Ontario Police Arbitration and Adjudication Commission

In the matter of an Appeal from the Disposition of a Hearing Officer dated July 5, 2024, pursuant to s. 87 of the *Police Services Act* and s. 216 of the *Community Safety and Policing Act, 2019*.

Date: 2025-02-18

Between:

Sergeant Mick Sachdeva

Appellant

and

Peel Regional Police

Respondent

Decision and Order

Adjudicators: I. Anderson, L. Hodgson, P. Lennox

Participants: H. Black, counsel for the appellant
S. Wilmot, counsel for the respondent

Held by videoconference: December 11, 2024

INTRODUCTION

1) On March 21, 2024, the appellant, Sergeant Mick Sachdeva, pleaded guilty to one count of Discreditable Conduct contrary to section 2(1)(a)(xi) of the Code of Conduct contained in Ontario Regulation 268.10, pursuant to the *Police Services Act,* RSO 1990, c P.15 (PSA).

2) In the penalty decision dated July 5, 2024, the Hearing Officer, Superintendent Taufic Saliba, ordered a reduction in rank from Sergeant to First Class Constable for a period of 12 months.

3) The appellant has appealed the penalty ordered. This appeal was commenced pursuant to s. 87 of the now repealed PSA. The appeal is continued pursuant to s. 216 (4) of *the Community Safety and Policing Act*, 2019, S.O. 2019, c., Sched. 1. This panel was appointed to exercise the powers and perform the duties of the Ontario Civilian Police Commission in relation to the appeal as provided for by that section. For the purposes of this appeal, we refer to ourselves as "the Commission".

DISPOSITION

4) For the reasons that follow the appeal is dismissed.

BACKGROUND

5) At the disciplinary hearing on March 21, 2024, the appellant pleaded guilty to the charge of discreditable conduct and an agreed statement of fact (ASF) was read into the record. A second count of misconduct (insubordination) under s. 80(1)(a) of the PSA was withdrawn.

6) As parties did not agree on the characterization of some aspects of the misconduct, the appellant testified, and additional exhibits were entered at the penalty proceedings.

7) The ASF is reproduced below as it largely sets out the factual context for this appeal:

> Sergeant Mick Sachdeva #1940 was hired with Peel Regional Police in June

of 1997. He is currently assigned to 22 Division Uniform B-Platoon.

On September 28, 2017, Sergeant Mick Sachdeva ("Sgt. Sachdeva") pleaded guilty to the charge of Discreditable Conduct under the Police Services Act ("PSA").

The charges were in relation to an inappropriate social and business relationship with ("AA"). Sgt. Sachdeva completed securities transactions on his behalf.

As part of Sgt. Sachdeva's PSA resolution, he agreed to cease "any ongoing relationship" with AA. Sgt. Sachdeva also undertook to retain counsel to resolve the ownership issues with the Cambridge property. Following the PSA hearing, Sgt. Sachdeva consulted a lawyer and took steps towards resolving the property matter.

On April 2, 2021, an arson investigation commenced by the Hamilton Police Service ("HPS") identified three suspects. The primary suspect in this investigation was AA, who was known to HPS as having an extensive criminal history. Sgt. Sachdeva was not a target of the investigation, nor was it suspected that he was involved in the offence being investigated.

Due to the serious nature of the arson, HPS obtained judicial authorization to use a Transmitted Data Recorder ("TDR") on said individual's phones.

The evidence obtained in the investigation revealed approximately thirty (30) telephone calls between June 8, 2021, and July 19, 2021. Sgt. Sachdeva initiated twenty-two (22) of those thirty telephone calls. An extraction of Sgt. Sachdeva's cellular phone further confirmed that one hundred and twenty-four (124) text messages were exchanged between AA and Sgt. Sachdeva between January 15, 2020, and August 12, 2021. Sgt. Sachdeva initiated eighty-six (86) of those one hundred and twenty-four text messages.

The HPS investigators were concerned about the frequent contact between AA and Sgt. Sachdeva given AA's serious criminal history and pending arson investigation and notified PRP.

It was later revealed that AA and Sgt. Sachdeva had continued to both be listed as associated to "Deva Property Investment Management Inc." ("the Company") and that a rental property in Cambridge was still registered in the company's name.

