

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

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

IN THE MATTER OF

OTTAWA POLICE SERVICE

AND

CONSTABLE PIERRE FOURNIER, 1704

CHARGE:

1. DISCREDITABLE CONDUCT

DECISION WITH REASONS

Before: Superintendent (Retired) Chris Renwick

Counsel for the Prosecution: Ms. Vanessa Stewart
Ms. Bonnie Cho
Mr. Graydon Campbell

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

Disposition Hearing Dates: December 11-15, 2023

Allegations of Misconduct

Constable (Cst.) Pierre Fournier, badge number 1704, is before this Tribunal on a charge of discreditable conduct.

Count one: Discreditable Conduct

Cst. Fournier is alleged to have committed discreditable conduct in that, on April 24, 2021, he acted in a disorderly manner, or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the Ottawa Police Service (OPS) by placing himself on-duty while off work and on leave, and engaging in a physical and verbal altercation with young persons in an unprofessional manner, thereby constituting an offence against discipline as prescribed in section 2(1)(a)(xi) of the Code of Conduct, Schedule to Ontario Regulation 268/10, as amended, and therefore contrary to section 80(1) of the *Police Services Act (PSA)*.

Overview

The first appearance was held in-person at the Fairmont Ave. OPS facility on June 20, 2023, followed by a July 31, 2023 second appearance where proposed witness lists were submitted and disclosure was finalized. Two additional videoconferences (August 16, 2023 and October 16, 2023) followed to prepare for the seven-day scheduled in-person December 2023 hearing.

On July 31, 2023, Ms. Bonnie Cho submitted a Notice of Filing Evidence (Exhibit 5), advising the Tribunal of the Prosecution's intent to file copies of the statement summaries of the seven civilian witnesses and would call the six youth witnesses to appear as witnesses to permit cross-examination by the Defence.

Ms. Cho further advised the Tribunal that the Prosecution would be seeking to have the six youth witnesses appear by way of videoconference due to their age and to limit their exposure to Cst. Fournier as he was self-representing. At the October 16, 2023 appearance, Cst. Fournier advised that he would be opposed to the Prosecution's request and wanted to have the witnesses give their evidence in-person. It was decided that the Tribunal would receive a written application by the Prosecution for the witnesses to testify by videoconference and oral submissions would be heard at the commencement of the Hearing.

Ms. Cho submitted a request to place a publication ban on the names of the six youths involved due to all being under 18 years of age. Cst. Fournier had no opposition to the request and the Tribunal placed a publication ban on the naming of the six youths. They will be referred to by initials in this decision and any external publications or communications.

Representation

The OPS was represented by Ms. Bonnie Cho at the first four appearances and by Ms. Vanessa Stewart and OPS Articling Student Mr. Graydon Campbell at the hearing. Cst. Fournier was self-represented and was assisted by OPS Cst. Cedric Nizman on the last two days of the five hearing dates.

Plea

Cst. Fournier was arraigned at the July 31, 2023 appearance and the Notice of Hearing was read into the record for one count of discreditable conduct. Cst. Fournier entered a plea of not guilty.

Finding

To the allegations of misconduct before me, I make the following findings, based on the standard of clear and convincing evidence:

Count One: Guilty of discreditable conduct in placing himself on-duty while off work and on leave and engaging in a physical and verbal altercation with young persons in an unprofessional manner.

The Hearing

Seven days were scheduled for the hearing, from December 11-15 and December 18-19, 2023. The hearing concluded on December 15, 2023, and consisted of five days of in-person sessions. The hearing was held in Room 317 of the OPS's Professional Development Center, 1385 Woodroffe, Ave., Ottawa.

Application for Witnesses to Testify by Videoconference

The Hearing commenced with oral submissions on the Prosecution's Application for Witnesses to Testify by Videoconference, led by Mr. Graydon Campbell. Mr. Campbell filed a written Factum for Witnesses to Testify by Videoconference (exhibit 7) and a Book of Authorities (exhibit 8). Cst. Fournier filed a written response to the Application. (Exhibit 9).

Mr. Campbell submitted that this case involved an aggressive and abusive confrontation by Cst. Fournier, an off-duty police officer, with six youths between the ages of 15-16 at the time of the 2021 incident. Cst. Fournier detained and berated the youths, leading to a physical confrontation, and his actions were beyond the realm of oppressive and were in fact abusive.

Mr. Campbell submitted that should the youths be made to testify in-person it would be intimidating for them and could impair the function of the Tribunal in finding fact. With

Cst. Fournier being self-represented there is the real risk of psychological and emotional damages as well as the risk of prejudicing the reliability and creditability of their testimony.

