:

*In Williams and OPP (December 4, 1995 OCCPS) the Commission identified three key elements to be taken into account. These include the nature and seriousness of the misconduct, the ability to reform or rehabilitate the officer, and the damage*

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<sup>3</sup> Exhibit 24, Tab 2:Defence Book of Authorities – P Ceyssens – Principles Governing the Determination of a Disposition

<sup>4</sup> Exhibit 20, Tab 2:Prosecution Book of Authorities - *Favretto v Ontario Provincial Police*, [2002] CanLII 76732 Pgs 13-15

*to the reputation of the police force that would occur if the officer remained on the force.*

*There are also other factors that can be relevant, either mitigating or aggravating the penalty, depending on the particular misconduct in question. They included the officer's:*

- *Employment history and experience;*
- *Recognition of the seriousness of the transgression, and*
- *Handicap or other relevant personal circumstances.*

*Finally, other considerations could include provocation, the need for deterrence and concerns arising from management's approach to the misconduct in questions.*

*When imposing penalty, it is also important to take into account prior disciplinary cases dealing with similar types of misconduct. The reason for this is simple. As the commission stated, at page 615, in its decision in Schofield and Metropolitan Toronto Police: "Consistency in the disciplinary process is often the earmark of fairness. The penalty must be consistent with the fact, and consistent with similar cases that have been dealt with on earlier occasions"*

In my analysis I will outline aspects of submissions of each counsel relevant to the particular factor under consideration. Under the heading *Consistency*, I have considered the cases presented by each respective counsel.

#### *Nature and Seriousness of Misconduct*

Defence counsel submitted that P/C Joubert has pleaded guilty to a single count of misconduct on which I must assess the appropriate penalty. The prosecution reminded the tribunal that this factor is the fundamental sentencing factor and there is no requirement that all sentencing factors be given equal weight<sup>5</sup>. While recognizing there is no finding of guilt in relation to insubordination or deceit, I agree with the prosecution and the public complainant in that the ASoF involve elements of such behaviour. Further, the Commission's comments in *Kobayashi and Waterloo Regional Police*<sup>6</sup> provided guidance:

*Repeated misconduct over time is aggravating and there is no error in principle or misapprehension of evidence in the Hearing Officer treating the multiple acts of misconduct as such.*

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<sup>5</sup> Exhibit 20, Tab 3: *Clough v Peel Regional Police Service*, [2014] ONCPC 12 at Para 104

<sup>6</sup> Exhibit 20, Tab 7: *Kobayashi and Waterloo Regional Police Service*, [2015] ONCP at Para 44

In the ASoF, P/C Joubert admitted the following which demonstrated repeated misconduct:

*May 10, 2016* – in a duty report he wrote:

*Some of the texts to my wife were screen shots of actual conversations directly from the source sender to me. [the source] would not send me the conversation for fear of Marty Brown seeking revenge,...I did recreate and abbreviate conversations shown to me, to the best of my knowledge.*

*May 12, 2016* – in a conversation wherein PSB asked who the source was, P/C Joubert advised that “[the source] did want to send me the text, but did not want to get involved and had concerns about Marty’s reaction. As I can see now why!...”

*May 24, 2016* – in an email to PSB, P/C Joubert indicated that the texts were provided to him by the sources, in confidence.

*November 10, 2016* – P/C Joubert in his compelled interview with PSB was asked a number of times to identify the source of his information and he refused, despite being counselled about insubordination.

*November 18, 2016* – PSB provided another opportunity to P/C Joubert to identify his source and he refused.

*February 16, 2017* – PSB provided another opportunity to P/C Joubert to identify his source and he refused.

The initial misconduct involved P/C Joubert’s fabrication of text messages purportedly sent by the public complainant to other individuals which he then forwarded on to his former spouse, A.J. This included approximately 60 text messages sent to A.J. over Feb 2-3, 2016, despite her request to cease such communication. The misconduct continued as P/C Joubert failed to cooperate with PSB investigators despite the many opportunities he was provided.

In terms of his abuse of the Confidential Informant Process, P/C Joubert, according to the ASoF, provided information to PSB. Both P/C Joubert and PSB based on information provided by him, communicated and arranged to have the two sources of information registered as confidential informants. P/C Joubert indicated on several occasions that the sources had given him information in confidence. The evidence refutes that was the case.

Contrary to the intended use of the Confidential Informant Process, there is no evidence to support there was any criminal or other ongoing investigation except for the PSB investigation of P/C Joubert at the time. As noted in the ASoF, P/C Joubert:

- On Feb 3, 2016 met with J.G. in a marked police cruiser for approximately 2.5 hours.
- From Feb 2-3, 2016 he sent approximately 60 messages to his former spouse.
- In a duty report dated May 10, 2016 wrote that “some of the texts to my wife were screen shots of actual conversations directly from the source sender to me.”
- In a PSB interview on November 20, 2016, P/C Joubert agreed with the investigator that he actually saw the messages and recreated them, to the best of his ability.

Contrary to these statements, as also noted in the ASoF, P/C Joubert admitted:

- [He] neither recreated nor abbreviated conversations shown to him.
- Neither source showed him any conversations on their respective phones.
- Neither source forwarded P/C Joubert conversations which he then forwarded to A.J.
- Neither recognized the text messages that were created that purported to involve Dr. Brown.
- Without the knowledge or consent of either source, [he] fabricated text messages purported involving Dr. Brown in an effort to make him look bad to A.J.

In his dealings with PSB, as outlined above, P/C Joubert refused to indicate who his ‘sources’ were in respect to the texts. Despite neither source asking to remain anonymous or to be a confidential informant, P/C Joubert then went on to have them both registered as confidential informants.

The only inference I can draw from this is that P/C Joubert used the Confidential Informant Process for his own personal gain, to thwart the PSB investigation and cover his tracks in relation to ‘recreating’ texts that he was never shown. Based on the agreed facts, I also conclude that the only purpose for false creation of such texts was to disparage the reputation of the public complainant and interfere in his relationship with P/C Joubert’s former spouse.

I agree with Mr. Girvin in that, the use of an OPP cellphone is not significant in this matter and that regardless of whether P/C Joubert used an OPP issued cellphone or his personal cellphone, he would still be before the tribunal. Despite this, I find P/C Joubert’s conduct very troubling. He gathered information on Dr. Brown, misrepresented that information and engaged in a campaign to smear the reputation of Dr. Brown in the eyes of A.J., his former spouse. I find that if a member of the public knew the full circumstances of P/C

Joubert's misconduct, the public would be shocked and it is likely his actions would bring discredit to the OPP.

This was not a singular mistake. I find P/C Joubert's misconduct was deliberate, protracted and lacked integrity. This causes me concern about the integrity of his character. P/C Joubert made repeated attempts to conceal the truth and misrepresented conversations and text messages; this behaviour goes against the core values of the OPP. Individual aspects such as spending on-duty time gathering information on Dr. Brown or sending numerous unwanted texts to a former spouse are serious enough but when you understand the full circumstances of this matter including what I find are direct attempts to thwart the PSB investigation and to interfere with the sanctity of the Confidential Informant Process, this is very serious misconduct.

P/C Joubert was uncooperative and less than forthcoming in his dealings with PSB investigators, despite being given numerous opportunities to come forward with the truth. Acknowledging there was no finding of guilt in relation to deceit, it is clear from the ASoF that P/C Joubert's responses to PSB investigators were not truthful and lacked integrity. When reviewing the questions and answers between P/C Joubert and the PSB investigator as outlined in the ASoF, it is clear he misrepresented the truth about the existence of texts and that he did in fact create them "out of thin air," contrary to his initial assertion that he physically saw the messages. Regardless of whether there are "factual underpinnings" in the content of these messages as suggested by defence counsel, it does little to lessen the seriousness of this matter. I can come to no other conclusion than - P/C Joubert's actions and words were dishonest. In order to fraudulently create two Confidential Informant files, he would have needed to complete forms and attribute information to these 'sources'.

The final component that I find heightens the seriousness of this misconduct is the fact that P/C Joubert intentionally misused an important police tool, the Confidential Informant Process, in the course of his misconduct. I find the only logical reason he would do so, is to attempt to hide his original deceitful behaviour of re-creating texts that had never existed. Police officers hold a position of trust in communities; P/C Joubert's actions have breached that trust and are well below the standard expected of a police officer. In the ASoF, P/C Joubert confirmed he was:

*...less than forthcoming in indicating that the sources had given that information in confidence. Neither J.G. nor the other source asked to be a confidential informant. Neither asked to remain anonymous. Neither indicated they wanted no further involvement. Neither asked for it to be kept secret.*

Overall, I find P/C Joubert's misconduct egregious and this is a significant aggravating factor for consideration.

