

In the matter of the *Police Act*, R.S.A. 2000, c. P-17 and
in the matter of the *Police Service Regulation*, Alta. Reg. 356/1990

And in the matter of Complaints and Disciplinary Proceedings against
Sergeant Jason Carrier Regimental Number 7754
of the Lethbridge Police Service

And in the matter of Complaints and Disciplinary Proceedings against
Constable Keon Woronuk Regimental Number 8626
of the Lethbridge Police Service

Penalty Decision

Constable Keon Woronuk # 8626

On July 8, 2019, Constable Keon Woronuk #8626 was charged with ten counts of disciplinary misconduct under the *Police Service Regulation*. On June 24, 2020, Constable Woronuk entered "Admit" pleas to the following five counts:

Count 1:

That you committed a Corrupt Practice, contrary to section 5(1)(c) of the *Police Service Regulation*, as defined by section 5(2)(c)(iv) of the *Police Service Regulation*, by, without adequate reason, using your position as a police officer for your personal advantage or another person's advantage.

Count 2:

That you engaged in Discreditable Conduct, contrary to section 5(1)(e) of the *Police Service Regulation*, as defined by section 5(2)(e)(viii) of the *Police Service Regulation*, by doing anything prejudicial to discipline or likely to bring discredit on the reputation of the police service.

Count 4:

That you committed an act of Deceit, contrary to section 5(1)(d) of the *Police Service Regulation*, as defined by section 5(1)(d)(i) of the *Police Service Regulation*, by wilfully or negligently making or signing a false, misleading or inaccurate statement or entry in an official document or record.

Count 7:

That you committed a Corrupt Practice, contrary to section 5(1)(c) of the *Police Service Regulation*, as defined by section 5(2)(c)(iv) of the *Police Service Regulation*, by, without adequate reason, using your position as a police officer for your personal advantage or another person's advantage.

Count 10:

That you committed Insubordination, contrary to section 5(1)(g) of the *Police Service Regulation*, as defined by section 5(2)(g)(ii) of the *Police Service*

Regulation by omitting, or neglecting, without adequate reason, to carry out a lawful order, directive, rule or policy of the Commission, the Chief of Police or another person who has the authority to issue or make that order, directive, rule or policy.

Sergeant Jason Carrier #7754

On July 10, 2019, Sergeant Jason Carrier #7754 was charged with six counts of disciplinary misconduct under the *Police Service Regulation*. On June 24, 2020, Sergeant Carrier entered "Admit" pleas to the following two counts:

Count 5:

The you engaged in Discreditable Conduct, contrary to section 5(1)(e) of the *Police Service Regulation*, as defined by section 5(1)(e)(vi) of the *Police Service Regulation*, by abetting in or knowingly being an accessory to a contravention of section 5 of the *Police Service Regulation* by another peace officer.

Count 6:

That you committed Neglect of Duty, contrary to section 5(1)(h) of the *Police Service Regulation*, as defined by section 5(2)(h)(i) and 5(2)(h)(v) in that you neglected, without lawful excuse, to promptly and diligently perform your duties as a police officer and further, that you failed to report a matter that it was your duty to report.

Summary of Proceedings

At the outset of these proceedings, Sergeant Carrier and Constable Woronuk were charged on separate Notices and Records of Disciplinary Proceedings. The matters were proceeded with as separate hearings. Both officers made their first appearances at separate times on September 25th, 2019

At that time, the cited officers entered "deny pleas" to all counts. The matters were set over to separate dates for full hearings. Since that time there were several applications, and several adjournments.

On June 5th 2020, a pre-hearing video conference was held and application was made by the parties to combine the two matters into one. The application was granted and the two matters were combined. The hearing was adjourned to commence on June 22, 2020. Prior to that date, the parties advised they were working on a resolution and the matter was brought forward and set over to June 24th, 2020.

On June 24, 2020, Sergeant Carrier changed his plea to "Admit" on counts five and six contained in the Notice and Record of Disciplinary Proceedings (Exhibit 1). Constable Woronuk changed his plea to "Admit" on counts one, two, four seven, and ten contained in the Notice and Record of Disciplinary Proceedings (Exhibit 4).

An Agreed Statement of Facts was entered as Exhibit #P-1 in the proceedings with the Presenting Officer summarizing the facts on the record.

With the admit pleas of Sergeant Carrier, coupled with the admission of the facts contained in Exhibit P-1 which I reviewed, I found that counts five and six were proven on a balance of probabilities. Sergeant Carrier was found guilty of counts five and six. Upon application of the Presenting Officer with consent of the cited officer, counts one through four were withdrawn.

With the admit pleas of Constable Woronuk, coupled with the admission of the facts contained in Exhibit P-1 which I reviewed, I found that counts one, two, four, seven and ten were proven on a balance of probabilities. Constable Woronuk was found guilty of counts one, two, four, seven and ten. Upon application of the Presenting Officer with consent of the cited officer, counts three, five, six, eight, and nine were withdrawn.

The parties made submissions to support the joint submission on penalty contained in the Agreed Statement of Facts. The matter was set over to July 9th, 2020 for the decision on penalty.

FACTS (as per the Agreed Statement of Facts, Exhibit P-1)

1. The matters set out in this Agreed Statement of Facts are admitted solely for the purpose of the disciplinary hearing to be conducted into the charges as set out in the Notice and Record of Disciplinary Proceedings dated July 8, 2019 (re: Cst. Woronuk) and July 10, 2019 (re: Sgt. Carrier), respectively. They are not admitted for any other **purpose or any other proceedings.**

The Diner

2. On April 14, 2017 at approximately 10:10 a.m. Sgt. Jason Carrier of the Lethbridge Police Service ("LPS") was on a meal break with two other LPS Police Officers at the Chef Stella Diner located at 525 — 4 Avenue South in Lethbridge, Alberta (the "Diner"). His fellow officers were junior in rank. All three officers were on duty and uniformed.
3. Shortly after Sgt. Carrier sat down at his table, Shannon Phillips, New Democrat Party ("NDP") MLA for Lethbridge-West and then-Minister of Environment and Parks ("Minister Phillips"), arrived for a breakfast meeting at the Diner. Minister Phillips was meeting informally with several stakeholders for a proposed new Provincial Park in the Castle area of Southwest Alberta. Sgt. Carrier and his fellow officers were seated at a table immediately behind Minister Phillips' table inside the Diner.
4. Sgt. Carrier, along with other people from Lethbridge, often participates in outdoor activities like camping, off-roading with all-terrain vehicles, fishing, and hunting in the Castle area of Southwest Alberta. Sgt. Carrier recognized Minister Phillips when she arrived. He then overheard Minister Phillips discussing plans to potentially close down large parts of the Castle area to designate them as a

Provincial Park, and he saw that she had a large map of the area on the table outlining areas of potential closure. Sgt. Carrier did not recognize any of the stakeholders at the meeting.

5. Sgt. Carrier did not agree with the plan Minister Phillips was outlining as he, and others he knew, enjoyed outdoor activities in the Castle area and opposed potential restrictions that would accompany the designation of the impacted areas as a Provincial Park.
6. Sgt. Carrier took a photograph of Minister Phillips meeting with the stakeholders and the map on his phone and sent it by text to another LPS Officer, Cst. Woronuk, to let him know that Minister Phillips was at the Diner with a group discussing a plan to close parts of the Castle area and invited him to attend.
7. Cst. Woronuk, who was an Acting Sergeant on duty and uniformed in downtown Lethbridge that morning, was friends with Sgt. Carrier. The two friends had participated in many of the same outdoor activities (i.e. camping, fishing, and hunting) in the Castle area. Sgt. Carrier thought the Castle area plan Minister Phillips was discussing at her breakfast meeting would be of interest to Cst. Woronuk.
8. Sgt. Carrier was aware that Cst. Woronuk, like him, opposed some of the NDP government policies and did not support Minister Phillips's policies as Minister of Environment and Parks. Sgt. Carrier assumed Cst. Woronuk would be opposed to any plan to close the Castle area to many of the outdoor activities in which Cst. Woronuk, Sgt. Carrier, and others regularly participated.
9. Cst. Woronuk indicated that he would come by for a coffee. Shortly thereafter, Cst. Woronuk arrived at the Diner and sat at Sgt. Carrier's table.
10. Another LPS officer who was on duty, uniformed, junior in rank to Sgt. Carrier, and similarly-minded in his Castle area recreation activities and politics (the "Other Officer") had been informed by one of the officers at the Diner of the Minister Phillips meeting and invited him to join them there. The Other Officer eventually did so. By the time he had arrived at the Diner, the officer group had since left, but he was able to see the Minister and the stakeholders still sitting together, before leaving shortly thereafter to return to his shift.
11. While he was in the Diner, Cst. Woronuk also took a photograph on his phone of Minister Phillips and the stakeholders.
12. As he was paying his bill and leaving the Diner, Sgt. Carrier also took another photograph on his phone, a "selfie" with the Minister and the stakeholders in the background.

