

Cornwall Police Service Discipline Hearing
In the Matter of Ontario Regulation 268/10
Made Under the Police Services Act, R.S.O. 1990,
And Amendments thereto:
And
In The Matter Of
The Cornwall Police Service
And
Staff Sergeant Robert Archambault #126

Charge: Discreditable Conduct

Before:

Superintendent (Retired) M.P.B. Elbers
Ontario Provincial Police Adjudicator

Appearances:

Counsel for the Prosecution: Ms. Jessica Barrow
Cornwall Police Service

Counsel for the Defense: Self represented

Penalty Decision with Reasons:

The Hearing:

Staff Sergeant Archambault #126 pled guilty on Tuesday December 08, 2020 via an electronic Hearing and was found Guilty of Discreditable Conduct contrary to Section 2 (1)(a)(ix) of the Code of Conduct contained in Schedule for Ontario Regulations 268/10, as amended.

An Agreed Statement of Facts was tendered in this Hearing by Counsel and marked as Exhibit #5.

COUNT 1 - DISCREDITABLE CONDUCT

1. On October 28, 2020, Staff Sergeant Robert Archambault pled guilty to Operating a Motor Vehicle with a blood alcohol concentration that was equal to or exceeded 80 milligrams of alcohol in 100 milliliters of blood, contrary to section 320.14(1)(b) of the *Criminal Code of Canada* before Justice O'Brien in Cornwall, Ontario. A copy of the transcript from this proceeding is attached as **Appendix 'A'**.
2. At this time, the following facts were admitted by Staff Sergeant Archambault and read into the record by the Crown:
 - a) On August 8, 2020 at 17:17 hours, Erika Hebert and Julien Adam were southbound on Highway 138 from St. Andrews in South Stormont Township, when they observed a black F150 pickup truck also southbound, cross into oncoming traffic twice, nearly causing head-on collisions with several vehicles. The vehicle was then observed to ride the gravel shoulder for a distance. Erika Hebert contacted the SD&G OPP to report this incident and provided the Ontario marker for the F150. Hebert and Adam observed the vehicle pull into the Rosedale Terrace subdivision just off Highway 138 and informed police that the vehicle was now parked on McLennan Street.
 - b) Officer Brown arrived on scene at about 5:24 p.m. as the Communication Centre was providing a further update that the male driver had exited the pickup and was walking away with what could be a beer in his hand. Upon arriving, Officer Brown was flagged down by the complainants who pointed westerly, advising that the male driver had just now walked around the corner of the street. Officer Brown drove by the black F150 and turned around the corner, where he observed Archambault standing, pouring a beer out on the shoulder of the road.

- c) Upon interacting with Archambault, Officer Brown noted that he was unsteady on his feet, walking as if he was shuffling. Archambault indicated that he was coming from a friend's place on North Branch, Archambault was speaking slowly, and Officer Brown could detect the odour of an alcoholic beverage on his breath. Officer Brown also observed that Archambault appeared to be squinting slightly and had watery and bloodshot eyes.
- d) At 5:26 p.m., Officer Brown placed Archambault under arrest for impaired operation of a conveyance. He was handcuffed to the rear and searched incident to arrest. The empty beer can was secured from the male. Rights to counsel were given at 5:27 p.m., which he understood. He requested to speak to Legal Aid. He was cautioned and given the breath demand at 5:28 p.m., which he also advised he understood.
- e) Officer Brown departed the scene at 5:36 p.m. on route to the closest available qualified technician at the time, at the Long Sault OPP detachment. In departing the scene, Officer Brown drove again past the black F150 and had observed that it had the same licence plate provided by the complainant, namely 555 25RN.
- f) Upon arriving at the Long Sault detachment at five-forty-nine, Archambault indicated that he now wished to speak with a lawyer by the name of Miller as legal counsel. Archambault was provided the lawyer list and indicated that he wished instead to speak with James McGillivray, who is now his current counsel. At 5:56 p.m., Officer Brown placed a call to McGillivray who spoke with Archambault in private from 5:59 p.m. to 6:03 p.m. At that time, Archambault indicated he was satisfied that he had spoken to counsel.
- g) At 6:08 p.m., Officer Brown provided his grounds to the qualified breath tech, Officer Wensink, and Officer Wensink took over custody of Archambault for the purpose of taking the breath test. At 6:52 p.m., Officer Brown received custody from Officer Wensink who advised that Archambault had provided two suitable samples of his breath directly into an approved machine. At 6:15 p.m. the first sample was 188 milligrams of alcohol in 100 milliliters of blood, and half an hour later, at 6:45 p.m., the sample was 177 milligrams of alcohol in 100 milliliters of blood.
- h) The empty can of beer seized from Archambault at the scene was lodged in property, in addition to several other empty and full alcohol containers, seized from the vehicle by Officer Redmond who attended the scene. At 8:56 p.m., Archambault was released from custody and on an undertaking to appear in court at a later date. His licence was seized and suspended for a period of 90 days and the vehicle was impounded for seven days. At the time of the offence, Archambault was an active member of the Cornwall Police Service.