Mr. Campbell submitted that the *Statutory Powers Procedure Act (SPPA)* sections 15 and 25.0.1, provides latitude for administrative Tribunals to establish its own rules and to permit evidence by way of videoconferencing, as was affirmed by the Ontario Civilian Police Commission (ONCPC) in their ruling in *Cst. Ioan Floria v. Toronto Police Service*, 2020 (ONCPC 6), at paragraph 43.

Mr. Campbell cited *Gordenier v. The Ontario Provincial Police* (2022 ONCPC 06), submitting that the Tribunal has the responsibility, as the finder of fact, to assess the credibility and reliability of the young witnesses. Permitting the witnesses to testify by videoconference, under the circumstances present, would allow for them to perform better and it would be unlikely for prejudice towards Cst. Fournier to arise. All mannerisms would be observed as if they are physically present in the hearing room but without being in the presence of the constable who accosted them.

Mr. Campbell concluded that denying these witnesses the ability to tell their accounts remotely risks the emotional and psychological wellbeing of young persons by requiring them to be cross-examined by the person who was so aggressive towards them. Videoconference appearances would not prejudice the right of Cst. Fournier to procedural fairness nor would it harm Cst. Fournier's ability to make his case.

Cst. Fournier submitted that the *SPPA* does allow for video testimony, and under certain circumstances, it is an option. However there needs to be a valid, compelling reason and in this situation, there are no exceptional circumstances to warrant such a ruling. Cst. Fournier submitted that, in totality, all the witnesses are in Ottawa, there is no medical accommodation, the hearings are in a public building, and there are no safety concerns.

Cst. Fournier cited *R. v. Neville*, (2018 NLSC), that establishes that exceptional circumstances need to be present for the Tribunal to permit witnesses videoconferencing their evidence. He submitted that there are no exceptional or unusual circumstances present in this hearing.

Cst. Fournier cited *R. v. Barry*, (2022 ABQB 600), wherein Justice Loparco sets out the seven factors to consider when determining if a witness should be permitted to give evidence by videoconference. In addition, Cst. Fournier cited the case of *R. v. K.S.* (2020 ONCJ 328) that establishes that there must be a valid reason to request video testimony beyond a mere preference, as it is recognized that the best evidence (in-person testimony) remains the default standard.

Cst. Fournier submitted that he has the right to face and hear the witnesses as this is his only opportunity to get to the truth, and body language says a lot. He submitted that there is evidence of collusion between the six witnesses and if permitted to testify remotely, there is no way to confirm the witnesses will be alone while giving evidence. The Tribunal

should exercise its statutory authority under the *SPPA* and require the witnesses to testify in person.

Decision: Application for Witnesses to Testify by Videoconference

The arguments by both parties were well presented and were of great assistance in reaching a decision. There are really two questions before me: Do I have the authority; and, if yes, then should it be allowed.

The answer to the first question is yes, this Tribunal has the authority to direct witnesses to appear by videoconference. The authority for this non-contested conclusion lies in section 25.0.1 of the *SPPA* and is recognized and affirmed in recent case law, cited above.

Turning to the question of should videoconference testimony be allowed, I referred to the *R. v. Berry* (2022 ABQB 600) decision, cited by Cst. Fournier, which refers to the list of non-exhaustive factors set out in section 714.1 of the Criminal Code, being: The location of the witnesses; cost incurred; nature of the anticipated evidence; suitability of the location from where the witnesses will give evidence; nature and seriousness of the offence; and any potential prejudice to the parties caused by videoconference testimony.

Two applicable factors that need to be clearly addressed are the nature of the witnesses' anticipated evidence, and the potential prejudice to the Respondent Officer. Cst. Fournier's position is that the six youth witnesses provided untruthful statements and colluded on details after the incident and prior to their interviews. The contested nature of the witnesses' anticipated evidence is indeed a factor for consideration. Credibility will be an issue for the Tribunal to determine. Further, Cst. Fournier's ability to effectively cross-examine the witnesses, in his words his "only chance to get to the truth", will be hindered by not being in-person and is a factor for potential prejudice.

I also must take into consideration the age of the witnesses and my duty to insulate youths from any potentially aggressive or abusive interactions with Cst. Fournier which, in my opinion, could very well become a live issue in this hearing. At the time of the incident in April, 2021, the six witnesses were all aged 15 to 16 years old and are all 17 to 18 years of age at the time of this hearing (December 2023).