Outside and After the Diner

13. At approximately 11:00 a.m., Sgt. Carrier and Cst. Woronuk then left the Diner to resume their shifts. Sgt. Carrier and Cst. Woronuk had a brief conversation outside the Diner during which Cst. Woronuk said that he "would hate to see Phillips drive away from the restaurant and there was a reason to stop her". Sgt. Carrier replied that Minister Phillips should receive the same treatment as anyone else such as a soccer mom speeding through a playground, and that just because she was a politician did not mean she would get special treatment - she would be written a ticket. Cst. Woronuk then said he was going to be in the downtown area and would be conducting traffic ticketing / enforcement duties for the next while. Both Cited Officers then walked to their respective police vehicles and resumed their shifts.
14. Sgt. Carrier drove his police vehicle to a parkade near the Diner where he caught up on reports and monitored activity as it is known for prostitution-related activities in the nearby area. The parkade was a block away from the Diner and had a partially obstructed view of the Diner. At approximately 11:35 a.m., Sgt. Carrier noticed Minister Phillips exit the Diner and walk across the street and out of view. He did not see or otherwise notice when any of the stakeholders left the Diner. Sgt. Carrier remained in his vehicle and completed his reports until approximately 12:06 p.m. when he began his return to LPS Headquarters at 135 — 1 Ave South.
15. Sgt. Carrier arrived at LPS Headquarters at approximately 12:14 p.m.. Shortly after arriving he received a text message from Cst. Woronuk with a screen-shot picture from Cst. Woronuk's Mobile Data Terminal. The screen shot was of a Canadian Police Information Centre ("CIPC") licence plate search, conducted at 12:14 p.m., showing information for a blue Mazda vehicle registered to an individual in Edmonton, Alberta. The screen-shot picture did not have any text to explain its purpose, and Sgt. Carrier did not at the time know why Cst. Woronuk had sent him the screen-shot.
16. For his own part, Cst. Woronuk admits that after his discussion with Sgt. Carrier outside the Diner, he found a nearby position of surveillance of the Diner from his parked vehicle. Cst. Woronuk eventually saw one of the stakeholders leave the Diner, enter a vehicle, and drive past his position. Cst. Woronuk then followed the vehicle to see if the driver committed a driving infraction. Cst. Woronuk did not issue any ticket, but he did conduct a CPIC licence plate query at 12:14 p.m.. Cst. Woronuk admits sending a screen-shot of the CPIC search results shortly after to Sgt. Carrier and the Other Officer, and states this was for assistance in case he lost the vehicle. Cst. Woronuk admits that he had no lawful reason to conduct his CPIC search and was motivated to do so by his personal and political views. In total, Cst. Woronuk followed the vehicle for approximately five blocks before losing his visual of it at a red light. He then drove several more blocks in an effort to re-locate the vehicle, but was ultimately unsuccessful, and returned to LPS Headquarters. The Other Officer drove to the area the vehicle had been, but was unable to locate it.

17. For his own part, Cst. Woronuk admits that on April 15, 2017 and while off-duty, he posted a photograph of Minister Phillips and the stakeholders that was taken at the Diner to Facebook under the user name "Mike Corps" and which then became widely disseminated on social media. The photograph was accompanied by a long caption criticizing Minister Phillips and her NDP Government and identified certain of the stakeholders.

The CPS Investigation

18. Shortly after learning of the posted photograph, Minister Phillips filed a complaint under the Police Act. This led to an investigation conducted for the LPS by the Calgary Police Service (the "CPS Investigation"), which was completed in September 2017.
19. As part of the CPS Investigation, Cst. Woronuk provided a directed Explanatory Report on July 27, 2017. In that Explanatory Report, Cst. Woronuk outlined a series of internet searches he performed on the evening of April 14, 2017 to ultimately ascertain the identity of one of the stakeholders, but omitted any mention of his earlier CPIC search during the day, which had revealed the identity of the vehicle's registered owner to him.
20. The CPS Investigation resulted in an official two-year warning being placed on Sgt. Carrier's record and an official one-year warning being placed on Cst. Woronuk's record, respectively, under s. 19(1) of the *Police Service Regulation*.

The MHPS Investigation

21. Upon discovery of Cst. Woronuk's CPIC search as a collateral issue in the CPS Investigation, a second and collateral investigation was then commenced in March of 2018 for the LPS by the Medicine Hat Police Service ("the MHPS Investigation"), which led to the various charges that are the subject of these proceedings against the Cited Officers.
22. The MHPS Investigation has focused on the allegations of the surveillance and traffic enforcement of both Cited Officers for personal and political reasons, as well as allegations of Cst. Woronuk's unlawful CPIC licence plate search and misleading Explanatory Report during the CPS Investigation.

Sgt. Carrier's Further, Specific Admissions

23. Sgt. Carrier has maintained throughout that he, himself, never conducted any surveillance or traffic enforcement of either Minister Phillips or any of the stakeholders, and he was not aware of any plan or intention to do so.
24. Sgt. Carrier has maintained throughout that he, himself, received the screen-shot picture of Cst. Woronuk's CPIC search result after he had arrived at LPS Headquarters, but without any more information at the time.

25. After subsequently learning (one to two weeks after) about Cst. Woronuk's conduct on April 14, 2017, Sgt. Carrier admits he realized that Cst. Woronuk had undertaken a CPIC licence plate query for no lawful reason and in violation of CPIC and LPS Policies and that Cst. Woronuk had also followed an individual for traffic ticketing purposes because of his own personal and political views. However, Sgt. Carrier did not report the misconduct by Cst. Woronuk to his superior officer at LPS.
26. Sgt. Carrier recognizes that his position as Sergeant, and as a highly-experienced and well-regarded member of the LPS, is critical in setting the tone and manner by which LPS police officers provide effective and efficient police services to the community. He recognizes that Sergeants are in a leadership position within LPS and are expected to hold other police officers accountable for sub-standard work and/or contraventions of LPS policy or code of conduct behaviour.
27. Sgt. Carrier acknowledges with the benefit of hindsight that his comment to Cst. Woronuk about politicians not receiving special treatment from LPS in terms of traffic violations was likely construed, in the context of their shared political views about Minister Phillips' policies combined with the Cst. Woronuk's statements made outside the Diner, as tacit approval or support for Cst. Woronuk's subsequent actions.
28. Sgt. Carrier further acknowledges that he should have reported Cst. Woronuk's violations of LPS policy to his superior officer, and his own failure to do so was a breach of LPS policy and the LPS expectations of his role as a Sergeant.

Cst. Woronuk's Further, Specific Admissions

29. Cst. Woronuk admits that as part of the CPS Investigation, he neglected to state in his Explanatory Report that he had conducted any CPIC search on the vehicle he was following from the Diner. Cst. Woronuk has explained that he did this, because he was only responding directly to the complaint by Ms. Phillips of the Facebook photograph posting. However, Cst. Woronuk acknowledges this could be interpreted as misleading and is regretful of the omission. At the time Cst. Woronuk was preparing his Explanatory Report, he was also under significant personal distress given the tragic loss of his sister around the same time.