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

The prosecution and the public complainant both submitted that P/C Joubert's misconduct is likely to cause damage to the reputation of the OPP. I agree that it is imperative to maintain public trust and confidence in the OPP. Although the prosecution submitted that he was unaware of any media coverage on this matter, police disciplinary tribunals are open to the public and the hearing decisions become public documents.

This misconduct directly involved several members of the public. Given my full understanding of the circumstances of P/C Joubert's misconduct, I find that a reasonable and informed member of the public would be shocked to learn a police officer conducted himself in this manner. P/C Joubert's misconduct has the potential to negatively impact not only his own reputation but the reputation of police officers in general and the OPP. I find that damage to the reputation of the OPP will be more significant if P/C Joubert is not held appropriately accountable. This is an aggravating factor for consideration.

### *Public Interest*

The prosecution submitted that there is a strong public interest in maintaining the trust and support of the local community and the broader province of Ontario and that police officers are held to a high standard of behaviour. Although *Lapointe and Timmins Police Service*<sup>7</sup> involved a domestic assault, there are comments of the Hearing Officer that I find are significant for consideration in this matter including:

*The community is entitled to have high expectations of a police service and its members to retain the trust and confidence, they must be professional and ethical in everything they do. It is incumbent upon police services to send a strong message that this kind of behaviour will not be tolerated...*

*...no one need choose to be a police officer or to bear the public trust but those who do so, must acquire the excellence of character necessary to live up to it.*

Mr. Fleury submitted that in terms of the public interest, P/C Joubert has demonstrated the inability to live up to the core values of a police officer specifically honesty and integrity. The public interest would also consider the impacts on Dr. Brown, the public complainant.

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<sup>7</sup> Exhibit 20, Tab 5: *Lapointe v Timmins Police Services*, [Apr 22 2016], Pg 19

Dr. Brown provided a statement before the tribunal to share the impacts that P/C Joubert's misconduct had and continue to have on his life. I recognize that Dr. Brown's statement was not sworn nor subject to cross examination but it was clear that this was a very emotional experience for him. He noted a distrust for the OPP in general as a result of P/C Joubert's misconduct and I am hopeful after reading this disposition he will be able to move forward in his life, knowing that P/C Joubert has been held appropriately accountable. P/C Joubert's misconduct involved both on-duty and off-duty misconduct over an extended time period that falls well below the expectations of the community and the OPP. Without considering the details contained within the public complainant's statement, I find public interest is a serious aggravating factor for consideration.

### *Recognition of Seriousness of Misconduct*

Although I agree with Mr. Fleury that efforts to resolve a matter do not necessarily equate to taking responsibility for one's actions, I give mitigation to P/C Joubert for his guilty plea and taking responsibility for his actions. The plea alleviated the need for a full hearing involving other members of the public as witnesses. I accept P/C Joubert's apology however considering the timing of the plea and the apology, I am not entirely convinced he understands the seriousness of this matter. P/C Joubert demonstrated a lack of integrity throughout this misconduct as he fabricated texts and continued the ruse that the texts were genuine in his dealings with PSB. Although defence counsel indicated a desire on the officer's part to resolve this matter early on, P/C Joubert at some point engaged the Confidential Informant Process which does not indicate a path towards resolution in my mind.

I find recognition of seriousness of misconduct a slightly mitigating factor for consideration. At this point, I remind P/C Joubert that as a father, there is no more an important example you can set for your children, than to be honest, demonstrate integrity and take ownership for your mistakes directly and immediately.

### *Employment History*

P/C Joubert has been a sworn officer with the OPP since 2003 and there is no formal discipline on his record. I have closely reviewed the documentation provided to the tribunal. The career profile outlined several letters of appreciation from 2005 – 2017. Three Performance, Learning and Development Plans (PLDPs) spanning the years from 2014 to 2017 were provided to the tribunal.



In the earliest PLDP<sup>8</sup> covering work performance from 2014-2015, P/C Joubert met expectations in all categories except in teamwork where he was rated by his supervisor as “exceeding” expectations. I am impacted by the positive comments of his supervisor including:

*...in a very nice letter [received]...”the officer kept his hands around my neck the entire time and never let go until the ambulance arrived...little did he know, I actually have a severe neck injury.” “...thought he deserved some recognition in light of all the bad publicity the police often receive.” This is the kind of selfless act which distinguishes Marc from other officers.*

*He also received high praise for how he dealt with a family who had members involved in a serious [motor vehicle collision]...Marc has a way of bringing the “human” element into policing, demonstrating caring and compassionate whenever it is required.*

In that same evaluation the next level supervisor noted:

*P/C Joubert is a senior, experienced member in the detachment. He has demonstrated the ability to completed [sic] investigations thoroughly and professionally...I have seen an improvement in his enforcement activities and agree with [his Sgt] that this could be improved given his assignments. P/C Joubert is a quiet/calm person whom has a pleasant demeanour. I encourage P/C Joubert to be a leader in all aspects of his duties...*

In the PLDP covering work performance from 2015 to 2016<sup>9</sup>, P/C Joubert again received all “meets” and one “exceeds” performance standard, again for “teamwork.”

Comments within the evaluation were not all positive as some indicated an issue where P/C Joubert did not have his notes, DARs or Niche Task list up to date. He was spoken to by his supervisor and it was noted he had improved although continued monitoring was suggested. This evaluation also noted:

*To his credit, Marc is always willing to help out when required, and his personality makes him a very popular individual within the detachment and he is always a pleasure to be with.*

*To be fair, P/C Joubert has had a lot on his plate in terms of his personal life in the last two years. However...his performance at work could be simply be described as “satisfactory”...*

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<sup>8</sup> Exhibit 20, Tab 27: Performance and Development Plan 2015

<sup>9</sup> Exhibit 20, Tab 28: Performance and Development Plan 2016

His next level supervisor also expressed concerns including:

*...his performance is lackluster [sic] to say the least. As an ERT member I expect P/C Joubert is setting the standard for other members. This needs to improve going forward.*

The final PLDP<sup>10</sup> provided to the tribunal started out as less than positive in terms of work performance. His supervisor commented on P/C Joubert's willingness to help out various platoons when they are busy and that P/C Joubert was well-liked by officers and the community. The supervisor then went on to state that when deficiencies in performance are addressed with P/C Joubert, he does not argue, routinely acknowledges his deficiencies but inevitably reverts to his bad habits. Commendably his supervisor addressed P/C Joubert's poor performance by putting a work improvement plan (WIP) in place. In this plan, this supervisor also made great efforts to document expectations and steps to correct P/C Joubert's deficiencies.

The conclusion of the evaluation included the following supervisory comments:

*In short and a credit to P/C Joubert, he met the [work improvement goals]...with vigour and seriousness, His positive attitude, hard work ethic and reflective personality shined [sic] through.*

*...he is an engaged officer...a very capable and mature police officer, who clearly has the knowledge, skills and abilities to do the job...*

*Without question, being placed on a [WIP] is a difficult position for any officer with P/C Joubert's length of service and specialty position. Admirable, P/C Joubert accepted the situation with a marked degree of professionalism and confidence.*

The prosecution described P/C Joubert's employment record as acceptable but not to the point it should be considered mitigating. Although P/C Joubert has no prior history of misconduct, Mr. Diana submitted that it is expected police officers have no history of misconduct and overall this is a neutral factor. I disagree with counsel for the public complainant who described P/C Joubert's employment history as underwhelming with a trend downward and as a neutral factor at best. To the contrary, I find P/C Joubert's employment history is generally positive. The supervisor's comments overall indicate to me that P/C Joubert is an engaged and capable officer who has had some struggles but put forth a positive effort to overcome those struggles.

Police officers are human and can undergo personal challenges like anyone, that sometimes, ultimately, reflect in their work performance. I find P/C Joubert's personal circumstances may have impacted his work performance for a time period but his attitude

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<sup>10</sup> Exhibit 20, Tab 29: Performance and Development Plan 2017

towards addressing his poor performance is encouraging and lends some mitigation in this respect.

In totality, I find employment history a mildly mitigating consideration.

### *Ability to Reform or Rehabilitate*

The prosecution submitted that this factor was neutral at best, given that beyond the information in the ASoF there is no evidence of this officer's ability to reform or rehabilitate. The prosecution submitted that P/C Joubert was willing to mislead his former wife as well as members of the PSB. The prosecution clarified that this does not mean P/C Joubert will commit similar misconduct in the future; he has pleaded guilty but to date he has shown no remorse.