Sgt. Sachdeva further acknowledged that during the time period of the HPS investigation, he rented a vehicle from AA's shop, and he gave AA the code for his garage, and AA personally attended at his home address and picked up the key fob from inside the officer's home garage at the conclusion of the rental term.

The actions of Sgt. Sachdeva constitute Discreditable Conduct under section 2(1)(a)(xi) of the prescribed Code of Conduct.

8) At the penalty hearing for the current misconduct the respondent sought a demotion for a period of 12 months. The appellant submitted that a forfeiture of three days was appropriate.

9) The Hearing Officer agreed with the respondent and ordered a reduction in rank from Sergeant to 1st Class Constable for a period of 12 months.

ISSUES ON APPEAL

10) In oral submissions to the Commission, counsel for the appellant indicated that, although other issues were raised in his written materials, the appellant would only be pursuing the following grounds:

    i. Did the Hearing Officer err in his characterization of the 2017 misconduct decision?
    ii. Did the Hearing Officer err in not addressing the appellant's explanation for having contact with AA?
    iii. Did the Hearing Officer dismiss the appellant's use of a family law lawyer?
    iv. Did the Hearing Officer err in finding the appellant had "resumed a personal relationship" with AA?
    v. Was the penalty ordered excessive?

STANDARD OF REVIEW

11) In *Karklins v. Toronto (City) Police Service*, 2010 ONSC 747 at paragraph 10, the Divisional Court confirmed the role of Ontario Civilian Police Commission (the predecessor to this Commission) on a penalty appeal, noting the following:

> The role of the Commission on penalty is well established. Our function is not to second guess the Hearing Officer or substitute our opinion. Rather, it is to assess whether or not the Hearing Officer fairly and impartially applied the relevant dispositional principles to the case before him or her. We can only vary a penalty decision where there is a clear error in principle or relevant material facts are not considered. That is not something done lightly.

12) This Commission must pay deference to the Hearing Officer's weighing of dispositional factors and findings of fact unless an examination of the records shows his conclusions cannot be reasonably supported by the evidence.

13) Even if this Commission would have come to a different conclusion, it will not interfere with the penalty decision unless there has been an error in principle or relevant factors have been ignored. The Commission's role is to determine whether the Hearing Officer's decision was reasonable in the circumstances: *Kobayashi and Waterloo Regional Police Service*, 2015 ONCPC 12 (CanLII) at paragraph 33; *Gould v. Toronto Police*, 2018 ONSC 4074 (CanLII) (Div. Dt.) at paragraph 6.

ANALYSIS

i. The Hearing Officer did not err in his characterization of the 2017 misconduct decision

14) The appellant submits that the Hearing Officer's reasons are "fatally defective" because he, on two occasions, used the term "order" when describing the appellant's agreement in 2017 to cease his relationship with AA. The respondent submits that, as noted in the current ASF, the appellant agreed at the 2017 discipline proceedings, to cease his relationship with AA. The Hearing Officer understood the nature of the prior disposition and, the respondent asserts, the use of the word "order" to describe the appellant's prior undertaking is of no moment. We agree and find the Hearing Officer understood the nature of the prior resolution and reasonably considered that the appellant failed, as he had agreed to in 2017, to cease his relationship with AA.

15) The appellant is correct that the order issued at the 2017 disciplinary proceeding only imposed a penalty of five days forfeiture, required the appellant to seek approval of secondary employment and, if advising or trading, prove compliance with security industry rules. In the body of the 2017 decision, however, the Hearing Officer set out the appellant's misconduct with respect to his relationship with AA:

> *It has been clearly established that misconduct was committed by (the appellant). (The appellant) engaged in business dealings on behalf of a member of the public known as AA despite his full knowledge of AA's prior criminal activities. (The appellant) continued to associate himself with AA, a known criminal and knowingly assisted AA in potentially hiding assets for an improper purpose. (The appellant) was aware that AA took steps to intentionally conceal his properties from his ex-wife by registering the properties in other people's names. (The appellant) further worked with AA as a day trader.*

16) More importantly, the 2017 Hearing Officer, when considering the appellant's employment history and potential for reform as part of her determination of the appropriate penalty, specifically noted: *"He has undertaken to cease all unregulated trading activities on behalf of others and has ceased any ongoing relationship with AA."*