It is my decision to allow the six youth witnesses to appear remotely by way of videoconference, a recognized platform that is accepted by most courts and tribunals, this being a professional regulatory hearing on alleged professional misconduct.

The nature of the anticipated evidence and the potential prejudice to Cst. Fournier must be balanced with the requirement to lessen the risk of the testimony of the young witnesses' being constrained by anxiety or fear. I am satisfied that, as the Hearing Officer, I will be able to assess and weight the reliability and truthfulness of their testimony and that they will be subjected to a fulsome, yet respectful, cross-examination.

Furthermore, the risks can certainly be mitigated by having the Tribunal ensure that they are testifying from a controlled setting to ensure that there is no coaching, assistance, or communication devices present.

Testimony

The Prosecution called seven witnesses to provide testimony, Sgt. Serge Bérubé and six youths referred to by their initials, due to the October 16, 2023 publication ban. (X.A., B.L., C.T., E.M., P.B.-K., and W.W.) The Defence called five witnesses: Cst. Abdulraheem Masoud; Cst. Kevin Dorion; Sgt. Jason Arbuthnot; Sgt. Jonathan Trudeau; and Mr. Guy Fournier. The Prosecution agreed to split the presentation of their case to accommodate the out of sequence calling of witnesses for the Defence due to scheduling issues.

Sgt. Serge Bérubé

Sgt. Bérubé was called as the first witness for the Prosecution. He testified that he was the Professional Standards Unit (PSU) lead investigator of the *PSA* investigation into Cst. Fournier's alleged misconduct, which was initiated on September 12, 2022, at the conclusion of the criminal proceedings.

Sgt. Bérubé testified that he interviewed Cst. Fournier on December 15, 2022 and an audio recording of that statement was played to the Tribunal (exhibit 15). The audio of the 911 call by Cst. Fournier on April 24, 2021 was also played.

Mr. X.A.

Mr. X.A. testified that he is currently 18 years old and that he was 15 on April 24, 2021. He testified that he was riding his motocross bike in a sand pit with five friends when the confrontation occurred and that he was punched approximately six times, the first time by Cst. Fournier but cannot say for sure who punched him subsequently. He stated that he had minor injuries to his wrist and ankle. He stated that the gas tank of his bike was damaged as he fell to the ground when he was pushed and his chest protector, goggles, and nose protector were broken during the incident.

Mr. B.L.

Mr. B.L. testified that he is 18 years old and that he was 16 on April 24, 2021. He stated that he and friends were riding dirt bikes in the pit area when a truck arrived and he immediately left on his bike. He testified that he returned and observed one man grab X.A.'s helmet and one punched at him and both men dragged X.A. to the ground.

Mr. C.T.

Mr. C.T. testified that he was 15 years of age in 2021. He testified that one of the males ran up when he was stopped on his motor bike, startled him, and grabbed his handlebar

to prevent him from riding away. He testified that he observed Cst. Fournier push X.A. and his bike fell, upsetting him. He testified that he heard comments of one of the men being a police officer after his friends returned.

Mr. E.M.

Mr. E.M. testified that he is currently 17 years of age and that he was 15 at the time of the incident in the gravel pit. He testified that the two men drove up and parked, walking up towards him. He testified that one of the men told him he was going to show him a badge but the brother told him not to show it.

Mr. P. B.-K.

Mr. P. B.-K. testified that he is 18 years of age and that he was 15 on April 24, 2021. He testified that he knew he was trespassing on private property at the time of the incident. He testified that he observed Cst. Fournier shake X.A., not punch him.

Mr. W.W.

Mr. W.W. testified that he is 18 years of age and that he was 16 at the time of the incident with the two adults and that he called 911 after leaving the area on his bike. When asked by Cst. Fournier if he saw him punch S.A., W.W. replied that he saw an arm reach out for his helmet and make contact.

Cst. Abdulraheem Masoud

Cst. Masoud was called as a witness for the Defence. His evidence was that he was on duty on April 24, 2021 and responded to the call of an off-duty constable being “jumped by males” and that he submitted an occurrence report. He testified he remained at the scene for approximately half an hour and that he was not the principal officer on the call nor did he speak to the youths or their parents who attended.

Cst. Kevin Dorion

Cst. Dorion was called as a witness for the Defence. He testified that he responded to the call and upon arrival spoke to three of the youths (C.T., X.A., and E.M.) and later to a parent of each. He testified that he also attended a separate location and spoke to youth W.W. who had called 911. He stated that he verbally trespassed C.T., X.A., and E.M. for trespassing on private property and did not detain or arrest the youths. He testified that he submitted an occurrence report (exhibit 10).

