



TORONTO 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 THE THE TORONTO POLICE SERVICE
AND SERGEANT Joel EVELYN (8018); (He/Him)

Charges: Discreditable Conduct (5 Counts)

DISPOSITION DECISION

Hearing Officer: Superintendent Shane Branton; Toronto Police Service; (He/Him)

Prosecutor: Ms. Alexandra Miller, Toronto Police Service; (She/Her)

Defence Counsel: Mr. Michael Lacy; (He/Him) and Ms. M. Ahumada (She/Her)

Case Number: 25.2020

Hearing Dates: 2023.05.01-05; 2023.05.08-09; 2023 07.13; 2023.07.27

Decision Date: 2023.10.10

Before commencing my decision on penalty and sentencing in this matter, I would like to thank Mr. Lacy and Ms. Ahumada, Defence Counsel, and Ms. Miller, the Service Prosecutor, for their joint submissions as to penalty and exhibits tendered, all of which have assisted me in reaching my decision.

Note: This decision is divided into four parts: PART I: OVERVIEW; PART II: THE HEARING; PART III: ANALYSIS AND FINDINGS FOR DISPOSITION; and PART IV: DISPOSITION.

PART I: OVERVIEW

Background

1. Sergeant Joel Evelyn (8018) commenced his employment with the Toronto Police Service (TPS) in 2001. Sergeant Evelyn presently holds the rank of Sergeant and is assigned to 13 Division.

Allegations of Misconduct (Five Counts)

2. Sergeant Joel Evelyn (8018), being a member of the Toronto Police Service, you are alleged to have committed misconduct in that you did act in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the police force of which you are a member, contrary to section 2(1) (a) (xi) of the Schedule Code of Conduct of Ontario Regulation 268/10 and therefore, contrary to Section 80(1) (a) of the Police Services Act, R.S.O. 1990 as amended.
3. On Monday, May 1st, 2023 a hearing commenced on the above five counts of Discreditable Conduct. The hearing continued on the following dates: May 2nd to 5th, May 8th, May 9th and July 13th. Viva Voce evidence was provided to the tribunal by the following witnesses: PC Jamie Schertzer (60079); District Special Constable

Kaitlynn Bell (82826); Detective Olga Rhone (10575); PC Samantha Smart (66078); PC Petar Stanev (66041); PC Justin DeGuzman (65850) and PC Ian Parker (9147).

Plea

4. On Thursday, July 27th , 2023 Sergeant Joel Evelyn (8018), pleaded guilty and was found guilty of Discreditable Conduct on count three of the Notice of Hearing, contrary to the Police Services Act.
5. Counts 1, 2, 4 and 5 were withdrawn by the Prosecution.

Decision

6. I have carefully considered the joint submission and relevant information presented by both the Prosecutor and Defence Counsel as well as reviewed previous Tribunal Decisions. In light of the mitigating and aggravating circumstances, and in particular, the seriousness of the matter, I impose the following sanction under Section 85(1) (c) of the Police Services Act (PSA).

Discreditable Conduct – Forfeiture of 4 days or 32 hours pay.

PART II: THE HEARING

Exhibits

7. The exhibits for this matter are listed in Appendix 'A', attached hereto. To avoid repetition, all exhibits will be referred to by number without the preface of Appendix 'A'.

Representation

8. In this matter, Mr. Lacy and Ms. Ahumada represented Sergeant Evelyn and Ms. Miller represented the TPS.

Agreed Statement of Facts

The facts of this matter as amended are substantially agreed upon by the parties. The Agreed Statement of Facts, filed as Exhibit 3, state:

Sergeant Joel Evelyn was the Sgt. at 14 Division, working in a uniform capacity.

In April 2019, Sergeant Evelyn was selected to be in charge of the district special constables at 14 Division and the first-level supervisor of all respective members.

Between May 2019 and April 2020, Sgt. Evelyn sent nude photographs of adult women to male members that he was supervising on their cellphones via WhatsApp. Two service members whom he supervised admitted to receiving nude photographs from him. One service member advised Professional Standards that Sgt. Evelyn had sent at least one hundred photos in the last year.