17) In the current matter, the Hearing Officer noted, when summarizing the respondent's submission, that*: "(a)s part of the 2017 resolution, (the appellant) agreed to cease any ongoing relationship with AA. This did not, in fact, occur."* Again, in the analysis section of his decision, the Hearing Officer noted of the 2017 proceedings, *"(the appellant) agreed to cease any association with AA and subsequently hired a lawyer to detach himself and his property management company from the Cambridge property."*

18) What the appellant now takes issue with is the Hearing Officer's reference, on two occasions, to the 2017 agreement to cease contact as being an "order". After reviewing the seriousness of the misconduct and the appellant's repeated, ongoing contact with AA after 2017, the Hearing Officer found: *"Collectively, they illustrate (the appellant)'s intention to maintain a casual if not personal relationship with AA, thus ignoring the previous Tribunal's order."* (emphasis added). Later when assessing the importance of specific deterrence the Hearing Officer held: *"An order from the Tribunal to cease contact with an individual does not diminish with time and cannot be flouted for convenience."* (emphasis added)

19) We do not agree that the Hearing Officer misapprehended the nature of the prior decision, or that the use of the term 'order' constitutes an error in principle warranting intervention.

20) First, we note that in the ASF before the Hearing Officer and this Commission, the appellant agreed that the 2017 discipline proceedings included an agreement to cease his relationship with AA:

> [8] *As part of Sgt. Sachdeva's PSA resolution, he agreed to cease "any ongoing relationship" with AA. Sgt. Sachdeva also undertook to retain counsel to resolve the ownership issues with the Cambridge property. Following the PSA hearing, Sgt. Sachdeva consulted a lawyer and took steps towards resolving the property matter*. (emphasis added)

21) Second, this agreement was part of a joint submission on penalty at the 2017 proceedings. In those reasons for penalty, when the Hearing Officer considered factors in favour of the appellant's potential for reform, she noted the joint submission that the appellant accepted full responsibility, pleaded guilty, had ceased his relationship with AA and retained legal counsel to deal with the Cambridge property. Given that the appellant's agreement to cease his relationship with AA and to use a lawyer to deal with property issues were relied on in support of a joint submission, it was clearly an element of the ultimate disposition.

22) Third, we would note that in the proceedings before the Hearing Officer both the appellant and his counsel appeared to treat the agreement to cease contact with AA as an "order" resulting from the 2017 proceedings, as did counsel for the respondent. In the appellant's 2022 compelled interview, he fully acknowledged that, based on the 2017 disposition he was not to have any relationship with AA: *"There's no excuses here, I'm being honest, I'm not stupid. I know what I'm doing is going against what was ordered"* (emphasis added).

23) In the Hearing Officer's summary of the appellant's counsel's submissions, it appears counsel made no distinction between the 2017 undertaking to cease contact and the 2017 order.

> [132] *The Defence noted Supt. Fawcett's 2017 decision which accepts that: "…he did not view the property before being purchased, provided no funds…". Contrary to the Prosecution's suggestion that (the appellant) has ignored the first Tribunal's orders, he has in fact been trying to get rid of the property since 2016.*
>
> *[136] (the appellant)'s efforts over a period of time show that he was attempting to comply with Supt. Fawcett's order in the 2017 decision.*
>
> *[144] Mr. Black again referenced the 2017 Tribunal Decision and Supt. Fawcett's comments that (the appellant) "…stated he did not view the property…provided no funds…has accepted full responsibility for his actions and had pled guilty at the earliest opportunity…he has undertaken to cease all unregulated trading activities on behalf of others and has ceased any*

ongoing relationship with AA. He has retained legal counsel to resolve the issues with the Cambridge property…" (emphasis added)

24) In the result, the appellant and counsel all used the term "order" to include the appellant's agreement to cease contact with AA. In these circumstances we do not think the Hearing Officer can be faulted for adopting the same usage.

