

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

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

**IN THE MATTER OF**

**CORNWALL POLICE SERVICE**

**AND**

**CONSTABLE KEVIN WELLS**

**DISCREDITABLE CONDUCT (TWO COUNTS)  
NEGLECT OF DUTY (ONE COUNTS)  
DECEIT (ONE COUNT)**

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**DISPOSITION**

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<b>Before:</b>	<b>Superintendent (Ret.) Greg Walton Ontario Provincial Police</b>
<b>Counsel for the Prosecution:</b>	<b>Ms. Lynda Bordeleau Ms. Courtney March</b>
<b>Counsel for the Defence:</b>	<b>Mr. Lawrence Greenspon Mr. Graham Bebbington</b>
<b>Hearing Dates:</b>	<b>September 21 &amp; 22, 2020</b>

## **Background**

Constable (Cst.) Kevin Wells was charged with six counts of misconduct. Following a three-day hearing, I found Cst. Wells guilty of four of the six counts in a decision dated March 3, 2020. I made the subsequent conclusions:

- Cst. Wells committed discreditable conduct by knowingly operating Cornwall Police Service marked cruiser #4 without a valid driver's licence, it had expired. He did so without notifying his supervisor. This behaviour was contrary to Cornwall Police Service policy.
- Cst. Wells committed neglect of duty when he failed to make a notebook entry about his involvement in an on-duty single motor vehicle collision with Cornwall Police Service cruiser #4. His decision to not document the collision and the damage he observed, was more than a performance issue, the degree of neglect was so significant that it elevated to a matter of misconduct. Furthermore, Cst. Wells did not immediately report the collision to a supervisor as required by Cornwall Police Service policy.
- Cst. Wells committed discreditable conduct when he had Cornwall Police Service marked cruiser #4 inspected by an unapproved mechanic without authorization.
- Cst. Wells committed deceit when he misrepresented the facts by providing misleading or inaccurate statements to his supervisor, Sergeant MacLean, and Mr. Pettinella, (Cornwall municipal mechanic) with intent to deceive. Cst. Wells failed to report to his supervisor that he did not possess a valid Ontario driver's licence at the time of the collision; that he was fully aware of the extent of the damage; and, that he had the vehicle inspected by a licenced mechanic. Subsequently, Cst. Wells left a note for the licenced mechanic, Mr. Pettinella, which did not explain the full extent of his knowledge concerning the damage sustained. Cst. Wells was intent on suppressing the extent of the damage sustained to Cornwall Police Service marked cruiser #4 in an attempt to conceal that his driver's licence was expired.

## **Positions on Penalty**

Ms. Lynda Bordeleau represented the Cornwall Police Service and took the position based on the totality of the evidence, that Cst. Wells' usefulness to the Cornwall Police Service has been nullified and he ought to be dismissed. Mr. Lawrence Greenspon represented Cst. Wells and submitted dismissal is not at all warranted, and that a more fitting sanction is a demotion in rank for a period of time or a loss of hours amounting to two weeks, or 80 hours.

## Decision

The evidence was clear and convincing and as such, I found Cst. Wells guilty of four counts of misconduct. This disposition hearing is to determine the appropriate sanction.

I find Cst. Wells has nullified his usefulness to the Cornwall Police Service. Cst. Wells shall resign within seven days or face dismissal from the Cornwall Police Service.

## Reasons

There is a significant disparity in the positions taken by Counsel in respect to disposition; dismissal versus a loss of hours or demotion in one rank for an unspecified span of time. I will first consider the circumstances which must exist for a police officer to be dismissed from employment.

Exhibit #21 is Mr. Greenspon's Casebook. Exhibit #22 is Ms. Bordeleau's Book of Authorities. At tab 2 of Exhibit #21 and also found at tab 33 of Exhibit #22, is the matter of *Williams and Ontario Provincial Police*, 1995 CanLII 15417 (ON CPC) wherein the Commission stated:

The assertion that Constable Williams can be useful or an asset to the Ontario Provincial Police after a finding of misconduct is argued by his counsel with reference to a number of prior decisions. For this to be the case though, three elements must be considered with reference to these cases: the nature and seriousness of the misconduct, the ability to reform or rehabilitate the officer, and the damage to the reputation of the police force that would occur should the officer remain on the force.

In some cases, the seriousness of misconduct can be so egregious as to cause irreparable harm to the police service if the officer were to remain employed. In those instances, the potential to reform is surpassed by the seriousness of misconduct and in most cases, it is unlikely that an opportunity to rehabilitate would correct a fundamental character flaw of such magnitude.

In this matter, I agree with the submissions from Counsel indicating the seriousness of misconduct is not so egregious that on its own, it merits dismissal. Therefore, in keeping with *Williams*, it is incumbent upon me to consider Cst. Wells' ability to reform or rehabilitate, and the damage to the reputation of the Cornwall Police Service that would occur should Cst. Wells remain employed as a police officer.

At tab #37 of Exhibit #22 are excerpts from Paul Ceyssens' Legal Aspects of Policing specific to *Police Services Act (PSA)* Code of Conduct dispositions. Mr. Ceyssens concluded:

...It is a "fundamental proposition" that a disposition must be proportionate to the misconduct, with "due regard to those special considerations applicable to service force." Proportionality requires a careful examination of a standard list of disposition "considerations" (or disposition "factors") that are mitigating or aggravating or neutral, depending upon the facts of each particular matter...

Proportionality is arguably the most complex of the five principles that govern the process of crafting an appropriate disposition, and requires three decisions:

- First, a decision-maker must identify which disposition considerations are relevant to the matter in question.
- Second, a decision-maker must determine whether each relevant disposition consideration is mitigating, aggravating or neutral in the circumstances.
- Third, the decision-maker must appropriately balance or weigh the identified relevant disposition considerations in accordance with the factual background of the matter, and the competing interests. Thus a decision-maker must give proper weight to the relevant factors in a particular case," and a proper balance is of utmost importance... there is no requirement to give all factors equal weight, no requirement that any one factor be given more weight than another...

This approach has been accepted and continues to be relied upon by *PSA* tribunals in Ontario to determine an appropriate and fitting sanction. Mr. Ceyssens also noted a disposition must reflect the unique circumstances of each case and Counsel agreed in their submissions that this case has distinct factors. Cst. Wells received a significant sanction in 2016 and was in the process of completing that sentence at the time of this matter.

Found at tab 3 of Exhibit #21 and tab 19 of Exhibit #22 is the matter of *Krug and Ottawa Police Service*, 2003 CanLII 85816 (ON CPC). In *Krug*, the Commission identified 13 factors that must be considered when appropriate and fitting sanctions are determined. Since 2003 that list has increased to include additional factors. In this decision, I will address those disposition considerations considered relevant by Counsel and by this tribunal. I will determine whether each of the individual factors is aggravating, mitigating, or neutral, and ultimately, I will determine the appropriate weight to be applied to each factor considered.

One of the penalty factors to be considered is that of “Consistency of Penalty.” In his text, Mr. Ceyssens speaks to Consistency of Penalty and cites the case of *Schofield and Metropolitan Toronto Police Force* which states:

Consistency in the discipline process is often the earmark of fairness. The penalty must be consistent with the facts, and consistent with similar cases that have been dealt with on earlier occasions.

As mentioned, this case is unique. Counsel submitted that they were unable, as is often the case, to locate a previous case that closely mirrors the facts in this case. Furthermore, Counsel were unable to identify a matter wherein an officer was demoted in rank due to previous misconduct at the time additional misconduct was committed, which is the situation here; Cst. Wells was demoted to the rank of fourth-class constable in 2016 resulting from a guilty plea to multiple counts of misconduct.

Because Consistency of Penalty will be of limited assistance, the significance of the remaining penalty factors is potentially amplified. Often, I am tasked, based on similar previous cases submitted for consideration, to ascertain the range of penalties available, and to then determine where the sanction ought to land within that established range of penalties. In this instance, the range of available penalties is wide-ranging, consequently, the other penalty factors must provide the necessary guidance in this determination.

