

**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

SERGEANT PETER VAN DER ZANDER, #1639

DISCREDITABLE CONDUCT

DISPOSITION

Before: Superintendent (Ret.) Greg Walton
Ontario Provincial Police

Counsel for the Prosecution: Ms. Louise Morel

Appearing for the Defence: Mr. Mike Lamothe
Ottawa Police Association

Hearing Date: February 18, 2021

Allegation of Misconduct (amended)

Discreditable Conduct

Sergeant (Sgt.) Peter Van Der Zander committed discreditable conduct in that on or about November 23, 2019, he acted in a manner prejudicial to discipline or likely to bring discredit to the reputation of the Ottawa Police Service wherein he mishandled a theft in progress complaint from a community partner, S.S.¹ by advising him that the manner in which he dealt with a theft in progress incident was unethical and that, in the future, he would withhold services by not sending Ottawa police officers in response to requests for assistance by loss prevention officers. S.S. was taken aback by the treatment he received and no longer felt safe, thereby constituting an offence against discipline as prescribed in section 2(1)(a)(xi) of the Code of Conduct, as set out in a Schedule to Ontario Regulation 268/10, and therefore contrary to section 80(1) of the *Police Services Act (PSA)*.

Plea / Representation

Sgt. Van Der Zander faced four counts of alleged misconduct. Represented by Mr. Mike Lamothe, of the Ottawa Police Association, Sgt. Van Der Zander entered a guilty plea to one count of discreditable conduct. Following a finding of guilty, the remaining three counts of misconduct were marked withdrawn at the request of the prosecutor.

Ms. Louise Morel represented the Ottawa Police Service as the prosecutor and along with Mr. Lamothe, proposed a joint penalty position of a forfeiture of 15 days pay or 120 hours. Additionally, the proposed penalty included refresher training with the Professional Development Centre in relation to powers of arrest and release.

Agreed Statement of Facts (amended)

Sgt. Van Der Zander is a sworn member of the Ottawa Police Service and has been since April 2003. He was promoted to the rank of sergeant on January 26, 2015.

On November 23, 2019 Mr. S.S., a loss prevention officer with Marshall's located at 165 Trainyards Drive in Ottawa, contacted the Ottawa Police Service for assistance regarding a potential theft at the store. Sgt. Van Der Zander responded to the call for service.

¹ Involved person initialized to anonymize their involvement

On November 24, 2019, Mr. S.S. sent an email to Inspector Zackrias to complain about the manner in which Sgt. Van Der Zander handled the incident, interacted with him, and had indicated that the Ottawa Police Service would no longer respond to loss prevention officers' calls for assistance where the subject was known to them and where they did not actively work to prevent the subject from stealing.

Staff Sergeant Hugo Garneau contacted the complainant who advised that he did not want to proceed by way of a formal complaint such as a "Part V Public Complaint" through the Office of the Independent Police Review Director due to concerns of negative repercussions that it might have on the working relationship between loss prevention officers in general and the Ottawa Police Service.

On or about December 25, 2019, a Chief's complaint was initiated and on January 14, 2020, Ottawa Police Service Chief Sloly forwarded correspondence to York Regional Police Chief of Police Joliffe requesting his Service investigate this incident as a means of ensuring independence and transparency. York Regional Police Professional Standards Bureau investigated and subsequently forwarded their report to Chief Sloly on August 14, 2020.

Mr. S.S., the loss prevention officer, advised that he observed via closed-circuit television, an individual who he believed might attempt to shoplift. The individual was known to him as being aggressive and violent from previous dealings at other locations. S.S. was the only investigator on the premises and was aware of a previous incident wherein this individual had pepper sprayed a loss prevention officer to escape arrest and S.S. was concerned for his safety. He explained to the 9-1-1 call taker that this was the reason for his request for assistance from the Ottawa Police Service.

On June 19, 2020, Sgt. Van Der Zander attended an interview with York Regional Police Professional Standard Bureau investigators and provided a statement detailing his actions on the day of the incident.