25) Given the ASF clearly sets out that the appellant agreed, in 2017, to cease contact with AA as part of a joint submission, that the appellant's agreement to do so was relied upon by the 2017 Hearing Officer in formulating the 2017 order, and all parties to the current proceedings referred, at some point, to this undertaking as part of the 2017 order, we cannot agree that the Hearing Officer's use of the word 'order' constitutes a clear error in principle. There is clear and convincing evidence that the appellant's relationship with AA formed part of his discreditable conduct in 2017 and, as part of that discipline process, he undertook to not communicate with AA. It was fully appropriate for the Hearing Officer of the current proceeding to consider that he acted contrary to this. Despite inaccurately referring to the 2017 resolution as an order, when the reasons are viewed as a whole, it is clear that the Hearing Officer understood the nature of 2017 discipline disposition. Any misstep in word choice does not constitute an error in principle nor does it impact the reasonableness of the decision.

ii. The Hearing Officer did not fail to consider the appellant's explanations for his contact with AA.

24) The appellant submits that in assessing the seriousness of the misconduct, the Hearing Officer failed to consider the appellant's explanation for his ongoing communication with AA. In the appellant's submission, his personal communication with AA was necessary to deal with the Cambridge property. More specifically, there existed a freeze order related to AA's family law proceedings on the Cambridge property which impacted the appellant's own divorce proceedings.

25) This property was referenced in the 2017 discipline decision:

> *On June 21st, 2011, (the appellant) agreed to purchase a residential property with AA located in Cambridge, Ontario. The property was registered in the name of Deva Property Management Inc. (The appellant) stated, in his compelled interview, that he did not view the property before being purchased, provided no funds, but had an 18% to 20% interest in the property with AA. (The appellant) stated that he knew AA registered the properties in the names of third parties to conceal ownership of the assets*

> *(The appellant) assisted AA in concealing ownership of assets by registering the Cambridge property in his company name without providing any funds toward the purchase of the property. (The appellant) participated in this endeavor with full knowledge of AA's criminal history and his motivation to conceal ownership of assets.*

26) Ownership issues and communications with AA with respect to the Cambridge property were clearly relevant to the 2017 discipline proceeding. The respondent notes that the appellant, as early as the time of his 2017 compelled interview, appeared to be aware that AA's spouse had a freeze order on the Cambridge property.

27) We do not agree with the appellant's submission that the Hearing Officer failed to consider the appellant's reasons for continuing communications with AA in defiance of the 2017 resolution. The Hearing Officer's decision devotes several paragraphs to the history of the Cambridge property and the appellant's submission[1] that his only reason for communication with AA was to sell the property and eliminate the claim of interest by AA's ex-wife. The Hearing Officer also noted the appellant's submission that, *"Even though the submitted correspondence shows that (the appellant) was trying to leave the company for years, the "freeze order" prevented this."* The Hearing Officer was clearly alive to the existence of the freeze order on the property. Implicit in the reasons for penalty is that this simply did not justify the appellant's ongoing contact with AA, contrary to the 2017 agreement.

28) In his determination of the appropriate disposition, the Hearing Officer stated he had carefully considered the ASF, the appellant's evidence and counsels' submissions. It was clear that he considered the appellant's explanation for continuing to contact AA. The Hearing Officer noted:

> *[174] The evidence that was provided by (the appellant) assisted in assessing various factors as they relate to his relationship with AA. These include (the appellant)'s knowledge of AA's criminal activities and the impetus to maintain contact with him after the 2017 Tribunal decision. (emphasis added)*

29) The Hearing Officer's reasons demonstrate that he considered the appellant's motivation for divesting the property, including the appellant's concerns about the Cambridge property and the impact of the freeze order on his divorce proceedings, and also the appellant's motivation for communicating with AA. As dealt with more

[1] While the Hearing Officer refers to these as "prosecution submissions" we find, given the context, the Hearing Officer intended to attribute these submissions to the appellant's counsel.

fully below, the Hearing Officer specifically noted that the appellant's reasons for divesting the Cambridge property were largely the result of family law proceedings (and the resulting freeze order) rather than any motivation to comply with the 2017 resolution. But the Hearing Officer also rejected the appellant's suggestion that the divestment was the appellant's sole motivation for communicating with AA.