Cst. Dorion testified that has has been policing the area of Greely since 2021 and is aware of the recurring issues of youths operating motocross bikes dangerously and trespassing on private property.

Sgt. Jason Arbuthnot

Sgt. Arbuthnot was called as a witness for the Defence. He testified that he was a sergeant with PSU and was the assigned investigator for a criminal investigation into the incident. He testified that the investigation concluded with consultation with a Crown Attorney resulting in Cst. Fournier and Mr. Guy Fournier being criminally charged with assault and mischief.

Sgt. Jonathan Trudeau

Sgt. Trudeau was a witness for the Defence and testified that he responded to the call on April 24, 2021 as a patrol sergeant. He testified that he spoke with Cst. Fournier when Cst. Fournier returned to the scene where the incident had occurred, listened as Cst. Fournier relayed what had occurred and permitted Cst. Fournier to depart. Sgt. Trudeau testified that he called Insp. D'Aoust who subsequently attended and ascertained that occurrence reports were being submitted.

In cross-examination by Ms. Stewart, Sgt. Trudeau advised that, as he understood the situation, the youths had not been arrested and were not being detained, thus no requirement for rights or cautions to be provided. There was no criminal investigation initiated into the actions of the youths or Cst. Fournier during the initial response.

Mr. Guy Fournier

Mr. Guy Fournier is the identical twin brother of Cst. Pierre Fournier and was called as a witness for the Defence. Mr. Fournier testified from Quebec City via videoconference, as agreed by both parties. The examination-in-chief was conducted by Cst. Cedric Nizman who assisted Cst. Fournier due to Mr. Fournier being his brother.

Mr. Fournier testified that he was visiting Ottawa and was in a field with his brother, Cst. Pierre Fournier, preparing for a turkey hunt. Upon departure, he was following his brother in his truck and observed his brother take an unanticipated right turn, exited his vehicle and approached a male on a motocross bike on the top of a hill. Mr. Fournier testified that he initially sat in his truck until other youths arrived. He exited his vehicle and engaged with the youths. He testified that he was there during the altercation which involved four of the youths.

Mr. Fournier testified that one of the youths placed his hands on Cst. Fournier and two other youths became involved, with pushing and shoving, but no punches thrown. Mr. Fournier testified that he ran up, grabbed the aggressor by the shoulder pads, and put him down and held to the ground until Cst. Fournier told him to release him.

Mr. Fournier testified that he advised one of the youths that Cst. Fournier was a "cop" and he went to Cst. Fournier's vehicle to retrieve Cst. Fournier's police badge. He testified that he did not show the badge to anyone, at the demand of Cst. Fournier.

Mr. Fournier testified that he was present when the police arrived and that he was not interviewed nor engaged in any way with the responding officers.

Submissions and Analysis

Prosecution Submissions

Ms. Stewart submitted that the issue to be decided is whether the Prosecution has proven that Cst. Fournier's actions constitute misconduct as laid out in the Notice of Hearing. Specifically, whether Cst. Fournier placed himself on-duty by entering into a provincial *Trespass to Property Act (TPA)* investigation, and if his actions that day were unprofessional in nature, bringing the reputation of the OPS into disrepute.

Ms. Stewart submitted what is not contentious is that there was a verbal altercation involving swearing, which led to a physical altercation, and a call to 911 by Cst. Fournier during which Cst. Fournier stated to the 911 operator "...I'm gonna be the bad guy, but, hey, I'm off anyway."

Ms. Stewart cited *Mulville and Azarveve and York Regional Police Service*, (2017 CanLII 19496) in which the Commission defines the test to be applied and the definition of a "reasonable person". She submitted that the constellation of factors here are: the age of the individuals; the nature of the officer's conduct; the rules and regulations, specifically the PSA, the *Canadian Charter of Rights and Freedoms (Charter)*, and *TPA*; and the lack of adherence to OPS policy. Ms. Stewart submitted that, citing the *Cst. Silverman v. Ontario Provincial Police* (1997 CanLII 22046) decision, paragraph 32, that the standard is the potential damage to the reputation of the Service rather than actual damage.

On discreditable conduct, Ms. Stewart submitted that the *PSA* provides that an individual commits discreditable conduct if they act in a disorderly manner and bring discredit to the police service. Case law has also defined what is discreditable conduct and Ms. Stewart cited the *Cst. Alden v. Ottawa Police Service* (2013 ONCP 13) decision which speaks to an off-duty constable placing himself on-duty. Ms. Stewart submitted that this is a case of an officer taking policing actions while off-duty and using his position of authority to place individuals under detention to further an investigation.

