

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

Summary of Proceedings

On December 6, 2019, [REDACTED], was charged with three (3) counts of disciplinary misconduct. On February 16th, 2021, [REDACTED] entered an “admit” plea to an amended count # 1.

Counts 2 and 3 were withdrawn.

The remaining count as amended and contained in the Agreed Statement of Facts (ASF) is as follows:

Count #1

Discreditable Conduct under section 5(2)(e)(iii) of the *Police Service Regulation*, using profane, abusive, or insulting language to any member of a police service or to any member of the general public in that between 2017 October 4 and 2017 October 6, inclusive, [REDACTED], in Edmonton or Calgary, in the Province of Alberta, while in a supervisory capacity, made profane, abusive, and insulting comments to [REDACTED]

Summary of Proceedings

[REDACTED] made his first appearance on January 13th, 2020 at which time he reserved his plea on the three counts contained in the Notice and Record of Disciplinary Proceedings.

On February 16th, 2021, [REDACTED] entered an “admit” plea to an amended count # 1. An “Agreed Statement of Facts” was read into the record and entered as Exhibit #4. The facts contained in Exhibit #4 were admitted to by [REDACTED].

With the admit plea and the admission of the contents of the agreed statement of facts which supported the charges, I found the charge of Discreditable Conduct pursuant to s. 5(2)(e)(iii) of the *PSR* to have been proven on a balance of probabilities. [REDACTED] was found guilty of the misconduct. Counts two and three were withdrawn at the request of the Presenting Officer.

The parties made submissions with regards to penalty coupled with a joint submission on penalty. The matter was set over to February 25th, 2021 for my 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. From the 3rd day of October 2017 to the 6th day of October 2017, inclusive, [REDACTED] and a squad of CPS members attended Public Safety Unit (PSU) training in Edmonton. [REDACTED] was the [REDACTED] for the [REDACTED] Squad and his [REDACTED] [REDACTED] was [REDACTED]
2. [REDACTED] was the PSU Coordinator at that time, who oversaw the organization of the training that is to take place. [REDACTED], a full time Logistics Officer with the PSU created the teams, which is an informal process. Both [REDACTED] became aware of conflict and animosity amongst the [REDACTED]
3. Interaction between [REDACTED] during and immediately after the training was strained, culminating in an altercation on the 6th day of October 2017 when [REDACTED] called [REDACTED] over the phone and asked him “where are you right now? You’re my [REDACTED] You left the van in the wrong spot and the keys in it. What the fuck’s the matter with you?” [REDACTED] replied “I’m on my way to sort you out”. [REDACTED] subjectively believed that [REDACTED] threatened to kill him and made a complaint to the Chief. As a result of that complaint, [REDACTED] had his firearm seized, was removed from duty for a short time and suspended from participating in PSU for several months. Ultimately, [REDACTED] received a one-year official warning under s. 19(1)(a) of the Police Service Regulation.
4. Explanatory reports and audio recorded statements of numerous witness officers were collected regarding the verbal telephone altercation that took place on the 6th day of October 2017. In essence, the evidence of the witness officers discloses that [REDACTED] and [REDACTED] were engaged

in a heated telephone discussion where emotions were running high. Profane, abusive, and insulting comments were made by both [REDACTED] and [REDACTED].

5. The PSU training week is an intense course that is designed to prepare members for responding to large crowds and mob control. Conditions are sometimes created that expose and prepare PSU members to verbal abuse, threats, and provocation in order to learn how to respond appropriately and effectively in crowd control. Witness officers describe the week as stressful and exhausting. By the end of the week, emotions are running high and all members are on edge.
7. A total of five officers were witnesses to the week's event who also provided statements to PSS. For the most part, they felt that this incident has caused divisiveness within the squad. At least two members have left the squad as a result. In addition, some state that they were friends with both [REDACTED] and [REDACTED] and that that friendship has now been lost.
8. [REDACTED] acknowledges that the witness officers have been unfairly stuck in the middle of the acrimony and is accepting responsibility for his actions to assist with everybody moving forward.
9. The following exhibits form part of this Agreed Statement of Facts:
 - 1) PEAKS Behavioural Events, Calgary Police Service;
 - 2) PEAKS 2017 Annual Assessment, Calgary Police Service; and
 - 3) PEAKS 2016 Annual Assessment, Calgary Police Service.