30) The Hearing Officer rejected the appellant's contention that the freeze order on the Cambridge property and any resulting complications for the appellant's divorce proceedings were the sole impetus or justified his ongoing personal communications with AA. After reviewing the evidence of the appellant's multiple communications with AA for varying reasons (e.g., the Cambridge property, a vehicle rental, the sale of his vehicle), the Hearing Officer stated:

> *[192] The totality of Sgt. SACHDEVA's actions in this factor leave little doubt in my mind that these in-person or electronic interactions were not coincidental or fateful, but rather intentional and planned.*
>
> *[193] Each of the above incidents, on its own, is aggravating. Collectively, they illustrate Sgt. SACHDEVA's intention to maintain a casual if not personal relationship with AA, thus ignoring the previous Tribunal's order.*

31) As part of the 2017 resolution, the appellant had agreed to cease his relationship with AA and have counsel deal with the Cambridge property. There were no exceptions – financial complications, legal proceedings or otherwise. It was not, as suggested by the appellant, that a situation arose in which the appellant simply had no option but to contact AA directly. Even the appellant, in his compelled statement to the Service's Internal Affairs in 2022, acknowledged that he should have used his lawyer or contacted the police association rather than contacting AA himself about the property.

32) The appellant pleaded guilty and in the ASF accepted that he committed discreditable conduct by contacting AA. In the circumstances, it was fully open to the Hearing Officer to find no mitigation in the appellant's explanation that he required personal contact with AA because of a legal issue relating to the Cambridge property. When discussing the importance of specific deterrence in the circumstances here, the Hearing Officer noted, *"I agree with the Prosecution's view that (the appellant's) misconduct is serious due to its repetitive nature and that it is rooted in poor judgment and willful blindness."* The fact some of the appellant's communications with AA were about a legal order on the Cambridge property provided no mitigation on penalty. It was established on clear and convincing evidence that the appellant continued to inappropriately maintain an improper

relationship that, in 2017, he had agreed to terminate.

33) In Canada (*Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, the Supreme Court reiterated that the hallmarks of a reasonable decision are justification, transparency and intelligibility. It also noted that an administrative decision maker "cannot always be expected to deploy the same array of legal techniques that might be expected of a lawyer or judge", and that a tribunal's reasons "must not be assessed against a standard of perfection": see para. 91 – 98. This reasoning is directly applicable here. The Hearing Officer is a police officer appointed by the chief of police pursuant to section 82(1)(a) of the PSA. While the Hearing Officer has expertise with respect to police conduct, the Hearing Officer is not a lawyer or judge.

34) It may have been preferable for the Hearing Officer to explicitly set out that the appellant repeatedly contacting AA because of Cambridge property legal issues provided no mitigation. The Hearing Officer was, however, clearly alive to the ongoing issues relating to the Cambridge property and that, based on the prior resolution, the appellant was to cease communication and retain counsel to deal with property issues. This would include issues with respect to a freeze order. The Hearing Officer reasonably concluded that, in failing to cease communication, the appellant demonstrated poor judgement. When the reasons here are read as a whole and in the context of the entire record, we find that they provide a transparent, justified and intelligible basis for penalty. We see no basis to interfere.

iii. **The Hearing Officer did not dismiss the appellant's use of a family law lawyer.**

34) Within the context of considering "Recognition of the Seriousness of Misconduct" and "Potential to Reform or Rehabilitate the Police Officer", the Hearing Officer stated:

> *[195] I accept that (the appellant) made efforts over several years after the 2017 Tribunal decision to separate Deva Property Management from the Cambridge residence. However, I also accept the Prosecution's assertion that his efforts to divest were made through his family law counsel as they related to his divorce proceedings. Further, (the appellant) declined offers from his lawyer to handle communication with AA's lawyer, opting instead to communicate directly with AA. (The appellant) acknowledged in his testimony that he placated AA and communicated with him due to the possibility that he would be a witness in the former's divorce proceedings.*

> *[196] It was not until (the appellant) was served a Notice of Investigation by Internal Affairs in 2021 that he alluded to his lawyer that he was not to associate with AA and that he knew he was "violating…Service policy".*

35) In the appellant's submission, by noting his use of a family law lawyer the Hearing Officer "…somehow diminishes the Appellant's good faith efforts to divest himself of the Cambridge property". We do not agree.