On *Charter* violations, Ms. Stewart referred the Tribunal to the decision of *Gonzales v. OPP*, (2006, CanLII 84676) which stipulates that if *Charter* violations occur it can amount to misconduct on this point alone. With this, Ms. Stewart asked that the Tribunal assess if Cst. Fournier's actions constitute a *Charter* breach.

Further to *Charter* violations of young persons, Ms. Stewart submitted that the misconduct was compounded by Cst. Fournier's detention of Mr. C.T. by both physical and psychological restraint. Ms. Stewart cited *R. v. Thompson*, (2020 ONCA 264) as recent case law that reviews the law of detention. The onus is not on the youths and how they behave, rather it is on the officer and his actions. Ms. Stewart submitted that Cst. Fournier, off-duty, was investigating a trespassing and detained Mr. C.T. at the outset, advising him that "you are not going anywhere" while taking physical hold of him, without providing his rights to counsel and committing a serious, flagrant *Charter* violation.

Ms. Stewart submitted that the evidence established that Cst. Fournier worked this area, knew the landowners and their ongoing issues with youths trespassing on motocross bikes, and that he was frustrated with their ongoing disregard for private property, nearby neighbours, and their own safety. This was the background on April 24, 2021 when off-duty Cst. Fournier sees the actual culprits and engages himself in what becomes a chaotic event which results in unlawful detention, inappropriate language, and ultimately a physical confrontation in which youths were afraid and wanted to leave.

Ms. Stewart submitted that a commonality consistent in the statements and testimony of the six youths was that of: detention; identification as a police officer; profane, mocking words that some attributed to racial slurs; provocation; and a physical altercation described as pushing and/or punching. Ms. Stewart summarized that this hearing is not about excessive force, rather that of a trained and experienced police officer who used words to escalate from a verbal interaction into to physical confrontation in the context of youths being detained for a *TPA* investigation while not being afforded their required rights.

Ms. Stewart submitted that once Cst. Fournier had decided to take action on the trespassing violation, he had an obligation to engage the youths professionally, use de-escalation, professional language, and to abide by the *Charter*. Rather, his behaviour of detention without *Charter* rights, inappropriate and unprofessional language, going hands on with a youth without following OPS policies, and continuing this behaviour when he knew they were afraid and wanted to leave, brings the reputation of the Service into disrepute. Courts and society expect police officers to do better and Cst. Fournier's actions demonstrated a flagrant disregard for *Charter* rights and professionalism.

Defence Submissions

Closing submissions for the Defence were made by Cst. Cedric Nizman, on behalf of Cst. Fournier.

Cst. Nizman submitted that at the time of the alleged offence, Cst. Fournier was off work on a work-related injury, undergoing therapy and treatment for mental stress. He was aware of the recurring incidents of trespassing and believed that no one was doing the right thing to address the taunting of the property owners and the risk of litigation from accident or injury. Youths were operating motorbikes on a highway with no insurance and riding dangerously while trespassing on private property, and neither the parents nor OPS were taking adequate measures for accountability or an end to the incidents.

Cst. Nizman submitted that the Prosecution has failed to establish that Cst. Fournier was on-duty at the time or that he identified himself as a police officer. He was in civilian clothes and approached as a concerned citizen. He was not on-duty in any official capacity and that police officers do not carry notebooks when off-duty.

Cst. Nizman cited *R. V. Thompson* (2020 ONCA 264), paragraph 32, which outlines that not every trivial or insignificant interference with individual liberty warrants *Charter*

scrutiny and that police may interact with or even delay members of the public without necessarily prompting a detention under section 9 of the *Charter*. Cst. Nizman submitted that there were no arrests made and no detention as Cst. Fournier was a civilian at the time of the incident.

Cst. Nizman submitted that the initial intent was to sit and talk to the youths but unfortunately, it did not go that way. The incident was confrontation from the start with all parties swearing and shoving until Mr. X.A. assaulted Cst. Fournier and decisive action was taken, using the correct amount of physical force to stop the assault of Cst. Fournier by Mr. X.A. Cst. Nizman submitted that Cst. Fournier was “not in police officer mode” and the swearing is a moot point as he was not on-duty as a police officer.

Cst. Nizman submitted that the initial investigation by the arriving police officers was one of the worst managed responses possible. There were no written statements taken, no Provincial Offence Notices for trespassing, or *Youth Criminal Justice Act (YCJA)* warnings to parents. The officers arriving did not determine who were the subjects and who were the complainants and Mr. Guy Fournier was not spoken to at the scene. A sergeant and an inspector attended and Cst. Nizman submitted that the matter was deemed trivial and closed and not re-opened until after the social media attention.