Cited Officers' Performance Reviews

30. Sgt. Carrier has otherwise been a recognized and respected leader within the LPS and is an acknowledged advocate for the well-being of other LPS members. He has served the people of Lethbridge as a police officer for approximately 23.5 years in a variety of roles and units including significant experience in drug and intelligence units. Sgt. Carrier's Performance Evaluations from 2017, 2018, and 2019 are attached as Exhibits 2, 3, and 4, respectively, to this Agreed Statement of Facts.
31. Cst. Woronuk has served the people of Lethbridge as a police officer for 19.5 years in a variety of roles and units. Cst. Woronuk's Performance Evaluations from

2018 and 2019 are attached as Exhibits 5 and 6 respectively, to this Agreed Statement of Facts.

Sgt. Carrier's Guilty Pleas, Withdrawal of Other Charges, and Joint Submission as to Penalty

32. Sgt. Carrier accepts full responsibility for his actions and admits to:

•**Count #5 (Discreditable Conduct** for giving implied support for Cst. Woronuk's subsequent actions and misconduct) and **Count #6 (Neglect of Duty** for failing to report Cst. Woronuk's acts of misconduct to a superior officer),

of the allegations set out in the 10 July 2019 Notice and Record of Disciplinary Proceedings.

33. The parties agree and submit that a penalty of a reduction in rank from Sergeant to Senior Constable — Level Two for a period of one (1) year, effective June 24, 2020 to June 23, 2021, under section 17(1) (e) of the *Police Service Regulation*, is an appropriate penalty in light of the principles set out in *Amery v. Young, Lingl v. Calgary Police Service*, and subsequent case law.

34. The Chief of Police, having investigated and assessed the other allegations against Sgt. Carrier, hereby withdraws Counts #1 (Corrupt Practice), #2 (Discreditable Conduct), #3 (Unlawful or Unnecessary Exercise of Authority), and #4 (Insubordination) as set out in the 10 July 2019 Notice and Record of Disciplinary Proceedings.

Cst. Woronuk's Guilty Pleas, Withdrawal of Other Charges, and Joint Submission as to Penalty

35. Cst. Woronuk accepts full responsibility for his actions and admits to:

•**Count #1 (Corrupt Practice** from using his position as a police officer to initiate a motor vehicle licence plate search through the Canadian Police Information Centre — CPIC- for personal and political reasons and not for legitimate law enforcement purposes) and **Count #2 (Discreditable Conduct** for conduct in this regard which is likely to bring discredit on the reputation of the LPS);

•**Count #4 (Deceit** by negligently making a misleading Explanatory Statement in June or July 2017 in the course of an investigation conducted by the Calgary Police Service for the Lethbridge Police Services by omitting any mention of the CPIC search he conducted on April 14, 2017, as detailed above);

•**Count #7 (Corrupt Practice** from using his position as a police officer in targeting Minister Phillips and other individuals for traffic enforcement measures for personal and political reasons and not for legitimate law

enforcement purposes) and **Count #10 (Insubordination)** for thereby failing to carry out lawful rules and policies of the LPS), of the allegations set out in the 8 July 2019 Notice and Record of Disciplinary Proceedings.

36. The parties agree and submit that a penalty of a reduction in rank from "Senior Constable Level Two" to "Constable — Class One" for a period of two (2) years, effective June 24, 2020 to June 23, 2022, under section 17(1) (e) of the *Police Service Regulation*, is an appropriate penalty in light of the principles set out in *Amery v. Young*, *Lingl v. Calgary Police Service*, and subsequent case law.
37. The Chief of Police, having investigated and assessed the other allegations against Cst. Woronuk, hereby withdraws Counts #3 (Insubordination), #5 (Discreditable Conduct), #6 (Neglect of Duty), #8 (Discreditable Conduct), and #9 (Unlawful or Unnecessary Exercise of Authority), as set out in the 10 July 2019 Notice and Record of Disciplinary Proceedings.

Evidence

Exhibits:

- Exhibit 1 Notice and Record of Disciplinary Hearing, Sergeant Carrier;
- Exhibit 2 Presiding Officer Appointment Memo, Sergeant Carrier Hearing;
- Exhibit 3 Presenting Officer Appointment Memo, Sergeant Carrier Hearing;
- Exhibit 4 Notice and Record of Disciplinary Hearing, Constable Woronuk;
- Exhibit 5 Presiding Officer Appointment Memo, Constable Woronuk Hearing;
- Exhibit 6 Presenting Officer Appointment Memo, Constable Woronuk Hearing;
- Exhibit P-1 Agreed Statement of Facts;
- Exhibit P-2 Performance Evaluation, 2017, Sergeant Carrier;
- Exhibit P-3 Performance Evaluation, 2018, Sergeant Carrier;
- Exhibit P-4 Performance Evaluation, 2019, Sergeant Carrier;
- Exhibit P-5 Performance Evaluation, 2018, Constable Woronuk;
- Exhibit P-6 Performance Evaluation, 2019, Constable Woronuk.

Submissions of the Presenting Officer

Mr. Major commenced his submissions stating that the matter before me was investigated by the Medicine Hat Police Service to provide separation of interests, and to provide objectivity. That investigation has led to these proceedings.

He stated that employment matters are usually conducted in private, but policing brings responsibilities that result in civilian oversight and public access. Policing has to be transparent and seen to be conducted with integrity.

This hearing was scheduled for four to five days with multiple witnesses and exhibits. As a result of serious and "hardnosed" negotiations between the parties including the Lethbridge Police Association and the Chief of Police, they came to agreement on an appropriate sanction, equipping him with the tools for a resolution.

Mr. Major stated not all the parties are keen on the resolution, but that can be an indicator that the resolution is a good one.

He advises that the proposed penalties are on the spectrum of acceptable penalties. The cited officers are entering guilty pleas to certain charges with the remaining charges being withdrawn.

The proposed penalties involve a demotion in rank, and a reduction in seniority in rank of two levels. A demotion is the second most serious penalty and the facts supporting the proposed penalties are contained in the Agreed Statement of Facts which was signed by all parties.

Mr. Major then summarized the Agreed Statement of Facts into the record.

Mr. Major advised that Sergeant Carrier learned of the surveillance and CPIC check after the fact. He realized it was wrong but never spoke to Constable Woronuk or any superior officer about it. Sergeant Carrier also realized his actions at the diner may have encouraged Constable Woronuk or gave implicit acceptance.

He then spoke about the Calgary Police Service (CPS) investigation. He stated that the matter is "res judicata" but it was provided for context.

Speaking to the actions of Constable Woronuk and the charge of deceit, he stated that the omission by the officer was negligent. He restricted his answers to the precise questions of the CPS investigator. It also occurred at the time of the passing of Constable Woronuk's sister. Mr. Major stated the act was not intentional.

Mr. Major then spoke to the proposed sanctions quoting the LERB cases of *Amery* and of *Lingl*.

He advised that the most serious penalty provided is dismissal followed by demotion which comes with its own negative affect. There is the matter of compensation, pension, and the loss of reputation within the service and externally with the public. It is a serious setback in a member's career but it can be overcome.

He advised that the Chief of Police and Sergeant Carrier met and agreed on a proposed penalty of a reduction in rank from Sergeant to Senior Constable Level II for a period of one-year.

He further advised that the Chief of Police and Constable Woronuk met and agreed on a proposed penalty of a reduction in seniority in rank from Senior Constable Level II to Constable 1st Class for a period of two-years.

Constable Woronuk admitted to more misconduct including an unauthorized CPIC inquiry and corrupt practice. He was an Acting Sergeant at the time of the misconduct and the message needs to be that this behavior is not acceptable.

Mr. Major added that Sergeant Carrier's failure of leadership by giving tacet approval to Constable Woronuk, then later not doing anything when it happened makes this an integrity issue.

Mr. Major advises that Sergeant Carrier has been a police officer for twenty-three and a half years, and Constable Woronuk has been a police officer for nineteen and a half years. Both have good performance evaluations including a classification of "Exceeding Expectation" in some categories. As well, both officers cooperated during the investigation and hearing process.

As an additional factor in mitigation, Mr. Major added that Constable Woronuk lost his sister at the time of this misconduct.

Counsel for Sergeant Woronuk, Ms. Franklin

Ms. Franklin advised that Constable Woronuk was on duty when he was invited to the diner by Sergeant Carrier. He did not have a premeditated plan but was drawn into a spontaneous decision to conduct traffic enforcement.