Submissions of the Presenting Officer

Ms. Campbell advises that as of January 16, 2020 [REDACTED] was a [REDACTED] member of the Calgary Police Service [REDACTED]. He is described as being highly motivated, calm, with a tactical mindset. He has nineteen note-worthy events on file for notable work ranging from July 2011 – 2019 inclusive.

His work History with the Service includes time in [REDACTED]
[REDACTED]

In mitigation, Ms. Campbell advises that [REDACTED] has a good record without any previous discipline. He is also a member with long service.

She stated there was some existence of some provocation with an ongoing dispute between himself and [REDACTED] over the weekend training session and there was mutual hostility and behaviour between him and [REDACTED].

She advises [REDACTED] has entered an “Admit” plea which saved the witness officers from further unwanted involvement in something that has had a deleterious effect on all of them.

In aggravation, she stated the misconduct was not in keeping with CPS Respectful Workplace Policy. [REDACTED] was the [REDACTED] in charge and [REDACTED] was his [REDACTED].

She stated that while all police officers are held to a higher standard; those in command are held to an even higher standard. They must show leadership by setting an example of exemplary behaviour, respect for others and professionalism in all circumstances.

A complaint that [REDACTED] made to the Chief regarding [REDACTED] resulted in serious consequences for [REDACTED] including a suspension; embarrassment; removal from his unit; and seizure of his firearm. This is when [REDACTED] himself was guilty of inappropriate behaviour toward [REDACTED]

Ms. Campbell stated the penalty being sought would be a reprimand.

Submission of the Cited Officer

Mr. Wilson, Counsel for [REDACTED] stated he agreed with the submissions of the Presenting Officer and as well stated, the penalty being sought was a joint submission.

He advises that the matter had been set for a full two-week hearing. The guilty plea by [REDACTED] eliminated the need for the hearing and for numerous police witnesses not being required to testify. He stated these witnesses all advised him they were reluctant to be in the middle of this matter, with two camps based on who heard what between [REDACTED] and [REDACTED] on the dates in question. The dispute and resulting *PSR* charges have caused a divide in the Public Safety Unit.

He stated the guilty plea was entered as a means to alleviate the stress brought by this matter on the witness members.

He further advised this matter has been stressful to [REDACTED], and in fact, the cited officer has been on [REDACTED]. It is his wish to have the matter concluded so he can return to work on the street.

Analysis

[REDACTED] has been found guilty of one count of misconduct under the *Police Service Regulation*. The determination of an appropriate penalty for the misconduct involves the consideration of a number of factors. Several of these have been spoken to by both the Presenting Officer and Counsel for [REDACTED]

To aid in determining an appropriate penalty, in 1993 the Law Enforcement Review Board (LERB) provided a statement of principles regarding disciplinary sanctions.

This statement of principles, given in *Amery v. Young*,¹ are guidelines to assist in imposing discipline sanction in these matters. They are listed as follows:

1. *The principal purpose of police discipline is to advance the organizational objective of effective and efficient police services to the community.*
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.*
3. *In cases where organizational or administrative factors have played 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.*
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 training or professional counseling. The constructive use of this option, in some circumstances, may work to achieve this goal.*
5. *Both aggravating and mitigating factors should be considered in determining a just sanction or punishment.*
6. *Deterrence of other police officers and maintenance of public respect of the police are legitimate goals in the context of police discipline.*
7. *Consistency in disciplinary sanctions should be strived for. Like instances of misconduct should attract like sanctions.*

Discussion on the Amery Principals

Addressing the first listed principle, providing effective and efficient policing services to the community is not possible when those responsible for doing so are embroiled in petty, childish disputes with each other. The fact that the animosity between [REDACTED], and [REDACTED] elevated to the level that it did is disappointing and unsettling. It is imperative that police officers who have differences with each other, exercise respect for their co-workers, and address differences in a mature and constructive manner. If a police officer manages conflict with another police officer in a confrontational and disrespectful manner, how do they deal with a member of the public in similar circumstances.

