

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

And in the matter of Complaints and Disciplinary Proceedings against  
[REDACTED]  
Of the Calgary Police Service

### **Penalty Decision**

On December 6, 2019, [REDACTED], was charged with four counts of disciplinary misconduct. On April 20<sup>th</sup>, 2020, [REDACTED] entered "admit" pleas to the following two counts:

#### **Count #3**

Discreditable Conduct under section 5(2)(e)(viii) of the Police Service Regulation, doing anything prejudicial to discipline or likely to bring discredit on the reputation of the police service in that on or about 2016 August 12, in the City of Calgary, Province of Alberta, [REDACTED] purchased or acquired a firearm from [REDACTED] when he did not possess the required Possession and Acquisition License (PAL).

#### **Count #4**

Improper Use of Firearms under section 5(2)(f)(iii) of the *Police Service Regulation*, failing to exercise sound judgment and restraint in respect of the use and care of a firearm in that on or around 2016 August 12, in the City of Calgary, Province of Alberta, [REDACTED], while off-duty, stored a shotgun at his residence in a manner that was not in compliance with firearms legislation and presented a potential danger to others in the residence

#### **Particulars on Counts 3 and 4**

On or about 2016 August 12, [REDACTED] purchased a Remington 870 12-gauge shotgun on behalf of a colleague, [REDACTED]. At the time of purchase, [REDACTED] did not possess a Possession and Acquisition Licence (PAL). [REDACTED] purchased the shotgun from [REDACTED] and then took it to his residence [REDACTED] where at the time he lived with his wife and two young children.

The shotgun was stored at [REDACTED] residence in a manner that may have been contrary to requirements under the *Criminal Code*. On or about 2016 August 15, [REDACTED] turned the shotgun over to [REDACTED] for storage in a gun locker at his residence.

## **Summary of Proceedings**

██████████ made his first appearance on January 13, 2020 at which time he reserved his plea on the four counts contained in the Notice and Record of Disciplinary Proceedings.

On April 20, 2020, ██████████ entered "Admit" pleas on counts three and four. An Agreed Statement of Facts was read into the record, and the document was entered as Exhibit #4 in the proceedings. ██████████ admitted to the facts contained in Exhibit #4. With the admit pleas of ██████████, coupled with the admission of the facts, counts three and four were found to be proven on a balance of probabilities. ██████████ was found guilty of counts three and four. The Presenting Officer made application to withdraw counts one and two, which was supported by the cited officer. Accordingly, counts one and two were withdrawn.

The parties made submissions with regards to penalty, coupled with a joint submission on penalty. The matter was set over to May 6<sup>th</sup>, 2020 for the penalty decision.

## **Evidence**

### **Exhibits:**

- Exhibit 1 Notice and Record of Disciplinary Hearing;
- Exhibit 2 Presiding Officer Appointment Memo;
- Exhibit 3 Presenting Officer Appointment Memo;
- Exhibit 4 Agreed Statement of Facts.

## **Facts (As per the Agreed Statement of Facts)**

1. On or about the 12th day of August 2016, ██████████ purchased a Remington 870 12-gauge shotgun on behalf of his colleague, ██████████. ██████████ knew that ██████████ was a hunter, that he looked for deals on firearms and had asked him to find a hunting shotgun on his behalf.
2. On or about the 12th day of August 2016, ██████████ attended ██████████



██████████ residence, located at ██████████, where, at the time, he lived with his wife and two young children, to deliver the shotgun and obtain payment from ██████████.