Before I delve into the relied upon penalty factors, I will first speak to the issue of progressive steps of discipline. At tab 13 of Exhibit #22 is the matter of *Galassi v. Hamilton (City) Police Service*, 2005 CanLII 20789 (ON SCDC) where the Court stated:

The Hearing Officer treated the 2000 convictions for discreditable conduct as prior convictions. He did not address the fact that the misconduct which led to those 2000 convictions occurred in 1999, after all but one of the firearm incidents had taken place. In my view, the Hearing Officer erred in speaking of “progressive discipline” in this case. In a system of progressive discipline, an employer applies increasingly serious sanctions to employee misconduct in an effort to correct the employee’s behaviour. Nevertheless, even in such a system, the particular misconduct of an employee may be so serious that dismissal is warranted, despite the absence of prior warnings or disciplinary action.

Ms. Bordeleau noted seriousness of the misconduct is often what drives dismissal cases, however, in this case, if it were not for the 2016 discipline matter, the Cornwall Police Service would have a different stance on penalty. Ms. Bordeleau submitted progressive steps of discipline is a very pertinent issue for consideration.



Mr. Greenspon submitted one previous act of misconduct does not equate to progressive steps; a pattern is necessary and more than one previous guilty finding is required. He added, that to impose a sanction of dismissal for misconduct of such a minor nature is illogical, despite the presence of previous serious misconduct.

Ms. Bordeleau noted dismissal is not meant to be punitive in nature, it occurs when a point has been reached that an officer is no longer useful to his employer. *Trumbley v. Fleming*, 1986 CarswellOnt 2250 (C.A.) can be found at tab 30 of Exhibit # 22 and states:

The most serious consequence that can befall a police officer in such proceedings is the loss of his or her position and, while I do not minimize the seriousness of this consequence, it is a civil consequence and not punishment of a criminal nature. A police discipline matter is a purely administrative internal process, its most serious possible consequence makes it analogous to a discipline matter in ordinary employer-employee relationships, even though the procedure governing it is clearly more formal.

To ascertain whether an officer ought to be dismissed, the Court agreed in the matter of *Galassi*, that the proper test is the suitability of the individual to be a police officer given his past conduct, the surrounding circumstances, his prospects at rehabilitation, and whether his usefulness has been annulled. In the matter of *Venables and York Regional Police Service*, October 3, 2008 (OCCPS), the facts are far more serious, but the Commission confirmed the hearing officer correctly concluded that the seriousness of misconduct raised insurmountable doubts about the officer's future suitability as a police officer. In this instance, it is the totality of the circumstances, not solely the seriousness of misconduct that must be taken into consideration when considering whether Cst. Wells remains useful to the Cornwall Police Service. In *Welfare and Peel Regional Police*, 2018 ONCP 15(CANLII), the Commission confirmed that it is the usefulness of an officer to his or her police service which must be considered.

Ms. Bordeleau submitted that based on previous misconduct, in conjunction with the findings in this matter, Cst. Wells has demonstrated he cannot be trusted to honestly account for his actions while on duty, nor can he be trusted to comply with Cornwall Police Service policy. A police officer must have, and act with, honesty and integrity; Cst. Wells has demonstrated he does not possess these fundamental qualities.

Ms. Bordeleau underscored the fact Cst. Wells was serving his sanction from previous misconduct at the time he committed these acts, the short time between misconducts is a major factor for consideration. As a result of the previous serious misconduct, Cst. Wells was demoted from first-class constable to fourth-class constable in 2016. Before he had fulfilled his compelled sanction, he committed the misconduct related to this matter. At

that time, Cst. Wells held the rank of second-class constable; he had not yet returned to first-class. Ms. Bordeleau likened this situation to committing an offence while still on probation.

Tab 36 of Exhibit #22 contains excerpts from the text “Canadian Labour Arbitration” by Donald Brown and David Beatty:

The principle of progressive discipline evolved from an employer’s duty to warn employees of the seriousness with which it viewed their behaviour and is based on the idea that, along with deterrence, correction and rehabilitation are the primary purposes of industrial discipline. The theory very simply is that by progressively increasing the severity of discipline sanctions for persistent misconduct, an employee will be encouraged to reform. Such a system enhances the fairness and efficacy of discipline as a corrective tool by ensuring that employees are not punished more harshly than necessary and are not caught by surprise.

Progressive steps of discipline and the previous misconduct finding in 2016 is a relevant consideration but it is not an exclusive cause for dismissal; Cst. Wells has either annulled his usefulness to his employer or he has not. I must determine whether Cst. Wells has the ability to reform or rehabilitate, while considering the damage to the reputation of the police force that would occur should he remain employed as a police officer. That assessment cannot be guided exclusively by progressive steps of discipline.

The Canadian Labour Arbitration text also states:

The doctrine of the culminating incident delineates those circumstances in which it is proper for an employer to rely upon an employee’s poor employment record in order to justify taking more serious action than might otherwise be warranted by the other circumstance of the case. It is the logical corollary of the proposition that an employee’s long and blameless employment record may properly be relied on by an arbitrator to ameliorate a disciplinary penalty. In the standard case, the doctrine says that where an employee has engaged in some final, culminating act of misconduct or behaviour for which some disciplinary sanction may be imposed, it is entirely proper for the employer to consider a checkered and blameworthy employment record. In determining the appropriate sanction for that final incident. Just as in criminal law, arbitrators recognize that penalties for a second, third, and fourth offence may increase with each succeeding offence.

The proposition is not that for every succeeding offence the sanction must be greater, it is that the sanction may be greater. It is reasonable to expect that in situations where the misconduct in question is the same or very similar to the misconduct in a previous finding

of guilty, it would result in an increased sanction. However, if the scenario was slightly different, such as, a very minor infraction committed after a significant sanction had been imposed for serious behaviour, it is illogical to conclude that therefore the sanction must result in an increased sanction. For example, an officer could receive a lengthy demotion for impaired driving causing bodily harm and afterwards, within the next few years, he is found to have committed misconduct for failing to comply with administrative policy and procedure. It is not essential for the subsequent sanction to be at least that of a lengthy demotion, increasing in severity from the prior penalty; all factors must be taken into consideration in order to arrive at an appropriate and fitting sanction. And I am not required to apply equal weight to each factor, reasonable weight must be given to each factor to achieve a reasonable finding.

At tab 20 of Exhibit #22 is the matter of *Livingston Industries Ltd. V. I.W.A.*, 1982 Carswell Ont 2529 (Ontario Arbitration), wherein the Board noted:

It is generally accepted that punishment, in an industrial relations context, ought to be administered on a “corrective” basis. Penalties should be tailored to allow an employee to learn from his or her mistakes subject, of course, to particularly serious misconduct that may justify an employee’s immediate removal from the work place...

However, corrective discipline also assumes that as an employee continues to misbehave, the employer’s rightful and important interest in having a productive work place may come to outweigh the employee’s entitlement to another chance. The deliberate use of incrementally more severe doses of discipline by an employer enables the parties to document where they stand and provides important information to the employee. An employee who continues to misbehave notwithstanding the application of incremental measures of punishment provide important evidence that he is unlikely to learn from another opportunity and that the employer need not continue to cope with him.

Mr. Greenspon submitted that one previous misconduct offence is insufficient to trigger progressive steps of discipline. I agree that if there had been more than one formal discipline matter in Cst. Wells’ history, it would increase my reliance on progressive steps of discipline, but one previous matter activates the principle and such recent misconduct findings aggravate the Employment History, and is an important consideration concerning Cst. Wells’ ability to rehabilitate; penalty factors which follow.



## Public Interest

In Legal Aspects of Policing, Mr. Ceyssens states:

Public interest arises as a disposition factor in three principal situations:

- Where the misconduct has offended or undermined the public interest or public confidence, or would do so;
- Where the misconduct generated a demonstrable risk; and
- Where there is a need to demonstrate confidence in the police force, its members, or its discipline process.

Ms. Bordeleau noted public trust is an aggravating factor; Cst. Wells' behaviour undermined public confidence, put his employer at risk (when operating a police cruiser unlicensed) and the public expects the Cornwall Police Service to answer with an appropriate and fitting sanction.

In his text, Mr. Ceyssens cites the following passage from the dissenting judgement in *Montreal (City) v. Quebec, 2008 SCC 48*:

Police have considerable power and discretion over matters that can affect the fundamental rights of the members of the public whom they encounter. Police work requires individuals not only to exercise a significant degree of judgement and integrity, it is also a position that requires the utmost public trust.

The public has an interest in ensuring police officers maintain a remarkably high standard of conduct. Public trust is eroded when an officer fails to meet those expectations and consequently, the public must have confidence that an officer will act professionally at all times, demonstrating the essential characteristics of a police officer, honesty and integrity.