¹ Amery v. Young ALERB #007-093

When imposing a disciplinary sanction, the penalty should be fair and reasonable to all parties. In this matter, the public was not involved so this is not a primary consideration, however the misconduct is an affront to the "Respectful Workplace" policy of the Police Service. It must also be recognized that the final sanction is but one aspect of a penalty. The process itself and the resulting administrative consequences, i.e.; transfer, suspension, can also be considered.

Another Amery principal is the one of deterrence. Police officers need to know that behavior such as that demonstrated by [REDACTED], can have disciplinary consequences. Any disciplinary sanction can have an adverse effect on a member's career. Disrespectful behaviour such as this will not be tolerated.

The last Amery principle to be addressed speaks to how consistency in disciplinary sanctions should be strived for. Neither party offered any matters of like cases, and this is not unexpected as it is fortunate that they are not plentiful. My research has found several like matters out of Ontario that will be discussed in a later part of this decision.

I will state that no two disciplinary matters are alike. While the charge laid may be the same, the situational facts and the personal circumstances of the parties involved will make every matter different. That being said, penalties assessed in other matters are of value in determining fairness and the range of whether or not a penalty is reasonable.

Also included in the Amery principals are the mitigating and aggravating factors. These are significant in determining an appropriate sanction and the relevant factors are discussed as follows:

Previous good record of the officer.

Ms. Campbell submits [REDACTED] has a good service record and has described him as being highly motivated, calm, and having a tactical mindset. I have reviewed the Behavioral Events and the PEAKS Assessments contained in exhibit #4. As well I was provided with additional PEAKS Assessments for 2011, 2014 and 2015.

My review of these documents supports the position of the Presenting Officer that [REDACTED] service record is one to be proud of. Through his work he has demonstrated a number of skills sets and abilities, with these being drawn upon by the police service on numerous occasions and on important matters. He is goal oriented and when assigned a task, takes it on with vigor. There are also examples of good work as a patrol officer. [REDACTED] is highly thought of by many of those who have supervised him.

Long Service of the officer.

[REDACTED] joined the CPS in [REDACTED] He is a senior member of the police service having completed over [REDACTED] of service.

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

During his [REDACTED] of service, [REDACTED] has not been the subject of any discipline. This matter appears to be an isolated incident in this member's career.

The existence or absence of provocation.

The Presenting Officer has suggested that an on-going dispute between [REDACTED] and [REDACTED] contributed to the misconduct. There was shared mutual hostility and behaviours between the two officers.

While the situation may have contributed to the misconduct, it does not excuse it. [REDACTED] was in the position of [REDACTED] at the time. He was dealing with a subordinate. It was [REDACTED] responsibility to rise above the fray and to deal with it professionally. He did not; instead, he lowered himself resorting to profane, abusive, and insulting language directed at a subordinate. He showed a lack of leadership and the qualities expected of a supervisor.

A police officer in a volatile situation is expected to show restraint and to exercise sound judgement ignoring provocation. A supervisor in the same situation is held to even a higher standard.

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

The dispute that led to the misconduct apparently festered throughout the training week. The Agreed Statement of Facts states: "Interaction between [REDACTED] and [REDACTED] during and immediately after the training was strained, culminating in an altercation on the 6th day of October 2017..." The altercation is what led to the misconduct. I am comfortable in concluding the misconduct was not premeditated however I cannot go as far as making the determination that it was committed "spur of the moment." It was an ongoing dispute that resulted in the outburst between the two members.