3. Following his guilty plea, Staff Sergeant Archambault was sentenced by Justice O'Brien to a fine of \$2,000.00 plus a victim surcharge of \$600.00 and a driving prohibition of 12 months, subject to the AIID program.
4. The actions of Staff Sergeant Archambault constitute Discreditable Conduct pursuant to section 2(1)(a)(ix) of the prescribed Code of Conduct.

Findings:

Counsel in this matter, Ms. Jessica Barrow, representing the Cornwall Police Service and Staff Sergeant Archambault who is self-represented have requested a demotion in rank from Detective Staff Sergeant to Detective Sergeant for a period of nine (9) months, following which the officer will be returned to the rank of Detective Staff Sergeant on the basis of satisfactory work performance to be determined by the officer's Divisional Commander pursuant to section 85 (1) (c) of the Police Services Act.

Exhibit #6 the Agreed Joint submission by Counsel for Penalty was tendered to the Tribunal.

In Williams and the Ontario Provincial Police, the Commission identified three key elements a Hearing Officer must take into account when imposing a penalty. These include: the nature of the seriousness of the misconduct, the ability to reform or rehabilitate the officer and the damage to the reputation of the Police Force that will occur if the officer remained on the force.

Ms. Barrow has submitted four (4) cases for me to consider in support of their joint submission in assisting me in determining the appropriate disposition and the Book of Authorities is marked as Exhibit #7. Staff Sergeant Archambault supports the cases offered by the Prosecution in the joint position of demotion.

- a. *Krug v. Ottawa Police Service*, 2003 CanLII 85816 (ON CPC)
- b. *Devine v. Ontario Provincial Police*, 2008 ONCPC 10
- c. *Schlarbaum, v Chatham-Kent Police Service*, 2013 ONCPC 5
- d. *Van Straalen v. Ontario Provincial Police Service*, 2017 ONCPC 17

Krug addresses the Disposition considerations to consider in assessing an appropriate penalty. Devine, Schlarbaum and Van Straalen I have found them to be instructive in assisting the Tribunal to reach an appropriate disposition as they relate to drinking and driving offences.

They are instructional to a point however we must consider that we are assessing the behaviour of a Staff Sergeant not a Constable. This being said, again, it addresses the power a Police Officer possesses and the use or improper use of this power in the behaviour that this officer exhibited can affect the Officer and tarnish the image and reputation of the Service for whom he/she is employed. In this circumstance it is the Cornwall Police Service.

I must be guided by the OCCPS decision of Schofield and Metropolitan Police Service.

“Consistency in the disciplinary process is often the benchmark of principles. The penalty must be consistent with the facts, and consistent with similar cases that have been dealt with on earlier occasions.”

Accountability, ethical behaviour and conduct are at a standard much higher than the public we serve. In Hrycyschyn vs OPP (1993) the Commission created the standard that a Sergeant would be held to a higher standard than a Constable. Staff Sergeant Archambault is a nineteen year member of the Service and is a senior officer within this organization.

Ms. Barrow stressed to the Tribunal in her submissions that this offence is a serious matter and Archambault exhibited reckless behaviour. She also stated that Archambault has mitigating factors for the Tribunal to consider because he has a stellar career; he is well respected by his peers and subordinates and is active in the community. He has acknowledged his behaviour and has shown remorse.