Clearly, police services and their members require the public's trust in order to succeed. For these relationships to succeed, they must be founded on respect and professionalism, an unachievable objective if the public cannot trust its officers to exhibit strong values such as ethical judgement and professionalism. When an officer breaches that trust, the public expects that officer to be held accountable.

Cst. Wells breached internal policy and disrespected his employer when he was less than truthful. I consider his behaviour offensive to the public, he put himself above the law and decided it was appropriate to drive a police cruiser, on-duty, with an expired driver's licence; it is an abuse of his position as a police officer. This is the antithesis of what is expected of members of the Cornwall Police Service.

Public trust is fragile. To maintain that trust, the public must be assured that misconduct of this nature will attract an appropriate sanction. The public must have confidence that the Cornwall Police Service will hold members accountable for their actions.

Cst. Wells committed serious misconduct and if members of the community discover the gravity of his misconduct, they will expect behaviour of this nature to generate a sanction which corresponds to the seriousness of the misconduct. The public will be disappointed in his behaviour, especially considering his recent misconduct. However, a significant sanction will contribute to the process of re-instilling public confidence in the Cornwall Police Service, knowing he was held accountable for his actions and that the matter was taken seriously by his employer.

Public interest is an aggravating factor which necessitates a considerable sanction.

### Employment History

The matter of *Postma and Ontario Provincial Police*, December 20, 2017 relates to one count of neglect of duty, it can be found at tab 5 of Exhibit #21. The officer entered a guilty plea admitting he failed to follow domestic violence policy and he failed to provide proper supervision and guidance to a probationary constable. The officer was ordered to forfeit 30 hours. I was the hearing officer in the *Postma* matter. Mr. Greenspon requested I take a similar stance as I did in *Postma* where I stated:

To me, one of the most significant factors to be considered when ascertaining an appropriate penalty is employment history. I take the position that whenever possible; a sanction ought to reflect whether or not the conduct in question is an isolated incident. In most instances, the sanction could be significantly greater if the behaviour in question is more than an isolated incident. Fortunately, that is not the case here and furthermore, Cst. Postma has an excellent track record...

My perspective on the significance of Employment History as being a particularly important factor for consideration has not changed; it can provide great insight into the character of the involved officer and closely aligns with his ability to rehabilitate. In this instance, all of the evaluations that were tendered for my consideration are positive.

Cst. Wells commenced his career initially as a Special Constable in 2002 and began as a fourth-class constable in 2007. In the 2008 - 2009 Performance Evaluation Report he was described as a "great team player" and was commended for "an extremely productive year" statistically. The Inspector referred to Cst. Wells as a "natural" and lauded him for his work ethic. Chief of Police at the time Dan Parkinson stated:

Cst. Kevin Wells is an exceptional employee. His productivity is remarkable. His contribution to teamwork within his shift is outstanding. His involvement and accomplishments with the East End Team are a clear demonstration of going “above and beyond” to achieve exceptional goals...He is an asset to the Cornwall Community Police Service and undoubtedly will have a very successful career...

Comments such as this these illustrate the potential Cst. Wells had early in his career. Throughout her submissions Ms. Bordeleau noted Cst. Wells no longer possesses the necessary attributes required of a police officer. There is no disputing the fact that he once had a promising career based on strong character attributes. The issue here of course, is, whether he now has a character flaw so significant that nullifies his usefulness to the Cornwall Police Service.

In his 2009 - 2010 Performance Evaluation Report, Cst. Wells was described as “consistent, dependable and accurate” and was identified as a “leader among his peers in his proactive approach to policing as is evident in his charge analysis and case load summaries.” He was encouraged to take steps toward promotion despite having to “become more mindful of the fact that younger and more novice officers look up to him as a role model.”

The 2014 - 2015 Performance Evaluation Report states:

2014 has been another commendable year for Cst. Wells. During the course of this year he has received numerous commendations and accolades for his performance. Cst. Wells has built a reputation for being very proactive police officer and this year is no different... Cst. Wells is a top performer in relation to enforcement...

The 2017 - 2018 Performance Evaluation Report is an important record because it is the most recent appraisal and it documents Cst. Wells’ performance upon his return to work following the 2016 misconduct guilty finding and sanction. He met performance standards in four categories and exceeded requirements in the remaining two, Analytical Skills & Problem Solving Ability and Job Knowledge and Skills. Sergeant Butler made the following observations:

Cst. Wells writes detailed information in his notebook which is neat and legible. He has demonstrated his abilities to write clear concise and legible reports which are superior to the average officer. Cst. Wells is always available to assist officers and encourages them to become more proactive. Cst. Wells is also always available for overtime when shifts are short manpower.

Cst. Wells is well liked and respected by his peers and his supervisors. Cst. Wells has always policed at a high level...He is consistently the highest producing constable for charges on I Team and one of the top in the police service.

Exhibit #19 also contains a number of commendations and a lengthy running Record of Performance commentary which contains some negative comments about his negative attitude at times, but mostly, it documents his many accomplishments.

At tab 22 of Exhibit #22 is the matter of *Morden and Peel Regional Police Service*, 1997 CanLII 22039 wherein the Commission stated:

This Commission has ruled that a hearing officer may order a dismissal in a situation where a police officer has committed serious misconduct, and his or her usefulness as a police officer has been annulled...In order to consider Constable Morden's usefulness as a police officer, the Commission must not only consider the particular offences for which he has been convicted, but must also consider his employment history.

At tab 1 of Mr. Greenspon's Casebook and also found at tab 34 of Exhibit #22 is a decision dated March 21, 2016 concerning Cst. Wells' previous misconduct. Following his guilty plea, Cst. Wells was found guilty of three counts of discreditable conduct, two counts of breach of confidence and two counts of neglect of duty. [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] It was determined that this behaviour may have endangered the safety of [REDACTED]  
[REDACTED], members of [REDACTED] family, Cst. Wells, members of his family, and other police officers.

[REDACTED], Cst. Wells breached policy when he disclosed police business and/or internal procedures with [REDACTED]. He breached policy further by not reporting dates and times of scheduled and unscheduled meetings with [REDACTED] and by not making notebook entries about those meetings. Furthermore, Cst. Wells queried a vehicle and two persons on the Canadian Police Information Centre (CPIC) and on the internal Cornwall Police Service records system for purposes other than official police business and failed to make subsequent notebook entries. Cst. Wells also used the internal Cornwall Police Service records system for non-official business when he queried the name of [REDACTED] and he failed to make a corresponding notebook entry.



Following a joint penalty position from counsel, Cst. Wells was demoted from first-class constable to fourth-class constable with annual progressions through each gradation for a period of three years on the basis of satisfactory work performance on assessments conducted by the officer's Divisional Commander. The hearing officer stated:

If not for his guilty plea, the officer's recognition of his misconduct; and his genuine desire to rehabilitate his reputation with management, I would consider a greater penalty.

The 2016 decision is predictably concise, undoubtedly a result of the agreed positions taken by Counsel and due to the sensitive nature of the misconduct. Consequently, the comprehensive details of the misconduct are not included, but from the summary of information contained within, the only conclusion to be drawn is that the misconduct was at the extreme range of the spectrum. Adding to this conclusion is the fact Cst. Wells agreed to be demoted from first-class constable to fourth-class constable, a sanction reserved for offences at the extreme range of seriousness of misconduct.

The current misconduct is generally disparate in nature from the 2016 misconduct, but they do share some similarities: Cst. Wells failed to be forthcoming with management about the fact he [REDACTED]; he failed to inform superiors about each communication with [REDACTED] and he failed to make complete and accurate notes. In my findings, it was determined Cst. Wells was less than forthcoming with management and he failed to make mandatory notebook entries.

Resulting from the previous misconduct, Cst. Wells received the most serious sanction available short of dismissal; he was demoted from first-class constable to fourth-class constable. He was not demoted one level, he was demoted three levels and at the time, the hearing officer stated that if it were not for existing mitigating factors, he would have considered a more severe penalty. The only penalty more severe would have resulted in dismissal. The previous misconduct is a significant factor for consideration, it is recent, it is serious and in both incidents, Cst. Wells demonstrated a lack of honesty and integrity.