The prosecution provided *Robin and Saskatchewan Police Commission*<sup>11</sup>, a 2016 Saskatchewan Court of Appeal decision that has provided guidance in the discussion of rehabilitation including:

*The Commission took clear aim at the hearing officer's analysis of sentencing factors as an unreasonable overemphasis on rehabilitation. It emphasized that remedial measures are only a consideration where reasonable... In the face of a lengthy pattern of deceit, insubordination and breach of the duties of loyalty and integrity, character was in issue, not simply attitude... The Commission noted the hearing officer did not explain how these behavioural frailties might be remedied.*

The public complainant's counsel submitted that although a guilty plea is mitigating and an acceptance of responsibility, the tribunal should consider that this did not occur until the last possible moment. I concur with Mr. Fleury when he indicated there is a difference between trying to resolve a matter and accepting responsibility.

Defence counsel reminded the tribunal that P/C Joubert has pleaded guilty to a single charge of misconduct and the words "less than forthcoming" do not equate to deceit; nowhere in the Notice of Hearing nor the ASoF are the words insubordination or deceit. Mr. Girvin submitted that P/C Joubert has entered a guilty plea and that is a mitigating factor.

I find that is not always so clear cut. Guilty pleas are always mitigating but I need to consider the weight to be given. On appeal, defence counsel in *Kobayashi*<sup>12</sup> argued that the Hearing Officer failed to appreciate the significance of the officer's guilty plea and as

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<sup>11</sup> Exhibit 20, Tab 4: *Robin v Saskatchewan (Police Commission)*, [2016] SKCA 159, Paras 106-107

<sup>12</sup> Exhibit 20, Tab 7: *Kobayashi and Waterloo Regional Police Service*, [2015] ONCP, Paras 59-60

well, diminished the apology by the officer. It assists me as I consider the following comments of the Commission in that case:

*We disagree. The Hearing Officer stated that the letter of apology was mitigating and found it “laudable that the officers sought a resolution, and pled guilty.” The Hearing Officer did not err in principle, by finding that the level of mitigation was tempered by the circumstances in which the apology and guilty plea were given.*

*The Hearing Officer is entitled to consider the circumstances surrounding the guilty plea and apology when determining what level of mitigation, if any, to attribute to them. Surrounding circumstances include the timing of the apology and the strength of the case against the accused. A guilty plea or apology does not result in automatic and unqualified mitigation. See Nelles and Cobourg Police Service, (May 2, 2007, OCCPS) at para 107; Moore and York Regional Police Service, (March 26, 2001, OCCPS); Lalani v University of Toronto, 2014 ONSC 644 (CanLII) at para 9; R v Haly, 2012 ONSC 2302 (CanLII) at 33.*

Although it is difficult to comment on the strength of a particular case, I note that both ‘confidential informants’ were prepared to waive their privilege to testify before this tribunal. P/C Joubert’s plea came at the time of the scheduled hearing. While acknowledging that P/C Joubert is guilty of discreditable conduct not deceit, his lack of integrity and dishonest behaviour are now a matter of the public record. I have concerns that P/C Joubert’s misconduct may negatively impact his future role as a police officer.

The Commission’s comments in *Favretto*<sup>13</sup> have guided my analysis including:

*The key question which we need to consider [when considering dismissal] is whether or not [the officer] can be rehabilitated and reformed to the extent that he can be an asset to the OPP and the general community as a police officer. ...rehabilitation is a very important and significant factor when considering an appropriate penalty...*

*The community has a significant investment in every police officer and before an officer is dismissed, every attempt should be made to consider whether or not rehabilitation is possible. This is of significant importance when the subject officer has had a clear record and good performance evaluations. Unless the offence is so egregious and unmitigated, the opportunity to reform should be a significant consideration.*

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<sup>13</sup> Exhibit 20, Tab 2, *Favretto v Ontario Provincial Police*, [2002] CanLII 76732, page 15

Although I have already described P/C Joubert's misconduct as egregious, I find the jurisprudence assistive in outlining that I must balance that factor with other factors including an opportunity to reform. P/C Joubert has been a police officer since 2000; in his current role he is a constable attached to Prince Edward County detachment who also performs Emergency Response Team (ERT) duties when required. The OPP and the public have a significant investment in him in this role.

As defence counsel submitted, P/C Joubert was present before for the tribunal in working uniform and this provided notice that, contrary to the submissions of the counsel for the public complainant, the OPP does believe that P/C Joubert is of future usefulness to the organization. Mr. Girvin reminded the tribunal that P/C Joubert has been policing since 2000. He was a cadet with the Toronto Police Service and a constable with the Carleton Place Police Service before they were amalgamated with the OPP in 2003.

I give some mitigation for the officer's policing experience. However, I am mindful that given his police experience he would be fully cognizant of the potential negative ramifications for using the Confidential Informant Process for personal interests and in a manner contrary to the intended purpose of the program. I am encouraged by the comments of P/C Joubert's supervisor that he can learn from his mistakes. As I have commented, I do not characterize P/C Joubert's misconduct as a mistake however I find this officer's positive response to a WIP is indicative of his ability to reform.

P/C Joubert did plead guilty and a full hearing was not required. I give some mitigation in respect to P/C Joubert's guilty plea. P/C Joubert's employment history provides some assurances he can reform and he should be given the opportunity to do so.

P/C Joubert addressed the tribunal, apologizing and indicating remorse for his actions. He advised the tribunal that in 2015 his life turned upside down and remains that way. He shared that above all else he is a father and these are not actions he would normally engage in. P/C Joubert apologized to the public complainant for the adverse impact that his misconduct had on him and on the relationships of the mutual friends that they share. I give some mitigation for this apology and although it was offered late in the process, I felt it was sincere.

P/C Joubert shared with the tribunal that his personal life has been in upheaval since 2015. I appreciate that dissolution of one's family can have a significant impact on anyone, particularly when children are involved, as is the case here. I give mitigation to P/C Joubert in that he has continued to attend to his duties while facing a marital break-up as well as this misconduct matter.

P/C Joubert's unblemished disciplinary history, the plea and apologies as well as his attitude in the WIP, all bode well for his ability to reform. Although there may have been further mitigation had there been increased cooperation with the PSB investigators and an earlier plea, overall, I find this a mitigating factor to consider.

### *Specific and General Deterrence*

The prosecution submitted that P/C Joubert needs to understand that misconduct of this nature has consequences in respect to his future employment with the OPP. The comments in the officer's PLDPs do indicate that P/C Joubert is capable. A light penalty will not help the officer appreciate the significance of the misconduct. Mr. Fleury has submitted that dismissal is being sought as even a demotion will not communicate the message of specific and general deterrence.

In terms of general deterrence directed at all OPP officers, I agree with Mr. Diana and Mr. Fleury who submitted that other officers also need to understand there are significant consequences for this type of behaviour, making it clear that misconduct such as this will not be tolerated by the OPP or the public. A strong but appropriate penalty will be sufficient to prevent others from engaging in similar misconduct and remind all members the high standard expected of police officers. All OPP tribunal decisions are posted on the OPP intranet in a redacted format and can be viewed by all members thereby satisfying general deterrence.

I find a significant sanction is needed to impress upon P/C Joubert that integrity is a vital quality that police officers must possess and that important police tools are there to protect the greater public, not for personal interests of any officer. I find specific and general deterrence are both necessary and will be satisfied by a strong sanction.

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

A demotion to fourth class constable comes with a significant financial impact regardless of the imposed duration. Unlike dismissal, demotion as a sanction is not permanent and P/C Joubert will resume his status as first class constable in time. In light of the misconduct and in an effort to hold P/C Joubert appropriately accountable, some financial impact is to be expected. The financial impacts and the potential negative impacts on the reputation of P/C Joubert and his standing in the community also serve as specific deterrence. I find this a neutral consideration.

### *Consistency of Disposition*

The prosecution, defence counsel and counsel for the public complainant have all provided me with jurisprudence to guide me in determining the appropriate sanction in this matter. The importance of consistency cannot be overstated and similar misconduct should attract a similar sanction. Given this matter involved some unique circumstances this was a challenging process. I have reviewed all of the cases provided and despite that none were exactly on point I have outlined those I found most assistive, below.

Although I recognize I am dealing with a guilty plea and a finding of guilt in relation to discreditable conduct, I find the facts of this matter very troubling as they outline not just unprofessional but dishonest behaviour. I find P/C Joubert used OPP equipment, the Confidential Informant Process during work hours and he engaged other members of the public, all to achieve his personal agenda, to intentionally disparage the reputation of the public complainant. Then, in what can only be understood as an effort to evade disciplinary consequences, P/C Joubert chose to not cooperate with PSB investigators and engaged the Confidential Informant Process needlessly. P/C Joubert's lack of cooperation led to a further waste of resources as Provincial Operations Intelligence Bureau personnel initiated confidential informant files and PSB investigators needed to continue the investigation in order to determine the truth of the circumstances. Those circumstances did not become clear until P/C Joubert pleaded guilty and an ASoF was finalized.

