

ONTARIO PROVINCIAL POLICE  
Applicant

And

CONSTABLE MICHAEL WALLI  
Respondent

Adjudicator:  
Peter Lennox

Appearances:  
J. Kirsh, prosecutor  
L. Gridin, defense counsel

Heard:  
August 14, 2025

Date of decision:  
August 29, 2025

Length of decision:  
35 pp.

Statutory citations:  
*Community Safety and Policing Act, 2019*, S.O. 2019, ss. 82, 202  
*Criminal Code*, R.S.C. 1985, c. C-46, s. 86(1)  
O. Reg. 404/23, s. 20 ; O. Reg. 407/23, s. 4

**COMPLIANCE WITH LAWS - Criminal offences** - Careless use of a firearm - Unintentional discharge of firearm during high-risk takedown resulting in significant injury to member of the public - Respondent pled guilty to charge of violating s. 86(1) of *Criminal Code* and accepted full responsibility - Six-month demotion appropriate penalty - Respondent also required to undergo remedial firearms training at the discretion of the OPP.

**CRIMINAL OFFENCES - Careless use of a firearm** - High-risk takedown - Respondent accidentally discharging firearm - Driver of vehicle significantly injured - Serious misconduct contrary to public interest - Acceptance of responsibility demonstrated through guilty pleas in criminal and disciplinary proceedings as well as expressions of remorse - Six-month demotion appropriate penalty - Respondent required to undergo remedial firearms training at the discretion of the OPP.

**DISCIPLINARY PENALTIES - Demotion** - Respondent unintentionally discharging firearm during course of arresting suspect - Member of the public suffered significant injury as a result -

Serious misconduct requiring penalty beyond reprimand or forfeiture of days - Demotion appropriate.

**DISCIPLINARY PENALTIES - Directed program or activity** - Respondent unintentionally discharging firearm during course of arresting suspect - Significant injury resulting - Demotion appropriate penalty - Respondent also required to undergo remedial firearms training at the discretion of the OPP.

**SENTENCING - Deterrence** - Accidental discharge of firearm during high-risk takedown resulting in significant injury to member of the public - Serious misconduct requiring substantial penalty - Rehabilitative potential, positive employment history and other mitigating factors suggesting that lengthy demotion unreasonably harsh - Six-month demotion a sufficient deterrent.

### Summary of Reasons for Decision

On August 20, 2022 members of the OPP Orillia Detachment were engaged in a suspect apprehension pursuit. The vehicle in question crashed in a parking lot. The respondent, Cst. Walli, was one of the officers who arrived first on the accident scene. Constable Walli repeatedly yelled at the driver to get out of the truck and to show him his hands. Unable to see the driver's hands, and believing that the driver had access to tools which could be used as weapons, he grabbed the driver and attempted to remove him from the truck. During this process, the respondent unintentionally depressed the trigger of his firearm. The driver suffered a gunshot wound to his leg. He was treated with first aid at the scene, both occupants of the truck were taken into custody, and the driver was transported to hospital. Immediately following the gunshot, Cst. Walli was observed to be visibly upset.

The Special Investigations Unit charged Cst. Walli with a number of offences under the *Criminal Code*. On July 8, 2024 the respondent pled guilty to the offence of careless use of a firearm, contrary to s. 86(1) of the *Code*. The other criminal charges were withdrawn. The presiding judge accepted the plea, found Cst. Walli guilty and imposed a sentence of conditional discharge.

Constable Walli also pled guilty to a disciplinary charge of violating s. 4 of the Code of Conduct, O. Reg. 407/23. The matter proceeded to a pre-conference hearing, and subsequently, to an adjudication hearing. At the adjudication hearing, the parties presented an agreed statement of facts, including their joint recognition that the discharge of the firearm was unintentional. However, they disagreed on the issue of penalty; the prosecutor sought an 18-month demotion, while defense counsel submitted that the appropriate disposition was a reprimand and additional training.

The prosecutor cited the list of factors typically considered when assessing penalty in cases of misconduct by police officers. These factors could be aggravating, mitigating, or neutral, depending on the facts and circumstances. The prosecutor submitted that in this case, *seriousness of the misconduct* was a key factor. He argued that a member of the public was injured by an OPP officer who fired his service gun, albeit unintentionally. Other aggravating factors, he

stated, included *public interest* and *damage to the reputation of the service*. He submitted that the finding of guilt and the unjustified shooting of a citizen eroded public trust in the police and damaged the reputation of the OPP. The prosecutor pointed to media attention in this case, asserting that the negative *effect of publicity* also aggravated the misconduct. While he acknowledged the respondent's *recognition of the seriousness of the misconduct*, he downplayed the mitigating impact of the respondent's discipline-free, positive *employment history*. The prosecutor suggested that a demotion was necessary to fulfill the objectives of *specific and general deterrence*. In terms of *consistency of disposition*, the prosecutor acknowledged that there were no cases directly on point but he offered a number of cases which, in his submission, were appropriate comparators; some of these involved criminal offences.