Constable Woronuk has a long and good service record. She pointed out in his Performance Evaluations, he received a classification of "Exceeding Expectation" in "communication" and "competence" which goes directly to his ability to carry out his duties.

Ms. Franklin also referenced several of the supervisor comments in the evaluations quoting words such as "capable, skillful, and positive.

She also provided some detail on the passing of Constable Woronuk's sister that had occurred at the same time as the ordered statement by the CPS investigators.

Ms. Franklin stated that the definition of "Deceit" in the *Regulations* is broadly defined. Constable Woronuk's actions were not wilful, nor was it an intentional act. It was a regretful omission.

Speaking to the proposed penalty, she states that it is impactful and will be a financial blow for two years.

Counsel for Sergeant Carrier, Mr. Scott

Mr. Scott referenced the *Amery* principles and advised that Sergeant Carrier has been a police officer for twenty-three and a half years. He is a well-regarded member of the police service. He stated the incident is an isolated one in Sergeant Carrier's career.

Sergeant Carrier cooperated fully with the investigation and hearing process. He stated that paragraphs 26-28 contained in the Agreed Statement of Facts were provided to the Presenting Officer by the cited officer. In addition, he stated Sergeant Carrier agrees he did not meet the expectations of the police service.

He advised that there is a friendship between Sergeant Carrier and Constable Woronuk but that should not have clouded his judgement. He recognizes he had a responsibility.

Mr. Scott stated that the prospects of rehabilitation and fitness for duty are good. He directed me to Sergeant Carrier's Performance Evaluations where in the comment sections it speaks to him being "excellent about keeping his superiors informed on what he is doing and follows the chain of command." Also, in the evaluations, he is given a classification of "exceeds expectations" in the areas of "decision making," "competence," and "work life balance." He also commented on the statement in the 2019 evaluation that describes Sergeant Carrier's knowledge and experience as an "asset" to his patrol team.

Sergeant Carrier

Sergeant Carrier was asked to provide some background on his professional and personal life.

He advised he was promoted to Sergeant in 2013. Upon promotion he was assigned to the "Combined Forces Specialized Enforcement Unit", then went to the "Intelligence Unit" for three years. For the past number of years, he has been assigned to the Patrol Division as the "B" team Sergeant.

He has also been a member of the "Tactical Unit" including five years as a team leader.

Sergeant Carrier is married and has two boys, ages eleven and fourteen.

He described policing as a different age now; he stated it is tougher. Policing requires transparency within and outside of the organization.

He stated he takes the job seriously. He has pride in the job and his accomplishments.

Over the past three years, he has assisted the Duty Staff Sergeant and has done 762 hours of Acting Staff Sergeant time.

He closed by stating he "makes no excuses" for his actions.

Constable Woronuk

Constable Woronuk was also asked to provide some background on his professional and personal life.

He stated that two years after he joined he was placed in the Property Crimes Unit where he remained until 2006. It had been discovered that he had a particular skill set working with computers. He then worked in the "Internet Child Exploitation" unit until 2012. He is currently in the patrol unit which he thoroughly enjoys.

Constable Woronuk stated he is divorced with no children but is in a ten-year long relationship with a woman with two children.

He stated he regrets his actions starting that is "not who I am." He described it as a lack of judgment.

Analysis

Sergeant Carrier has been found guilty of two counts of disciplinary misconduct under the *Police Service Regulation*. Constable Woronuk has been found guilty of five counts of misconduct. It is now required that appropriate penalties be imposed upon each officer.

The task of determining an appropriate penalty involves the assessment of many factors.

Both the Presenting Officer and Counsel for the cited officers have referenced the *Amery* case as well as the *Lingl* case, both from the Alberta Law Enforcement Review Board (LERB).

In 1993 the LERB provided a statement of principles regarding disciplinary sanctions. These statements of principles, given in *Amery v. Young*¹, are to this day the guidelines assisting Presiding Officers in Alberta in crafting appropriate penalties in police disciplinary proceedings.

In this decision, I am addressing the misconduct of two police officers. I will address the specific principles where my comments will be both in the context of the overall incident, as well as to the specific actions of each cited officer.

Not all the listed principles are applicable to the matter at hand but each of these principles should be considered before they are determined to be not applicable. I will speak to those principles that I believe are relevant to the matter before me.

The principles and comments are as follows:

1. *The principle purpose of police discipline is to advance the organizational objective of effective and efficient police services to the community.*

There is a lawful requirement and public expectation that police officers entrusted to enforce the law, will do so in an unbiased manner. When it is found that a police officer is using their position and the powers conferred on that position to advance their personal and or political beliefs, there can be and often is a loss of trust and confidence in the agency as a whole.

When a police service determines misconduct has been committed by one of its officers, it must act. The type of action taken will be determined by the type of

¹ *Amery v. Young* ALERB #007-093

misconduct, its impact on the service, its members, as well as the community. Serious incidents of misconduct are to be sent to Disciplinary Hearing.

It is important that the public have the utmost trust and confidence in its Police Service. Without the support of the community a police service's level of effectiveness is severely hampered. The public must see that the police service is willing to recognize and effectively deal with members who commit disciplinary offences.

A police services primary stakeholder is the public. We are answerable to the public. We also have a duty to protect the public therefore all possible measures must be taken to ensure the ability to provide effective and efficient policing services is not compromised by the misconduct of a police officer.

The primary purpose of any disciplinary action is to educate and to correct behavior. The agency's goal is to make any police officer a better police officer. In doing so, the agency increases its capacity to deliver its services to the public thus achieving the organizational goal.

The success of any police agency is dependent on the support of the public. When the public loses confidence in its police service as a result of the actions of one of its officers, that adversely affects an agency's ability to provide effective and efficient policing services to the community.

Accordingly, the police agency must effectively use the disciplinary process to appropriately deal with police officers who have committed misconduct. This is part of regaining the public trust and support. In such matters, the process must be open and transparent.

2. *A fair and just sanction in the circumstances is the goal. The public interest must be considered in those cases where it is engaged.*

As was stated in *Amery*² referring to police disciplinary proceedings:

"The intention of such proceedings is to maintain discipline, integrity and professional standards, or to regulate conduct."

The primary goal of discipline is to correct the behavior that led to the misconduct. We want our members to learn from the process to ensure they and others do not repeat such actions that led to the misconduct.

The penalty imposed upon a cited officer is but one aspect of the disciplinary process. The sanctions imposed in this matter should be such that it is not viewed as strictly punitive. What the cited officer takes away from her of the process is also important. The penalty itself is the final piece of the process and it must be tailored to the individual circumstances of the incident and the police officer. It must be fair, and not just punitive.

A penalty that is excessively harsh without sufficient justification can have the opposite effect of the desired outcome. It can cause the cited officer to have animosity and an "us

² *Amery v. Young*, ALERB 07-93. Pp. 6-7

against them” attitude. In that scenario, the desired goal cannot be achieved. Any penalty imposed must be fair to all parties. This includes the cited officer, any other vested party and the public at large.

3. *In cases where organizational or administrative factors have played a significant roles in contributing to the misconduct that contribution must be considered. In those instances, organizational policy or procedure should take priority for correction. Any individual discipline imposed in such circumstances must consider the overall context.*

Not Applicable

4. *A remedial approach which seeks to correct and educate, rather than to punish, should be considered as a priority in those circumstances where it is appropriate. In the Alberta context Regulation 17 (3) promotes the use of special training or professional counseling. The constructive use of this option, in some circumstances, may work to achieve this goal.*

Not applicable

5. *Both aggravating and mitigating factors should be considered in determining a just sanction or punishment.*
 - A. *Previous good record of the officer.*

I have been provided with the Performance Evaluations for both members and have reviewed them thoroughly. It is evident that the officers are highly regarded by their peers and their supervisors. They are both professional police officers committed to the Service and their community.

In their response to my questions about their personal and professional lives, their passion for their work was apparent.