I will examine the cases provided by each party starting with defence counsel submissions at the lower end of the range up to the public complainant's submission that dismissal was the appropriate sanction.

#### *Defence Counsel Cases Analyzed*

I concur with defence counsel that the facts and circumstances of this case are unique. I acknowledge that P/C Joubert's former spouse was not a complainant in this matter and that there is no evidence that P/C Joubert made direct contact with the public complainant. As Mr. Girvin noted, that is not to suggest there was no impact on the public complainant resulting from P/C Joubert's misconduct. I have considered the cases provided by defence counsel but I find this matter significantly more serious than the circumstances in those cases. Mr. Girvin provided the following cases that involve penalties involving forfeiture of hours, not demotion.

*Clark and Ontario Provincial Police*<sup>14</sup> involved a finding of guilt of an officer who made disparaging remarks to a woman in a court setting, after P/C Clark's friend was found guilty of sexual assault against her. The case provided was in relation to an appeal of the misconduct

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<sup>14</sup> Exhibit 24, Tab 3: Defence Book of Authorities, *Const. T.J. Clarke v Ontario Provincial Police*, [1995] OCPD

finding and the eight hour penalty ordered. The facts are disparate from this matter but they also involved a contentious hearing with conflicting evidence which is not the case here. Regardless, I find the matter at hand significantly more serious than *Clark*; I do not find this case assistive.

Likewise, I did not find the circumstances in *Mikilachki and Toronto Police Service*<sup>15</sup> sufficiently similar to be of assistance in my analysis. I do recognize the principle outlined in *Mikilachki*, specifically, the importance of not relying on unsworn evidence such as a victim impact statement. The evidence in the matter before me is contained within the ASoF. Mr. Brown's victim impact statement was not weighed in assessing the appropriate penalty, but it did help me to understand the negative impacts that P/C Joubert's misconduct had on him.

Although *Bryne and Ontario Provincial Police*<sup>16</sup> also involved a public complainant that is where the parallel ends. *Bryne* involved a full hearing of an officer who was engaged in secondary employment and was alleged to have made some negative remarks towards and used his position as an officer to influence a member of the public. I find P/C Joubert's misconduct more serious than *Bryne* and I did not find this matter assistive in my analysis.

*Kokot and Ontario Provincial Police*<sup>17</sup> involved a single incident of off-duty misconduct. The intoxicated officer while at a bar, lunged and yelled at bar-staff. The officer pleaded guilty and was found guilty of discreditable conduct, receiving a penalty of 24 hours. The matter at hand was not a single incident of an intoxicated officer but included a protracted and planned sequence of events encapsulating the misconduct. I find the current matter significantly more serious than *Kokot* and this case was not helpful in my analysis.

*Mitchell and Ontario Provincial Police*<sup>18</sup> involved a misleading notebook entry and an officer who entered his former spouse's house without her permission. A full hearing was held and the officer was found guilty of some, but not all of the particulars as outlined in the Notice of Hearing. Although I do not have the full case to understand the complete circumstances of that matter, clearly *Mitchell* involved serious misconduct. Given the matter at hand involved several members of the public as well as the former spouse of P/C Joubert and his contrived plan to deceive her, sending a flurry of unwanted message in one day, I find this matter overall more serious than *Mitchell*. The domestic-related nature of P/C Joubert's misconduct is only one aspect in the totality of the circumstances. Given the other aggravating factors involved, I do not find the fact that P/C Joubert's

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<sup>15</sup> Exhibit 24, Tab 5: *Const. L. Mikalachki v Toronto Police Service and J. Garrett*, [2004] OCCOPS

<sup>16</sup> Exhibit 24, Tab 6: *Const. M. Bryne v Ontario Provincial Police*, [2007] OCPC

<sup>17</sup> Exhibit 24, Tab 7: *Ontario Provincial Police v Const. J. Kokot*, [2011]

<sup>18</sup> Exhibit 24, Tab 8: *Ontario Provincial Police v Const. J. Mitchell*, [2012]



former spouse was not a complainant nor a party to this proceeding does much to lessen the seriousness of his misconduct.

*Rome and Ontario Provincial Police*<sup>19</sup> involved a sergeant who made derogatory comments in the presence of his shift members. He was also unprofessional in the presence of the public and towards members of his shift. Sergeant Rome pleaded guilty and received a 40 hour sanction. I find the circumstances of the *Rome* too disparate from the current matter to be of assistance.

I have considered *Pierce and Ontario Provincial Police*<sup>20</sup>, a matter involving an officer who was less than forthcoming in relation to driving his wife to the airport in a police vehicle without permission. *Pierce* did not have the aggravating circumstances involved in relation to the Confidential Informant Process. Although I acknowledge as submitted by defence counsel, that *Pierce* is a reminder that a Hearing Officer is bound by the facts before them, I find that case too disparate to be of assistance in determining the disposition for the current matter. There are aggravating circumstances in the current matter that are not present in *Pierce*.

Defence counsel also provided *Mancini and Courage and Niagara Regional Police*<sup>21</sup> and portrayed that matter as more egregious than the matter at hand. *Mancini* involved both on-duty and off-duty misconduct and the officer was counselled to stay away from the complainant on three occasions. *Mancini*, unlike the current matter underwent a full hearing after which the officer was found not guilty. The Commission in reviewing the public complainant's appeal substituted a finding of guilt for discreditable conduct and ordered a forfeiture of 25 hours. *Mancini* does not involve inappropriately engaging the Confidential Informant Process, one particular factor I find that heightens the seriousness of the current matter.

I have considered the submissions of defence counsel in respect to the misconduct was not police duty related misconduct. In this matter, given P/C Joubert engaged the Confidential Informant Process for his own purposes, on-duty versus off-duty misconduct is not the distinguishing feature in this matter. Considering the totality of the circumstances of P/C Joubert's misconduct, I find a forfeiture of hours, in the range of 30-60 hours, an unacceptable consideration for a sanction.

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<sup>19</sup> Exhibit 24, Tab 9: *Ontario Provincial Police v Sgt. S. Rome*, [2018]

<sup>20</sup> Exhibit 24, Tab 10: *Const. C. Pierce v Ontario Provincial Police*, [2017]

<sup>21</sup> Exhibit 24, Tab 4: *S. Mancini v Const. M. Courage (Niagara Regional Police Service)*, [2004] OCPC, para 15-16

### *Prosecution Cases Analyzed*

*Galloway and Innisfil Township Police Force*<sup>22</sup> ultimately involved an appeal of a penalty of dismissal. The officer had been found guilty of three counts of misconduct - neglect of duty, deceit and insubordination. The Commission varied the penalty to a demotion from first class to second class constable for a period of 12 months. P/C Galloway had left his patrol zone without permission, then made a false entry in his notebook in relation to this.

Similar to the matter at hand, P/C Galloway was less than cooperative with the PSB investigators. P/C Galloway's additional charges arose from the first offence which constituted more serious offences than the original offence.<sup>23</sup> Although the tribunal is considering one finding of guilt of discreditable conduct, the ASoF clarifies the steps taken by P/C Joubert to hide his original misconduct and this renders the totality of the circumstances more serious than if it had ended with the fabrication of texts. Unlike P/C Joubert who outright provided false information, P/C Galloway refused to provide a statement. Although P/C Joubert has been found guilty of a single count of discreditable conduct, this matter involved a number of deliberate and distinct events, over a significant period of time, which had elements of failing to comply with lawful orders, and being untruthful on a number of occasions. Overall, with the additional factors of the Confidential Informant Process and the involvement of members of the public, I find P/C Joubert's conduct to be more serious.

*Mackie and Walkerton Police Association*<sup>24</sup> is a case from 1973 involving an officer who was at home and made a false entry in his notebook. After pleading to neglect of duty and deceit the officer was dismissed. The Commission found this sanction was too severe and amended the penalty to a reduction in rank to second class constable. Although the misconduct in *Mackie* was significantly less serious than in the current matter, the case provided some assistive comments.