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

Some might believe that such misconduct is trivial in nature but when a police officer in a supervisory capacity acts in such a manner, it is a serious matter. A Police Service's Sergeants are the frontline supervisors of the organization. Of all supervisory ranks in the organization, it is the Sergeant that has the most impact and influence over the members. They set the standard for what is and what is not acceptable behavior in the organization, and they do this through how they themselves comport themselves and react in all aspects of policing.

If a Sergeant uses profane, insulting, and or abusive language towards a subordinate, then the subordinate and any other officer present may believe this is acceptable behaviour in dealing with others. This sets a terrible example and potential tone for the organization.

As well, the seriousness of the misconduct can be measured by the impact this dispute had on the other members of the PSU Squad. Here you had the S [REDACTED] [REDACTED] embroiled in an ongoing dispute throughout the training week. This culminated into the telephone call that led to the misconduct charges. This dispute overshadowed the training the members were there to participate in. Again, as stated in the Agreed Statement of Facts: *“For the most part, they felt that this incident has caused divisiveness within the squad. At least two members have left the squad as a result. In addition, some state that they were friends with both [REDACTED] and [REDACTED] and that that friendship has been lost.”*

When a supervisor and a subordinate are in conflict, while responsibility lies with both parties, it is a reasonable expectation that the supervisor will be the more mature party and work to de-escalate and resolve the dispute. This did not happen in this instance. Instead, [REDACTED] went down the rabbit hole and engaged [REDACTED] [REDACTED] one on one in a childish and pointless dispute that culminated into the actions that led us here today.

Police officers are expected to professionally manage conflict in their day-to-day duties. Disagreements between co-workers within the workplace are to be expected and actually can be healthy. Disagreements can lead to a productive exchange of ideas and opinions. It is the respect that is offered differing opinions that is important. When respect is lacking is when a disagreement can turn into a conflict that sours personal and professional relationships.

Officer cooperation, frankness and overall attitude

[REDACTED] has entered a guilty plea in these proceedings. This is to his credit and has saved a number of police witnesses from testifying in a member initiated disciplinary hearing. The guilty plea however was a last-minute plea on the day the hearing was to commence with evidence, and a full year after his first appearance.

The stated reason for the plea was to accept responsibility for his actions *“to assist with everybody moving forward.”*

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.

I have been advised that [REDACTED] is currently on [REDACTED]. This leave commenced during these disciplinary proceedings. There is no indication that the

factors necessitating the [REDACTED] in any way a contributed to the actions of [REDACTED] that led to the misconduct.

Discussion on Penalty

The parties have submitted a joint recommendation on penalty. They recommend a “reprimand” as an appropriate sanction. They have not provided any “like” cases to support their recommendation, nor has any substantive information been provided to justify such a penalty.

There is little in the way of “like” cases in Alberta Police discipline where a supervisor has been found guilty of using profane, abusive, or insulting language towards another police officer. There are matters where a police officer has used such language directed at a member of the public, but I believe those are substantively different.

Police officers must work together to achieve the goals of the Police Service, and to serve the public. They should not be distracted by petty differences that escalate into arguments and hostilities.

Policing has rightfully adjusted in the ways its members interact between the ranks. However, it is still paramilitary and there is still delineation particularly with its rank structure and the responsibilities within the ranks. Subordinate police officers are not to be insubordinate to officers of a higher rank. Conversely, officers of a higher rank are not to be demeaning, or tyrannical to their subordinate officers. Respect must flow both ways and when that respect does not exist and members are uncivil to each other, discipline may result.

Several matters out of Ontario involving police officers are indicative of how serious such misconduct can be viewed.

In *O’Farrell, Wlodarek v. Metropolitan Toronto Police Force*,² the cited officers were off duty at the social room of the police association building. The accused Constables exhibited unacceptable conduct by making racial insults and using obscene and insulting language to a fellow constable and his wife. At Hearing, the Presiding Officer ordered Constable Wlodarek to resign pending dismissal. Constable O’Farrell was ordered reduced in seniority in rank from 1st Class Constable to 3rd Class Constable. On appeal, Wlodarek’s punishment was varied to “Reduction in rank to 4th Class Constable. O’Farrell’s was altered to “Reduction in rank to 2nd Class Constable.