Sergeant Carrier is the recipient of the Lethbridge Police Service Medal, the Alberta Emergency Services Medal as well as the Canadian Police Exemplary Service Medal. I was also provided with a copy of his Curriculum Vitae which provided detailed information about Sergeant Carrier. His record of in-service and external training is impressive and is indicative of a motivated, skilled police officer.

Constable Woronuk is also the recipient of the Lethbridge Police Service Medal, and the Alberta Emergency Services Medal. I was impressed by Constable Woronuk’s work history which he provided to me verbally. He has a skill set that he employs to the advantage of the police service and the public. I was also impressed by his commitment to patrol. Far too many police officers work feverishly to get off patrol which leaves a void of experience. Patrol is the front-line of policing. Almost every success or failure that a police service experiences starts with patrol. Having skilled, experienced senior police officers out on the front-lines increases the effectiveness and capabilities of all patrol officers. This concept is not lost on Constable Woronuk. He knows and embraces this role and I commend him for it.

B. Long Service of the officer.

Both Sergeant Carrier and Constable Woronuk are long serving members of the Lethbridge Police Service. Sergeant Carrier has been a police officer for twenty-three and a half years, and Constable Woronuk has served for over nineteen years.

C. Whether or not the misconduct was an isolated incident in the employment history of the Officer.

As indicated in the Agreed Statement of Facts, this matter started with a complaint by Minister Phillips that was investigated by the Calgary Police Service. As a result of that investigation, Sergeant Carrier was assessed a sanction of a "official two-year warning" pursuant to section 19(1) of the *Police Service Regulation*. This warning is still on Sergeant Carrier's personal file.

The Presenting Officer submits that the matter that resulted in the official warning and the matters presently before me are separate incidents.

The actions that resulted in the current disciplinary matters also found their roots or resulted from the investigation into the initial complaint. Specific to Sergeant Carrier, the official warning related to the photograph taken at the diner and its posting by Constable Woronuk.

The matters before me have been described as stemming from a collateral issue from the CPS investigation. A question that can be asked is why was the collateral issue which obviously stemmed from the original incident not investigated by the CPS as part of the original complaint. In the follow-up interview to the "Ordered Report" of Constable Woronuk where he outlined a series of internet searches, an expected follow-up question would be about any queries conducted using CPIC or LPS systems. It is obvious an off-line CPIC search of Constable Woronuk's queries was conducted that revealed the CPIC query in April 14, 2017 but this resulted in a separate investigation.

If this matter had been investigated fully from the outset by the CPS, all charges would have been processed in one disciplinary action.

It is my finding that the two-year official warning assessed Sergeant Carrier in 2018 is part and parcel to the current disciplinary process. I would view it as a separate count of misconduct but as a result of the circumstances stemming from the same incident.

Accordingly, I view the current misconduct as an isolated incident in the employment history of Sergeant Carrier.

Constable Woronuk does not have a prior history of disciplinary misconduct on his personnel file. I also view this is an isolated incident in his employment history.

D. The existence or absence of provocation.

The actions of Sergeant Carrier and Constable Woronuk can be viewed as a result of an emotional response to a government proposal. Both members have a longstanding

tie to the Castle area in southwestern Alberta and opposed the proposed restrictions being discussed by the Minister.

I would not characterize the actions of the members as being provoked in the sense that the Minister purposely intended to trigger a reaction from them, however the members were motivated to act by what they perceived as an injustice with the proposed restrictions being placed in the Castle area. It is my finding there was no provocation.

E. Whether or not the misconduct was premeditated or was done on the spur of the moment being aberrational in nature.

Sergeant Carrier was already present in the diner when Minister Phillips arrived with her party. Constable Woronuk was not present at that time and attended later upon being invited by Sergeant Carrier.

The actions of the officers resulted from their observations and discussions related to the governments proposals on the Castle recreational area at that time. There was no premeditation and the initial acts of misconduct were spur of the moment. These acts then led to additional acts by Constable Woronuk which continued for several hours on April 14th, 2017.

Constable Woronuk's surveillance and intended traffic enforcement was a continued action from discussions outside of the diner. I would not consider this spur of the moment given the fact that he waited, then surveilled a subject with the intention of conducting a traffic stop. However I would not go as far as saying it was a planned, premeditated action.

His failure to disclose the CPIC query he conducted on April 14th, 2017 was an omission. There is no evidence to support this omission was wilful or intentional and therefore was not premeditated.

The failure of Sergeant Carrier to speak to Constable Woronuk when he learned he had conducted surveillance coupled with his failure to report the matter to a superior officer was an omission of responsibility. He should have done it and he did not. I do not believe Sergeant Carrier planned and willfully failed to carry out this responsibility. I do not believe he was "covering" for the actions of Constable Woronuk. He failed to perform his supervisory duties, but this was not premeditated.

*F. Whether the imposition of a particular penalty will create a **special** economic hardship for an officer in light of his/her particular circumstances.*

Not applicable

G. Evidence that the rules or internal policies of the police service (written or unwritten) have not been uniformly enforced or applied, thus constituting a form of discrimination.

Not applicable

H. Evidence indicating that a police officer misunderstood the nature or intent of a given order or directive and as a result disobeyed it.

Not applicable

I. The seriousness of the misconduct. In circumstances involving a member of the public, the impact or consequence to that person or persons.

In the LERB *Amery*³ decision it states:

“In regard to police discipline it must also be mentioned at the outset that a police officer, unlike an employee in the private sector, occupies a special status as a public office holder. With that office comes unique and extraordinary powers and the obligation to use those powers within the confines of the law. Of primary concern, in relation to the public interest, are powers of arrest, detention, search, the use of force, and charging authority. It may be particularly so that an abuse of these powers invites a loss of public trust which in turn may tend to generally damage the reputation of a police service. Those involved in the disciplinary investigation process or in the imposition of disciplinary sanctions must accordingly be mindful of the extraordinary public interest that is engaged in circumstances of misconduct involving these powers.”

Police officers are public office holders who have sworn an oath to office. All police officers are acutely aware that they have these extraordinary powers and that any abuse of these powers is unacceptable. Policing must be conducted in a fair and unbiased manner. A police officer must be and must seem to be impartial in the execution of their duties. There is no other way to police.

This is a matter where the cited officers put their self-interests ahead of their oath of office and responsibilities.

Both members have been found guilty of discreditable conduct for their actions. The charge is worded, “doing anything prejudicial to discipline or likely to bring discredit on the reputation of the police service.”

Members do not often think about the impact that their decisions or actions have on an organization. In this matter, it involved an elected official who was also a member of the Provincial Cabinet. One would have to be naïve not to think the situation was not discussed with other elected officials and cabinet members. Any commentary on this would not have been favorable to the Lethbridge Police Service. Efforts would have to have been made by the police service to address the actions of Sergeant Carrier and Constable Woronuk, with Minister Phillips, and possibly others, to soften any negative impact on the service.

³ *Amery v. Young*, ALERB 07-93. P. 8

I will next speak to the misconduct of Sergeant Carrier. When the discussion related to the targeted traffic enforcement took place, Sergeant Carrier should have immediately shut it down. He should have strongly stated such an action would be inappropriate and that it would be an abuse of power. He didn't and instead tacitly approved of the action. Sergeant Carrier's inaction and tacit approval of Constable Woronuk's intentions is disappointing. It is also profoundly serious. No person should be targeted by the police based on the police officer's personal or political views.

When Sergeant Carrier later learned that Constable Woronuk had surveilled one of the people who attended the Minister's breakfast meeting with the intent to do traffic enforcement, he failed in his supervisory duties. If prior to this he thought the targeted traffic enforcement was idle chat, this was proven not to be the case. Sergeant Carrier had a responsibility to address the matter with Constable Woronuk and he did not. He also did not advise his superiors of the incident. This matter involved an elected member of the provincial legislature who was also a Provincial Cabinet member. Any such interactions require that information to be elevated to the senior leadership of the police service. Again, Sergeant Carrier failed in carrying out this responsibility.

I have previously spoken about the importance of the front-line constables to the success and failures of policing. The rank of Sergeant, in my view is the most important rank within policing. It is the sergeant who has the most influence over the constable position. The sergeant is the person whose leadership will determine whether a constable will be an effective police officer who delivers the best level of service to the public. The sergeant will be the teacher, and the mentor. The constable will emulate what they observe of the sergeant. If the sergeant portrays a professional, knowledgeable, and fair police officer, the constable under that sergeant's supervision will most likely exhibit those qualities.

