

**OTTAWA POLICE SERVICE DISCIPLINE HEARING  
IN THE MATTER OF ONTARIO REGULATION 268/10**

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

**IN THE MATTER OF**

**OTTAWA POLICE SERVICE**

**AND**

**CONSTABLE PIERRE FOURNIER, 1704**

**DISCREDITABLE CONDUCT**

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**DISPOSITION**

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Before: Superintendent (Retired) Chris Renwick

Counsel for the Prosecution: Ms. Vanessa Stewart

Counsel for the Defence: Constable Pierre Fournier (Self-Represented)  
Assisted by Constable Cedric Nizman

Disposition Hearing Date: February 22, 2024

## **Background**

Constable (Cst.) Pierre Fournier was found guilty of one count of Discreditable Conduct on January 22, 2024, following a five-day Hearing. On February 22, 2024, an in-person Disposition Hearing was held to receive submissions on penalty. The Ottawa Police Service (OPS) was represented by Ms. Vanessa Stewart and Cst. Fournier was self-represented, assisted by Cst. Cedric Nizman.

## **Position on Penalty**

Ms. Stewart submitted that the Prosecution's position was for a forfeiture of 40 days' pay, supported by a Book of Authorities (exhibit 17). I will note that there was some confusion following Ms. Stewart's submission as, in her closing, she stated 40 hours as opposed to the 40 days in her opening. To add further confusion, Ms. Stewart's submission requested a concurrent 15 days on count two when in fact Cst. Fournier was only charged and found guilty on one count of Discreditable Conduct. The Tribunal asked Ms. Stewart for clarification and confirmation of the Prosecution's position and she confirmed that the submission was for the forfeiture of 40 days' pay. She stated that she misspoke stating hours instead of days in her summation, and that she erred in presenting a concurrent penalty submission for the non-existent count two.

Cst. Nizman submitted the following Defence position on penalty: Forfeiture of 'zero' hours pay; an apology from the Inspector of the Professional Standards Unit (PSU); a written apology from the Prosecutor; an apology from the Ottawa Police Association (OPA); and an in-person meeting with the Chief of Police.

## **Decision**

This Tribunal has found Cst. Fournier guilty of one count of Discreditable Conduct on clear and convincing evidence. The sanction that will be imposed is for the forfeiture of 10 days (80 hours).

## **Principles Governing the Determination of a Disposition**

I will start by laying out the five foundational principles that govern the process of arriving at a fair and appropriate disposition, being: That the disposition should fully accord with the purposes of the police discipline process (the employer's interests, the rights of the Respondent Officer, the public's interests, and involved members of the public interests); a corrective disposition should take precedence over a punitive disposition; the presumption of the least onerous disposition; proportionality with other similar cases; and the principle that police officers are held to a higher standard than other employees.

## **Submissions by the Prosecution**

Ms. Stewart submitted that the objective of discipline is to correct, deter, and to ensure the public that the police are under control. On the principal of proportionality, Ms. Stewart spoke directly to seven of the 14 disposition factors: Public Interest; Seriousness of the Misconduct; Employment History; Specific and General Deterrence; Damage to the Reputation of the Police Service; Effect on Police Officer and Police Officer's Family; and Consistency of Disposition.

On Public Interest, Ms. Stewart submitted that it is imperative that the public has faith in its police service and that officers behave in a professional manner. That did not happen here with Cst. Fournier's behaviour falling well below reasonable expectation. Ms. Stewart submitted that the public demands good judgement and actions that are in accordance with law, and free from personal motivation. Restraint must be shown and power exercised in accordance with the office.

Ms. Stewart submitted that the misconduct was extremely serious. There was a violation of the Charter of Rights involving youth who, under law, have extra protection on rights to counsel.

As to the factor of Employment History, Ms. Stewart submitted that for an experienced officer, Cst. Fournier's conduct fell short of what was expected. This can be both aggravating and mitigating. Ms. Stewart further submitted that the Prosecution is not filing any previous misconduct which is mitigating.

Turning to Specific and General Deterrence, Ms. Stewart submitted that the sanction must show that the behaviour exhibited was wrong, not acceptable, and will not be tolerated by the OPS. This is necessary to reassure the public that they will be dealt with in a professional manner. Ms. Stewart submitted that this was a full hearing, Cst. Fournier was found guilty; thus, the disposition must be tailored for Specific Deterrence and must be met with serious consequences. As a mitigating factor, Ms. Stewart submitted that there is no indication that he will not continue to be a good officer.

Ms. Stewart submitted that the actions of Cst. Fournier have received media attention, came to the attention of the public, and have brought the reputation of the OPS into disrepute. Specifically with the young persons involved and their families, the reputation of the OPS has been tarnished.