In *Cst. Drennan v. Hamilton-Wentworth Regional Police*,³ the officer was charged with Discreditable Conduct for having allegedly used profane, abusive, or insulting language related to a person's sex towards a female colleague, Constable H. The incident occurred at a police facility and the members were on duty and in the presence of other

² O’Farrell, Wlodarek v. Metropolitan Toronto Police Force, 1976 ONCPC 3 (CanLII)

³ Constable Alan Drennan and the Hamilton-Wentworth Regional Police Service, 1996 CanLII 17298 (ON CPC)

officers. The comments had a negative effect on Constable H. The Hearing Officer imposed a penalty of a forfeiture of 72 hours. The penalty was varied on appeal to a forfeiture of 45 hours.

In *Brennan and Niagara Regional Police Service*,⁴ the cited officer was in his Staff Sergeant's office discussing an accommodated work arrangement which included some work assigned by a Superintendent that the Staff Sergeant was not aware of. The Staff Sergeant requested the cited officer stay in his office while he sought some information from an Inspector. At that point, the cited officer began to walk away from the office, whereupon the Staff Sergeant asked the officer to come back. In a loud voice, the cited officer replied, "Fuck you!" The Hearing Officer imposed a penalty of "Admonishment." This penalty was not available under the *Act*, and on appeal, the matter was returned to the Hearing Officer for a proper disposition of the penalty.

The matters noted above are not directly on point to the matter involving [REDACTED] [REDACTED] however they are similar in the fact that they involved police officers directing inappropriate language at other police officers.

A marked difference in the [REDACTED] matter is that both involved police officers were hurling profane, abusive and or insulting language towards each other, however it also must be recognized that [REDACTED] was in an [REDACTED] role at the time.

The Agreed Statement of Facts stated: *"The PSU training week is an intense course that is designed to prepare members for responding to large crowds and mob control. Conditions are sometimes created that expose and prepare PSU members to verbal abuse, threats, and provocation in order to learn how to respond appropriately and effectively in crowd control."*

As stated in the Agreed Statement of Facts, PSU members are trained to respond appropriately to verbal abuse, threats, and provocation. This is a critical component meant to ensure PSU members keep their composure under trying and difficult circumstances. [REDACTED] interactions with [REDACTED] resulting in him using profane, abusive and or insulting language indicate this is a skill set that requires some development.

It is further stated in the Agreed Statement of Facts: *Witness officers describe the week as stressful and exhausting. By the end of the week, emotions are running high and all members are on edge."*

I agree with this statement in part, but not in the manner I believe it was intended as part of the Agreed Statement of Facts. During my career as a police officer with the Calgary Police Service, I served as a member of the Public Safety Unit as a Constable, and later as a PSU Commander. I have participated in the training week as a squad member and as a Commander. The week is physically and mentally exhausting, but I never experienced or witnessed the stress as described, or members "being on edge."

⁴ *Brennan and Niagara Regional Police Service*, 1998 CanLII 27133 (ON CPC)

What I did witness was members coming together as squad mates, working towards a common goal in training. I saw the development of an esprit de corps and a sense of accomplishment. This was primarily due to the excellent leadership demonstrated by the squad leaders.

In the matter before me, it is obvious that both [REDACTED] and [REDACTED] abdicated their responsibilities as PSU Squad leaders as their animosity and dislike for each other percolated throughout the training week. These members should have been cognizant of how such behavior can adversely affect a work area. In this instance, the actions of both [REDACTED] and [REDACTED] had a terrible effect on the other members of the PSU Squad they were assigned to. When the [REDACTED] and squads [REDACTED] are feuding, the squad is devoid of leadership. A squad devoid of leadership does not achieve any of its learning objectives during the training week. It is more likely the case, the squad members could not wait for the week to end so they could get away from the petty squabbling between the squad [REDACTED] and the [REDACTED].