Clearly there are conflicting dynamics at play in this penalty factor. I am significantly impacted by the positive evaluation reports which are supported by the character references to follow. I have always taken the stance that police officers who have exemplified incredibly positive work ethic, professionalism and dedication, ought to be recognized for it. Conversely, officers who demonstrate poor work performances over the course of their career cannot receive mitigation accessible in this penalty factor.

As is often said, “the best predictor of future behaviour, is past behaviour.” Cst. Wells has always been a strong performer and I fully anticipate he would continue on that course should he be given the opportunity. Cst. Wells received mitigation from the hearing officer in 2016 for his strong employment record. Returning to work following that demotion, he proved the hearing officer right; he worked hard and proficiently.

Unfortunately, the principle, “the best predictor of future behaviour, is past behaviour” also applies to Cst. Wells’ inability to be honest and forthright. The question is not whether Cst. Wells will work hard if given the opportunity, it is whether he can be trusted to act with honesty and integrity; can he be trusted by his peers, his employer and by the public?

I find Cst. Wells’ repeated lack of honesty and integrity outweighs his work ethic and dedication. As a result, I consider Employment History to be an aggravating factor. In just four years, Cst Wells has been found guilty of 11 counts of misconduct. More important than the extent of misconduct, is the nature of the misconduct, it illustrates his lack of honesty and integrity.

#### *Nature and Seriousness of Misconduct*

Mr. Greenspon submitted the nature of the misconduct is at the low end of the spectrum. I will examine his perspective in detail under the heading of Consistency of Disposition but for the purpose of this penalty factor, it is sufficient to note that Mr. Greenspon opined emphatically that the seriousness of this misconduct does not warrant a lengthy demotion and certainly does not warrant dismissal.

Ms. Bordeleau acknowledged that if it were not for the previous finding of misconduct in 2016, the Cornwall Police Service would be seeking a less severe sanction. That does not suggest that therefore dismissal cannot be considered given all the circumstances in this matter, or that a significant sanction is not warranted. In *Andrews and Midland Police Service*, 2006 ONCPC 6 (CanLII), the Commission concluded allegations of neglect of duty and deceit are serious matters. In the matter of *Nicolaou and Metropolitan Toronto Police Force*, 1993 CanLII 14142 (ON CPC), the officer, while off-duty operated his personal vehicle with expired licence plates, an expired driver’s licence, and he was unable to produce a valid insurance slip. The Commission noted:

We cannot minimize the seriousness of Constable Nicolaou’s “neglect.” The public would not expect that an officer who is bound to enforce the *Highway Traffic Act* would himself breach the *Act*, not in a single offence but in three counts. In this respect, the public expectation of an officer would at minimum, be equivalent to the standards expected from a private citizen.

*Nicolaou* is from 1993. It is my position that police officers are held to a much higher standard today, than 27 years ago, and even then, an officer breaching the *Highway Traffic Act* was considered serious in nature. In my view, driving a marked police cruiser in an on-duty capacity while unlicensed aggravates the matter.

In *Costa and Toronto Police Service*, 2017 ONCPC 14 (CanLII), the Commission noted:  
We acknowledge that honesty and integrity are fundamental qualities for police officers to possess. These qualities are expected of them by the public, their services, fellow officers and the judiciary. The appellant's admitted misconduct has to be examined in light of this expectation.

Ms. Bordeleau submitted, and each of the character witnesses confirmed during their testimony, that honesty and integrity are characteristics integral to the police officer profession. Ms. Bordeleau submitted Cst. Wells' behaviour demonstrated a lack of those characteristics, and I agree.

Cst Wells purposely went to work knowing he had an expired driver's licence. He did not attempt to renew it before commencing his shift, nor did he notify his employer. After being involved in a collision with a curb and obviously damaging the cruiser, he made attempts to conceal the matter by not immediately notifying a supervisor and by not making a notebook entry about the incident. Instead, he drove the car out of his policing jurisdiction to have the vehicle examined by an unapproved mechanic without authorization. Mr. Greenspon suggested he did this to ensure the vehicle was safe to drive. I do not accept this reasoning. Cst. Wells could have simply notified his supervisor, transported the cruiser to the garage and taken out another, fully functioning cruiser. It is clear to me that Cst. Wells deliberately acted for the sole purpose of concealing the incident. After learning the full extent of the damage and coming to the realization the incident could not be fully suppressed, he then attempted to minimize the harm by being less than forthcoming with his sergeant. Cst. Wells misrepresented the facts by providing misleading or inaccurate statements to his supervisor, Sergeant MacLean, and the civilian employee Mr. Pettinella. Cst. Wells failed to inform them about the full extent of his knowledge concerning the damage sustained.

It is without question that Cst. Wells failed to be honest and forthright when conversing with Sergeant MacLean about the damage, or that he lacked integrity during the course of events. In the matter of *Nesbeth and Windsor Police Service*, 2015 ONCPC 23 the Commission stated:

Police officers are not held to a standard of perfection. They will make errors of judgement and make mistakes – some of which will be serious – which will not result in dismissal. However, because of their unique role in the administration of

justice and the critical importance in maintaining public confidence in policing, a consistent pattern of deceit and dishonesty directed towards avoiding responsibility is a significant aggravating factor.

It can be argued whether Cst. Wells' behaviour constitutes "a consistent pattern of deceit." His misconduct occurred in less than a 24-hours span but as I have highlighted, it consisted of multiple acts of dishonesty. Regardless, I am comfortable asserting it is behaviour which amounts to a significant aggravating factor. Police officers, like everyone, make mistakes, but a person with integrity would have notified his employer about the expired driver's licence as soon as it became known. An honest person would have immediately notified a supervisor about the collision. Cst. Wells' failure to do the right thing, as was clearly expected of him, is compounded by the fact he was still fulfilling his sanction from previous misconduct. This dramatically affects the ability of his employer and his community to trust Cst. Wells to act with professionalism in the future.

The matter of *Galassi and Hamilton (City) Police Service* can be found at tab 8 of Exhibit #21. The officer was found guilty of three counts of misconduct of such a serious nature, it alone merited dismissal. Mr. Greenspon submitted that in this analysis, I must consider the reputation of the police service; whether Cst. Wells' behaviour would deteriorate the reputation of the Cornwall Police Service to such a degree that dismissal is warranted. Mr. Greenspon submitted a reasonable person in the community would not view Cst. Wells' misconduct in such light. Mr. Greenspon submitted there are varying degrees of deceit, and the facts here would not drastically affect the reputation of the police service in the eyes of the public.

In *Legal Aspects of Policing*, Mr. Ceyssens cites the matter of *Page and Abbotsford Police*, BC Adj, 17 April 2013:

Deceit is the most serious disciplinary default that can be committed by a police officer. The fact that an officer knowingly makes a false or misleading statement in a duty report or in the course of reporting to, or being interviewed by, a senior officer must adversely affect one's assessment of the officer's integrity and honesty, and one's assessment of his or her suitability to be or remain a member of a police department. Integrity is a core value the public has a right to expect and demand of police officers in order that the public will have confidence in the fair, lawful and trustworthy administration of justice. Lying or the making of misleading statements in relation to an officer's dealings with a member of the public cannot be condoned... The public has a right to expect that dismissal will always be a sanction for consideration where deceit is at the heart of a disciplinary default.



Cst. Wells committed deceit; he misled his supervisor when he was not forthcoming with the full facts of his licence status, the collision and subsequent cruiser damage. Jurisprudence confirms there are varying degrees of deceit; he did not lie to the public or commit perjury, he did not make a false report or false notes, he made no notes. There are other acts of deceit that are more serious than Cst. Wells' misconduct and in fact, Ms. Bordeleau conceded if it were not for Cst. Wells' previous misconduct, a sanction short of dismissal would likely have been sought.

The matter of *Jansen and Transit Police*, BC Adj, 13 February 2014 cited by Mr. Ceyssens is fitting:

In addition, it must be apparent that deceit compromises internal organizational effectiveness. A police organization must be able to expect and receive honest accounts of incidents and the involvement of officers in them from its members. Nothing can compromise police effectiveness more readily than the loss of confidence in an officer's preparedness to tell the truth to superiors whatever the consequences may be.