Sgt. Van Der Zander explained the individual approached him in the middle of the store and at that time the individual had no stolen property on his person, nor in his backpack, as confirmed by a search completed by the loss prevention officer. Sgt. Van Der Zander did not review the closed-circuit television footage which captured the shoplifting incident, nor did he attempt to locate the merchandise the individual attempted to steal before Sgt. Van Der Zander arrived at the store.

Sgt. Van Der Zander explained he formed the opinion that Mr. S.S. behaved unethically by allowing a known shoplifter to proceed with the theft rather than attempting to stop the theft that was occurring.

Sgt. Van Der Zander believed the suspect had previously been trespassed from this Marshall's location, and that the loss prevention officer, knowing this, allowed him into the store with the aim of catching him steal again rather than trying to prevent a crime and asking him to leave the store. This belief was incorrect.

As a result of the interaction he had with Sgt. Van Der Zander, Mr. S.S. formed the belief that in the future, police services would be withheld by not sending Ottawa Police Service officers in response to requests for assistance from loss prevention officers.

Decision

Sgt. Van Der Zander entered a plea of guilty to one count of discreditable conduct and acknowledged the Agreed Statement of Facts accurately represented the particulars of the incident. As a result of the clear and convincing evidence, I find Sgt. Van Der Zander guilty of discreditable conduct. Furthermore, there is no judicious reason to deviate from the joint penalty position of a forfeiture of 15 days or 120 hours and the proposed refresher training; Sgt. Van Der Zander will be sanctioned accordingly.

Reasons

Sgt. Van Der Zander's conduct is no longer in question, what is left to be determined is whether the proposed sanction is appropriate; does the joint penalty position strike a balance between community expectations, fairness to Sgt. Van Der Zander and the needs of the organization?

Ms. Morel submitted there are three guiding principles when considering an appropriate sanction: the nature and seriousness of the misconduct, the officer's ability to rehabilitate and the damage to the reputation of the police service. Ms. Morel submitted the *PSA* sets out 15 considerations applicable to the determination of an appropriate sanction.

I am not bound by the joint penalty submission, however, to reject it, I would have to find that it is outside the reasonable range of available penalties for similar misconduct and that it conflicts with commonly held proportionality considerations. I will rely on the penalty factors that are relevant to this case; factors which will provide guidance and assist me in determining whether the proposed sanction is fitting.

Public Interest

Ms. Morel submitted credibility is the cornerstone of public trust; to effectively carry out their mandate, the public's trust in their Police Service is essential. Ms. Morel submitted Sgt. Van Der Zander's behaviour eroded public trust, his words and his actions had a negative organizational impact. Ms. Morel submitted Sgt. Van Der Zander's actions tarnished the reputation of each of his peers and weakened the trust of the public, trust that is critical to the success of the Ottawa Police Service.

Ms. Morel submitted police work requires judgement and integrity and the trust of the public. Police officers are expected to set an example for the community; short comings will reflect negatively on the police service.

I agree unequivocally with Ms. Morel's submissions. The public has an interest in ensuring police officers maintain a high standard of principled conduct. Clearly, the behaviour of Sgt. Van Der Zander falls well below that standard, which results in the public's loss of trust not only in him as a police officer, but also his employer by association. The public's trust in a police service is fragile and easily disrupted. Members of the media were present for this hearing and will undoubtedly report on it in detail. To maintain their trust, the public must be assured misconduct of this nature will attract an appropriate sanction.

The public must have the assurance that the Ottawa Police Service will hold members accountable for their actions. In his role as supervisor, Sgt. Van Der Zander is expected to lead by example; his actions, however, fall well short of the standard that the public holds for its police officers, and that the Ottawa Police Service expect of an officer at his rank. Public trust is incredibly hard to recapture once it has been lost, but a significant sanction will contribute to the process of re-instilling public confidence in the Ottawa Police Service, knowing Sgt. Van Der Zander has been held accountable for his actions.

Public Interest is an aggravating factor, but I find that the sanction proposed sufficiently and appropriately addresses this penalty factor.