*The Commission takes a serious view of the actions of [P/C Mackie] because the Chief of Police, to function properly, has to have the utmost faith in the conduct of the members of his force...*

I agree with the prosecution who noted the OPP needs to be able to trust the word of its officers. P/C Joubert breached this trust when he failed to cooperate with PSB investigators, leading to two people being signed up inappropriately under the Confidential Informant Process. I find P/C Joubert's matter significantly more serious than the circumstances in *Mackie* not only because the former involved a course of conduct as

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<sup>22</sup> Exhibit 20, Tab 18: *Constable Galloway and Innisfil Township Police Force*, [1987] CanLII 6348 (ON CPC)

<sup>23</sup> Exhibit 20, Tab 18: *Constable Galloway and Innisfil Township Police Force*, [1987] CanLII 6348 (ON CPC), Para 12

<sup>24</sup> Exhibit 20, Tab 19: *Mackie v Walkerton Police Assn*, [1973], DD OCCPS, Pgs 2-4

opposed to a single incident but for the other aggravating circumstances I have previously outlined.

*Costa and Toronto Police Service*<sup>25</sup> involved a third class constable who provided a sworn KGB statement to York Regional Police (YRP) officers indicating he did not know the whereabouts of his brother, who was a person of interest in a homicide. P/C Costa did in fact know the location of his brother and the morning following the statement, delivered a letter to the YRP officers admitting the information he had provided was not accurate and he had in fact purchased a plane ticket for his brother and drove him to the airport. The officer had pleaded guilty to deceit and was dismissed. The Commission varied the penalty to a 30 day suspension without pay followed by demotion to rank of fourth class constable for two years.

I find *Costa* distinct from the current matter in that the officer came forward with the truth within a matter of hours after his statement to YRP officers. I agree with the Commission's comments that the immediate remorse shows a potential for rehabilitation. P/C Costa's conduct in this regard is distinguishable from P/C Joubert's conduct. From the evidence as outlined in the ASoF, although he was provided many opportunities to come forth with the truth, P/C Joubert maintained his ruse of the false messages and the need for confidential informants to be signed, until sometime just prior to his plea. This matter was set for a hearing when P/C Joubert entered his guilty plea. Although I acknowledge he is entitled to a full hearing, it is unfortunate he did not come forth sooner as it may have provided further mitigation to his plea.

Both cases involve the personal lives of the officers. P/C Costa gave a sworn statement to another police service while he was off duty. P/C Joubert sent false texts to his former spouse and made untrue statements to PSB investigators who were in the course of investigating his on-duty and off-duty misconduct. I have also considered that P/C Costa was a relatively new police officer while P/C Joubert is an experienced member. P/C Joubert deserves some mitigation for his length of service but on the other hand one would expect someone of his tenure to conduct oneself differently when faced with allegations of misconduct. I agree with the prosecution in that P/C Joubert's statements were not sworn statements, although in my mind, the expectation is, that a police officer tells the truth when he is being interviewed by police, either in an internal capacity such as PSB or as a result of being interviewed by another police service. The public would expect police officers to tell the truth in the course of an investigation, whether they were on or off-duty; whether they had a personal involvement or not.

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<sup>25</sup> Exhibit 20, Tab 20: *Costa v Toronto Police Service*, [2017] ONCPC 14

In *Costa*, the Commission relied on *Nesbeth and Windsor Police Service*<sup>26</sup> as a similar misconduct, and made note of the distinctions, particularly a single act versus “a pattern of deceit and dishonesty directed towards avoiding responsibility is a significant aggravating factor.” P/C Nesbeth was dismissed from the Windsor Police Service following a complaint from the Canada Border Services Agency (CBSA) in relation to her conduct at the border; she was disrespectful, unprofessional and deceitful in relation to items being brought across the border. A lengthy hearing was held in *Nesbeth* and the Commission in *Costa* noted:

*That officer [P/C Nesbeth] maintained her denials for years through the hearing after which she was dismissed from the service. That “pattern of deceit and dishonesty” led to the conviction and dismissal. The facts of Nesbeth are markedly different from those in this matter.*<sup>27</sup>

*The facts of the case before us [Costa] are unique. Had the appellant not, within a matter of hours, corrected his deceit, or if the homicide investigation had been impeded in any way, his dismissal would have been within the range of reasonable penalties.*<sup>28</sup>

Like P/C Joubert, P/C Nesbeth was an experienced police officer. Both matters involved not one single act of untruthfulness but a pattern of behaviour. Considering the Commission’s comments above, I note that P/C Joubert did not come forth immediately but unlike in *Nesbeth* it did not continue through to a full hearing. *Nesbeth* outlined some circumstances I find would be aggravating including a threat directed at CBSA officers, even engaging other officers in her “apparent desire to exact some sort of revenge.” There were no such threats or indication of threats in this matter. I note the comments of defence counsel who outlined there was never direct contact between the public complainant and P/C Joubert.

Upon reviewing *Nesbeth*, I agree with the prosecution who noted there was a pattern of dishonesty similar to the current matter and that merits a significant penalty. The Commission’s comments in *Nesbeth*<sup>29</sup> are important to keep in mind:

*Police officers are not held to standards of perfection. They will make errors of judgment and make mistakes – some of which will be serious – which will result in dismissal. However, because of their unique role in the administration of justice and the critical importance in maintaining public confidence in policing, a consistent pattern of deceit and dishonesty directed towards avoiding responsibility is a significant aggravating factor [emphasis added]. Undermining the efforts of another law enforcement agency*

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<sup>26</sup> Exhibit 20, Tab 21: *Nesbeth and Windsor Police Service*, [2015] ONCPC

<sup>27</sup> Exhibit 20, Tab 20: *Costa v Toronto Police Service*, [2017] ONCPC 14, Para 64

<sup>28</sup> Exhibit 20, Tab 20: *Costa v Toronto Police Service*, [2017] ONCPC 14, Para 70

<sup>29</sup> Exhibit 20, Tab 21: *Nesbeth and Windsor Police Service*, [2015] ONCPC, Para 32

*to conduct its mandate, as in this case, and the willingness of the Appellant to use her office to further her revenge on CBSA officers should also rightly be considered as significant aggravating factors.*

This commentary highlights the importance of the public interest and public confidence, and how a pattern of dishonesty to evade responsibility is a significant aggravating factor. This tells me dismissal may have been an appropriate penalty had it not been for P/C Joubert's guilty plea and some other mitigating factors that exist here but may not have existed in *Nesbeth*.

*Gregg and Midland Police Service*<sup>30</sup> involved neglect of duty, insubordination, discreditable conduct, and deceit charges. The original misconduct stemmed from P/C Gregg's failure to conduct a criminal investigation, complete an occurrence report or make notes on the matter, followed by providing inaccurate information to her sergeant and her failure to answer questions of the PSB investigators.

The Commission found P/C Gregg's behaviour concerning and serious misconduct. The Commission considered dismissal but took into account the situation and whether a superior officer did not provide the assistance the Commission felt he should have. The Hearing Officer had noted P/C Gregg had a positive career without an indication of previous discipline and had been put in a difficult situation given the nature of the investigation. Although *Gregg* and the current matter both involve a lack of cooperation with PSB investigators, unlike in *Gregg* there was a plea in this matter. Both matters involve experienced police officers with employment history in *Gregg*, possibly more mitigating as the Hearing Officer wrote, "[P/C Gregg] is obviously a very energetic and capable officer..." P/C Gregg received a one year demotion to second class constable.

I found *Gregg* assistive in my analysis as there are some similar factors involved in the current matter as noted above. Despite his plea, P/C Joubert's misconduct involved several aggravating factors that amplify the seriousness. P/C Joubert's misconduct involved using the Confidential Informant Process for his own personal interests. This misconduct was not in the form of an error or as a result of a failure to properly investigate a matter while on duty. P/C Joubert met with his 'source' while on duty and set in motion, a plan to discredit the public complainant. When it became clear the manufactured texts would likely be discovered, P/C Joubert made untrue statements to PSB investigators and then engaged the Confidential Information Process. In what I find was an attempt to conceal his earlier misconduct, through his conduct, P/C Joubert clearly put his own interests before the public interest; his misconduct

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<sup>30</sup> Exhibit 20, Tab 23: *Gregg and Midland Police Service*, [2001] CanLII 56735

is more serious than the misconduct in *Gregg*. Despite this, the Commission in *Gregg* reminds us:

*The dismissal of an officer is the most serious punishment that can be imposed in a disciplinary proceeding. This punishment must be reserved for those cases in which the conduct is so reprehensible that the officer is no longer useful to the service.*<sup>31</sup>

The facts in *Mahoney-Bruer*<sup>32</sup> are distinct from the current matter but both matters involved falsifying some sort of record – Sgt. Mahoney-Bruer falsified *Highway Traffic Act* offence notices and notes and P/C Joubert falsified text messages. Both officers misled PSB investigators. Each matter involves a breach of the public trust but I find aspects in the current matter add to the seriousness. On several occasions, when asked by PSB investigators, P/C Joubert chose not to identify ‘his source(s)’ of the false texts. He then set about to cover his tracks by engaging the Confidential Informant Process. According to the ASoF, neither of the two ‘sources’ asked for the information or their identity to remain confidential.