When a sergeant has been shown to fail in demonstrating the expectations of the rank, it can have a terrible adverse effect on their subordinates.

Constable Woronuk's actions that led to his misconduct charges is serious. Anytime a police officer uses his position and the tools available to that position to his personal advantage it has a negative impact on the police service and the public at large.

The intent of Constable Woronuk to target an attendee of Minister Phillips' meeting is truly troubling. I cannot see any purpose for such an action. Using CPIC to identify the individual might be seen to some as minor but it is not. Police officers have a fundamental responsibility to protect the rights and privacy of individuals. Along with protecting the privacy of individuals comes the responsibility to respect the institutions that hold the information of individuals. Constable Woronuk took the further step of distributing the information he improperly obtained, sending a photo of the CAD screen to Sergeant Carrier.

Speaking to the count of "Deceit" it has been clearly stated this was an act of omission; it was not proven or alleged to be willful. It was also at a time when Constable Woronuk

was mourning the tragic loss of his sister. It was not the case where Constable Woronuk was deceitful in response to a question. However, the ordered explanatory report he submitted was not an accurate account of his actions.

Looking at the matter in its totality, this is a serious incident. It involved breaches of some of the basic tenets of policing. Serious misconduct warrants serious sanctions.

J. Officer cooperation, frankness and overall attitude

Both cited officers have accepted responsibility for their actions. They both entered "admit" pleas to various counts contained in the Notice and Record of Disciplinary Proceedings. The remaining counts were withdrawn.

The officers have cooperated with the investigation and actively participated in the creation of the Agreed Statement of Facts.

Both officers have spoken about the incident and describe it as a lack of judgement.

K. Circumstances of mental or emotional stress or a context of substance addiction or drug dependence. In considering such circumstances the likelihood of future misconduct arising from the same cause or causes is an important factor.

Information has been provided that at the time Constable Woronuk provided his ordered explanatory report he had just lost his sister to a tragic accident. This was a stressful time for Constable Woronuk that may have adversely affected his judgement.

L. Other mitigating or aggravating factors unique to the personal circumstances of the officer or the misconduct involved.

Not applicable

6. Deterrence of other police officers and maintenance of public respect of the police are legitimate goals in the context of police discipline.

General deterrence is an important aspect of police discipline.

Members of the LPS and other police agencies need to be aware that such misconduct can attract serious disciplinary consequences. In addition, they must also be reminded of the negative impacts of the public perception on their coworkers and the profession.

7. Consistency in disciplinary sanctions should be strived for. Like instances of misconduct should attract like sanctions. In previous penalty decisions I have commented on how imposing a penalty is a subjective process that is as individual to the circumstances of the matter as it is to the circumstances of the cited officer. As stated in Furlong "The fitness of a sanction depends on numerous factors, and is particularly sensitive to the factual underpinnings of the offences."

No matters are exactly analogous to other matters. Penalties from other matters can be used to provide guidelines for a Presiding Officer on what an acceptable range of the available penalties are. That continues to be the case here.

This principle has been discussed previously by the *Alberta Court of Appeal*. In *Kube v Edmonton (Police Service)*⁴ Justice Slatter made observations on the utility of precedents on penalty:

(8) In addition, it appears that both the Presiding Officer and the Board had before them the “leading cases” on penalties in police disciplinary decisions. The additional cases that were tendered were merely further examples of the application of those principles. Such decisions are of little precedential value: R. v Arcand, 2010 ABCA 363 (CanLII) at paras. 213-27, 415-9, 499 AR 1. As the Court noted in R. v B.S.M., 2011 ABCA 105 (CanLII) at para. 7, 502 AR 253:

. . . In theory, trying to set some outer limits for a sentence range by examining precedents has some utility, but in practice it is often unsatisfactory. Typically the outer limits are too far apart to be meaningful, and the facts are all over the map. Few if any cases really match on their facts; so all one can ordinarily produce is a Frankenstein’s monster, by trying to graft two or more precedents together. Use of precedent for factual questions, especially for numbers for sentences or damages, is not usually a useful exercise. . . . Instead, the value of sentencing precedent lies in its principles and (where given) its starting points.

In *Camrose (Chief of Police) v MacDonald*⁵ at para 28, the court stated:

“Both Amery and Lingl support the policy of treating like cases alike where possible in light of all the relevant factors. But this is a statement of the need for a fair and predictable consistency of approach, not a rule in favour of regimented outcomes and without the need to properly assess all the relevant factors in each case.”

In *A v Edmonton Police Service*⁶ the LERB referenced *MacDonald* at para 115:

“We note, first, the Court of Appeal’s guidance in MacDonald, i.e., that a fair and predictable consistency of approach is called for, without that leading to regimented outcomes detached from assessment of the factors in a given case. Outcomes in like cases are of value in assessing penalty, but they must not be allowed to drive an outcome regardless of present circumstances.”

None of the affected parties provided any cases of like discipline to support their proposed penalties. In keeping with the direction provided by the court, I will provide a number of matters.

⁴ *Kube v Edmonton (Police Service)*, 2013 ABCA 438

⁵ *Camrose (Chief of Police) v MacDonald*, 2013 ABCA 422 (CanLII)

⁶ *A v Edmonton Police Service*, 2014 CanLII 11016 (AB LERB)

I will first address like cases relating to the charges against Constable Woronuk.

Matters related to the unauthorized use of CPIC and or agency records management systems are common, as are matters associated to the use of the information obtained.

CPS v. Cst. McElroy, 2016 June 3.

The member obtained a licence plate for a vehicle parked near the residence of her ex-husband. She queried the plate on the CPS Records Management System, obtaining the registered owner information. This query was not for any legitimate policing purpose.

The member was found guilty of insubordination and ordered to forfeit twenty-four hours accumulated through overtime.

EPS v. Cst. Smart, 2016 Jan 27.

The member conducted three queries of CPIC, using the login profile of another police officer, for personal reasons, unrelated to his policing duties.

The member was found guilty of two counts of insubordination and was suspended from duty without pay for fifty hours.

CPS v. Cst. Campbell, 2015 Nov 09.

The member used the Canadian Police Information Center (CPIC) to query a woman's license plate for investigative purposes after observing her drive a car. The member then used the information gained from CPIC to query the woman on the Police Information Management System (PIMS) and obtained her personal phone number. The member then called the woman to inquire into her safety. Shortly thereafter he sent a text of a personal nature, unrelated to police business, to the woman using his private cell phone.

The member was found guilty of insubordination and ordered to forfeit thirty-six hours accumulated through overtime.

Several examples of members providing false, or misleading information in an ordered statement or interview are as follows:

EPS v. Cst. Yaremchuk, 2015 May 26.

The member, when interviewed by an ASIRT Investigator in relation to steroid use as well as the steroid trafficking activity, he willfully made false statements by stating he did not use the anabolic steroid Stanozolol, and he was not aware that a Detective in 2012 was in possession of, or distributing Stanozolol a substance listed in Schedule IV of the Controlled Drugs and Substances Act.

The member was found guilty of Discreditable Conduct and Deceit. He was reduced in seniority in rank, from Senior Constable to 4 year Constable for one year, then progression to 5th year Constable for one year, then return to prior seniority in rank.

EPS v. Cst. Toy, 2015 Dec 03.

The member willfully or negligently made and signed a false, misleading or inaccurate statement in the course of providing an involuntary written response to a complaint against him. The member willfully or negligently made one or more false, misleading or inaccurate statements while testifying at a Disciplinary Hearing being conducted pursuant to section 45(3) of the *Police Act*.

The member was found guilty of Deceit. He was order dismissed from the police service.