A screenshot of the photographs that came from Sgt. Evelyn's account was provided to Professional Standards. In Sgt. Evelyn's interview with Professional Standards, he readily admitted to sending the photographs and apologized for his actions.

In so doing, Sgt. Evelyn committed misconduct in that he did act in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the Toronto Police Service.

Positions on Penalty

9. The positions on penalty are in congruence. Defence and Prosecution agree by joint submission on forfeiture of 4 days or 32 hours pay. A summary of Ms. Miller's and Mr. Lacy and Ms. Ahumada's submissions, in support of this position, follows.

Witnesses

10. No witnesses were called by the Prosecution or the Defence.

Submissions

Prosecution Submissions

11. The Prosecutor – Ms. Miller began her submissions by entering a Book of Records (Exhibit 4), and a Book of Authorities (Exhibit 5).
12. Ms. Miller submitted that the facts in this case are straightforward, the misconduct is clear and the disposition proposed is consistent with previous cases and satisfies the principals of our discipline system.
13. She outlined the objectives of discipline, which are to: correct unacceptable behaviour, deter others from similar behaviour, and assure the public that the police are under control. The Prosecution's submissions cover all three of these areas.
14. Ms. Miller highlighted that there are fifteen considerations governing the determination of an appropriate disposition and they can be found in the 2017 *Ontario Police Services Act*, by Ceyssens and Childs (Exhibit # 4, Tab 1) The

Prosecution fully considered all of these principles and in the submissions to penalty, noted the following as particularly relevant in this matter.

15. Ms. Miller submitted that Sergeant Evelyn's actions have *public interest* implications as it relates to the public confidence in police. She reiterated the necessity for the public to be assured that the police are under control, and to provide the public confidence in the police discipline system. Sergeant Evelyn's conduct was not public but it did involve other members of the organization.

16. The Prosecutor referenced that police officers conduct is always held to a higher standard with reference to Exhibit 4, Tab 2; of the submitted Book of Records. Herein, the Toronto Police Service Standards of Conduct was reviewed by the Chief and states, "*Toronto Police Service members are held to a higher standard of conduct than other citizens. This standard is not only an expectation from the community, it is an expectation we place upon ourselves. This higher standard of behaviour is necessary to preserve the integrity of the Service. The community expects Toronto Police Service members to conduct themselves and discharge their duties with diligence, professionalism and integrity; comply with and be seen to act within the spirit and letter of the law*".

It is evident that Sergeant Evelyn's conduct in the agreed statement of facts regarding the photographs that he failed to live up to the standard that the public and Service expects.

17. The Prosecutor referenced the Toronto Police Service Core Values that are contained in Exhibit 4, Tab 3. One of the values is do the right thing by acting professionally, with integrity. The Prosecutor submits that Sergeant Evelyn did not set a positive example and did not live up to the core values.

18. With regards to the *seriousness of misconduct*, Ms. Miller commented that this is

a fundamental consideration in all dispositions. The Prosecutor added that as a supervisor there is a responsibility to be professional in your interactions with other members of the Service. There is a line between what is appropriate and what is not. Sergeant Evelyn crossed that line when he sent the images.

19. The Prosecutor referenced Exhibit 4, the submitted Book of Records, at Tab 4 – Oath of Office. Sergeant Evelyn’s signed and swore his oath in January 2001 to; “*discharge my duties as Police Constable with the Toronto Police Service, faithfully, impartially and according to law*”. A component of Sergeant Evelyn duties is to maintain public trust, his actions undermined that trust.

20. On the principle of *recognition in the seriousness of misconduct or remorse*, Ms. Miller submitted that Sergeant Evelyn’s guilty plea is an indisputable factor in taking responsibility for his actions. The Prosecutor referenced the case of *Purbrick and the Ontario Provincial Police* (Exhibit 5, Tab A) to support the position. The recognition of the seriousness is vital in the consideration of rehabilitation for Sergeant Evelyn. As such the Prosecutor submitted that the guilty plea demonstrates an admission of culpability and assists with rehabilitation.