On Effect of the Police Officer and Police Officer's Family, Ms. Stewart submitted that Cst. Fournier will suffer harm to his reputation and additional stress by being positive for police misconduct in McNeil Disclosure Packages. Ms. Stewart also recognized the financial impact on Cst. Fournier however, submitted that the penalty is the result of his deliberate behaviour and falls on him.

As to the disposition factor of Consistency of Disposition, Ms. Stewart entered a Book of Authorities (exhibit 17) which includes seven decisions and Ontario Civilian Police Commission appeal decisions that Ms. Stewart submitted are relevant on consistency:

*Alden v. Ottawa Police Service*, 2013 ONCPC 13.

*Edward King and the Toronto Police Services Board*. 1992 CanLII 12274.

*Krull v. The Ontario Provincial Police*, 2021 ONCPC 9.

*Mesic v. Ottawa Police Service*, (Supt. (Ret'd) Knowlton Roberts, 22 Dec. 2009).

*Mesic v. Ottawa Police Service*, (D/C (Ret'd) Terrence Kelly, August 2020).

*Niagara Regional Police Service v. Schoenhals* 2019 OIEPD #180011101.

*Pacitto v. Toronto Police Service* 2004 ONCPC (File OCCPS#04-03).

Ms. Stewart provided a summary of the above decisions, similar circumstances that align with the facts established in this hearing, and the penalties imposed in each. Ms. Stewart acknowledged that no two situations of abuse of police authority are exactly alike and each of the factors must be properly weighed.

### **Submissions by the Defence**

Cst. Fournier entered 21 letters of reference/support (exhibit 18) and read four into the record. (Mr. Tyler Chapman, Mr. Greg Mount, Mr. Kassem Tyrany, and a 17-year-old youth.)

Cst. Cedric Nizman, assisting Cst. Fournier with submissions, provided statistics and instances of youth being responsible for serious crimes and the failure of the police and community in enabling and encouraging youth to break laws.

Cst. Nizman submitted that the decision of this Tribunal has failed the public and has made Cst. Fournier into a scapegoat by his own employer. He submitted that Cst. Fournier has integrity, and he confronted the youths in frustration over the prolonged injustice of their behaviour and lack of accountability. It was Cst. Fournier who was assaulted by one of the youths.

Cst. Nizman spoke to Cst. Fournier's sense of frustration and dismay with his treatment by the OPS and his experience with his criminal charges, suspension, and the effect that will remain with him for the rest of his life.

As to the Prosecution's position on penalty, Cst. Fournier expressed his opposition, submitting that it does not align with the pre-hearing position of the forfeiture of 18 hours or a mid-hearing offer of 12 hours.

## **Analysis**

To reach a decision on penalty, I will address the seven disposition factors referenced by the Prosecution with the addition of two additional factors that I deem to be helpful, being: Recognition of the Seriousness of the Misconduct; and Provocation. I will also consider Inappropriate Disposition Considerations in weighing the submission by Cst. Fournier on the wide margin between an informal resolution offer and the Prosecution's position.

I do note here that the Defence submitted generalized positions more focused on his perceived unfairness on the finding of guilt and his post-incident treatment. What was not specifically addressed were any of the accepted disposition factors nor submissions on aggravating or mitigating values.

### Public Interest

The longstanding issue of youths operating motocross bikes on private rural property became somewhat of a polarizing issue in the community and caused concern to the landowners and a level of frustration towards the OPS for not adequately resolving the problem. When Cst. Fournier, off-duty and on extended medical leave, happened upon six youths trespassing in a friend's commercial gravel pit, and stationery, he engaged them. Unfortunately, Cst. Fournier was met with defiance from the outset and his actions turned to detaining one of the youths, using profanity and mocking words, and ultimately hands-on pushing and shoving with one of the youths who was 15 years of age.

I find that, despite the initial good intention of Cst. Fournier to intervene, his behaviour quickly fell well below the expectation that the public demands in its police officers. His language and conduct were unprofessional, particularly in confronting youth, and his actions caused the incident to escalate to a physical confrontation.

The public must be assured that members of the OPS will conduct themselves in a professional manner, apply appropriate de-escalation techniques, and adhere to legislative requirements when exercising their powers of detention. Cst. Fournier's misconduct has undermined the public confidence, and there is a requirement here to demonstrate that the police discipline process recognizes the importance of maintaining public confidence and that corrective action will occur. For these reasons, I find that the Public Interest is an aggravating factor.