Metro Vancouver Transit Police v. Cst Janzen, 2014 Feb 12

The particulars of the counts of deceit were that: a) he made an entry in his notebook that to his knowledge was false or misleading and omitted to record in his notebook the use of force against Mr. Booker, to which he was a witness. b) he made an entry in his PRIME synopsis page on May 1, 2010, that to his knowledge was false or misleading. 2 c) he made a PRIME police statement on May 6, 2010, that to his knowledge was false or misleading. d) he provided a duty report to Staff Sergeant Doug Fisher, that to his knowledge was false or misleading. e) he provided an oral statement to Staff Sergeants Doug Fisher and Kent Harrison on December 7, 2010, that to his knowledge was false or misleading.

The member was found guilty of Abuse of Authority, Deceit and Discreditable Conduct. He was assessed a suspension of 5 days, 3 days, and also dismissed from the police service. On appeal the penalty was varied to a 14-day suspension and a reduction from 1st Class Constable to 3rd Class Constable.

EPS v. Cst. Berube, 2010 Apr 10.

The member brought strip club employees into the EPS Constables Lounge and left them unattended. The member lied to the investigating Detective during his ordered interview. The member was on Whyte Ave. during Stanley Cup celebrations. Ignored warning from Police to move, then ran from Police. Arrested. Had open alcohol in vehicle. The member involved in off-duty collision. He falsified Collision Report re damage amount and used position as a police officer to influence other parties' insurance agent.

The member was charged with a variety of charges which included deceit, corrupt practice, neglect of duty and discreditable conduct. He was ordered dismissed from the Edmonton Police Service.

EPS v. Cst. Kube, 2013 March 14

On 2011 October 22, while off-duty, the member attended at the scene of an investigation into the insurance status of a motorcycle that he had sold more than two months earlier. Although he had cancelled the insurance on the motorcycle immediately after the sale, he presented the investigating officers with an ostensibly valid certificate of insurance, without advising the investigating officers of the cancellation of that certificate of insurance. He produced this certificate of insurance to the investigating officers in an attempt to avoid the operator of the motorcycle being charged with operating without insurance contrary to the Traffic Safety Act. During his discussion with the investigating officers, he identified himself as a member of the Edmonton Police Service.

The member was found guilty of discreditable conduct and corrupt practice. He was dismissed from the Edmonton Police Service.

I will now address matters like the charges against Sergeant Carrier. Finding matters of failure to supervise is surprisingly difficult.

O.P.P. v Sgt. Potsma, 2017 Dec 20.

The Sergeant attended a domestic violence call with a probationary constable. It was proven that the Sgt. failed to ensure a proper investigation was completed and he failed to ensure the OPP Domestic Violence Policy was followed by the probationary constable.

The Sergeant was ordered to forfeit thirty hours of worked time.

Windsor Police Service v. Staff Sergeant Bridgeman, 2014 Jan. 27

The S/Sgt. was found guilty of discreditable conduct and neglect of duty. As the OIC of the Criminal Investigation Bureau he reviewed an occurrence report relating to an arrest. He assigned the file to a Detective. He later endorsed a charge laid by the Detective despite there being insufficient grounds for the charge. It was found the S/Sgt. failed to properly monitor and oversee the investigation under his command.

The Staff Sergeant was reduced in rank from Staff Sergeant to Sergeant for a period of eighteen months.

Montreal Police Service v. Agent Samaras. 2017 Sep 29.

The cited officer and another officer were dealing with a cyclist when the complainant intervened wanting to be a "witness" for the cyclist. The other officer warned the complainant not to interfere. She approached the complainant telling him he smelled of alcohol, grabbed him, and took him to the ground. He was handcuffed and placed into the police car. The cited officer failed to intervene in the misconduct of Cst. Trudeau.

Agent Samaras was found guilty of the Alberta equivalent of neglect of duty and was suspended without pay for two eight-hour working days.

Discussion on Penalty

The parties have submitted a joint-submission on penalty.

For Constable Woronuk they submit a reduction in seniority in rank from Senior Constable Level II to Constable 1st Class for a period of two-years would be appropriate.

For Sergeant Carrier, they submit a demotion in rank from Sergeant to Senior Constable Level II for a period of one-year would be appropriate.

In both instances these proposed penalties were the work product of discussions between the Chief of Police and the cited officers.

Mr. Major advises that the joint submission on penalty is not binding upon me.

Joint submissions are the product of often time lengthy discussions involving cooperation and compromise. They promote expedience and efficiency to the disciplinary process and reduce the stress and worry to the cited officer, complainants, and witnesses.

In October 2016 the *Supreme Court of Canada* in *R. v. Anthony Cook*,⁷ confirmed that trial judges should only depart from a joint submission in very limited circumstances, where the sentence proposed would bring the administration of justice into disrepute, or is otherwise not in the public interest. This decision has become the primary jurisprudence on the test on accepting or rejecting a joint submission in criminal matters. It did not address civil, administrative processes.

Since the release of the decision, a number of administrative tribunals have adopted *Anthony-Cook* when addressing the issue of joint submissions on penalty however the appeal courts are very limited in determining whether or not *Anthony-Cook* applies to administrative tribunals.

An April 2019 decision from the *Alberta Court of Appeal* took a position on the application of *Anthony-Cook* to a decision of the *Alberta Review Board*. In *R v Sehmbi*⁸ the Court addressed the appeal of an *Alberta Review Board* decision where the Board did not accept a joint recommendation on a disposition. The Court stated:

Joint Submissions

[5] The appellant agrees that the test in R. v Anthony-Cook, 2016 SCC 43 (CanLII), [2016] 2 SCR 204 does not apply to dispositions by the Board. Anthony-Cook explains the place and importance of joint submissions in the

⁷ R. v. Anthony Cook, 2016 SCC 43

⁸ R v Sehmbi, 2019 ABCA 117 (CanLII)

criminal justice system. A disposition by the Board is fundamentally different from a conviction and sentencing in a criminal matter.

[7] The Board is required to give primacy to the safety of the public, and consider the needs of the accused and the other factors mentioned in s. 672.54. This must give the Board the ability to depart from the recommendations of the treatment team, even if they are agreed to by the patient. The treatment team and the accused cannot foreclose the Board's ability to give primacy to the safety of the public: Re Osawe, 2015 ONCA 280 (CanLII) at para. 33, 323 CCC (3d) 405. Although Anthony-Cook does not apply in this context, joint submissions are to be encouraged: Re Osawe at para. 47.

The above noted case is not directly on point relating to administrative tribunals in the employer/employee or professional disciplinary context. At best I will conclude that the application of *Anthony-Cook* to police disciplinary proceeding is unsettled law in Alberta.

Notwithstanding, a Law Society case from Newfoundland/Labrador aptly captures what should be the intent around joint submissions on penalty in Administrative Tribunals and the impact of *Anthony-Cook* and its guiding legal principles.

The Adjudication Tribunal further notes the recent decision of the Supreme Court of Canada in R. v. Anthony-Cook, 2016 SCC 43 (CanLII) in relation to joint submissions on sentence. While that case was in the context of a criminal matter, the guiding legal principles are of benefit when considering a joint submission on sanction in the context of professional discipline. In accordance with the public interest test adopted by the court in Anthony-Cook, the Joint Submission in this case is not so "markedly out of line with the expectations of reasonable persons aware of the circumstances of the case that they would view it as a breakdown in the proper functioning" of the Law Society.⁹

So, are the joint penalty submissions for the cited officers "markedly out of line with the expectations of reasonable persons aware of the circumstances or do they fall within the range of reasonable outcomes?"

Speaking to the matter of Constable Woronuk, in a nutshell, his misconduct consisted of conducting a CPIC query for a non-law enforcement purpose. He did so for a personal/political purpose and conducted traffic enforcement measures in a targeted fashion, again for personal/political purposes. He also omitted the fact that he conducted CPIC inquiries in his "ordered explanatory report."

The most serious charges that Constable Woronuk has been found guilty of are counts 1, 4 and 7; these are counts of "Corrupt Practice, and Deceit." In relation to policing, the words themselves conjure up images of dishonesty, bribery and general unreputable behavior. A review of the facts and circumstances of this matter shows this not to be the case.