Sgt. Mahoney-Bruer was charged criminally and acquitted. Following a *Police Services Act* hearing he was convicted of one count of deceit and demoted four levels to third class constable. After an appeal to OCPC, the penalty was varied to a demotion to second class constable for six months and then to remain at first class constable after that time. This was a permanent demotion that allowed for the officer to enter the promotional process in the future. The Commission outlined that the officer’s rank was an aggravating factor but he was an experienced, 20 year officer with an unblemished career, a mitigating factor.

I agree with the prosecution who outlined the current matter was more egregious than the circumstances in *Mahoney-Bruer*. Police officers are given expansive powers in order to effectively undertake their essential duties, most importantly, to ensure community safety and security. The Confidential Informant Process is an important tool for police officers and when it is manipulated for personal reasons, it not only undermines the trust in the Confidential Informant Process itself but the public trust as well. The Confidential Informant Process is set out in policy and protected through case law.

The sanctity and the associated liability of informer privilege should be paramount in every police officer’s mind. Misuse of this program, motivated by self-interest, may have the effect of minimizing the importance of such a program while increasing organizational risk. I find any police officer would understand the potential damaging impacts of P/C Joubert’s conduct may have on the Confidential Informant Process, not only for the OPP but for all police services that use and access this same tool.

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<sup>31</sup> Exhibit 20, Tab 23: *Gregg and Midland Police Service*, [2001] CanLII 56735, para 93

<sup>32</sup> Exhibit 20, Tab 24: *Mahoney-Bruer v Ontario Provincial Police*, [2018] ONCPC

To serve his own needs, P/C Joubert placed an important program at risk and I find this unconscionable. The OPP has made changes to this program, ostensibly to ensure such manipulation is not permitted in the future. Although the ramifications may not be appreciated, I find a fully informed member of the public would be appalled to learn an officer used this tool to serve his own personal interests.

Mr. Diana submitted that I should consider the nature of the interactions in this misconduct matter and referenced *Orser and Ontario Provincial Police*<sup>33</sup>, not for the circumstances of the matter but to address the issue of unwanted communication. In *Orser*<sup>34</sup>, the Commission stated:

*Technology has opened up new avenues for bullying, shaming, humiliation and abuse.*

P/C Joubert, likely as part of his ERT duties, was entrusted with an OPP-issued cellphone. It is not the fact he was using an OPP cellphone to communicate with his ex-wife, rather it is the volume and false content of unwanted communication that is concerning. The prosecution stressed that this is something the OPP may wish to monitor in the future. It is unfortunate that it may be necessary to monitor all officers for errant behaviour using OPP assets, because someone like P/C Joubert felt entitled to facilitate his unwanted texts to his ex-wife through this mode of communication. The public should be able to trust that police officers will not use work equipment in this manner. The public confidence and liability implications of using OPP technology to send unwanted texts and emails is evident. I agree with Mr. Diana who noted it is invasive, intrusive and inappropriate for members of the OPP to utilize OPP technology in this manner.

#### *Public Complainant Cases Analyzed*

Mr. Fleury, counsel for the public complainant, while acknowledging that there was a high bar test for dismissal, submitted that dismissal within seven days was the appropriate penalty to be imposed. He urged the tribunal to consider and weigh heavily, the seriousness of the misconduct. He concurred with the prosecution that although this matter involved a finding of guilt for discreditable conduct, the ASoF is representative of behaviour involving insubordination and deceit.

Mr Fleury submitted that the aggravating circumstances in this case that warrant dismissal come about after the commencement of the misconduct investigation when P/C Joubert provided information in his duty report that was not factual and then engaged the Confidential Informant Process to evade responsibility. Mr. Fleury submitted that the case law is clear that misconduct involving a one-off lie is distinguishable from a pattern of

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<sup>33</sup> Exhibit 20, Tab 25: *Orser v Ontario Provincial Police*, [2018] ONCPC 7 Para 58

deceitful conduct that exists in this case. Mr. Fleury provided the following jurisprudence to support his submissions.

*Karklins and Toronto Police Service* involved an appeal of a penalty of resignation within seven days or face dismissal. P/C Karklins' misconduct involved on-duty conduct wherein as a result of P/C Karlin's failure to serve traffic tickets and a Notice of Suspension, a member of the public was wrongfully convicted and incarcerated for five days. The Divisional Court upheld the officer's conviction and dismissal noting the standard of review is reasonableness. The court found that although:

*Some of the language used by the Hearing Officer in describing the test for dismissal was not ideal. However, the essence of his decision demonstrates that he understood and applied the correct test. The Commission dealt with this issue appropriately in its Reasons.*

Mr. Fleury submitted that P/C Joubert's conduct paralleled P/C Karklins' as both involved the failure of the officers to take ownership for their respective wrongdoing; the behaviour was not spontaneous but continued over a long period of time up until the date of the hearing. Although I was not provided the Hearing Officer's full analysis in *Karklins*, I find the circumstances are distinct from the current matter. Regardless, I acknowledge the words of the court in *Karklins*:

*... that dismissal "is reserved for the most egregious cases where the potential for rehabilitation is poor and the usefulness of the officer to the service is effectively spent." The Commission also commented that "there may well be singular acts of misconduct that strike to the heart of the employment relationship and effectively exhaust an individual's potential usefulness to perform the key duties of a police officer. Such singular acts may raise obvious concerns with respect to character."<sup>35</sup>*

*Karklins* stresses the importance of assessing the particular circumstances of the misconduct in question including the egregiousness of the misconduct, the usefulness and rehabilitative assets of the officer, to determine the most suitable penalty within the range identified. In *Karklins*, the court also commented that:

*Although a lesser penalty may also arguably fall within this range, that is not a sufficient reason in itself to interfere with either the Hearing Officer's or the Commission's decision.<sup>36</sup>*

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<sup>35</sup> Exhibit 23, Tab 1: Public Complainant Book of Authorities - *Constable Karklins v The Chief of Police* – Toronto, [2010] ONSC 747, Para 16

<sup>36</sup> Exhibit 23, Tab 1: *Constable Karklins v The Chief of Police* – Toronto, [2010] ONSC 747, Para 25



*Shorey and Belleville Police Service*<sup>37</sup> was submitted although counsel noted the facts in that case were dissimilar to the matter at hand. Mr. Fleury however stressed that the ongoing nature of the misconduct in this matter should be considered by the tribunal. The Commission's comments in *Shorey* provide assistance:

*The Hearing Officer viewed the offences committed by the appellant as egregious. In our view, he was rightly troubled by the extended period over which the harassment and unauthorized searches took place. The Hearing Officer viewed the repeated and ongoing misconduct as showing deliberation. He contrasted the nature of the appellant's misconduct with situations where an officer has made a single error in judgement. The Hearing Officer felt that the ongoing and deliberate nature of the misconduct elevated its seriousness and warranted greater punishment. We agree.*

*Husseini and York Police Service*<sup>38</sup> involved health benefit frauds committed by P/C Husseini; she was dismissed. The Commission upheld the imposed dismissal. Apart from the fact both matters involved falsifying some sort of 'record', *Husseini* is not assistive as the facts as disparate from P/C Joubert's misconduct. Given the facts as noted in the Commission decision, I do not agree that *Husseini* is necessarily less serious than the matter at hand however I find both matters are elevated in seriousness as the officers involved took efforts to attempt to cover up their actions. The Commission's comments are helpful including:

*If one were to blindly apply the consistency of penalty principle, the importance of which we acknowledge, police officers will have one free pass to falsely claiming benefits then trying to cover-up their actions by forging documents without the threat of dismissal. That would erode public confidence in the discipline process.*

## **Conclusion**

As noted in the prosecution's submissions, the facts in this matter as a whole, as outlined in the ASoF, include the elements of discreditable conduct, insubordination and deceit. I agree with the prosecution who submitted that collectively, the facts in this matter add up to behaviour that should not be tolerated with a sanction any lower than a demotion. This is certainly not reflective of a case where a forfeiture of hours would apply.