Without dispute, Cst. Wells' 2016 misconduct is of a profoundly serious nature. As noted by Mr. Greenspon, in that matter Cst. Wells' behaviour put the safety of others at risk, and the behaviour occurred over an extended period, critical features which do not exist in this matter. I accept Mr. Greenspon's assertion that the 2016 matter is more egregious than the matter here. I also agree that progressive steps of discipline do not mandate an increase in penalty with each advancing misconduct. I do not agree though that therefore the sanction ought to be less severe; I must consider all penalty factors in totality.

Following the reasoning in *Jansen*, how then can Cst. Wells be trusted, even if demoted as a result of this misconduct, to not once again demonstrate dishonest behaviour? This of course, is the precise concern of Ms. Bordeleau and the Cornwall Police Service. Knowing that he was that close to being dismissed only two years prior, so fresh in his mind that he had not yet returned to first-class status, Cst. Wells willingly and knowing decided to breach policy and to mislead his supervisor. I find this troubling.

Mr. Greenspon submitted the matter of *Schmidt and Ontario Provincial Police*, 2011 OCPD marked as Exhibit #24. Cst. Schmidt was involved in a minor traffic collision, failed to make notes about the incident and failed to report it to his supervisor. Later that shift, he filed a report which was less than forthcoming. The Commission referred to the matter as being the "first incidence of misconduct" and Mr. Greenspon submitted that is an indicator that they considered the misconduct one act of misconduct, not a continuing act. Mr. Greenspon submitted that similarly, Cst. Wells' misconduct was isolated to one 12-

hour shift, it was not pre-planned behaviour nor was it deliberate. Mr. Greenspon submitted it too ought to be considered an isolated incident, not repeated misconduct.

Cst. Wells' misconduct began several hours before the commencement of his overtime nightshift when he learned his driver's licence was expired. He chose then to conceal the fact he was unlicensed. He did so for self-serving reasons; to receive financial compensation for working an overtime shift, and/or to support his co-workers who were short staffed. Regardless of his motivation to conceal that information, he was obligated to inform his employer, he was aware of his responsibility and yet chose not to. He then chose to not document the collision in his notes, chose to not immediately report the collision to his supervisor and when he finally did, he was less than truthful. Cst. Wells had ample opportunity to be truthful and forthcoming but instead made repeated attempts to conceal the truth. I appreciate that it is not behaviour which occurred over a lengthy period of time as was the case in Cst. Wells' 2016 misconduct, but I do not consider the totality of his behaviour to be merely a single act of human frailty.

Cst. Wells' initial poor judgement of driving unlicensed was followed by a string of unfortunate events, but more importantly, a series of bad decisions during the course of his shift. Again, I refer to *Jansen* in noting the Cornwall Police Service and the public expected Cst. Wells to be willing to tell the truth to his supervisor whatever the consequences may have been. His behaviour strikes a serious blow to his integrity.

It seems obvious that Cst. Wells' reaction was done to avoid detection that he was an unlicensed driver. No doubt, Cst. Wells was concerned that he could be charged under the *Highway Traffic Act*, or possibly even face disciplinary measures. His behaviour was deliberate, albeit as a result of an unforeseen situation; it may not have been planned, but it remains serious misconduct.

I find the behaviour demonstrated by Cst. Wells is a serious departure of what the public expects of a police officer, and what the Cornwall Police Service ought to expect from their members; the particulars strike at the core of policing duties and therefore, the behaviour can only be characterized as being found at the serious end of the misconduct spectrum.

Mr. Greenspon referenced several cases including the matters of *Eschweiler and Ontario Provincial Police*, 1998 CanLII 27141 ON CPC and *Seamons and Durham Regional Police*, 2006 ON CPC 8 CanLII to illustrate just how substantial the nature and seriousness of misconduct must be in order to result in dismissal.

I do not dispute Mr. Greenspon's assertions that many cases exist where the misconduct was greater than what exists in this matter, some resulted in dismissal and some did not. The issue unique to this matter, is the fact Cst. Wells was still complying with a previous code of conduct order of demotion for serious misconduct at the time of this behaviour. That should have been in the forefront of his mind, but rather than feeling compelled to be truthful about the situation, he instead chose to commit misconduct.

The character witnesses testified that considering the scale of other misconduct, they did not consider Cst. Wells' behaviour in this instance to be too serious. I question how familiar the witness officers can be with other misconduct matters from around the province of Ontario. Hearing officers are provided cases to rely upon to help establish a range of available sanctions to provide guidance in the determination of an appropriate penalty. It is unfair to place any weight whatsoever on whether these witnesses feel Cst. Wells behaviour is more, or less serious than other cases.

Mr. Greenspon submitted, based on the totality of the evidence, and guided by preceding jurisprudence, an appropriate sanction for Cst. Wells ought to be a loss of hours. Mr. Greenspon submitted that a forfeiture of 80 hours is appropriate but if I determined a demotion in rank was necessary, then a demotion of one rank for a period of time would suffice.

I do not agree that a loss of hours is within the range of available penalties when Cst. Wells' previous misconduct is considered in that analysis, but I did consider, at length, the viability of a demotion in rank. However, it is my position that a reasonable person in the community would be appalled to know that after salvaging his career and receiving a second chance in only 2016, Cst. Wells once again demonstrated a lack of honesty and integrity. I find that this behaviour is inconsistent with a sanction in the form of demotion because Cst. Wells has demonstrated that he was not impacted by a sanction of this nature; he went and committed further misconduct in relatively short order.

The public demand better and have the right to expect police officers who respond to calls for service in their community, demonstrate basic characteristics such as honesty and integrity. I am convinced that a reasonable member of the community, knowing that a police officer intentionally and purposefully behaved in a misleading manner and was less than forthcoming with his employer, would find that behaviour serious in nature. Knowing this misconduct occurred on the heels of receiving a significant sanction for a previous misconduct would only heighten the concerns of a reasonable member of the community.

Exhibit #20 is the matter of *Guenette and Ottawa-Carleton Regional Police Service*, (OCCPS) 18 December 1998 in which the Commission noted:

Police officers are held to a higher standard than the average citizen and trustworthiness is a basic essential requirement of this profession.

Cst. Wells' trustworthiness, a basic essential requirement to his profession, has been eroded. The Nature and the Seriousness of Misconduct is an aggravating factor.

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

Cst. Wells pleaded not guilty to all counts of alleged misconduct. This will not be considered an aggravating factor, the officer has every right to defend himself but understandably, he cannot receive mitigation that would be afforded with a guilty plea.

Following the conclusion of Mr. Greenspon's submissions, Cst. Wells accepted my offer to address the tribunal and acknowledged he made a mistake during the night in question. He admitted that he went to work knowing his driver's licence was expired but he did so to help his shift. Cst. Wells stated that he loves the job, he is passionate about it. He concluded his remarks by stating "I made a mistake, I apologize."

The matter of *Clough and Peel Regional Police Service*, 2014 ONCPC 12 (CanLII), can be found at tab 8 of Exhibit #22. The Commission stated:

The first Hearing Officer also downplays the importance of a written apology to him from Cst. Clough which, he said, "...rings hollow, and I assign it little weight in terms of mitigation." Hearing Officers are entitled to assess the sincerity of a letter of apology. In our view, the mere existence of a letter of apology does not equate to mitigation.

I did not find Cst. Wells' apology terribly encouraging; I am not convinced he has accepted full responsibility for his actions. Granted, he admitted he had made a mistake about going in to work with an expired driver's licence, but he insinuated it was necessary to assist his co-workers. This was not his decision to make, he knowingly breached policy and the *Highway Traffic Act*. Law abiding members of the public would not consider driving without a licence. It appears Cst. Wells does not have a full appreciation for the gravity of his misconduct and his apology did not acknowledge that he was less than truthful with his employer.

Cst. Wells receives slight mitigation for Recognition of the Seriousness of Misconduct.



### *Ability to Rehabilitate*

Ms. Bordeleau submitted Cst. Wells failed to take advantage of the opportunity presented to him. In 2016 he was provided a chance to further his career despite the fact the seriousness of his misconduct may have warranted dismissal. Instead of acting with honesty and integrity following that narrow escape from dismissal, Cst. Wells decided to deliberately deceive the Cornwall Police Service as reflected in my decision. Ms. Bordeleau submitted that consequently, Cst. Wells cannot be relied upon to act with these essential characteristics in the future.