Cst. Nizman submitted that the witnesses were fraught with inconsistencies. They were not brought in for formal interviews, rather were interviewed from their homes by telephone, and key evidence such as if punches were thrown or not thrown was not fully explored or established. The witnesses were permitted to submit their own photographs of damage in contrast to the best evidence rule. Further, Cst. Nizman submitted that Cst. Fournier and Mr. Fournier were denied the opportunity to file a police report documenting the alleged assault of Cst. Fournier by one of the youths after the incident when it became evident that they were the subjects of a criminal investigation.

Cst. Nizman submitted that there was prejudice displayed against Cst. Fournier when the decision was made to conduct a *PSA* misconduct investigation upon his criminal charges being withdrawn. Cst. Nizman further submitted malice on the part of the OPS for Cst. Fournier not being notified of the end of suspension for a period of three and a half months after it's completion.

Analysis

During the course of the hearing this Tribunal heard oral testimony from 12 witnesses who can be broken down into essentially three groups: Persons who were present at the gravel pit who were involved and/or witnessed the incident; OPS personnel who responded to the 911 call and undertook field investigative actions; and two OPS Professional Standards Unit (PSU) investigators, one who conducted a criminal investigation and the other who conducted the *PSA* misconduct investigation. The six youths (X.A., B.L., C.T., E.M., P. B-K., and W.W.) and Mr. Guy Fournier fall into the first group. Cst. Masoud, Cst. Dorion, and Sgt. Trudeau are the police witnesses in the second

group, and Sgt. Arbuthnot and Sgt. Berube are the two PSU investigators in the third group of witnesses.

In addition, audio and documentary evidence was submitted, including audio statements and transcriptions of the April-May 2021 interviews with the six youths, the two 911 calls on April 24, 2021 by Cst. Fournier and Mr. W.W., and three interviews of Cst. Fournier. (The May 12, 2021 voluntary interview with Sgt. Arbuthnot during the criminal investigation, a second voluntary interview by Sgt. Arbuthnot upon Cst. Fournier's arrest and criminal assault and mischief charges on June 17, 2021, and the compelled PSU interview by Sgt. Berube on December 15, 2022.) The recording of the June 17, 2021 compelled PSU interview was played during the hearing along with the recordings of both Cst. Fournier's and Mr. W.W.'s April 24, 2021 911 calls.

Overall, the evidence submitted provides this Tribunal with a clear picture of exactly what occurred at the Osgoode Sand and Gravel Pit on April 24, 2021, despite some minor inconsistencies and perspectives, such as descriptions of the exact form of physical force used, exact words spoken, and the level of aggressiveness, disrespect, and provocation demonstrated by both sides, the Fournier brothers and the six youths.

From Cst. Fournier's interviews it has been established that Cst. Fournier was both a resident of the area and one of the constables assigned to regularly work that area of Ottawa. He was well aware of the years long issue of area youth repeatedly operating motocross bikes on private property and riding illegally and dangerously on roadways, and in his own words, was frustrated by the recurring disrespectful and undisciplined actions of the youths and attitudes of the parents who enabled the activity.

It has also been established that Cst. Fournier was off work on extended medical leave at the time of the incident. Just the day prior, on April 23, Cst. Fournier was called by a landowner acquaintance who had a confrontation with unauthorized motocross riders on his property. The next day, April 24, 2023, Cst. Fournier happened to be in an adjacent field with his brother preparing for a hunt. While exiting the field to make a right turn on to Old Prescott Rd., Cst. Fournier observed "seven kids", stationary on their motocross bikes along the edge of the pit property. Cst. Fournier makes the inopportune decision to turn towards the stopped youth and, in his words "to go have a chat with them". As Cst. Fournier exits his vehicle all but one of the youths ride off, two of them giving the finger to him. Cst. Fournier stated that he ran up the hill, placed his hand on the bike or shoulder of then 15-year-old Mr. C.T. and stated "You're not going anywhere". During cross examination by Cst. Fournier, Mr. C.T. testified that he could not ride away as "one of you grabbed my handlebars".

Testimony and documentary evidence established that the other five youths, all 15-16 years of age, returned to the area where Cst. Fournier remained with Mr. C.T., and Mr. Fournier arrived after observing Cst. Fournier turn off towards the youths and engage with Mr. C.T. It was at this point that a verbal altercation commenced followed by a physical altercation, resulting in Cst. Fournier calling 911 at 4:46 pm and Mr. W.W. calling 911 at 5:10 pm, and the arrival of the responding patrol constables and sergeant.