21. While addressing *employment history*, Ms. Miller pointed at Exhibit 4, Tab 5, in the Book of Records which included Sergeant Evelyn’s complementary activities and awards. The Prosecution advised that there were many positive documentations and no negative performance issues.

22. Further, Ms. Miller submitted at Tab 6 of Exhibit 4, are the performance appraisals for Sergeant Evelyn from 2011 forward. The Prosecutor submitted that overall the employment history is a mitigating factor.

23. In terms of *consistency of disposition*, Ms. Miller commented that similar conduct should have similar dispositions but also recognizing that no two matters are the same. This case of Schofield and the Metropolitan Police Force is included in

Exhibit 5, Tab C comments: *consistency is the earmark of fairness*, which supports this. The Prosecutor further submitted that disposition is not about the right penalty but one that falls within the range considering all the factors.

24. Ms. Miller cited three earlier case law decisions contained in Exhibit 5, at (Tab D) Gabriel and Toronto Police Service, 2011, (Tab E) Smith and Toronto Police Service, 2019, and (Tab F) MacArthur and Toronto Police Service, 2021 which showed an appropriate range of penalty. The joint position proposed falls within that range. She then summarized each of the historic cases, highlighting the similarities and differences, as they equate to Sergeant Evelyn's matter.

25. In the area of *specific and general deterrence* the Prosecutor advised that she is aware of the Service's position as it relates to misconduct relating to involving public trust. I take notice that the correlation between penalty and deterrents, both general and specific. Ms. Miller referenced the case Andrews and Midland Police Service, 2002, (Exhibit #5, Tab G), where the Commission stated, "*He was also correct that the penalties imposed for misconduct must be strong enough to send a clear message to other officers that such conduct or any conduct of this nature will not be tolerated*" and further that, "*sufficient to punish and to deter while not causing undo or excessive hardship while demonstrating that reoccurrence will not be tolerated.*" The Prosecutor submitted that disposition must be delivered to demonstrate to members of the Service that this behaviour will not be tolerated and the standards of conduct must be upheld especially from supervisors.

26. Ms. Miller concluded that the appropriate disposition for this matter is a forfeiture of four days.

Defence Counsel Submissions

27. Mr. Lacy commenced his submissions by stating the Prosecution and Defence have worked together and are jointly submitting disposition forward for

consideration. Mr. Lacy submitted that the joint position is proportionate in the context of the allegations that Sergeant Evelyn has pled guilty to.

28. Mr. Lacy submitted that Sergeant Evelyn accepted responsibility for his actions at the first instance and apologized for his actions. Two of the individuals that did testify, had a friendly relationship with Sergeant Evelyn and communicated with him on WhatsApp. The context of the misconduct is that the individuals that received the images were friends. One of the recipients acknowledged that they were inappropriate, similar to the sort of things they had received in hockey chats. The images were not produced by Sergeant Evelyn but were mainstream content.

29. Mr. Lacy submitted that Sergeant Evelyn's actions were a lapse of judgement in professionalism and supervisor responsibilities. As a supervisor, Sergeant Evelyn is held to a higher standard. His actions were not intended to make others feel uncomfortable. There was a lack of understanding on the part of Sergeant Evelyn on appropriate boundaries and in this case those boundaries were crossed.

30. Defence counsel made brief submissions regarding the cases submitted by the Prosecution. The common theme was that all of the matters involved the public. This is not the case for Sergeant Evelyn. The context of this case is that it was one of friendship.

Comments by Sergeant Evelyn:

31. Sergeant Evelyn was provided an opportunity to address the Tribunal. Sergeant Evelyn indicated that his counsel had made the submissions on behalf.