36) In his evidence at the penalty proceedings, the appellant pointed to correspondence between himself and his family law lawyer as evidence that he was attempting to deal with the Cambridge property as required by the 2017 resolution. In this correspondence the appellant's family law lawyer highlighted to him that the Cambridge property would be included in the appellant's divorce proceeding financial statements unless he obtained the requisite documentation from AA. This correspondence is void of discussion of the appellant's 2017 discipline proceedings, rather the sole focus is on the appellant's divorce proceedings and the evaluation of his property. The Hearing Officer's statements that the appellant's efforts to divest were through his family law lawyer and related to his divorce proceedings were statements of fact amply supported by the evidence. They were relevant because they rebut the appellant's suggestion that his actions arose from his recognition of the seriousness of his misconduct and demonstrate his potential for reform.

37) Further, the appellant did not initially use counsel, family law or otherwise, to facilitate communications with AA and deal with the Cambridge property as he agreed to at the 2017 discipline proceeding. As noted by the Hearing Officer, it was only *after* the issuance of the Notice of Investigation for the current proceedings that the appellant mentioned to his lawyer that, pursuant to prior discipline proceedings, he was not to contact AA.

38) Based on the record before him, it was open to the Hearing Officer to note that, while there was some effort to divest the Cambridge property, the steps taken by the appellant provided little mitigation. As demonstrated by the correspondence entered as evidence, the appellant's efforts were in the context of his divorce proceeding rather than any compulsion to comply with the 2017 resolution. There is no error in the Hearing Officer considering this when determining the seriousness of the misconduct. We would not give effect to this ground.

iv. The Hearing Officer did not err in finding the appellant "resumed a personal relationship" with AA.

39) In his reasons for penalty, after setting out the appellant's knowledge of AA's criminal history, the Hearing Officer found he was troubled by what he "can only assume" to be the appellant's "willful blindness" to AA's criminal antecedence. He noted that, as set out in the ASF, the appellant maintained regular communication with AA through electronic messages and personal visits. The Hearing Officer found: *"It is clear that (the appellant) did not heed the warnings but instead chose to continue a personal and business relationship with AA."* On appeal, the appellant submits that the Hearing Officer erred in finding that the appellant continued a personal relationship with AA or that there were personal visits.

40) In considering this issue, it is important to return, as the Hearing Officer did, to the ASF. There, the appellant agreed that his prior charges were with respect to his inappropriate business and social relationship with AA. He agreed that following the 2017 proceedings he had personal contact with AA multiple times, the majority of which he initiated. Further, the ASF indicates:

> *Sgt. Sachdeva further acknowledged that during the time period of the HPS investigation, he rented a vehicle from AA's shop, and he gave AA the code for his garage, and AA personally attended at his home address and picked up the key fob from inside the officer's home garage at the conclusion of the rental term.*

41) In his reasons for penalty, the Hearing Officer considered the evidence including excerpts from the cell phone extraction, and then concluded:

> *[187] Examination of the evidence provided by the Prosecution in para 64 reveals that (the appellant) initiated contact with AA in approximately 86 of the 124 text messages between January 15, 2020, and July 15, 2021. The texts included requests to settle expenses along with several requests to meet in person. Several of (the appellant's) text messages expressed his frustration with AA for not being able to meet. On one occasion (June 6, 2020) (the appellant) asked AA if he left $100 in the car, causing one to speculate if they had met in person earlier that day.*
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> *[188] The above interactions are separate from the 22 telephone calls that (the appellant) initiated with AA, which were in relation to a vehicle appraisal and return of a rental vehicle.*

42) The Hearing Officer then went on to review the appellant's dealings with AA about the two separate vehicle issues. With respect to the appellant's contact with AA

when selling one of his vehicles, the Hearing Officer specifically rejected the appellant's suggestion that his only recourse was personal communication with AA: *"I do not accept (the appellant's) suggestion that AA's shop was the only option to remove the screws from the vehicle."* The Hearing Officer then went on to note, the appellant had also texted AA with respect to a vehicle rental, instructing him to attend the appellant's home and giving AA his garage code.