⁹ Myers (Re), 2017 CanLII 20439 (NL LS)

For a full understanding of how “Corrupt Practice” was viewed by the Legislature and the Governor in Council, when the Regulations were crafted, I refer to the subsection in its entirety:

(c) “corrupt practice” consists of one or more of the following:

(i) failing to account for or to make a prompt and true return of money or property that the police officer received in his capacity as a police officer;

(ii) directly or indirectly soliciting or receiving a payment, gift, pass, subscription, testimonial or favour without the consent of the chief of police;

(iii) placing himself under a financial, contractual or other obligation to a person in respect of whom the police officer could reasonably expect he may be required to report or give evidence;

(iv) without adequate reason, using his position as a Police officer for his personal or another person’s advantage;

When examining s. 5(2)(c)(i), (ii) and (iii), it is quite clear that the section is meant to deal with serious matters, that speak to the honesty and integrity of a police officer. When I look at the wording contained in (iv), it is my interpretation of the subsection, that it is meant to be a “catch all” that was not covered by the first three subsections. But, it is also meant to deal with serious matters of corruption. The “advantage” spoken of, should be something reasonably tangible.

The evidence before me indicates Constable Woronuk’s personal thoughts about the protection of the Castle Recreation area conflicted with the proposals of the government of the day. The discussions relating to this area could lead to a detrimental affect on Constable Woronuk’s recreational activities. He targeted an individual who attended the meeting with Minister Phillips, queried his licence plate and followed him with the intent to observe him commit a traffic offence. It was also admitted that his actions were meant to target Minister Phillips along with other persons who attended the breakfast meeting. Constable Woronuk admitted his actions were motivated by his own personal and political views.

Constable Woronuk “lost” the vehicle he was following. He was not able to conduct a traffic stop on this vehicle and did not stop any other vehicle associated with Minister Phillips’ meeting. He did not achieve his goal, but he did use his position and the tools available to him to identify one of the parties in attendance at the meeting. He did use this information identifying stakeholders when he posted the photograph to social media.

When I look at some of the dictionary definitions ¹⁰ of “corrupt,” I see examples such as:

¹⁰ dictionary.reference.com/browse/corrupt

1. *guilty of dishonest practices, as bribery; lacking integrity; crooked: corrupt judge.*

2. *debased in character; depraved; perverted; wicked; evil: a corrupt society.*

While simply a sampling of the definition, it speaks to the serious connotation the word has.

I have reviewed the circumstances of this incident, the intentions of Constable Woronuk, and my interpretation of the Corrupt Practice section of the *Regulations*. In finding the counts proven, I have found this “advantage” amounts to something tangible enough to fall into the category of corrupt practice. I will state that on a scale of seriousness in relation to most examples of corrupt practice, Constable Woronuk’s actions fall to the lower end. If Constable Woronuk had been successful in observing a traffic violation and issuing a summons, the “advantage” achieved would have been far more serious and would attract a far more serious penalty.

Speaking to the count of deceit, the evidence before me states, that in his ordered explanatory report, Constable Woronuk “omitted” the fact he conducted a “CPIC” query on the licence plate of a party who attended the meeting with Minister Phillips. He did advise that he conducted internet searches to ascertain the identity of an individual. A finding of deceit against a police officer is extremely serious and has often led to the dismissal of the officer. Constable Woronuk admitted the facts to this count and entered an admit plea. It must be concluded Constable Woronuk was negligent in the preparation of his report in omitting a key fact. He did not give a full account of his actions.

The counts of discreditable conduct and insubordination that were admitted to and found to be proven are based in the same set of facts as the previously mentioned counts.

The like cases listed in this decision provide some guidance on what an acceptable penalty for Constable Woronuk may be. The range varied from forfeiture of hours all the way to dismissal.

The proposed penalty is a global one. It is also a significant penalty and in my view one that is one the high end of what may be considered appropriate. A reduction of two levels from Senior Constable Level II to 1st Class Constable for a period of two-years results in a loss of wages of over \$19,000.00.

The seriousness of Constable Woronuk’s misconduct cannot be understated. Like any member of the public, it is okay to hold opinions and views but unlike an ordinary member of the public, a police officer acting in his official capacity must be and must be seen as being politically neutral. A police officer should never use their office as a means to advance their personal agenda and this is where Constable Woronuk’s misconduct stands out.

Accordingly, although the proposed penalty may seem unduly harsh where compared to other like counts of misconduct, I believe a person who is reasonably informed of the circumstances, would expect nothing less. I find the proposed penalty to be reasonable and one that meets the overall objectives of police discipline.

Addressing the proposed penalty of Sergeant Carrier, any time a promoted member is ordered reduced in rank, it is a serious penalty. In this instance, it is proposed the reduction be for one-year, not a permanent demotion. From financial perspective, a reduction from Sergeant to Senior Constable Level II has a financial consequence of over \$11,600.00. Sergeant Carrier has 23 ½ years of service and would be eligible for pension in 1 ½ years. This reduction has a significant impact on his “best five” years used to calculate pension. There is also a stigma attached to a demotion.

Sergeant Carrier’s agrees the discussion he had with Constable Woronuk outside of the diner was tacit approval for Constable Woronuk’s to move forward with his traffic enforcement plans. When he did not address these actions, and later found out what Constable Woronuk did do, he failed to perform his duties as a supervisor. If Sergeant Carrier had properly performed his supervisory duties from the outset, we wouldn’t be here today.

I have previously spoken about the importance of the sergeant rank. The matter currently before me is an example of how important proper supervision is. In this instance Sergeant Carrier failed in his responsibilities and both he and Constable Woronuk are now facing the consequences.

I am satisfied that this instance of misconduct was an aberration. Sergeant Carrier strikes me as the consummate professional and normally an excellent supervisor. If not for this fact, a permanent demotion from the rank of sergeant could be an appropriate penalty.

The proposed penalty is significant but not unduly harsh. I believe it is also meaningful and will have the desired effect of correcting and educating, but also general deterrence. Supervisors of all ranks must have foresight as to the impacts of their actions, or inactions, on themselves and those members they are responsible for.

ORDER

After consideration of the submissions of both parties, and assessing the evidence, I make the following order on penalty:

Constable Keon Woronuk Reg. No. 8626

- Count 1:** Corrupt Practice as defined by section 5(2)(c)(iv) of the *Police Service Regulation*;
- Count 2:** Discreditable Conduct as defined by section 5(2)(e)(viii) of the *Police Service Regulation*;

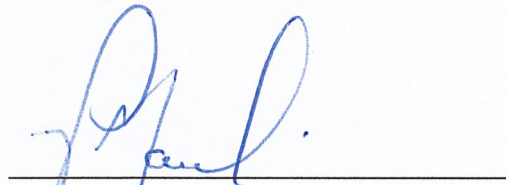
- Count 4:** Deceit as defined by section 5(1)(d)(i) of the *Police Service Regulation*;
- Count 7:** Corrupt Practice as defined by section 5(2)(c)(iv) of the *Police Service Regulation*;
- Count 10:** Insubordination as defined by section 5(2)(g)(ii) of the *Police Service Regulation*.

I impose a global penalty of a reduction in seniority in rank from Senior Constable Level II to Constable 1st Class for a period of two (2) years, pursuant to Section 17(1)(d) of the *Police Service Regulation*. This reduction will occur effective the 2nd pay-period of July 2020. After the completion of two (2) years, Constable Woronuk will return to Senior Constable Level II.

Sergeant Jason Carrier

- Count 5:** Discreditable Conduct as defined by section 5(1)(e)(vi) of the *Police Service Regulation*;
- Count 6:** Neglect of Duty as defined by section 5(2)(h)(i) and 5(2)(h)(v) of the *Police Service Regulation*;

I impose a global penalty of a reduction in rank from Sergeant, to Senior Constable Level II for a period of one (1) year, pursuant to Section 17(1)(e) of the *Police Service Regulation*. This reduction will occur effective the 2nd pay-period of July 2020. After the completion of one (1) years, Sergeant Carrier will return to the rank of Sergeant.



Superintendent Paul Manuel (Ret'd)

Presiding Officer

Presenting Officer:	Mr. Steve Major
Counsel for Constable Woronuk:	Ms. Tiffany Franklin
Counsel for Sergeant Carrier:	Mr. Dan Scott

Issued at the City of Lethbridge, Province of Alberta

July 9th, 2020