To arrive at a decision on whether the totality of Cst. Fournier's actions constitute discreditable conduct, I must first decide on some specific, key issues, as submitted by Ms. Stewart. First off, whether the evidence establishes that Cst. Fournier placed himself on-duty while engaging the youth, thus the requirements to adhere to policy and procedure in relation to note taking, reporting, and professional deportment and demeanor, particularly in dealing with young persons. Secondly, I must determine if Cst. Fournier's actions amounted to the detention of Mr. C.T. or any of the other youth and if so, if it occurred in a non-*Charter* complaint manner. And thirdly, to determine if the accumulation of factors brings the reputation of the OPS into disrepute, thus amounting to discreditable conduct.

I find no issue with the on-the-spot decision of Cst. Fournier to engage with the youth whom he happened upon as they were engaged in trespassing on private property of an acquaintance of his who previously expressed his concerns to members of the OPS and specifically to Cst. Fournier. Cst. Fournier stated his intent was to talk to the youth and there is no evidence that his intent was to effect arrests or take any enforcement action. Although not acting as a formal agent of the property owner, he was well versed in the trespass issue and felt compelled to take action on behalf of the property owner and the members of the community affected.

Cst. Fournier's decision, whatever was his initial demeanor and engagement plan, quickly turned as the youth fled upon his approach and, in his statement, two gave him the finger as they rode off. From there, the interaction did not go the way he intended and he permitted himself to be provoked by the defiant stance of the youth, the evasive statements of permission to be on the property, and his frustration with their efforts to continue to conceal their identity. Mr. Guy Fournier described Cst. Fournier demeanor as "Pierre was a little pissed off" and I accept the testimony of the six youths that Cst. Fournier was swearing at them, mocked them, and used language that caused Mr. W.W., Mr. E.M., and Mr. B.L. to conclude that Cst. Fournier was bating Mr. X.A. when he challenged Cst. Fournier's authority.

I find that there is no evidence to suggest that Cst. Fournier initially intended to identify himself as a police officer but I do find that as the verbal altercation escalated, Cst. Fournier did in fact verbally identify himself as a police officer. Further evidence is that Mr. Guy Fournier also advised at least one of the youths that his brother was a police officer and went so far as to retrieve Cst. Fournier's badge from his truck before being told by Cst. Fournier not to show it. In his statement to Sgt. Arbuthnot, Cst. Fournier stated:

"...and that's where I kinda fumbled, 'cause I said – I think I said something like, "We've had a lot of calls here". Like, I can't just hide I'm police, so I just kinda blurt whatever."

This is corroborated in the testimony of Mr. X.A., W.W., Mr. P. B.-K., Mr. E.M., Mr. C.T. and Mr. B.L., who all testified that Cst. Fournier identified himself as a police officer during the incident.

Another factor I must consider in determining whether Cst. Fournier placed himself on-duty is the series of actions he took and whether they amounted to police or investigative actions that would exercise his authority as a police officer, thus placing himself on-duty.

Immediately upon his arrival, Cst. Fournier took hold of Mr. C.T. and/or his motocross bike's handlebars, preventing him from leaving and stated "You're not going anywhere". He then demanded that Mr. C.T. call his friends to have them return. Cst. Fournier also prevented Mr. X.A. from picking up his bike just prior to the physical escalation.

The only rational conclusion to be drawn is that Cst. Fournier had entered into an investigation for the trespassing offence and was frustrated by the lack of co-operation by the youths and his inability to identify anyone due to their helmets and goggles and the absence of number plates on the bikes. Whether it was his intention to reason with them or to issue them warnings, his actions that day did amount to police actions, thus placing himself on-duty to exercise his authority as a police officer. With this, there is an obligation for him to make notes, complete an investigative action report, and to conduct himself to the standard required and demanded as a member of the OPS.

I find that the evidence supports that Mr. C.T., a 15-year-old, was physically detained by Cst. Fournier and was prevented from following his friends in leaving. The evidence also supports that Cst. Fournier instructed all the returned youth to remain until the police arrived following the physical altercation after which Cst. Fournier places the call to 911. I am satisfied that this occurred after Cst. Fournier identified himself as a police officer, collaborated by Mr. Fournier, thus establishes detention as outlined in *R. v. Thompson*, (2020 ONCA 264), and places an obligation on Cst. Fournier to immediately provide the additional rights to counsel and, in the case of youths, parental notifications.