43) The Hearing Officer noted AA visited the appellant's home and the nature and number of communications led to a reasonable inference of a personal relationship between the appellant and AA. It was reasonable, on the evidence before him and the content of the ASF, for the Hearing Officer to conclude that AA either continued or resumed a personal relationship with AA through electronic messages and personal visits. There is no basis for the Commission to now re-weigh and reinterpret the evidence. The Hearing Officer's factual conclusions, based on a comprehensive evidentiary record, are entitled to deference.

v. **The penalty ordered was reasonable**

44) The Hearing Officer arrived at the penalty of one year demotion following a detailed analysis of the appropriate dispositional principles as set out in *Krug v. Ottawa Police Service*, 2003 CanLII 85816 (ON CPC). In his comprehensive reasons, the Hearing Officer considered the factors of damage to the public interest, the seriousness of the misconduct, the appellant's work and discipline history, recognition of the seriousness of the misconduct, deterrence and consistency of disposition. The Hearing Officer's considerations included the appellant's knowledge of AA's criminal history, his willful blindness to the problematic nature of his continued relationship with AA, his inconsistent accounting to Internal Affairs, his guilty plea and apology to the Tribunal as well as the appellant's considerable experience with the Service.

45) The appellant submits that the penalty was unduly harsh, and the Hearing Officer failed to assess consistency of disposition or to consider if a lesser penalty was appropriate. We do not agree.

46) At the penalty proceedings, the appellant's counsel requested a penalty of three-day forfeiture. Before the Commission on appeal, the appellant's counsel submitted that five days forfeiture (the same penalty ordered at the 2017 proceedings) should be imposed. Before both the Hearing Officer and this Commission, the appellant submitted that the appellant's interactions with AA were "trifling" and there was no

evidence of ongoing socializing. The Hearing Officer clearly and reasonably rejected this submission, concluding the interactions were planned and demonstrated an intention to *"maintain a casual if not personal relationship with AA"*.

47) When considering the factor of specific deterrence, the Hearing Officer found the misconduct to be serious because it was repetitive and "rooted in poor judgement". This conclusion was open to the Hearing Officer. The evidence established that the appellant's communications with AA were not isolated or momentary lapses of judgment. Further, while the Hearing Officer allowed some mitigation for the appellant's guilty plea and apology, he also noted *"…his conduct may have continued had it not been identified during an investigation by another police service."* The OCPC recently affirmed the principle that "a Hearing Officer is entitled to consider contextual factors" and a "guilty plea or apology does not result in automatic unqualified mitigation." (see *Runge v. York Regional Police*, 2024 ONCPC 26 (CanLII) at para 17).

48) With respect to consistency of disposition, the Hearing Officer noted the respondent's submission that another penalty of forfeiture would not address the seriousness of the misconduct. The Hearing Officer summarized the respondent's supporting case law that ranged from forfeiture to dismissal. Similarly, the Hearing Officer summarized the appellant's submissions and jurisprudence in support of his position that a three-day forfeiture was appropriate. He found that the appellant's 2017 disposition was "naturally most helpful" in determining an appropriate disposition. The Hearing Officer clearly turned his mind to the principle of consistency in penalty, and the resulting penalty of demotion was within the range of reasonable penalties.

49) Given all of the factors, including that the 2017 disposition of five days forfeiture failed to sufficiently deter the appellant, it was reasonable for the Hearing Officer to order a penalty of demotion. As noted in *Kobayashi*, *supra*, only when a penalty decision is unreasonable, fails to consider all relevant matters or demonstrates an error in principle will the Commission intervene. There is no error in principle in the Hearing Officer's penalty decision, nor did he fail to consider material facts or apply a relevant dispositional factor. Given the circumstances of this case, the penalty ordered is not manifestly excessive. While a lesser penalty could arguably have been imposed, that is not a sufficient basis for this Commission to interfere with the Hearing Officer's decision.

CONCLUSION

51) The Commission sees no merit in the arguments raised by the appellant and finds the Hearing Officer's decision to be reasonable. The Hearing Officer identified all relevant factors in considering penalty and did not make an error in principle in the application of those factors. It is not open to the Commission to now reweigh the factors to achieve a different result.

ORDER

52) The appeal is dismissed and the Commission confirms the penalty decision of the Hearing Officer.

"Laura Hodgson"
Laura Hodgson

"Ian Anderson"
Ian Anderson

"Peter Lennox"
Peter Lennox