Prosecution Reply:

32. None.

Analysis and Decision:

33. In the well known case of Williams and the Ontario Provincial Police, 1995, OCCPS the Commission identified three key elements a Hearing Officer must take into account when imposing a penalty. These are: 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 could occur if the officer remained on the Force.

34. The Commission has also instructed there are other factors to be considered in light of particular misconduct which include the recognition of the seriousness of the misconduct, the employment record, the public interest in the administration of justice, general and specific deterrence and the need for consistency.

35. In the case of Bright, Konkle and the Niagara Board of Inquiry, 1997 which speaks to the necessity of a police officer to be of good character. The following passage supports section 43(1) of the PSA, "*Good character in a police officer is essential to both the public's trust in the officer, and to a police service's ability to utilize that officer. The public has the right to trust that its police officers are honest and truthful, and that, absent extenuating circumstances, they will not be officers any longer if they breach this trust.*" In this case Sergeant Evelyn violated the public trust by not recognizing his position as a supervisor and communicating inappropriate images with members that reported to him. He failed to meet the standard of conduct expected of him within the Service and outside the Service.

36. There is no doubt that the misconduct was serious. Sergeant Evelyn acknowledged that he crossed a line with his interactions with members. There was a power imbalance between Sergeant Evelyn and the involved members who were subordinates. This is an aggravating factor.

37. I do take note, at Exhibit 3, the Agreed Statement of Facts – that Sergeant Evelyn exercised his option to plead guilty in this Tribunal. The Prosecutor also submitted, that by way of his guilty plea before this Tribunal, Sergeant Evelyn has demonstrated that he has accepted the responsibility for his misconduct, and he has demonstrated that he is willing to face the consequences to continue to be a productive member of the Service. In support, I acknowledge that in the case of Carson and Pembroke Police Service, 2001, OCCPS which stated, “*we have no doubt that a guilty plea should be recognized as a mitigating factor and taken into account along with other factors in determining an appropriate penalty.*” The Commission has also instructed there are other factors to be considered in light of a particular misconduct which include the *recognition of the seriousness of the misconduct*, the *employment record*, the *public interest* in the administration of justice, general and specific deterrence, and the need for consistency.

38. Ms. Miller also submitted that the 2017 Ontario PSA by Ceysens and Childs guide us on how to assess an officer’s employment history in association with recognition of the seriousness of the misconduct and potential to rehabilitate. Ms. Miller focused on Factor 7 - Employment History, wherein the commentary cites several Commission cases and in summary makes the following determinations with respect to this factor. “*Employment history is an important disposition in all cases. Employment history as a mitigating or aggravating consideration closely relates to the disposition consideration of rehabilitation potential.*” With that, she considered Sergeant Evelyn’s employment history mitigating given the potential to reform or rehabilitate the officer.

39. In regards to the *potential to reform or rehabilitate the officer*, the Commission has

made comments in Andrews and Midland Police Service, 2002, OCCPS, "*The Commission believes that rehabilitation is a key factor to be taken into consideration when a penalty is imposed, especially, when the offender has a prior unblemished employment record. Unless the officer is beyond rehabilitation (in which case he would be a candidate for dismissal) the door should be kept open for the officer to be rehabilitated. The penalty should be tailored to provide him with the opportunity to do so.*" This is the case with Sergeant Evelyn. He is before this tribunal with an unblemished employment record.

40. It would appear that Sergeant Evelyn has taken positive steps since this event. Sergeant Evelyn has cooperated with the investigation admitted his misconduct and pled guilty. As noted in Carson and Pembroke Police Service, OCCPS, 2001 a guilty plea should be recognized as a mitigating factor. Sergeant Evelyn did not blame others for his actions and has accepted responsibility for them. He acknowledges the inappropriateness of a supervisor sending such images to subordinates. The steps he has taken demonstrate that he has recognized the seriousness of the misconduct.

41. This event has already had an on effect Sergeant Evelyn and will continue to in the future. His finding of guilt under the *PSA* will remain with him for a lengthy period of time. He has likely lost and will continue to miss out on professional opportunities until this matter is well behind him and has restored his reputation. He will have to report this misconduct when he is called upon to testify in court. All of those effects are as a result of the actions of Sergeant Evelyn for which he must bear the responsibility.