As noted in *Williams* and confirmed in continuing jurisprudence, the likelihood of Cst. Wells committing future misconduct is an essential factor for my consideration. In this instance, I can rely upon the evidence of the character witnesses, supported by his latest Performance Evaluation Report, to conclude Cst. Wells returned to work following a significant sanction in 2016 and proved to be a productive and valued employee.

In their assessment of character evidence, the Commission in *Guenette* stated:

The Commission is not bound by the strict rules of evidence developed for use by the court system. Hearsay is prima facie admissible in these proceedings, and appropriate weight may be assigned to these letters providing they are reasonably capable of belief.

Exhibit #18 contains 10 (11 tabs labeled but tab #2 was removed resulting in 10 total) letters of character reference and five of those people testified in person or via video feed at this tribunal on behalf of Cst. Wells: Tony Joseph, David Langlois, Jessica Legue, Nigel Pelletier, and Tom MacKay. All ten character witnesses are police officers with the Cornwall Police Service who have worked with Cst. Wells and know him well, but to varying degrees. Some consider themselves friends and socialize off-duty while others are purely co-workers. In terms of support for Cst. Wells, the testimony of the witnesses and the letters in general are so similar in content, that it is not necessary to present the testimony of each individual witness; an overall summary will provide a sufficient illustration of Cst. Wells character from their perspective.

None of the witnesses who testified had read the decision finding Cst. Wells guilty of misconduct in 2016 or the finding of guilt related to this matter. However, each witness understood Cst. Wells had been demoted in rank as a result of behaviour related to [REDACTED]. Similarly, each witness had a general understanding that Cst. Wells was found to have driven a cruiser with an expired driver's licence, that he damaged a cruiser when he drove it over a median, that he had the vehicle inspected by an unauthorized mechanic, that he failed to report the incident immediately, that he

did not make notes about the incident, and that he failed to fully disclose the extent of the incident to his supervisor.

It is imperative that a witness be aware of the tribunal findings concerning the subject officer in order for their opinion about that officer's character to be valued. I appreciate each witness was given an overview of the facts as they pertained to this case, but they were not fully informed, rather partially educated. Similarly, the character witnesses had only a limited understanding of the previous 2016 misconduct. That said, the witnesses appeared to have a strong understanding of Cst. Wells' work ethic and his dedication to his job.

I have no reason to question the credibility or the reliability of the character witnesses and I thank them for their participation. I cannot see any motivation for personal gain beyond to assist a friend, but at no point did I find the testimony exaggerated or sensational. I found their testimony helpful; I now have an understanding of Cst. Wells' strong work ethic and dedication to his profession. The witnesses described Cst. Wells' work ethic as "second to none," one witness with 13 years of experience referred to him as the hardest working police officer he has ever met.

The witnesses agreed Cst. Wells was proactive, knowledgeable, often relied upon by other officers, and has always been a consistent leader in enforcement criminally and in *Highway Traffic Act* matters. He was always willing to take on overtime shifts and appeared to work more shifts than any other officer. He was described as having passion for his work and as being professional with the public. The officers indicated they feel that the Cornwall Police Service and the community are better served when Cst. Wells is working. Most importantly, the character witnesses agreed there was no change in his work performance following his 2016 demotion.

The Cornwall Police Service is not a large organization. I am struck by the number of character witnesses from such a small service, they may even account for 10 percent of its sworn members; it speaks volumes about Cst. Wells' impact on the organization.

However, it is also noteworthy that not one person in a supervisory capacity testified on behalf of Cst. Wells. The constables who testified or wrote letters in support, raved about what a great team player he has been and how strong his work ethic was, and yet, the Cornwall Police Service is seeking his dismissal. I merely note this as an observation, I cannot be impacted by the fact a supervisor did not act as a character witness on his behalf.

In *Venables*, the Commission noted:

The Hearing Officer noted the evidence of Inspector Young that Constable Venables could still function as a police officer, if he was transferred to another office. This qualification arose from concerns about possible trust issues with members of his former platoon. However, the Hearing Officer repeated his observation that the assault had greatly jeopardized public trust and raised serious issues of police accountability and integrity.

I am not compelled to accept the perspective of the character witnesses. Despite their collective opinion, Cst. Wells remains subject to dismissal if other penalty factors support that position. However, in this case, the character evidence is supported by supervisor entries contained in Cst. Wells' annual performance reviews as noted under the Employment History tab.

The character witnesses were consistent; they anticipated Cst. Wells would return to work and be as committed as always, just as he had done in 2016. One witness described him as not missing a beat upon his return to work in 2016. I accept their viewpoint.

The witnesses testified that they noticed no difference in his work ethic or his attitude following his demotion in 2016 and consequently, they opined that they fully expect Cst. Wells would return to work in a similar fashion with the same zest for his profession, that he would return to work with the same work ethic as always. The collective position presented by the character witnesses contributes significantly to my appreciation for his work performance and subsequently, my assessment of Cst. Wells' ability to rehabilitate. I accept the testimony of the witnesses; their remarks mirror the comments contained within Cst. Wells' annual evaluations in terms of his commitment and dedication before and after 2016.

One witness officer testified that Cst. Wells makes Cornwall a safer city when he is working. That was a consistent theme and based on the character evidence, I do not dispute Cst. Wells' dedication, his passion for his job, his work ethic, or his commitment to policing. Unfortunately, these are not traits essential to the job, honesty and integrity are and this is what I am left questioning; can Cst. Wells be trusted to do the right thing during times of ambiguity.

Each witness agreed honesty and integrity are fundamental components of being a police officer and are consistent with the oath of office. They confirmed that it is also the duty of a police officer to follow rules such as policy and procedure.

I am confident Cst. Wells can be expected to work hard and put up leading statistics, but the public and the Cornwall Police Service demand more, and rightfully so; it is imperative that employers and communities are able to trust their police officers. How can we be sure that Cst. Wells will not breach policy again in the future as flippantly as he appeared to do in this instance?

I am guided by the matter of *McPhee and Brantford Police Service*, 2012 ONCPC 12 CanLII, found at tab 7 of Exhibit #21 wherein the Commission noted:

Paragraph 102 of the Decision indicates that the Hearing Officer was well aware of the critical consideration of potential for rehabilitation and the need to make every attempt to afford an opportunity to reform unless the misconduct is so egregious and unmitigated.

As previously stated, the misconduct in question here is not so egregious to justify dismissal on its own. Jurisprudence also states that an officer whose misconduct was out of character will have a higher potential to rehabilitate; Cst. Wells cannot be afforded that mitigation because of his previous serious misconduct. The character witnesses stated words to the effect, the oath of office means to act without bias, to do the right thing in the circumstances and to honestly account for your on-duty actions. I cannot give Cst. Wells the benefit of the doubt that he has the ability rehabilitate; he did not learn from his previous experience. If he were as passionate about his career as he proposed to be, I would have expected him to do the right thing even in the face of adversity regardless of the potential consequences. One would have expected that following such a significant sanction in 2016, he would have been motivated to be honest and forthcoming following the cruiser collision.

The Commission in *Seamons* stated:

Given the above, it was open to the hearing officer to conclude that Constable Seamons was in effect ‘ungovernable.’ That notwithstanding the positive character references, there was serious doubt about his potential for rehabilitation and his future usefulness as a police officer who could be trusted to function appropriately and in accordance with service policy. Further, it is evident to us that these legitimate concerns would not be resolved by a penalty of demotion.

Regardless of whether the misconduct was more, or less serious in *Seamons* than that of Cst. Wells, the concern about the trustworthiness of an officer is applicable to this proceeding. I recognize it is likely Cst. Wells would continue to be a hard worker if he returned to his position, but, similarly, his character is also unlikely to change. Cst. Wells has repeatedly demonstrated a lack of honesty and integrity. He was fully prepared to engage in unethical behaviour in response to the circumstances he faced. There is no



reason to believe that he will suddenly employ the essential attributes, being honesty and integrity, when faced with a similar predicament in the future; he simply can no longer be trusted to do the right thing. Consequently, Cst. Wells has nullified his usefulness as a police officer.

### *Specific and General Deterrence*

In the matter of *Pierce and Ontario Provincial Police*, 2018 ONCPC 8 CanLII the Commission stated:

In considering the need for deterrence, he wrote that general deterrence was a necessity so that the membership would appreciate the need to be forthcoming at the earliest opportunity. He also wrote that the sanction imposed “must consider specific deterrence an aggravating factor.” There is no doubt the appellant was repeatedly less than forthcoming with his supervisors on several occasions. No one can dispute that trust among officers is a necessity. The appellant’s actions can be seen as violating that trust and the need for deterrence should be obvious.