I reject the Defence's submissions that *R. v. Thompson*, paragraph 32, provides that not every interaction with the public amounts to detention and "not every trivial or insignificant interference with individual liberty attracts *Charter* scrutiny". This must be read in conjunction with paragraph 33 which defines detention as occurring "through a significant physical or psychological restraint". I find that both physical and psychological restraint occurred, thus detention, which invokes immediate *Charter* rights to be given.

I will not rule on the assault as it is not necessary, in my view, to reach a conclusion on the *PSA* charge of discreditable conduct and was sufficiently addressed in the criminal proceeding. What is relevant here is that a physical altercation followed the verbal altercation, regardless of who was the initiator or aggressor and whether the strikes described were open handed pushes or punches. I do agree that both Cst. Fournier and Mr. Fournier, to their credit, exhibited a certain degree of restraint when the incident turned physical, likely due to the age of the youths. This does not absolve Cst. Fournier's actions as, being an adult and an experienced police officer, he should not have permitted a trespassing incident with 15- and 16-year-olds to escalate to the point where it became physical.

I will address but not rule on the conduct of the responding constables and sergeant and to make conclusions on the veracity and completeness of their field investigation. It is clearly their evidence that they did not view the incident as an assault nor that Cst. Fournier's actions amounted to a self-initiated investigation under the *Trespass to Property Act* that included elements of detainment. I will note the follow-up criminal investigation by PSU Sgt. Arbuthnot arrived at a different conclusion.

I will now turn to the decisive factor in this decision: Whether the accumulation of factors present brings the reputation of the OPS into disrepute, thus amounting to discreditable conduct.

As submitted by the Prosecution, the two leading cases I turn to for guidance are *Mulville and Azarveve and York Regional Police Service* (2017 CanLII 19496) and *Cst. Silverman v. Ontario Provincial Police* (1997 CanLII 22046). The first case sets the objective test on discreditable conduct as requiring:

“..the Hearing Officer [to] place a dispassionate reasonable citizen fully apprised of the same facts and circumstances, aware of the applicable rules and regulations, in the same situation to assess whether the officer's language was discreditable.”

The *Cst. Silverman v. Ontario Provincial Police* decision adds the component that:

“[t]he measure used to determine whether conduct has been discreditable is the extent of the potential damage to the reputation and image of the Service should the action become public knowledge.”

I find that a reasonable, fully appraised citizen would conclude that the constellation of factors in Cst. Fournier's actions would reach the threshold of discreditable conduct on the part of a police officer. His initial approach in an aggressive manner, the detainment of a 15-year-old without consideration of *Charter* obligations, his entering into an investigation involving the provincial offence of trespassing, using profanity and a mocking demeanor, identifying himself as a police officer, and allowing the incident to escalate into a physical altercation are all factors that would reasonably lead to conclude that the OPS's reputation suffered damage from Cst. Fournier's actions that day.

It is not the fact that Cst. Fournier became the subject of harsh and, in some respects, inaccurate social media attention that constitutes discreditable conduct, rather the potential damage which is the measurement to be applied.

The reputational damage was in the way Cst. Fournier conducted himself in an unprofessional manner in the interaction with 15- and 16-year-old youths who were in clear violation of a provincial statute and were being evasive and defiant to his imposed authority. Being off-duty and on extended medical leave, Cst. Fournier, upon witnessing a *TPA* violation, should have considered himself a witness and reported the offence for police follow up rather than placing himself on-duty by his actions and exercising his

authority as a police officer. At the very least, once engaged and seeing the interaction deteriorating, he should have deescalated or disengaged altogether. He further failed in fulfilling his obligations as a police officer post incident in not making notes as soon as practical and submitting the required investigative action report despite his assessment that it was a non-event and that he was clear to leave by the attending patrol sergeant.

The OPS must retain the ability to demand that their employees conform to the standards of respect and service that the community expects and to take disciplinary action when police officer's conduct falls short of that standard.

Decision

Cst. Fournier is before this Tribunal on one count of discreditable conduct. In considering the exhibits entered, the testimony of all witnesses, and the review of case law provided, I make the following findings to the standard of clear and convincing evidence:

Count One: Guilty of discreditable conduct in placing himself on-duty while off work and on leave and engaging in a physical and verbal altercation with young persons in an unprofessional manner.

(original signed)

Chris Renwick
Superintendent (Retired).

Dated January 22, 2024.

Electronically delivered: January 23, 2024.

Appendix A

Exhibits

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