Seriousness of the Misconduct

The Agreed Statement of Facts recognized the actions of Sgt. Van Der Zander caused S.S. to believe police services would be withheld in the future which would result in putting the safety of loss prevention officers at risk. To leave such an impression is concerning at the very least. Sgt. Van Der Zander merely needed to conduct a thorough investigation but instead, he developed mistaken assumptions causing him to question the ethics and actions of S.S.

The fact that Sgt. Van Der Zander is a supervisor at the rank of sergeant adds to the seriousness of misconduct. A sergeant is often referred to as a team leader, a term which implies they must lead by providing an exemplary example of conduct. Sgt. Van Der Zander's conduct on this occasion was unwarranted and irresponsible. Behaviour of this nature does not foster a positive and respectable working environment with community partners such as but not limited to loss prevention officers. I highlight the fact that not only was S.S. taken aback by the treatment he received, but he no longer felt safe. This is completely unacceptable behaviour; it is the antithesis of the character a police officer is meant to epitomize.

Sgt. Van Der Zander committed serious misconduct which cannot be tolerated by the Ottawa Police Service and which warrants a fitting sanction. The seriousness of Sgt. Van Der Zander's behaviour is an aggravating factor for consideration, but I find the joint penalty position reasonable; it corresponds to the seriousness of the misconduct.

Employment History

Sgt. Van Der Zander has been a member of the Ottawa Police Service since 2003 and was promoted to sergeant in January 2015. I did not receive exhibits in support of this penalty factor. Often, annual performance evaluations are submitted as indicators of a subject officer's positive or negative attributes from the perspective of their supervisors. In this instance, Mr. Lamothe submitted that since this incident, Sgt. Van Der Zander has continued to act professionally and produced performance evaluations that exceeded standards. Mr. Lamothe submitted Sgt. Van Der Zander has received numerous letters of recognition over his near 18-year career.

I accept Mr. Lamothe's submissions are an accurate reflection of Sgt. Van Der Zander's employment history. The mere fact that he has been promoted to the rank of sergeant after 12 years of service suggests his employment history was so positive that it warranted promotion.

Ms. Morel discussed the fact Sgt. Van Der Zander has two previous disciplinary matters which were resolved informally. Because these two informally resolved disciplinary matters occurred prior to this hearing being decided, I am not able to consider them in this penalty factor, but I will give them weight when considering Sgt. Van Der Zander's ability to rehabilitate.

I consider employment history to be a mitigating factor for consideration.

Recognition of the Seriousness of the Misconduct / Ability to Rehabilitate

Ms. Morel noted Sgt. Van Der Zander's guilty plea, in conjunction with the fact he was cooperative with the investigation from the onset are both strong indicators of his ability to rehabilitate; he was straight forward, forthright, and accepted responsibility for his actions. Mr. Lamothe submitted Sgt. Van Der Zander has taken full responsibility for his actions and stated those actions will not be repeated.

As mentioned, Ms. Morel referenced two discipline matters which were resolved informally. On December 27, 2019 as a result of an Office of the Independent Police Review Directorate (OIPRD) complaint alleging he unlawfully entered and searched a residence, Sgt. Van Der Zander resolved the one count of discreditable conduct. This agreement included the forfeiture of 10 hours pay and Sgt. Van Der Zander was also counselled by his Inspector and received additional training.

On Feb 5, 2021 Sgt. Van Der Zander agreed to informal discipline for a neglect of duty allegation. In August 2019 while a patrol supervisor, Sgt. Van Der Zander directed officers to leave a residence unattended despite firearms being unsafely stored within. He was counseled and received additional training.

I am encouraged by the fact that not only did Sgt. Van Der Zander enter a plea guilty in this matter, but he also agreed to resolve the two previous matters informally. This suggests that he takes ownership of his mistakes which bodes well for his ability to rehabilitate; accepting responsibility for one's actions is a necessary step in their ability to rehabilitate. I am also encouraged by the fact Sgt. Van Der Zander entered this guilty plea knowing that it would come with a significant sanction. Mr. Lamothe submitted 120 hours equates to approximately a \$6,000 loss of pay. Agreeing to such a significant sanction is indicative of his desire to put this matter behind him and move forward.