Given my finding that Cst. Wells’ usefulness to the Cornwall Police Service has been nullified, specific deterrence is no longer a relevant consideration. However, all police officers must appreciate that conduct of this nature cannot be tolerated; it will be taken seriously by their employer and it will have significant consequences.

General Deterrence is an aggravating factor.

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

There are two components to this penalty factor: it is essential that the sanction is fitting so it can re-instill public trust and help repair the damage done to the reputation of the Cornwall Police Service; also, what is the potential damage to the reputation of the Cornwall Police Service if Cst. Wells maintains his employment.

In *Williams*, the Commission stated:

Finally, with regard to the reputation and image of the police force, the Commission cannot come to any possible conclusion other than were the circumstances of Constable Williams’ actions ever to become public knowledge, his continued presence in the force would seriously harm the image and reputation of the Ontario Provincial Police.

To make a finding of guilt concerning a matter of alleged discreditable conduct, it is necessary to establish that a reasonable person in the community, fully aware of the facts, would find that the conduct in question would likely discredit the reputation of the Cornwall Police Service if it were to become public knowledge. Here, the issue is whether a reasonable person in the community, fully aware of the facts, would find that it would seriously harm the reputation of the Cornwall Police Service if Cst. Wells remained employed.

In the matter of *Hassan and Peel Regional Police*, 2006 ONCPC (CanLII) the Commission stated:

Given the above, we see no reason why a hearing officer, in the absence of direct evidence, may not place himself in the position of a reasonable person in the community for the purpose of assessing the degree to which the conduct of an officer has brought harm to the reputation of a police force and the extent to which that harm were to continue if an officer were to remain employed.

In this matter, direct evidence was not tendered regarding the public's perception, instead, I have been tasked with placing myself in the position of a reasonable person in the community.

Each of the character witnesses agreed police officers are held to a higher standard, a supposition supported by jurisprudence. The character witnesses agreed that consequently, the misconduct committed by Cst. Wells would adversely affect the reputation of the Cornwall Police Service. Their positions held varying degrees, but generally, they felt a negative impact would result, but it would be minimal.

As noted earlier, I cannot expect the character witnesses to have a full appreciation of the seriousness of misconduct. I value their position about Cst. Wells' dedication to his profession, but I cannot rely upon their views concerning the seriousness of misconduct and therefore damage to the reputation of the Cornwall Police Service; it is simply an uninformed position.

In my opinion, the public would be shocked to know: that a police officer thought it would be sensible to go to work, to drive a cruiser, knowing his driver's licence was expired; that a police officer decided not to report this to his supervisor; that when the police officer was involved in a collision later that same shift, he chose not to come forward, but instead attempted to conceal the incident by failing to make notes or failing to make an immediate notification to his supervisor; that the officer then thought it prudent to have the damaged cruiser inspected by an unapproved mechanic without authorization rather than simply returning it for service and signing out a replacement car; that this same officer, hours

later, misrepresented the facts by providing misleading or inaccurate statements to his supervisor, with intent to deceive. Cst. Wells failed to report to his supervisor that he did not possess a valid Ontario driver's licence at the time of the collision, that he was fully aware of the extent of the damage, and, that he had the vehicle inspected by a licenced mechanic.

Mr. Greenspon submitted the reasonable person in the community would find Cst. Wells' behaviour problematic but the affect it would have on the reputation of the Cornwall Police Service would be minimal if at all. I disagree. I find a reasonable person in the community would find this to be completely unacceptable behaviour by a police officer. Consequently, the reputation of the Cornwall Police Service inevitably is damaged when one of their officers is known to behave in this manner. That reputational damage is compounded when it becomes public knowledge that this misconduct occurred in 2018, and in 2016, the police officer had been disciplined for serious misconduct which resulted in his demotion to fourth-class constable.

A statement made by one character witness which I do accept, is that often during times of misconduct, police officers are painted with the same brush. If the public becomes aware of Cst. Wells' misconduct, all police officers will suffer; their integrity will be questioned.

The likely damage to the reputation of the Cornwall Police Service as a result of Cst. Wells' behaviour is obvious. It is my position that if the public became aware of this misconduct while fully apprised of Cst. Wells' previous misconduct, they would be shocked if he maintained his employment. If Cst. Wells received a sanction less than dismissal, the potential damage to the reputation of the Cornwall Police Service would be substantial; the public expects sanctions to be fitting so their trust can be re-instilled, helping to repair the damage done to the reputation of the Cornwall Police Service.

I find the Damage to the Reputation of the Cornwall Police Service an aggravating factor.

#### *Effect on Cst. Wells and his Family*

In 2016, Cst. Wells was demoted to fourth-class constable. At the time of this misconduct, he had not yet attained first-class constable status. He has been suspended from duty for approximately two years and has subsequently remained at the rank of second-class constable. As a result of his own doing, Cst. Wells extended the length of his demotion which added to the pre-existing financial impact that sanction had on him and his family.

The financial impact on Cst. Wells resulting from his dismissal is obvious and significant, and it is a mitigating factor. However, the aggravating factors are so substantial that the related financial burden is an unfortunate, but necessary consequence.

### *Consistency of Penalty*

The Commission in *Costa* stated:

In *White and Reid v. Windsor Police Service*, OCCPS, November 10, 2000 the Commission wrote the following:

The penalty must be consistent with similar cases to maintain consistency in sentencing. While fact situations vary, a spectrum of misconduct and resulting penalties can provide a good comparative analysis to assist the Commission in determining an appropriate and fair penalty.

Consistency is essential to ensure the penalty is not only fitting but is within the range of other sanctions concerning similar misconduct. As noted earlier in this decision, Counsel were unable to identify cases precisely on point. The cases that were submitted for my consideration, are to provide assistance in generating a broad range for available sanctions for comparable misconduct.

Mr. Greenspon walked the tribunal through Cst. Wells' 2016 misconduct and submitted the facts in that instance are far more serious than the findings related to this misconduct. He noted that the facts are substantially different; the misconduct here is relatively minor in nature and the sanction ought to reflect that disparity.

Exhibit #21 includes matters which Mr. Greenspon submitted are far more serious than the facts in this case, some justifiably resulted in dismissal and others did not. For example, in the matter of *Wildeboer and Toronto Police Service*, 2006, (ON CPC) 10 CanLII, the officer received a sanction of 18 days (144 hours) following a guilty plea to one count of insubordination related to 13 CPIC queries that were not for the purpose of official police business. The queries occurred over approximately 10 months. I find *Wildeboer* does not contain the factors that exist in the current matter and it was of little assistance. Cst. Wells' transgression occurred when a previous misconduct penalty was still in effect.

In the matter of *McPhee and Brantford Police*, the officer was a third-class constable at the time of the misconduct and had received prior informal discipline for similar behaviour. The officer was found guilty of three counts of insubordination and two counts of discreditable conduct for misconduct that was clearly more serious than the facts in this matter and dismissal was upheld.



Mr. Greenspon submitted the seriousness of misconduct in this matter is not close to necessitating dismissal. In *Clough*, the Commission stated:

It may well be, as the Appellant argues, that the case law for a finding of one count of Deceit does not include at the high range of acceptable outcomes, a penalty of dismissal. But the panel is of the view that such a finding cannot be made in isolation in view of the Appellant's employment history with the Service and in particular the prior instances of discipline. The second Hearing Officer clearly took that history into account in considering that Appellant's ability to rehabilitate, and whether the Appellant's usefulness to the Service has been annulled.

*Stitt and York Regional Police*, 1997 CanLII 22038 (ON CPC), found at tab 9 of Exhibit #21 relates to deceit and two counts of neglect of duty. The officer failed to respond to assist another officer and subsequently made a false statement in response to the complaint. The sanction imposed was in the form of a forfeiture of hours and a six-month demotion in rank. Mr. Greenspon submitted Cst. Stitt's behaviour was more serious than that of Cst. Wells and this ought to be reflected in an appropriate sanction. It is possible Cst. Stitt's behaviour is more serious, but it is not obvious to me. What is clear and also what separates *Stitts* from this matter, is that Cst. Stitt's Employment History did not include any other disciplinary convictions.