I find this matter has very unique circumstances to be considered. The seriousness of this misconduct was elevated when this officer utilized a very important investigative tool essential to enhance public safety, for his personal, self-serving purposes. The police community and the court are very clear on the sanctity of the Confidential Informant Process and based on the ASoF, I can come to no other conclusion except that P/C

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<sup>37</sup> Exhibit 23, Tab 2: *Shorey and Belleville Police Service*, [2017] CanLII 53072 ONCPC, Para 45

<sup>38</sup> Exhibit 23, Tab 3: *Husseini and York Regional Police Service*, [2017] CanLII 4791 ONCPC Para 51

Joubert engaged this process solely in an attempt to ‘cover his tracks’ in relation to the fabricated text messages and to evade disciplinary consequences.

I am mindful of Mr. Girvin’s reference to *Thow v. British Columbia Securities Commission*<sup>39</sup> wherein the British Columbia Court of Appeal outlined “the legal inability of an administrative tribunal to impose a purely retributive or denunciatory penalty.” Mr. Girvin portrayed the penalties proposed by the prosecution and the public complainant as retributory. Defence counsel submitted that the penalty proposals provided by the other parties do not comport with one of the fundamental considerations of penalty, consistency. I do not concur with defence counsel that all of the cases placed before me by the prosecution and the public complainant are more serious than the current matter. I do not agree given the prosecution and public complainant cases are more similar than the defence cases; I find a significant demotion or dismissal are within the range of the appropriate penalties.

I have considered all of the evidence before me, guided by the submissions of counsel of the parties involved; I find this extremely serious misconduct. The jurisprudence highlights the importance of the public trust and highlights ongoing or deliberate misconduct warrants greater punishment. On the other hand, case law stresses the importance of considering the mitigating factors of rehabilitation, remorse and the OPP and community investment in the officer.

I find P/C Joubert’s conduct in this matter fell far short of the expectations of the community and of the OPP. Given my analysis of the cases above, I find the range for an appropriate penalty in this matter involves a significant period of demotion at the lower end up to a dismissal.

#### *Demotion or Dismissal*

I have to consider whether P/C Joubert still has usefulness as a police officer or whether his dismissal is necessary to protect the public interest and the reputation of the OPP. In *Robin*, the Court of Appeal commented:

*An officer must be trusted at all times, including circumstances where the officer is under pressure and has interests that stand in conflict to his duties: “The integrity and reputation of a police officer is of paramount importance to a police service, the public and the criminal justice system.” (Commission Decision at para 115)*

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<sup>39</sup> Exhibit 24, Tab 2: Ceysens – Principles Governing the Determination of a Disposition, *Thow v. British Columbia Securities Commission*, 2009 BCCA 46

*Certainly, on the issue of rehabilitation, it is difficult to comprehend how the appellant could be given another chance not to be deceitful, when deceit is by its nature, very difficult to detect.*

Although this was a Saskatchewan case, it included many of the factors that are present in this case. In both cases, the respondent officers engaged in deliberate acts of deception for their own personal purposes and then compounded the original misconduct by actively misleading investigators in order to conceal the misconduct. In *Robin*, the officer was ultimately dismissed after a hearing and additionally there was a finding by the Hearing Officer that the officer had “demonstrated a lack of candour even throughout the hearing itself.” Given the current matter involved a plea by the officer and no hearing resulted, this aggravating factor is not present here.

I have carefully considered the jurisprudence, balancing the interests of all of those involved including the public complainant, the OPP and importantly, the respondent officer. Any disposition imposed must be remedial not punitive and there is the presumption of the least onerous disposition. If a sanction, less than dismissal, would maintain the public confidence in the police discipline process then such a sanction should be ordered. If it were not for P/C Joubert’s acceptance of responsibility before this tribunal, even though it was on the day of the scheduled hearing, his dismissal may have been ordered. The Commission’s comments in *Favretto* including the importance of rehabilitation have guided me. Despite my concerns about whether or not P/C Joubert recognized the seriousness of his misconduct, his plea provided me a glimmer of hope that he can be rehabilitated.

P/C Joubert is an experienced police officer who has no prior history of formal discipline. The community and the OPP has a significant investment in him. Considering the personal trials he was experiencing at the time, I find his work record is generally positive. His employment records portray an employee who had the ability to contribute positively in the work place but was clearly undergoing some personal issues. This is not to excuse his misconduct in relation to falsifying the texts or his lack of cooperation with PSB investigators. Nor does it excuse his intentional, needless engagement of the Confidential Informant Process. Overall, I find P/C Joubert has the ability to reform and move past this misconduct matter and re-establish a positive reputation and work history.

I find P/C Joubert’s misconduct was a serious breach of the public confidence. His misconduct not only had the potential to damage the reputation of the public complainant but was clearly contrary to societal interests. The Court of Appeal in *Robin* highlighted:

*It is difficult to understand how public interest is not undermined, when a [complaints] investigator charged with the responsibility of delving into public interest concerns is repeatedly misled. Reputations might well have been irrevocably damaged by*

*falsehoods...Making false statements, which are likely to injure reputation, has always been regarded as a serious matter and harmful to societal interests, not merely the individuals affected: see Hill and Church of Scientology of Toronto, [1995] 2 SCR 1130.*

I find the public interest in this matter can be satisfied by imposing a demotion and not a dismissal. I found *Gregg, Mahoney–Bruer* and *Costa* most assistive in considering the appropriate length and level of demotion. In *Gregg*, upon appeal, the officer received a one year demotion to second class constable. I have already outlined my analysis and my finding that the current matter is more serious than *Gregg*. Sgt. Mahoney-Bruer, after appeal received a demotion to second class constable for six months then to remain permanently demoted to first class constable. Although in *Mahoney-Bruer* there was the opportunity to enter the promotional process, effectively this involved a permanent demotion. *Mahoney-Bruer* did not contain the aggravating factor of utilizing the Confidential Informant Process for the personal interests of the officer.

*Costa*<sup>40</sup> involved a penalty of a 30 day suspension without pay and a demotion to fourth class constable for two years. P/C Costa came forward with the truth, the morning following his interview with YRP officers unlike in the current matter. Although dismissal was a consideration, the Commission recognized the fact P/C Costa came forward with the truth within hours noting:

*Occurring as it did so quickly after the initial misconduct and prior to any charge being laid it must be seen as a genuine effort on the part of the appellant to atone for his initial misconduct. While providing a false statement under oath is serious, a penalty of dismissal in a matter like this could operate as a disincentive for police officers in future matters to correct their misconduct as soon as possible.*

The current matter cannot be characterized as P/C Joubert coming forward to correct his misconduct as soon as possible. I find a demotion to fourth class constable is the starting point for a suitable sanction. I find P/C Joubert's misconduct egregious and maintenance of the public confidence requires a significant sanction.

Given my concerns in relation to integrity which reflect poorly on P/C Joubert's character, I do not find, as noted by defence counsel that there are no rehabilitative concerns. I am very hopeful that P/C Joubert learns from this misconduct and moves forward in a positive manner. The public interest is also achieved in that general deterrence will be served as other officers become aware of this decision and that any attempts to manipulate police processes for their own interests will not be tolerated by the OPP. I am aware this is a significant penalty with accompanying financial impacts on P/C Joubert and his family. Unlike dismissal there is an

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<sup>40</sup> Exhibit 20, Tab 20: *Costa v Toronto Police Service*, [2017] ONCPC 14 at Paras70-71, 74

end date in sight for any demotion. P/C Joubert must remain cognizant that should he face similar misconduct in the future involving issues of integrity, dismissal as a sanction is not out of the question.

Despite my finding that there is some mitigation in P/C Joubert's ability to rehabilitate and considering his tenure and employment history, I find the involvement of the Confidential Informant Process and the integrity concerns I have already expressed, pushes this matter to a lengthier demotion. I find an 18 month demotion to fourth class constable will satisfy the significant public interest and, given the totality of the circumstances of this misconduct is fair to the officer. Following that 18 month period, P/C Joubert will move through the gradations to ultimately return to the rank of first class constable. This order is not retributory in nature but was made after careful contemplation, weighing all considerations.

#### *Anonymity of P/C Joubert in Written Decision*

Although it was not subject of a formal motion, defence counsel requested the officer's name in the decision to be anonymized. There was no evidence presented to support this request.

I have considered whether the officer's name in this matter should be anonymized. The purpose of police disciplinary hearings is to increase public confidence in police services by holding officers accountable in an open, transparent process. The Ontario Court of Appeal in *Browne v Ontario (Civilian Commission on Police Services)*<sup>41</sup> clarified:

*The legislative purpose is demonstrably to increase public confidence in the provision of police services, including the processing of public complaints. That confidence is further protected legislatively by assigning the Commission, under 72(8), responsibility for reviewing the decision of a chief of police regarding complaints from the public.*

Regardless, there may be times when anonymity is prudent. One such example might involve personal sensitive information of the respondent officer or the public complainant.