3. On or about the 12th day of August 2016, at the time of the purchase, [REDACTED] did not possess a Possession and Acquisition Licence (PAL). This was confirmed on the 29th day of August 2016, by Acting Detective Andrew Wilkinson #4065 who conducted a Canadian Firearms Information Registry check.
4. For the next three days the shotgun purchased by [REDACTED] was stored in an unsafe manner, that may have been contrary to the requirements under the Criminal Code of Canada, in a box by the side of his bed with no trigger locks. No ammunition was present in the household.
5. On or about the 15th day of August 2016, [REDACTED] turned the shotgun over to [REDACTED] for storage in a gun locker at his residence as he knew that he was currently storing the firearm in an unsafe manner.
6. [REDACTED]
7. [REDACTED] was also criminally charged with ss. 91(1) Unauthorized Possession of a Firearm and 86(2) Careless Use of a Firearm. A resolution to those charges involved [REDACTED] attending for treatment and counselling for the issues that lead to his behaviours. Upon receiving written proof that he had done those things, the charges were withdrawn, and the firearm forfeited for destruction. [REDACTED]
8. [REDACTED] had attended treatment and counselling through both CPS and a private psychologist who specializes in treating first responders. [REDACTED]
9. [REDACTED] also made a [REDACTED] donation to [REDACTED]. The donation was not part of the resolution agreement nor was it requested. Rather, it was something [REDACTED] did on his own.
10. The following exhibits form part of this Agreed Statement of Facts:

- 1) PEAKS Behavioural Events, Calgary Police Service;
- 2) PEAKS 2019 Annual Assessment, Calgary Police Service;
- 3) PEAKS 2018 Annual Assessment, Calgary Police Service;
- 4) PEAKS 2017 Annual Assessment, Calgary Police Service; and
- 5) PEAKS 2016 Annual Assessment, Calgary Police Service.

### **Submissions of the Presenting Officer**

Ms. Campbell advised [REDACTED] has been a member of the Calgary Police Service since [REDACTED]. [REDACTED]. He is presently a 1<sup>st</sup> Class Constable assigned as [REDACTED]

He does not have any prior discipline on his personnel record, and he has nineteen noteworthy events from 2015 to 2019.

In mitigation, Ms. Campbell stated [REDACTED] has a good service record, and this is an isolated incident. At the time this incident occurred, [REDACTED] was suffering from mental and emotional stress. He sought out treatment [REDACTED]. He also voluntarily made a [REDACTED] donation to the [REDACTED]

Ms. Campbell also stated that [REDACTED] "Special Economic Hardship" should be a consideration.

In aggravation, she advised the shotgun was unlawfully stored in the master bedroom for a period of three days which caused his spouse to fear for her safety. During this time both his spouse and children were present in the house. He was charged criminally with the charges being withdrawn after [REDACTED] completed a "resolution agreement."

The Presenting Officer stated that she and the cited officer were submitting a joint submission on penalty; on count three, a forfeiture of 20 hours accumulated through overtime, and on count four a forfeiture of 20 hours accumulated through overtime.

In support of the proposed penalty, Ms. Campbell provided information on three matters she described as "like cases." These will be discussed at a later point in the decision.

### **Submissions of the Cited Officer**

[REDACTED]

[REDACTED]



Mr. Wilson stated the incident was “out of character” for [REDACTED]. It was a lapse of judgement that he has taken full responsibility for. After being criminally charged, he participated in a “restoration proposal” involving treatment and counselling specific to first responders. He successfully completed the requirements of the restoration proposal resulting in the criminal charges being withdrawn.

[REDACTED] attended an inordinate number of “unnatural deaths” on a weekly basis. He witnessed a [REDACTED] Conservation Officer being struck and killed by a motor vehicle while directing traffic at a collision scene. [REDACTED].

Mr. Wilson stated [REDACTED] realized he needed help. [REDACTED] He sought treatment and he now is equipped with the tools he needs. During his time with the Calgary Police Service he has not seen the same type of carnage he experienced [REDACTED] although he knows he will, but he is now equipped.

Mr. Wilson also advised that [REDACTED] made a [REDACTED] donation to the [REDACTED], a fund that provides support for First Responders, Military, and their families in Alberta.

Mr. Wilson advised [REDACTED] has entered guilty pleas at an early stage in these proceedings. They advised the Service of their intent from the outset.