She stated he was respectful when he was arrested by another police service and was cooperative at all times. This was a serious criminal act and he exhibited a lack of respect for public safety and the law. Ms. Barrow turned my attention to the Van Straalen case for assistance. At paragraph 38 it stated the following by the appellate tribunal, OCCPS.

The authorities cited by the parties, disclose a number of factors to be considered in reaching an appropriate disposition in cases of impaired driving:

The level of the Breathalyzer reading

The level of impairment

The manner of driving- erratic, high speed etc.

Whether there were passengers put at risk

Whether an accident occurred and if so its severity

Whether the officer or others were injured

Whether the officer attempted to evade or avoid apprehension

The officer’s conduct when apprehended

The officer’s work record

Whether the officer had a record of discipline for similar offences

Breath samples were 188 and 177 respectfully. The judge in the case also prohibited Archambault from driving for twelve months which has to be absorbed by the Service.

Ms. Barrow indicated this officer pled guilty at the first opportunity he could in criminal court and also here at his Police Act Hearing First appearance. He has sought Counselling and continues that counseling to this day.

Staff Sergeant Archambault is highly valued with this Service and senior Command approve of the Disposition sought by the Prosecution and this officer.

Staff Sergeant Archambault addressed the Tribunal. He advised that he had made a bad decision when he decided to drive under the influence of alcohol. He stated he has embarrassed himself, his family, the community and his Service. He stated he felt shame and remorse daily. He stated being a leader was important so at the outset he sent a message to all officers of the Service to apologize for his conduct. He stated his family has been shamed from his behaviour and the media coverage has taken a toll on him and his family. He stated he is a good officer with an unblemished record and he has accepted the responsibility of his actions through his quick plea at Criminal Court and before this Tribunal. He stated he was aware of the cost of the demotion to him financially and how it will affect his family however he is willing to continue and will not be before another Tribunal for this type of conduct again. He is continuing his Counselling and ready to move on with his life and career.

Madame Justice O'Brien on October 28, 2020 when Staff Sergeant Archambault pled guilty at his criminal trial made numerous comments about the day in question that Archambault was arrested. She noted numerous aggravating and mitigating factors in support of this officer as well as detrimental to him. They can be found in Exhibit #8 at pages eleven thru thirteen. I believe they are worthy to note for this Hearing as well.

Credibility, honesty, integrity are characteristics that are earned .As one elevates him / herself through the ranks of this proud organization; those characteristics are more revered and treasured. It helps to create the professional image and excellence that the Cornwall Police Service officers strive to maintain.

It is important to consider the Public Interest. As I have stated earlier, it is common knowledge that the public holds police in a position of high trust and accountability. The Cornwall Police Service is constantly engaged in efforts to deal with traffic safety and that the public has high expectations of the Cornwall Police Service and its members in dealing with these issues. When an officer is involved in a situation involving drinking and driving the public interest is high and there is serious damage to the programs and reputation of this proud organization. It is further compounded when the officer holds the rank of Staff Sergeant. The community has become less tolerant of drinking and driving. The courts take this problem more serious with increased fines and penalties. This intolerance is compounded when it is committed by a police officer and is a significant aggravating factor.

The Cornwall Police Service through its prosecutorial team has stated that there is a significant need for deterrence in drinking and driving police discipline cases. A penalty must be provided to Staff Sergeant Archambault that will leave no doubt in his mind how serious this Tribunal considers his actions. The need for a strong message to others is required so that Cornwall Police officers are aware what the consequences for drinking and driving are and how serious senior management will deal with these cases.

On the day in question Staff Sergeant Archambault's conduct will not be tolerated by this Service.

A penalty must be provided to Staff Sergeant Archambault that will leave no doubt in his mind how serious this Tribunal considers his actions. The need for a strong message to others is required as there are too many incidents of Police Officers drinking and driving.

Staff Sergeant Archambault has no prior disciplinary issues on file.