### Seriousness of the Misconduct

I gauge Cst. Fournier's misconduct to be serious in that it involves an improper detention of a youth and a subsequent physical confrontation with another youth. I concur with Ms. Stewart's submission that a Charter violation, particularly involving young persons who have extra protections, increased the seriousness. This is an aggravating factor.

## Recognition of the Seriousness of the Offence

Under Recognition of the Seriousness of the Offence, Ceyssens & Childs' Ontario Police Services Act, Fully Annotated, 2023, the leading authority on disposition factors, quotes from the decision of *Armstrong v Law Society of Upper Canada* (2011 ONLSAP 1) on page 368, the following:

“Lack of remorse is a consideration when misconduct is not disputed, as it demonstrates lack of insight into the consequence of the misconduct. However, it cannot be an aggravating factor when a person honestly believes in his or her innocence.”

Cst. Fournier's steadfast position throughout the hearing and his disposition submissions that there was no misconduct on his part cannot and will not be viewed by the Tribunal as an aggravating factor. If there is no recognition that an offence has occurred, then it reasonably follows that there will not be a recognition of the seriousness nor any reflection, or remorse shown.

I do have some reservation that, should Cst. Fournier find himself in a similar situation in the future, his inability to recognize and address the serious errors in his judgement and actions that occurred the afternoon of April 24, 2021 could lead to further issues of misconduct. That stated, I will add no weight to the Recognition of the Seriousness of the Misconduct and consider it a neutral factor.

## Employment History/Provocation

I will state that I was clearly impressed with the volume and content of letters of reference/support (exhibit 18) for Cst. Fournier. In total, 21 letters, signed by 28 persons, a mixture of police co-workers (seven), sand and gravel pit owners (two), ex-colleague mental health professionals (two), and several Osgoode farmers, business owners, and neighbours. It is well established that Cst. Fournier has a decades long reputation as an engaged, caring community member and a respected and well thought of police officer.

Common traits in the letters refer to his generous and giving nature and strong sense of integrity and ethical conduct. His police colleagues and supervisors describe him as calm and respectful, community focused, and informative in his approach.

In this context, I find that Provocation is a mitigating factor. This does not excuse the seriousness of the misconduct by Cst. Fournier, but does provide me with some insight, based on his reputation and past performance, on what caused his well-meaning off-duty intervention into a Trespass to Property incident on a friend's property to quickly turn into a situation where he lost his composure and control. I find the defiant, confrontation,

stance of the six youths, knowingly trespassing and taking evasive measures to conceal their identity and avoid consequences, provoked Cst. Fournier to taking unfortunate actions that amounted to misconduct.

### Specific and General Deterrence

I find that both Specific and General Deterrence are factors that I need to consider here as both are applicable to this incident. On Specific Deterrence, it must clearly be shown to Cst. Fournier that his actions were found to constitute misconduct under the *Police Services Act* (PSA), whether he accepts responsibility or not. He breached the public trust in his actions when dealing with youths and the OPS, as the employer, must retain and exercise the ability to invoke formal discipline, when required, to demonstrate to both Cst. Fournier and the public that proper, lawful procedures will be adhered to or there will be consequences.

General Deterrence is also relevant and necessary. All members of the OPS must clearly understand that their employer nor the community they police will tolerate deviance from the standard of conduct demanded from them.

### Damage to the Reputation of the Police Service

As previously stated, the longstanding issue of youths on motocross bikes trespassing on private properties has been a polarizing flashpoint in the rural community. Letters from the owners of two sand and gravel pits (exhibit 18) speak to the years of frustration and absence of a police solution and their diminished perception of the ability of the OPS to protect their interests. Aside from the debate on whether this is an issue that can be solved by the police alone, it cannot be denied that this has caused some damage to the reputation of the OPS with rural landowners.

Conversely, it is evident that the manner in which Cst. Fournier engaged the youth and his losing control of the situation, has come to the attention of the public and has brought the reputation of the OPS into disrepute. There is a right way for a member of the police to engage. Improperly detaining, using profane, mocking language, and allowing the escalation to physical contact is not acceptable and has indeed tarnished the reputation of the OPS. This is an aggravating factor and, in my view, eclipses the damage of perceived police inaction to a community problem.

### Consistency of Disposition

As stated in the *Schofield and Metropolitan Toronto Police* (1984) decision, “consistency in the police discipline process is often the earmark of fairness.” Although not an absolute, as no two cases are exactly alike, and there are some provisions for other considerations, a hearing officer must take into consideration other similar decisions.

Ms. Stewart submitted seven decisions for my application of consistency while the Defence provided none. (Their position is that there should be a penalty of 'zero' hours forfeiture of pay.)