They join the Service in their submissions and the joint penalty recommendation. Mr. Wilson then spoke of the SCC Case of *Anthony-Cook* and its guidance on joint submissions.

[REDACTED] requests that the proposed penalty be spread over a period of eight months to one year.

[REDACTED]

The cited officer addressed the hearing offering an apology for his actions. He spoke of personal and professional accountability.

He spoke of his experiences as a police officer that led to personal issues. He spoke of the treatment and counselling he has undertaken and its positive outcomes.

He advised the hearing about his love of policing, and his desire to move forward as a contributing member of the Calgary Police Service.

## Analysis

[REDACTED] has been found guilty of two counts of misconduct under the *Police Service Regulation*. It is now required that a penalty be imposed upon him.

The task of determining an appropriate penalty involves the assessment of many factors. To aid in that assessment, in 1993 the Law Enforcement Review Board (LERB) provided a statement of principles regarding disciplinary sanctions. These statements of principles, given in *Amery v. Young*,<sup>1</sup> are to this day the guidelines assisting Presiding Officers in crafting appropriate penalties in police disciplinary proceedings.

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

The public that police agencies serve have the rightful expectation that their police officers provide the highest level of service they can. They expect these officers to be well trained, and frankly, to be good at what they do.

When a police officer has been found guilty of disciplinary misconduct it is the agencies responsibility to ensure the type of behavior is not repeated; both by the cited officer, and any other officer employed by the agency. The disciplinary process is integral to this premise. The goal is to educate and correct behavior thus reducing the likelihood of repeated misconduct.

This in turn helps make our police officers better at what they do, contributing to the organizational objective.

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

The determination of an appropriate penalty involves many factors. The primary goal is to correct the behavior that led to the misconduct. The penalty must be impactful but if it is viewed as overly punitive and without justification, it can have the opposite effect. It must be fair to the officer, as well as the other interested parties.

Upon the completion of the disciplinary process, the cited officer should be able to understand why a particular penalty has been imposed. The penalty must be properly reasoned and articulated and clearly understandable.

The public interest in this matter is limited although there was media coverage when [REDACTED] was charged. [REDACTED]

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<sup>1</sup> Amery v. Young ALERB #007-093



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

Not applicable.

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

Not applicable

5. *Both aggravating and mitigating factors should be considered in determining a just sanction or punishment.*

*A. Previous good record of the officer.*

[REDACTED] has a well-documented record of service. His personnel file contains sixteen noteworthy events (Exhibit 4 contained 3 duplicate noteworthy events). These noteworthy events describe a hardworking and skilled police officer who is a valued asset to his team, District, and the police service. He has the knack to identify suspicious behavior, then the skill and tenacity to investigate the matter to its fullest. I was very impressed by the work he did on "[REDACTED]". More so I was impressed that this was not a one of investigation. [REDACTED] routinely takes calls for service, or on view activity and investigates the matters to successful outcomes.

[REDACTED] also does not have any prior discipline on his personnel record.

*B. Long Service of the officer.*

[REDACTED] has a total of almost [REDACTED] of policing experience. Prior to his time with the Calgary Police Service, he served [REDACTED]

At the time of this misconduct, he had just shy of [REDACTED] of service with the Calgary Police Service.

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

\_\_\_\_\_ does not have a prior history of disciplinary misconduct. This is an isolated incident in his employment history.

*D. The existence or absence of provocation.*

Provocation is not a factor in this matter.

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

\_\_\_\_\_ asked \_\_\_\_\_ to find him a shotgun. I do not have information on the timeline of this request in relation to when the shotgun was purchased by \_\_\_\_\_.

\_\_\_\_\_ had previously taken the Canadian Firearms Safety Course.<sup>2</sup> He was well aware of the requirements of requiring a Possession and Acquisition Licence (PAL). Despite this, he purchased and took possession of the shotgun from \_\_\_\_\_ g. He chose not to obtain the PAL therefore he knowingly illegally purchased the firearm.