Counsel has advised that Archambault was cooperative when arrested and processed at the Ontario Provincial Police Service detachment. He pled guilty to the criminal charge at the earliest opportunity. Staff Sergeant Archambault also dealt with the Police Services Act charge in the same manner as he conducted himself with the Criminal charge. He has pled Guilty to the charge of Discreditable Conduct before this Tribunal. In his address during the Hearing to the Tribunal he expressed his remorse, his embarrassment for himself, the Cornwall Police Service, his family and the community as a whole and his desire to apologize for this unfortunate incident. It was obvious to me and those in attendance via an electronic format that his comments were sincere.

Staff Sergeant Archambault is an active member within his community, has the faith of his Police Chief that this was an unfortunate incident for this officer and would like him to continue his duties for the Service as soon as he is able. I am advised that he is attending counselling sessions to assist his position and return to work commitments. He is an active volunteer in the community. It is difficult to understand or comprehend with the character that has been described to me from Counsel why this officer conducted himself in the way which he did to lead to these charges. Staff Sergeant Archambault volunteers extensively in the community that he serves and this can be considered a mitigating factor to consider in this disposition.

Staff Sergeant Archambault acted in a manner not conducive to a member of the Cornwall Police Service. His actions are clearly unacceptable. It is necessary to consider a general deterrence for all members. The penalty must reflect that the Cornwall Police Service will not tolerate unacceptable behaviour. There must be specific deterrence for the member to send a message that individuals will be held accountable for their conduct. The Cornwall Police Service must deliver a penalty that not only prevents a recurrence, but also adequately protects the public.

The Discreditable Conduct displayed by this officer has the potential to damage the reputation of this organization. The city where he resides is not a large community. I understand from the prosecutors comments that the media have reported on this officer throughout the criminal process and was in attendance at the Police Service Act Hearing. This is certainly permitted as it is a public hearing and forms part of the accountability stage of this process.

I am confident, pleading guilty at the first opportunity, apologizing to the Tribunal, that Staff Sergeant Archambault has learned from his indiscretion and is prepared to take responsibility for his actions.

Rehabilitation has been addressed. Staff Sergeant Archambault has indicated to the Tribunal that he would not appear before this Tribunal with similar conduct in the future.

Specific and general deterrence must be considered when assessing an appropriate disposition for Police Act offences.

The Cornwall Police Service will not tolerate unacceptable behaviour by its members. The rank structure within the Cornwall Police Service is the backbone of the organization. It must be respected. The proposed joint submission as submitted I believe sends a message to the organization and its members.

Specific deterrence has been addressed as Staff Sergeant Archambault has indicated he will not behave like this again.

The cases that Counsel has provided are similar and on point with this case. I have found them to be instructive in reaching my decision. Three of the cases deal with drinking offences by members of their respective departments who in the end were demoted in rank.

The proposed penalty offered by Counsel poses a hardship to Staff Sergeant Archambault and his family. He has accepted this and wishes to move on with his life and put this incident behind him.

The Cornwall Police Service views this misconduct as serious and is cognizant that a penalty must be imposed to protect the interest of the public we serve.

Staff Sergeant Archambault, as a senior member of this organization, you have conducted yourself with a total lack of professionalism, judgement and courtesy, which is expected of all members of the Cornwall Police Service.

I commend you for attending your Hearing in Cornwall via an electronic format on December 08, 2020 self-represented. It was obvious to me that you wished to put this situation behind you. I will take into consideration your forthright manner in assessing the appropriate disposition.

I may have been more inclined to administer a more stringent penalty if it were not for the positive comments and observations relayed to me Counsel, the support from the Police Service, your apology and comments made by you to the Tribunal.

Disposition

In light of the seriousness of this allegation and bearing in mind all the evidence before me, Staff Sergeant Archambault #126 will be demoted from Staff Sergeant to Detective Sergeant for a period of nine (9) months following which the officer will be returned to the rank of Staff Sergeant on the basis of satisfactory work performance to be determined by the officer's Divisional Commander. During his time as a Detective Sergeant he will not be allowed to act as a Staff Sergeant in a supervisory capacity.

This demotion will be effective December 08, 2020 or as convenient for the Service as it relates to pay periods.

The Penalty is pursuant to Section 85 (1) (c) of the Police Service Act.

**M.P.B. Elbers, Superintendent
(Retired)**

December 13, 2020