Defense counsel pointed out that the respondent was found guilty, but not convicted, of a criminal offence. In granting a conditional discharge the judge considered factors similar to the factors considered in assessing the proper disciplinary penalty for misconduct. The discharge meant that Cst. Walli would continue to have a clear record. Defense counsel focused on *acceptance of responsibility* as a key mitigating factor. It was clear, he argued, that the respondent accepted full responsibility, as evidenced by his guilty pleas and a letter written by Cst. Walli. Echoing the trial judge's phrasing, counsel characterized the mistake made by Cst. Walli as incorrect finger placement, which led to the charge of careless use of a firearm. Counsel tendered an expert opinion report by a retired Calgary police officer which discussed, *inter alia*, improper finger placement and the consequences thereof. Counsel distinguished Cst. Walli's unintentional mistake in this regard from an act of moral blameworthiness. He submitted letters of support from supervisors, colleagues and friends who all attested to the respondent's *good character*. These, together with his positive *employment history*, indicated a good *prospect of rehabilitation*. Counsel suggested that a reprimand plus training would be a proportionate penalty for what he described as a minor mistake that led to an injury.

*Held*, respondent demoted from first-class constable to second-class constable for a period of six months, with return to the rank of first-class constable thereafter; respondent also required to undergo remedial firearms training at the discretion of the OPP.

Although the parties agreed on the facts of this case and also agreed that the discharge of the respondent's firearm was unintentional, they were far apart on the matter of penalty.

As the prosecutor submitted, the misconduct was serious. A member of the public suffered a significant injury when the respondent accidentally discharged his firearm, which, in turn, was caused by a failure to follow important training rules and safeguards. The *seriousness of the misconduct* was an aggravating factor, although the aggravating impact was diminished by the fact that the actions of the respondent were not intentional. An act that resulted in a police officer being found guilty in a criminal court was contrary to the *public interest*. Another aggravating factor was *damage to the reputation of the service*; the media attention generated by this case had a negative impact on the reputation of the OPP.

With respect to mitigating factors, *recognition of the seriousness of the misconduct* clearly worked in the respondent's favour. He was remorseful from the outset and expressed regret for his actions. His guilty pleas in both criminal and disciplinary proceedings were further evidence

of his insight. Moreover, Cst. Walli's recognition and acceptance of responsibility also signalled good *potential to reform or rehabilitate the police officer* – a conclusion underscored by the letters of support. These letters suggested that this incident was an isolated one. The respondent's evaluations were consistently positive and his overall *employment history* was exemplary.

Some penalty factors were neutral in this case, including: *disability and other relevant personal circumstances, provocation, procedural fairness considerations, effect on the police officer and family, systemic failure, loss resulting from unpaid administrative suspensions*.

Comparator cases provided some useful guidance but none were directly on point; therefore, *consistency of disposition* was not a key factor in this case.

In arriving at an appropriate disposition, the tribunal was obliged to consider *specific and general deterrence*. In this case, the penalty had to underscore the importance of following training given to police officers, especially training that was critical to public safety and officer safety. The penalty had to be sufficient to send a message to the respondent and other officers about the serious consequences of failing to follow police training.

Ultimately, the goal was to ensure a penalty that was proportionate to the offence, while avoiding an unnecessarily punitive measure. An 18-month demotion was unreasonably harsh in light of the mitigating factors. On the other hand, a reprimand was insufficient to send the clear message that violations of the criminal law, especially where, as here, they cause harm, will be taken seriously. Considering all the circumstances and relevant penalty factors, a six-month demotion was a sufficient deterrent.

Accordingly, Cst. Walli was to be demoted in rank from first-class constable to second-class constable for a period of six months, after which he would be returned to the rank of first-class constable. Because a failure to follow an important aspect of firearms training was central to this matter, it was also appropriate to order Cst. Walli to undergo remedial firearms training at the discretion of the OPP.

#### Authorities cited

*Constable Christy Clough and Peel Regional Police*, 2014 OCPC 12

*Police Constable (Robert) Bryan Horton and Ontario Provincial Police*, 2015 OCPC 16

*Constable Caitlyn van Straalen and Ontario Provincial Police*, 2017 OCPC 17

*Ontario Provincial Police and Insp. D.H. Springer*, decision of hearing officer Supt. K.M. Bickerton, July 14, 2021

*Provincial Constable Troy E. Bender and Ontario Provincial Police*, decision of hearing officer Supt. Robin D. McElary-Downer, August 28, 2014

*London Police Service and Constable Darryl Horan*, (Adj. P. Lennox), OPAAC ADJ#25-004

*Constable Cindy Schlarbaum and Chatham-Kent Police Service*, 2013 OCPC 5