\_\_\_\_\_ would also be well aware of the storage requirements for the shotgun. He chose to improperly store the firearm at his residence until he requested \_\_\_\_\_ store the weapon in his gun safe. Having \_\_\_\_\_ take possession of the shotgun is indicative of the fact that \_\_\_\_\_ was aware the shotgun was improperly stored at his residence. His experience and training as a police officer would also give him the knowledge of firearm storage requirements.

I do not view his actions as "premeditated." Premeditation involves planning and my interpretation of the information before me is \_\_\_\_\_ planned for nothing. I do not believe it crossed his mind that he should have obtained a Possession and Acquisition Licence, and when he received the shotgun, storing it at home was okay for a short while. It was more about convenience as opposed to a premeditated act to contravene the firearms laws.

This does not excuse the behavior. As \_\_\_\_\_ stated, it was a lapse of judgment.

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

The Presenting Officer stated any penalty with financial implications will create a special economic hardship on \_\_\_\_\_. \_\_\_\_\_ . I was not provided any information on \_\_\_\_\_ monthly expenses or income other than he is a 1<sup>st</sup> Class Constable.

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<sup>2</sup> Transcript Page 32, L. 1-3.



I recognize that any forfeiture of hours or suspension without pay has a financial impact as a penalty. It is supposed to, otherwise the penalty can be meaningless.

For mitigation to be considered for “**special**” economic hardship, detailed factual information must be provided. Also, information must be provided to explain why hardship will be experienced. Sufficient information has not been provided however it has been stated [REDACTED]

I also do not know whether or not [REDACTED] financial situation was factored into the joint recommendation on penalty.

Under these circumstances and with the information provided, I am not prepared to afford mitigation for the reasons of “**special** economic hardship.”

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

Not applicable.

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

Not applicable.

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

[REDACTED] purchased a firearm without the necessary Possession and Acquisition Licence contrary to the *Firearms Act*.<sup>3</sup> He then stored the firearm at his residence in a manner contrary to firearms safety regulations.<sup>4</sup> I do not believe he intended any malice in his actions, he was frankly lazy and exercised poor judgement.

[REDACTED]

His actions were contrary to the law. He was charged with firearms offences. The charges were withdrawn after [REDACTED] completed the requirements of a resolution proposal.

<sup>3</sup> Firearms Act. S.C. 1995, c. 39

<sup>4</sup> SOR-98-209 Storage, Display, Transportation and Handling of Firearms by Individuals Regulations

Members of the public are expected to uphold the law and those members of society charged with enforcing the law are not above it. Police officers should be and are held to higher expectations and standards than other members of the public. We expect our police officers to set the right example.

*J. Officer cooperation, frankness and overall attitude*

██████████ has accepted responsibility for his actions. He entered “admit” pleas to two counts contained in the Notice and Record of Disciplinary Proceedings. The remaining two counts were withdrawn. From the outset, he indicated his intentions to the police service.

He addressed the hearing apologizing for his actions.

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

The cited officer provided information relating to his experiences ██████████. These experiences resulted in personal issues for ██████████.

After this incident he realized he needed help. As part of his “restoration proposal” he underwent treatment and counselling ██████████. He has engaged the resources of the police service and states he is now equipped to deal with situations that previously had an adverse effect on him.

██████████ has been proactive in his treatment. He recognizes the importance and is practicing healthy choices.

While it hasn’t been established that ██████████ misconduct is directly related to the personal issues he was experiencing at the time, the treatment and counselling for first responders that he has undertaken does contribute to better decision making and the exercise of better judgement.

██████████ misconduct was judgement related. He made poor decisions. With his new tools, I believe he is better equipped therefore the likelihood of future misconduct in similar circumstances is greatly reduced.

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

I also take into consideration this misconduct occurred three and a half years ago. ██████████ has maintained a high level of work throughout this extended period of time despite the pressures of the court and disciplinary process.