Following the submissions of Ms. Morel and Mr. Lamothe, Sgt. Van Der Zander addressed the tribunal, accepted responsibility for his behaviour, and conceded his actions amount to discreditable conduct. Sgt. Van Der Zander never actually apologized for his actions, but he did appear sincere about accepting responsibility. He stated he "could have, and should have done better." This too bodes well for his ability to rehabilitate.

Nevertheless, I am troubled by the fact Sgt. Van Der Zander has three recent disciplinary findings against him (including this matter); it causes me to question his ability to rehabilitate despite his stated intent to move forward. Often, there is an underlying cause at the root of repeated acts of misconduct in such short order. I received no submissions

on this point, but I did take note that Sgt. Van Der Zander appears to harbor some resentment toward command staff. I say this with some trepidation because I base it only on the few minutes in which he addressed the tribunal.

Sgt. Van Der Zander insinuated that perhaps ulterior motives existed which resulted in these Code of Conduct allegations and this subsequent *PSA* proceeding. Despite this assertion, he entered a plea of guilty and readily admitted he committed the discreditable conduct alleged. Furthermore, one of the informally resolved disciplinary matters was OIPRD generated, not a chief's complaint. I draw no inference from his comments other than to encourage Sgt. Van Der Zander to make every attempt to resolve whatever potential underlying issues may exist between he and his employer, otherwise, rehabilitation will be difficult.

Sgt. Van Der Zander stated he is intent on moving forward professionally with a positive attitude and I give him full credit for taking that position. I accept that he recognizes the seriousness of his behaviour, that he has taken responsibility for his actions and that he will ensure it is not repeated. I find the penalty factors of Recognition of the Seriousness of the Misconduct and Ability to Rehabilitate to be mitigating considerations.

Specific and General Deterrence

Specific and general deterrence are important factors for consideration in this instance. Sgt. Van Der Zander now has an employment history that will include this sanction, and two informal disciplinary matters. Sgt. Van Der Zander can expect that any further disciplinary proceeding would likely result in an increased sanction. I am hopeful Sgt. Van Der Zander has learned from this experience and is prepared to move forward in a positive manner. Of concern, as mentioned, are the two previous informal matters, therefore, Sgt. Van Der Zander will have to make a determined effort to ensure this type of behaviour is behind him.

As noted, Sgt. Van Der Zander must appreciate that similar behaviour of this nature in the future would most likely result in a considerable increase in sanction. Similarly, all members of the Ottawa Police Service must understand allegations of this nature will be taken seriously and will result in a fitting sanction.

I am confident the joint penalty proposed demonstrates the Ottawa Police Service has taken Sgt. Van Der Zander's misconduct seriously and I am convinced the sanction proposed ensures other members will be dissuaded from conducting themselves in a similar manner.

I consider this penalty factor to be aggravating in nature, but I am satisfied that the joint penalty position proposed adequately addresses specific and general deterrence.

Damage to the Reputation of the Police Service

Ms. Morel submitted Sgt. Van Der Zander swore to uphold the law, to preserve the peace and to protect the public. Ms. Morel submitted Sgt. Van Der Zander breached that oath and thereby damaged the reputation of the Ottawa Police Service. Ms. Morel submitted it is unacceptable for any police officer, let alone a supervisor to fail to conduct a thorough investigation and to then berate a community partner causing them to believe they will no longer receive support from the officers of the Ottawa Police Service.

I accept Ms. Morel's submissions and further note that media outlets are aware of this matter and they will be reporting it accordingly. Police services work relentlessly to develop a positive image. Sgt. Van Der Zander's conduct in this matter calls into question the integrity of the Ottawa Police Service. This matter will be widely reported, and when the public learns of Sgt. Van Der Zander's conduct, his behaviour will undoubtedly have damaged the reputation of the police service. The members of the Ottawa Police Service expect their peers and more importantly, their supervisors, to always act with professionalism in the workplace; the public expects no less.