42. Though I have not been made aware of any media attention, this event has caused some damage to the reputation of the Service. Any member of the Toronto Police Service and any member of the Public who was involved in or was aware of the circumstances of this investigation would not see it in a positive light. If this matter is reported on in the future by the media it will likely cause further damage to the

reputation of the Service.

43. All procedural fairness considerations have been addressed in this instance. Sergeant Evelyn was provided the opportunity to make full answer and defence, and has had the benefit of an experienced counsel throughout these proceedings.

44. I have reviewed the information from Sergeant Evelyn's personnel file in Exhibit 4, at Tab 5. Sergeant Evelyn has been recognized on approximately 33 occasions for his involvement in a number of significant arrests and investigations throughout his career and has 5 letters of appreciation.

45. In Exhibit 4, at Tab 6, I reviewed Sergeant Evelyn's annual performance appraisals dating from 2011 to 2019. There were no evaluations to review from 2015-2019 for Sergeant Evelyn as he was away from work with a life altering illness for an extended period of time. In the appraisals available his supervisors commented on Sergeant Evelyn's performance as one that leads by example. Supervisors also spoke of his excellent job since arriving at the Division. One evaluation spoke of Sergeant Evelyn not completing tasks and focusing on initiatives outside of his primary function. Sergeant Evelyn submitted a response refuting these comments. The remaining evaluations spoke of Sergeant Evelyn as a Constable and being a valuable team member performing duties with dedication and compassion. Overall Sergeant Evelyn's evaluations are positive. Sergeant Evelyn's employment history is a mitigating factor.

46. As discussed in Andrews and Midland Police Service, 2002, OCCPS, an officer with a prior unblemished employment record should be provided with the opportunity to be rehabilitated. In this case, coupled with his prior positive employment record, the actions he has taken since this event, and the observations of those supervisors in a position to observe his behaviour, Sergeant Evelyn has demonstrated that he has the potential to reform or be rehabilitated.

47. I am satisfied that deterrence specific to Sergeant Evelyn has been addressed through his acceptance of responsibility, his guilty plea in this Tribunal and his willingness to accept a penalty. In regards to general deterrence, the outcome of these proceedings will be published on TPS Routine Orders and this decision will be published on the TPS Intranet. Those documents are available to the entire Service membership and will reinforce the previous messaging in regards to the potential consequences for this type of misconduct.

48. In Schofield and the Metropolitan Toronto Police, it was stated, “*each case must be judged on the facts peculiar to it. 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.*” The Prosecutor provided three historical cases in support of the joint penalty position.

49. In the matter of *Gabriel and Toronto Police Service (2011)*, Constable Gabriel was a member of the Employee and Family Assistance Program (EFAP) for the Service. He made inappropriate comments, gestures or sexual remarks towards female EFAP clients and EFAP peers. On occasion Constable Gabriel interacted physically with these EFAP clients and peers. Constable Gabriel pled guilty to one count of Insubordination. He received a disposition of 5 days for the insubordination. Constable Gabriel was not a supervisor but in a position of authority similar to Sergeant Evelyn. The interactions of Constable Gabriel involved members of the Service and physical which Sergeant Evelyn’s misconduct did not.

50. In the matter of *Smith and Toronto Police Service (2019)*, Constable Smith attended a domestic radio call and spoke with the involved parties. Constable Smith made inquiries with police databases on three occasions. A few months later he spoke with the female victim and asked to date her. The victim filed a complaint. Constable Smith pled guilty to one count of Discreditable Conduct, one count of

Insubordination. He received a disposition of a forfeiture of five days for each charge to be served concurrently. This matter differs as the female victim in was a member of the public in a vulnerable situation and use of police information systems.