The imposed penalties in the seven decisions range from three days' pay up to a demotion from First Class Constable to Fourth Class Constable. The decision that most aligns with the particulars in Cst. Fournier's circumstances are that of the first Cst. Mesic decision (2019). Both involve the interaction with a youth and a component of unnecessary physical contact, but differ in aggravating and mitigating considerations. Cst. Mesic was sanctioned with forfeiture of 15 days' pay.

The Cst. Schoenhals (2019) decision has similar elements of profane, abusive, and insulting language to a member of the public, and an off-duty arrest without the required rights to counsel. Cst. Schoenhals was sanctioned the loss of three days leave.

Lastly, the decision of Cst. Pacitto (2004) is of some benefit for consistency. Cst. Pacitto, again off-duty, used profanity and verbally abused store clerks during a dispute over a payment method, and got into a physical confrontation/interaction with a security guard who intervened, causing a customer to be assaulted. Cst. Pacitto was sanctioned five days pay.

#### Unauthorized/Inappropriate Disposition Considerations

Cst. Fournier's position on penalty was the forfeiture of 'zero' hours pay; an apology from the inspector of the Professional Standards Unit (PSU); a written apology from the Prosecutor; an apology from the Ottawa Police Association (OPA); and an in-person meeting with the Chief of Police.

This is an unauthorized disposition as it is not specifically contained in the menu of authorized dispositions in section 85(1) of the *PSA*. (Ceysens & Childs' Ontario Police Services Act, Fully Annotated, 2023, page 341). The submission cannot be considered as a viable sanction.

Cst. Fournier submitted that there was a large discrepancy between the Prosecution's offer of 18 hours during informal resolution discussions and the 40 days submitted following a finding of guilt. I conclude this is an inappropriate disposition consideration as any penalty originally offered in attempted informal resolution is not relevant to this Tribunal. (Ceysens & Childs' Ontario Police Services Act, Fully Annotated, 2023, p. 409, citing *Turgeon and Ontario Provincial Police, OCPC 2012*).



## Conclusion

In applying the five foundation principles governing the principles of a disposition, I have concluded that the most appropriate sanction would be a forfeiture of days - the lower end of the range in the decisions presented. This would satisfy the aggravating considerations of Public Interest, Seriousness of the Misconduct, Specific and General Deterrence, and the Damage to the Reputation of the Police Service. It would also take into consideration the mitigating considerations of Employment History, and Provocation.

The goal of the police discipline process is to permit the employer to maintain discipline in the conduct of its officers and to impose corrective sanctions when officer's behaviour falls below the expected standard. There is also the element of deterring other officers from similar substandard behaviour and demonstrating to the public that officers shall and will be held to a higher standard and be accountable for their actions.

## **Disposition**

This Tribunal orders that Cst. Pierre Fournier, 1704, shall forfeit 10 days (80 hours) in accordance with section 85(1)(f) of the Police Services Act, RSO 1990, c. P.15, as amended.

(Original signed)

Chris Renwick  
Superintendent (Retired).

Dated March 21, 2024.

## **Appendix A**

### **Exhibits Entered During the December 11-15, 2023 Hearing**

- Exhibit 1: Hearing Officer Designation, Supt. (Retired) Chris Renwick.
- Exhibit 2: Prosecutor Designation, Ms. Bonnie Cho.
- Exhibit 3: Prosecutor Designation, Ms. Vanessa Stewart.
- Exhibit 4: Notice of Disciplinary Hearing.
- Exhibit 5: Prosecution's Notice of Filing Evidence.
- Exhibit 6: Prosecutor Designation, Mr. Graydon Campbell.
- Exhibit 7: Prosecution's Factum of the Application for Witnesses to Testify by Videoconference.
- Exhibit 8: Prosecution's Book of Authorities for the Application for Witnesses to Testify by Videoconference.
- Exhibit 9: Defence's Response to the Application for Witnesses to Testify by Videoconference.
- Exhibit 10: OPS General Occurrence Report Investigative Action, Cst. K. Dorion.
- Exhibit 11: Prosecution's Exhibit Book ( Volume I and II).
- Exhibit 12: USB device containing electronic version of Prosecution's Exhibit Book (Volume I and II).
- Exhibit 13: Defence's Hand Drawn Scale Diagram of Scene.
- Exhibit 14: Prosecution's Marked Google Earth Photographs.
- Exhibit 15: Prosecution's Updated Exhibit Book.
- Exhibit 16: Prosecution's Book of Authorities for Closing Submissions.

### **Exhibits Entered during the February 22, 2024 Disposition Hearing:**

- Exhibit 17: Prosecution's Book of Authorities for Penalty Submissions.
- Exhibit 18: Defence's 21 letters of reference.