A penalty must correspond to the seriousness of the misconduct in order to help instill confidence in the community, in other members of the police service, and to restore the reputation of the Ottawa Police Service. In this instance, the proposed sanction adequately addresses the aggravating factor of Damage to the Reputation of the Police Service.

Effect on Police Officer and Police Officer's Family

The proposed penalty is a loss of 15 days of pay, or 120 hours, this is not time that can be worked by the officer, it is removed from a bank of hours that otherwise would have resulted in time off or financial compensation. Mr. Lamothe submitted this financial hardship will be compounded by the media attention this matter generates. Sgt. Van Der Zander has children who attend school; they will have to deal with the consequence of the media reports.

This is a mitigating factor for consideration. The media coverage and the financial loss will each have a negative effect on Sgt. Van Der Zander and his family.

Consistency of Penalty

Exhibit #6 is the prosecutor's Book of Authorities. In the matter of *Toronto Police Service and Bird*, 2005, the officer entered a guilty plea to one count of insubordination. The officer informed his supervisor he would not attend work for two mandatory overtime shifts. True to his word, he ignored a direct order and failed to attend. The officer agreed to a demotion in rank from first-class constable to second-class constable for a period of six months.

In the matter of *Ottawa Police Service and Forgie*, 2014, the officer entered a guilty plea to neglect of duty and to discreditable conduct. In that matter, the officer misrepresented the actions of a loss prevention officer in order to justify the release of the offender, in doing so, he also failed to process criminal charges. Officer Forgie received a demotion in rank from first-class constable to second-class constable for a period of eight months.

Ms. Morel submitted the matters of *Bird* and *Forgie* are more serious than the facts in this matter, there was an element of deceit in *Forgie* that does not exist here, but it is more aligned to the facts of this case than *Bird*.

The purpose of this penalty factor is to ensure the penalty proposed is within the range of sanctions available. I can rely on the *Forgie* matter as a general guide indicating that a short period of demotion could be considered appropriate. The joint penalty proposal does not include a demotion in rank, but nonetheless it does come with a significant loss in pay as does a demotion in rank.

I am satisfied that a fitting sanction for conduct of this nature, ought to result in a loss of hours or demotion. This is consistent with the penalty in *Forgie* for misconduct that is not analogous, but reasonably similar in nature.

Conclusion

Sgt. Van Der Zander entered a guilty plea to one count of discreditable conduct for behaviour that I consider concerning and serious in nature. However, he agreed to the facts in issue and to the penalty proposed. He also has a positive employment history and is a candidate for rehabilitation. Therefore, I can see no reason to deviate from the sanction proposed. A forfeiture of 120 hours is balanced, fair and satisfies the principles governing the appropriate determination of a disposition.

I take note that training was a feature included in the two informal discipline matters, and it is to be encompassed in this disposition. While I agree, this additional training can be beneficial, I have no doubt Sgt. Van Der Zander knew better, knew that his investigation

was inadequate, and knew that he was acting inappropriately at the time. I will order the additional training, but the onus rests with Sgt. Van Der Zander to conduct himself professionally at all times in the future.

Disposition

Sgt. Van Der Zander was found guilty of discreditable conduct based on clear and convincing evidence. After weighing aggravating and mitigating factors, I find the proposed sanction meets the goals of the discipline process; it strikes a balance between community expectations, fairness to Sgt. Van Der Zander and the needs of the organization.

Sgt. Van Der Zander is ordered to forfeit 15 days or 120 hours. This order is made pursuant to section 85(1)(f) of the *Police Services Act*, R.S.O. 1990. Furthermore, Sgt. Van Der Zander is ordered to participate in refresher training with the Professional Development Centre in relation to powers of arrest and release in accordance with section 85(7)(c) of the *Police Services Act*, R.S.O. 1990. This sanction was delivered orally on February 18, 2021 with immediate effect.



Greg Walton
Superintendent (Ret.)
Ontario Provincial Police

Date electronically delivered: February 19, 2021