At tab 6 of Exhibit # 21 is *Suleiman v. Ottawa Police Service and Lord*, 2011 ONCPC 10 (CanLII). In that matter, the Commission ordered the officer to forfeit 8-days or 64 hours for misconduct related to an arrest and subsequent strip-search. The Commission received five letters of support for the high quality of the officer's policing and his supervisor described him as one of the best on the team. Conversely, the officer had seven previous guilty findings of misconduct which resulted in a total of 25 days forfeited or 200 hours.

The Commission determined that the officer continued to have the confidence of the policing community and balanced both the good employment record and his negative discipline history in opting to give the officer another chance to reform. *Lord* involved an unlawful arrest and strip search, not an issue of dishonesty. His previous misconduct could be described as being mostly related to a poor attitude although in one matter he lied about time he had spent at court. The greatest disparity in these cases is the seriousness of Cst. Wells' previous misconduct where essentially, he already received his second chance. I am left to conclude his inability to be honest and forthright is a fundamental character flaw.

In *Pierce*, the Commission stated:

In *Hominsky*, the officer was convicted of misconduct, after pleading guilty, for damaging a police cruiser, failing to report the damage and then trying to cover it up by painting over the damage. He also falsified a report but admitted to his actions when questioned by Professional Standards. Based upon a joint submission, a penalty of the forfeiture of 90 hours was imposed.

The factor which exists here and not in other matters such as *Stitt*, is Cst. Wells' previous serious misconduct. It has been established that the seriousness of misconduct, without the influence of the 2016 matter, would likely result in a demotion in rank or perhaps a loss of hours. I am guided by *Williams* and will adhere to the principles of proportionality to arrive at a fair and appropriate sanction.

## **Conclusion**

The community, and the Cornwall Police Service have invested in Cst. Wells for almost 20 years, he ought to be afforded all reasonable opportunity to rehabilitate and to continue serving the public; dismissal should only be used as a sanction as a last resort, when the usefulness of the officer has been annulled.

As stated in *Williams*, three elements must be considered in matters of potential officer dismissal: the nature and seriousness of the misconduct, the ability to reform or rehabilitate the officer, and the damage to the reputation of the police force that would occur should the officer remain on the force.

Dismissal is not warranted on the strength of seriousness of this misconduct alone. Cst. Wells has demonstrated he cannot be rehabilitated, while still at second class-constable resulting from his 2016 sanction, Cst. Wells thought it prudent to deceive his employer. He failed to redeem himself and demonstrate he has the necessary attributes of honesty and integrity following the opportunity he had been afforded. I find a reasonable person in the community would be disappointed and insulted if Cst. Wells remained employed as a police officer with the Cornwall Police Service.

The hearing officer in the 2016 matter, relied heavily on Cst. Wells' strong and positive employment history when he accepted the joint penalty position of demotion rather than dismissal. I would like to be able to do the same, but despite his strong work ethic, Cst. Wells has failed to demonstrate honesty and integrity. I gave long and serious consideration to demoting Cst. Wells once again to fourth-class constable but clearly, that did not act as a satisfactory deterrent before, and I am not satisfied he can be trusted to do the right thing in the future.

The matter of *Haley Industries Ltd. V. U.S.W., Local 4820*, 2009 CarswellOnt 64616 (Ontario Arbitration) states:

...it remains the arbitrator's obligation to determine, in each case, whether the discharge is "just and equitable in all the circumstances:" and in a case such as this one, involving a 25-year employee and a string of incidents that were not, in themselves, particularly serious, I think an arbitrator should be reluctant to sustain a discharge, unless the employment relationship is clearly fractured and there is no reasonable likelihood that the situation can be rectified.

Cst. Wells committed serious misconduct in the wake of even more significant misconduct. I am very troubled by the fact Cst. Wells' inappropriate behaviour falls so closely in time to the previous misconduct and as mentioned earlier, Cst. Wells was still serving his previous sanction at the time. I am convinced the employment relationship has been fractured beyond any reasonable expectation of rectification. Consequently, Cst. Wells has exhausted all opportunity for rehabilitation despite the mitigating factors present in this case.

*Haley Industries Ltd.* further states:

In *Kingston Independent Nylon Workers Union, supra*, the grievor had 25 years of service when he was discharged following an event which the employer viewed as a disciplinary culminating incident and decided upon dismissal as an appropriate response to the misconduct in light of his prior discipline record. In regard to the culminating incident and discipline record, the employer did not assert that any single event was "particularly egregious", rather, that his record demonstrates "a growing accumulation of different performance and attitudinal problems, that the grievor was warned about, that he was disciplined for, and that he failed to rectify." There was no issue that the employer had followed a progressive discipline approach to the grievor. That approach is addressed by arbitrator MacDowell at para 61:

"Progressive discipline" envisages the use of disciplinary penalties, as a tool – a means of changing behaviour; and ultimately, if the employee does not "change his ways," he will eventually reach a point where he is "on the point of discharge" for any new infraction – not because the new incident is necessarily serious in itself, but rather because the culminative effect of his prior record shows (1) that he is an unsatisfactory employee and (2) that he is incapable of becoming anything else.

In this case, even though there has only been one previous sanction, the *Kingston* matter is fitting. In 2016 Cst. Wells received the most significant sanction next to dismissal and this further misconduct has produced a culminative effect showing he is an unsatisfactory employee and that he is incapable of becoming anything else.

In the matter of *Nelles and Cobourg Police Service*, 2007 ONCPC (CanLII), the Commission noted:

He [the hearing officer] acknowledged that Constable Nelles' "career history indicates a high level of professionalism, enthusiasm and capability." He noted the guilty plea to the disciplinary charges and the positive character evidence. However, asst the end of the day he concluded that these were insufficient to mitigate against the immediate dismissal given that Constable Nelles had irreversibly harmed his relationship with his employer."

Cst. Wells committed serious misconduct: he knew that his driver's licence was expired before commencing his shift and failed to inform a supervisor; he was involved in an on-duty collision and decided to not immediately report it; he immediately knew there was damage to Cornwall Police Service marked cruiser #4 and made unsuccessful attempts to secure the plastic shroud; knowing marked cruiser #4 was vibrating and had sustained damage, he did not make a notebook entry about the collision or the damage; he sought the assistance of an unapproved mechanic to view the damage without authorization; now fully aware of the extent of the damage, he still failed to make a notebook entry or to inform a supervisor; he then mislead his supervisor by being less than forthcoming with the truth.

Despite the strong character references in support of Cst. Wells which indicate if given the opportunity to return to work, he would likely be expected to be a hard worker, his untrustworthiness has irreversibly harmed his relationship with the Cornwall Police Service. The public deserves to be able to trust members of their police service.

The following comments from the Commission in *Williams*, are also fitting here:

These actions, afforded the opportunity of reasoning, indicate a serious lack of moral judgemental qualities required in a police officer. It is very doubtful that an opportunity for rehabilitation would correct what would be a fundamental character flaw.



In the matter of *Trumbley*, the Court stated:

The basic object of dismissing an employee is not to punish him or her in the usual sense of this word (to deter or reform or, possibly, to exact some form of modern retribution) but rather to rid the employer of the burden of an employee who has shown that he or she is not fit to remain an employee.

In proceedings such as this, corrective dispositions should take precedence over punitive dispositions wherever possible and Cst. Wells must receive the least onerous disposition available while still satisfying proportionality and other penalty factors. However, I find the aggravating factors far outweigh the mitigation afforded to the penalty factors of Effect on Officer and Family, and Recognition of the Seriousness of Misconduct. As a result, I find it is necessary to sever the relationship between Cst. Wells and the Cornwall Police Service.

### **Disposition**

Cst. Wells was found guilty of neglect of duty, deceit, and two counts of discreditable conduct. After carefully reviewing the evidence, the submissions of Counsel and the jurisprudence provided I find the fitting sanction is dismissal, it meet the goals of the discipline process: to strike a balance between community expectations, fairness to Cst. Wells and the needs of the organization.

Pursuant to section 85(1)(b) of the *PSA*, I order Cst. Wells dismissed from the Cornwall Police Service in seven days unless he resigns before that time.



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Greg Walton  
Superintendent (Ret.),  
Ontario Provincial Police Adjudicator

Date electronically delivered: October 07, 2020

This Disposition was amended October 7, 2020 following its initial release; the word London was replaced with Cornwall on page 33. Greg Walton.