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

Police officers are not above the law although at times some of them think they are. When it comes to firearms, it is not uncommon for police officers to take liberties with the rules. This is quite common relating to service issued pistols and proper storage. It is common for police officers to leave their Service issued pistols loaded in their holsters stored in their locker or their desk.

This matter is unique in that it involves the purchase and storage of a non-service firearm. That being said, the same laws apply. Police officers must be made aware they are not exempt from firearm laws and regulations. If they violate these laws and regulations, they are subject to both prosecution and discipline.

7. *Consistency in disciplinary sanctions should be strived for. Like instances of misconduct should attract like sanctions.*

A quote from the ABCA in *Constable A. v. Edmonton Police Service*<sup>5</sup> speaks to this principle.

*"In Amery v Young, LERB Dec No 007-93, the LERB stated that one of the objectives in selecting a disciplinary sanction is consistency; "like instances of misconduct should attract like sanctions": Amery at p 8. This Court in MacDonald supported the policy of treating like case alike and noted the need for a "fair and predictable consistency of approach", while acknowledging that all the relevant factors in each individual case must be assessed. A marked departure from these considerations, without adequate reason or explanation, can be an indicator that a sanctioning decision is unreasonable."*

The Presenting Officer provided three matters as like cases. Each of the three matters involved police service firearms; one at a residence, one in a personal vehicle, and one in a shared public/police service facility. All involve improper storage, but none involve acquiring or being in possession of a firearm without a Possession and Acquisition Licence.

In the Calgary Police Service matter of [REDACTED], the former girlfriend of the officer attended the Airdrie RCMP office after she attended the jointly owned Airdrie residence to retrieve property and found the residence insecure. The girlfriend conveyed concerns regarding entering the house due to the presence of firearms, including the CPS firearm of [REDACTED]

The RCMP entered the residence and located firearms on the basement floor, which they seized. The RCMP officers also located a lock box on a bedroom shelf. Although the lock box was secured with a combination lock, it was not bolted to the shelf or physically secured in any other manner. The lock box was opened and inside was the

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<sup>5</sup> *Constable A v Edmonton (Police Service)*, 2017 ABCA 38 para: 53 (CanLII)



CPS Service firearm with a loaded magazine inserted, but no bullet in the chamber. The Glock Service pistol was also seized by the attending RCMP members.

Accepting a joint submission on penalty, [REDACTED] was ordered to forfeit twenty-four (24) hours of work, accumulated through overtime.

In the Calgary Police Service matter of [REDACTED], while off-duty the officer parked his personal vehicle at a sports bar. [REDACTED] was inside [REDACTED] for approximately one hour and forty-minutes. Inside [REDACTED] vehicle was his Calgary Police Service issued Colt C8 patrol rifle, two high capacity magazines with ammunition. Upon leaving [REDACTED], [REDACTED] noticed that his vehicle had been broken into and his Calgary Police Service issued C8 patrol rifle and two high capacity magazines with ammunition were missing.

Accepting a joint recommendation on penalty, [REDACTED] was reduced from a 1<sup>st</sup> Class Constable to a 3<sup>rd</sup> Class Constable. After one year he would progress to 2<sup>nd</sup> Class, then after one-year return to 1<sup>st</sup> Class.

The third matter involved the Edmonton Police Service and [REDACTED]. In September 2011, an EPS Sergeant found an unlocked locker in the Zebra Child Protection Centre, containing a loaded service pistol secured in a holster on a duty belt. The locker room doubled as a custodial storage room and was available to any and all employees of the Centre. The Sergeant notified the constable. This behavior was repeated on two subsequent occasions. After the third, the Unit Staff Sergeant and Sergeant met with the constable to discuss and warn the constable regarding any future occurrences. On September 10, 2012, the officer's locker was again found insecure with the member's service pistol loaded and secured in the holster on his duty belt. The member was charged under the *Firearms Act*. He pled guilty and received an absolute discharge. As a result of the disciplinary proceedings, [REDACTED] was suspended from duty without pay for a period of 60 hours.