51. In *MacArthur and Toronto Police Service (2021)*, Constable MacArthur attended an address in relation to a domestic situation. One of the parties was arrested. Constable MacArthur engaged the complainant in the call in conversation via text messages from his personal device. He sent several inappropriate images to the complainant. Constable MacArthur pled guilty and was found guilty of Discreditable Conduct. After submissions he received a disposition of a forfeiture of five days. This case differs as the complainant involved was a member of the public and in a vulnerable situation.

52. In reviewing all of the cases from the Prosecution, it was apparent that even though many outcomes bore a number of similarities to others, there was no consistent penalty that was imposed. Each was considered on its own merit, and penalties imposed were in a range that was dependent on all of the mitigating and aggravating factors specific to that case.

53. A penalty must be appropriate to the circumstances, and a penalty imposed in one case may not be appropriate in another similar case based on the disposition factors that are present. In the matter before me, the misconduct of Sergeant Evelyn was serious. The boundaries between supervisors and subordinates need to be adhered to, to ensure a positive professional workplace. In this case, a forfeiture of days is appropriate based on a consideration of all of the disposition factors. The penalty I am imposing is within the range of penalties for other cases involving similar misconduct.

54. I acknowledge that Sergeant Evelyn has displayed remorse after committing the specific misconduct for which he now faces sanctions. The Tribunal strongly urges

Sergeant Evelyn to heed the principles of progressive discipline and to govern himself by its intent. To do otherwise may bring his usefulness to the Toronto Police Service into question and potential jeopardy.

55. I have reviewed the mitigating and aggravating factors, considered the submissions of Defence Counsel and the Service Prosecutor and previous related Tribunal decisions. I am aware that I am not bound by the joint submission on sentence, but on the totality of the evidence before me, I have found no compelling reason to depart from the joint submission. I have determined a penalty.

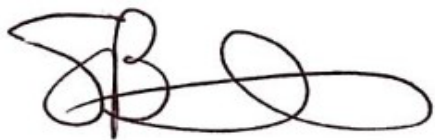
Penalty:

The penalty in this matter imposed under 85 (1) (c) of the Police Services Act will be:

For Discreditable Conduct in that Sergeant Evelyn is guilty of: acting in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the police force of which he is a member;

Forfeiture of 4 days or 32 hours pay.

The Notice of Hearing with counts 1, 2, 4 and 5 of Discreditable Conduct are marked withdrawn at the request of the prosecution.

A handwritten signature in black ink, appearing to be 'SB' followed by a long horizontal flourish.

Shane Branton
Superintendent
Hearing Officer

October 10th, 2023

Appendix 'A' - List of Exhibits 25/2020 Sergeant Joel Evelyn (8018)

Hearing Officer S. Branton Letter of Delegation (**Exhibit 1**)

Prosecutor A. Miller Letter of Designation (**Exhibit 2**)

Agreed Statement of Facts (**Exhibit 3**)

Prosecution Book of Records (**Exhibit 4**)

Police Discipline Process Chapter (Tab 1)

Toronto Police Service Standards of Conduct, Introduction by Chief Mark Saunders (Tab 2)

Toronto Police Service Core Values (Tab 3)

Oath of Office, Sergeant Joel Evelyn (8018) (Tab 4)

TPS 950, Awards and Letters of Recognition of Sergeant Joel Evelyn (8018) (Tab 5)

TPS Performance Appraisals of Sergeant Joel Evelyn (8018) (Tab 6)

Prosecution Book of Authorities (**Exhibit 5**)

Purbrick and the Ontario Provincial Police, OCPC May 25, 2011 (Tab A)

Carson and Pembroke, OCPC, July 27, 2001 (Tab B)

Schofield and the Metropolitan Police Service, OCPC, October 29, 1984 (Tab C)

Gabriel and the Toronto Police Service, June 7, 2011 (Tab D)

Smith and the Toronto Police Service, April 9, 2019 (Tab E)

MacArthur and the Toronto Police Service, August 23, 2021 (Tab F)

Andrews and the Midland Police Service, OCCPS, May 1, (Tab G)