Equally disappointing is the fact that this matter was not worked out between the two members. A trait of leadership is the ability to de-escalate conflict and to garner support of subordinates. Communications skills and team building are critical.

Instead, it led to cross complaints made by each officer, against each other.

In my review of [REDACTED] PEAKS Assessments, I noted several comments from the authors. In the 2015 assessment completed by [REDACTED], it was stated: *"[REDACTED] professionalism carries throughout all aspects of his policing activities. He ensures that member of the public and the team feels respected." "As the senior member on his line he provides leadership, guidance and mentorship to the other members. He ensures that every member has a say in the actions of the team, maintains communication with the members of the team as a whole and supports the other members in their times of crisis."*

In the "Behavior Rating" portion of this assessment under *"Fostering Relationship - Takes the time to establish a rapport with others"* he was scored as a Role Model (5).

In [REDACTED] 2014 PEAKS Assessment, [REDACTED] wrote: *"[REDACTED], you are professional, respectful and compassionate with every task you undertake. You have a command presence when dealing with members of the public, in the schools, and with your fellow officers that makes them look up to you and respect you. That being said, you also balance that present with a very outgoing, friendly demeanor that makes you approachable."*

If the above quotes are accurate, what happened with [REDACTED] and why? [REDACTED] obviously has skills but did not demonstrate these traits in his dealings with [REDACTED]. It does not matter how difficult another party may or may not be. [REDACTED], in an acting capacity took the low road embarrassing himself

in front of other police officers. He set an example but unfortunately it was a bad example. It surely is not indicative of the type of police officer his assessments and noteworthy event describe.

As mentioned, he has skills, but he did not exercise them in this instance. Either his temper overshadowed those skills, or he deliberately set them aside and this is his manner of dealing with conflict with other police officers who do not shy away from him during that conflict. I cannot say I know either way.

Co-workers, particularly police officers can be colourful in their language and their interactions with each other. But, in this instance it was different. There was genuine hostility between the two officers, and neither was going to back down. In my mind it is clear, as the [REDACTED], it was [REDACTED] responsibility to de-escalate the situation, or to terminate the interaction and deal with it in a supervisory capacity after tempers and emotions calmed down.

If [REDACTED] aspires to promotion to the Sergeant rank, he has some self-examination to undertake. While it has not been requested, and I will not order it, training in conflict resolution would be beneficial to [REDACTED]

The parties jointly submit a reprimand is an appropriate sanction. For a sanction to be considered appropriate, it has to achieve the objectives of police discipline. The primary objective is to correct the behavior, and to educate the member.

[REDACTED] has pleaded guilty to the charge of using profane, insulting and or abusive language towards another member of the police service. He has admitted to the misconduct but that does not necessarily mean he has accepted responsibility or recognizes his actions were inappropriate.

There has not been an apology from the cited officer for his actions, and there is no indication of remorse for the damage his actions caused to the training of his PSU squad.

I honestly cannot say whether or not, [REDACTED] accepts that his actions were inappropriate.

If the matter had been left to me to determine an appropriate penalty, a reprimand would not be considered. I would likely order a forfeiture of hours.

However, I do have a joint recommendation for a reprimand.

In the *Supreme Court of Canada* decision in *Anthony-Cook*⁵, the court discussed the test on accepting or rejecting a joint submission. This case has become the leading jurisprudence on joint submission in criminal matters.

Some administrative tribunals have adopted *Anthony-Cook* when addressing the issue of joint submissions on penalty however decisions from the appeal courts are extremely

⁵ R. v. Anthony-Cook, 2016 SCC 43 (CanLII)

limited in determining whether or not *Anthony-Cook* applies to administrative proceedings.

I have found one matter from the “*Court of Quebec*” (the equivalent to Provincial Court of Alberta) which sat in appeal of the Quebec Police Ethics Committee decision in *Demers c. Larochelle*⁶. At paragraph 47 it stated:

“As explained above, the Tribunal must conduct the exercise in accordance with the criteria established in Anthony-Cook, now applying the law in force based on the latest Supreme Court findings. This judgment is also widely applied in disciplinary matters.