The three matters offered have penalties ranging from a forfeiture of 24 hours, to a reduction in seniority in rank from 1<sup>st</sup> Class to 3<sup>rd</sup> Class Constable.

The matter involving [REDACTED] bears some similarities in that [REDACTED]. His former girlfriend requested the assistance of the RCMP to retrieve property and advised the police there were firearms in the residence. [REDACTED] stated he was in a state of emotional distress at the time. [REDACTED] had additional personal firearms not properly secured.

While the issues of unsafe storage are comparable, none of the three matters offered involve the criminal offence of being in possession of a firearm while not possessing the proper licence.

The actions of [REDACTED] obtaining a firearm without the proper licence adds another layer beyond the like cases listed above.



## Penalty Discussion

The parties have put forward a joint submission on penalty. They submit on each of the two counts, a forfeiture of 20 hours accumulated through overtime per s. 17(1)(b) *PSR* is an appropriate penalty.

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

Mr. Wilson discussed the premise of acceptance of joint submissions.

In October 2016, the *Supreme Court of Canada* in *R. v. Anthony Cook*,<sup>6</sup> confirmed that trial judges should only depart from a joint submission in very limited circumstances, where the sentence proposed would bring the administration of justice into disrepute or is otherwise not in the public interest. This case was heard in the criminal context and while not binding on administrative proceedings, the principles can be considered and applied to administrative matters where joint submissions on penalties are made.

I have thoroughly reviewed the agreed statement of facts provided by the parties. I have also reviewed the Behavioural Events and PEAKS Assessments of [REDACTED]. Having heard the submissions of the parties and researching matters of like discipline, I find that the joint recommendation on penalty is a reasonable one. It is in line with what I believe would be the expectations of a reasonably informed public as well as the members of the police service.

The proposed penalty speaks to the seriousness of the misconduct and sends the appropriate message that lawful firearms acquisition and storage must be practiced both off-duty and on-duty.

The proposed penalty is impactful to the cited officer, however, is not so harsh as to be seen as unjust or unfair.

It is my finding the proposed penalty would adequately address the level of seriousness of the misconduct without being unduly harsh or unfair to the cited officer. It also would act as a reasonable deterrent to other police officers while satisfying the public interest.

Counsel for the cited officer and the Presenting Officer spoke to [REDACTED] current financial situation. Mr. Wilson requested the forfeiture of hours be extended over a period of eight months to one-year. Currently [REDACTED] accumulated time bank is at zero hours. Given the support of the Service to this request, I am amenable to the proposal. This will also allow time for [REDACTED] to earn accumulated hours to satisfy the proposed penalty.

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<sup>6</sup> *R. v. Anthony Cook*, 2016 SCC 43

## ORDER

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

Counts # 1 and 2 are withdrawn.

Count #3 – Discreditable Conduct. Section 5(2)(e)(viii) *PSR*. I impose a penalty of a forfeiture of twenty (20) hours of work accumulated through overtime as per Section 17(1)(b) of the *Police Service Regulation*.

Count #4 - Improper Use of Firearms. Section 5(2)(f)(iii) *PSR*. I impose a penalty of a forfeiture of twenty (20) hours of work accumulated through overtime as per Section 17(1)(b) of the *Police Service Regulation*.

The total of 40 hours will be deducted from [REDACTED] time bank at a rate of 5 hours per pay commencing the first pay period of June 2020. Subsequent deductions will occur on the first pay period of each consecutive month until such time as the total 40 hours has been deducted.

*Original Signed*

\_\_\_\_\_  
Superintendent Paul Manuel (Ret'd)  
Presiding Officer

Presenting Officer: Ms. Valerie Campbell

Counsel for the Cited Officer: Mr. Cory Wilson

Issued at the City of Calgary, May 6<sup>th</sup>, 2020