The *Statutory Powers Procedure Act*, Section 9<sup>42</sup> outlines:

*9. (1) An oral hearing shall be open to the public except where the tribunal is of the opinion that,*  
*(a) matters involving public security may be disclosed; or*  
*(b) intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open*

<sup>41</sup> Exhibit 20, Tab 1 - *Browne v Ontario* (Civilian Commission on Police Services)

<sup>42</sup> Exhibit 20, Tab 8 – *Statutory Powers Procedure Act*, Section 9


*to the public, in which case the tribunal may hold the hearing in the absence of the public.*

I understand the importance of maintaining the public confidence in matters of police discipline and any decision in respect to anonymizing a decision is not made lightly. I have endeavoured to balance the public interest component in this matter while considering the interests of the officer. I have no evidentiary or legal justification in this case that would require anonymity of P/C Joubert's name. This is a matter of public record. When posting on the OPP intranet, the officer's name will be redacted in accordance with the current agreement.

#### **PART IV: DISPOSITION**

I order P/C Joubert demoted to fourth class constable for 18 months followed by the established progression through the constable rank gradations, incumbent on satisfactory evaluations, meeting or exceeding standards, to ultimately return to the rank of first class constable. This order is made pursuant to section 85(1)(c) of the *Police Services Act*, R.S.O. 1990.

2020-01-31

X 

Signed by: Lisa Taylor LS (M)

Lisa Taylor  
2020  
Superintendent  
OPP Adjudicator

Date: January 31, 2020

## Appendix A

The following exhibits were tendered during the hearing:

- Exhibit 1: Delegation - Adjudicator Superintendent Bickerton (Comm. Hawkes)
- Exhibit 2: Designation - Prosecutor, Inspector Young
- Exhibit 3: Designation - Prosecutor, All Officers
- Exhibit 4: Delegation - Adjudicator Superintendent Walton
- Exhibit 5: Designation - Prosecutor, Inspector Doonan
- Exhibit 6: Designation - Prosecutor, Inspector Tovell
- Exhibit 7: Delegation - Adjudicator Superintendent Taylor
- Exhibit 8: Delegation - Adjudicator Superintendent Taylor (A/Comm. Blair)
- Exhibit 9: Designation - Prosecutor, Inspector Young
- Exhibit 10: Designation - Prosecutor, All Officers
- Exhibit 11: Designation - Prosecutor, Inspector Doonan
- Exhibit 12: Designation - Prosecutor, Inspector Tovell
- Exhibit 13: Delegation - Adjudicator Superintendent Bickerton
- Exhibit 14: Delegation - Adjudicator Superintendent Taylor (A/Comm. Couture)
- Exhibit 15: Designation - Prosecutor, Inspector Young
- Exhibit 16: Designation - Prosecutor, All Officers
- Exhibit 17: Delegation - Adjudicator Superintendent Taylor (Comm. Carrique)
- Exhibit 18: Designation - Prosecutor, Mr. Chris Diana
- Exhibit 19: Agreed Statement of Facts
- Exhibit 20: Prosecution Book of Authorities
  - Tab 1: *Brown v Ontario Civilian Commission*, [2001] O.J. Para 66-67
  - Tab 2: *Favretto v Ontario Provincial Police*, [2002] CanLII 76732 Pgs 13-15
  - Tab 3: *Clough v Peel Regional Police Service*, [2014] ONCPC 12 at Paras 103-104, 107, 118
  - Tab 4: *Robin v Saskatchewan (Police Commission)*, [2016] SKCA 159 at Paras 106-107, 114, 116-117, 129
  - Tab 5: *Lapointe v Timmins Police Services*, [Apr 22 2016] at Pgs 18-19, 23
  - Tab 6: *Bovell v Toronto Police Service*, [2012] ONCPC 10 at Paras 51, 76, 81
  - Tab 7: *Kobayashi and Waterloo Regional Police Service*, [2015] ONCP at Paras 59-60
  - Tab 8: Section 9 – *Statutory Powers & Procedure Act*
  - Tab 9: Section 18 – OIPRD Rules of Procedure
  - Tab 10: *R v 974649 Ontario Inc.*, [2001] 3 S.C.R. 575 at Paras 70-71

- Tab 11: *ATCO Gas & Pipelines Ltd v Alberta (Energy & Utilities Board)*, [2006] 1 S.C.R. 140 at Para 51
- Tab 12: *Doe v Baker*, [2018] ONSC 6240 at Paras 18, 32-34, 36-37
- Tab 13: *Independent Police Oversight Review, Report of Justice Tulloch*, Pgs 177-181, 185-186, 197
- Tab 14: *Toronto Star v AG Ontario*, [2018] ONSC 2586 at Paras 3-6, 54-56
- Tab 15: *Law Society of Upper Canada v Nicolas Xynnis*, [2014] ONLSAP 9 at Paras 10-16, 26, 30-34, 40
- Tab 16: *Law Society of Upper Canada v Roy Francis Dmello*, [2011] ONLSHP 114 CanLII at Paras 5-6, 9-12
- Tab 17: *Law Society of Upper Canada v Farant*, [2014] ONLSTH 20 at Paras 18-27
- Tab 18: *Constable Bryan Gallowa and the Innisfil Township Police Force*, [1987] CanLII 6348 (ON CPC) at Paras 1,12-15)
- Tab 19: *Mackie v Walkerton Police Assn*, [1973], DD OCCPS at Pgs 2-4
- Tab 20: *Costa v Toronto Police Service*, [2017] ONCPC 14 at Paras 60-61, 64, 70-71, 74
- Tab 21: *Nesbeth and Windsor Police Service*, [2015] ONCPC 23 at Paras 31-34, 38, 43,45
- Tab 22: *Bargh v Ottawa Police Service*, [2011] ONCPC 3 at Pgs 19. 21-22
- Tab 23: *Gregg and Midland Police Service*, [2001] CanLII 56735 at Paras 80-83, 91-93, 95, 102- 104- 106-107
- Tab 24: *Mahoney-Bruer v Ontario Provincial Police*, [2018] ONCPC 13 Paras 72-73
- Tab 25: *Orser v Ontario Provincial Police*, [2018] ONCPC 7 Para 58
- Tab 26: Career Profile
- Tab 27: Performance and Development Plan 2015
- Tab 28: Performance and Development Plan 2016
- Tab 29: Performance and Development Plan 2017
- Exhibit 21: Prosecution - Notice seeking demotion
- Exhibit 22: Public Complainant – Notice seeking dismissal
- Exhibit 23: Public Complainant Book of Authorities
  - Tab 1: *Constable Karklins v The Chief of Police – Toronto*, [2010] ONSC 747
  - Tab 2: *Shorey and Belleville Police Service*, [2017] CanLII 53072 ONCPC
  - Tab 3: *Husseini and York Regional Police Service*, [2017] CanLII 4791 ONCPC
  - Tab 4: *Nesbeth and Windsor Police Service*, [2015] ONCPC 23
  - Tab 5: *David Holder v Ontario Provincial Police*, [2002] CanLII 63874 ONCPC
  - Tab 6: *Statutory Powers & Procedure Act*, [1990] C S22, s9
  - Tab 7: *Ottawa (City) Commissioners of Police v Lalande*, [1986] 24 Admin LR 145
  - Tab 8: *Ottawa-Carleton Regional Police Services Board v Ottawa-Carleton Regional Police Assn*, [1999] OLAA No 771
  - Tab 9: *Canadian Broadcasting Corp v Summerside (City)*, [1999] 170 DLR (4<sup>th</sup>) 731



- Exhibit 24: Defence Book of Authorities
  - Tab 1: Letter to OPPA President from Commissioner Carrique (17 May 2019)
  - Tab 2: The Police Discipline Process, 5.10
  - Tab 3: *Const. T.J. Clarke v Ontario Provincial Police*, [1995] OCPC
  - Tab 4: *S. Mancini v Const. M. Courage (Niagara Regional Police Service)*, [2004] OCPC
  - Tab 5: *Const. L. Mikalachki v Toronto Police Service and J. Garrett*, [2004] OCCOPS
  - Tab 6: *Const. M. Bryne v Ontario Provincial Police*, [2007] OCPC
  - Tab 7: *Ontario Provincial Police v Const. J. Kokot*, [2011]
  - Tab 8: *Ontario Provincial Police v Const. J. Mitchell*, [2012]
  - Tab 9: *Ontario Provincial Police v Sgt. S. Rome*, [2018]
  - Tab 10: *Const. C. Pierce v Ontario Provincial Police*, [2017]