Considering the circumstances of the offence and of the offender, the applicable sentencing principles, and the aggravating and mitigating factors mentioned previously, I am unable to conclude that the sentence jointly proposed by counsel would bring the administration of justice into disrepute or would otherwise be contrary to the public interest. The Court must, therefore, accept it.”

(Translated from French to English)

An April 2019 decision from the *Alberta Court of Appeal* has taken a different position on the application of *Anthony-Cook* to administrative tribunals. In *R v Sehmbi*⁷ the Court addressed the appeal of an *Alberta Review Board* decision where the Board did not accept a joint recommendation on a disposition. The Court stated:

Joint Submissions

[5] The appellant agrees that the test in R. v Anthony-Cook, 2016 SCC 43 (CanLII), [2016] 2 SCR 204 does not apply to dispositions by the Board. Anthony-Cook explains the place and importance of joint submissions in the criminal justice system. A disposition by the Board is fundamentally different from a conviction and sentencing in a criminal matter.

[7] The Board is required to give primacy to the safety of the public, and consider the needs of the accused and the other factors mentioned in s. 672.54. This must give the Board the ability to depart from the recommendations of the treatment team, even if they are agreed to by the patient. The treatment team and the accused cannot foreclose the Board’s ability to give primacy to the safety of the public: Re Osawe, 2015 ONCA 280 (CanLII) at para. 33, 323 CCC (3d) 405. Although Anthony-Cook does not apply in this context, joint submissions are to be encouraged: Re Osawe at para. 47.

The above noted case is not directly on point relating to administrative tribunals in the employer/employee or professional disciplinary context.

⁶ *Demers c. Larochelle*, 2018 QCCQ (Administrative and Appeals Division) 2373 (CanLII)

⁷ *R v Sehmbi*, 2019 ABCA 117 (CanLII)

A Law Society case from Newfoundland/Labrador aptly captures what should be the intent around joint submissions on penalty in Administrative Tribunals and the impact of *Anthony-Cook* and its guiding legal principles.

The Adjudication Tribunal further notes the recent decision of the Supreme Court of Canada in R. v. Anthony-Cook, 2016 SCC 43 (CanLII) in relation to joint submissions on sentence. While that case was in the context of a criminal matter, the guiding legal principles are of benefit when considering a joint submission on sanction in the context of professional discipline. In accordance with the public interest test adopted by the court in Anthony-Cook, the Joint Submission in this case is not so “markedly out of line with the expectations of reasonable persons aware of the circumstances of the case that they would view it as a breakdown in the proper functioning” of the Law Society.⁸

Given the void in case law, at best I will conclude that the application of *Anthony-Cook* to police disciplinary proceeding is unsettled law in Alberta.

Having heard the submissions of the parties and researching matters of like discipline, I find that the joint recommendation on penalty is not such that it is contrary to the public interest nor do I believe that it would lead to a break down in the administration of the police discipline process. The penalty of a reprimand can be viewed as being in line with what the expectations of a reasonably informed public as well as the members of the police service. It must also be noted that any discipline imposed at a disciplinary hearing remains on the members service record for a minimum of five years and can have adverse effects on a member’s career path.

ORDER

After assessing the circumstances of the incident, the evidence and hearing submissions, I make the following order on penalty:

On count #1 “Discreditable Conduct,” Section 5(2)(e)(iii) *PSR*, pursuant to s. 17(1)(a) *PSR*, it is my order that [REDACTED] receive a reprimand.

Dated: February 25th, 2021, at the City of Calgary, in the Province of Alberta.

Original Signed

Superintendent Paul Manuel (Ret’d)
Presiding Officer

Presenting officer: Ms. V. Campbell
Counsel for the Cited Officer: Mr. Corey Wilson

⁸ Myers (Re), 2017 CanLII 20439 (NL LS)