

[2] The third disciplinary default is an abuse of P/Sgt. Comte's authority contrary to s. 29(a) of the *Act*, by threatening to do harm to Mr. Singh's business during that same time period.

[3] In summary, the facts are that in the course of then Cst. Comte's investigation of a sexual assault allegation, and more specifically his attempts to obtain video recordings of an interaction between an alleged victim and a suspect at the Green Brier Inn, he abused his authority in word and deed in the course of his dealings with Jonathan Singh, as well as Ms. Raien.

[4] The specific facts bear repetition.

[5] In the time period between October 11-20, 2015, P/Sgt. Comte attended the Green Brier Inn on two or three occasions. He told the day manager, Ms. Raien, that he was looking for, and repeatedly requested, video footage of an incident involving an alleged sexual assault at the hotel.

[6] Ms. Raien described P/Sgt. Comte as "easy to talk to" on all of those occasions.

[7] She testified that on the second of these visits, P/Sgt. Comte asked to speak to Mr. Singh, the hotel's owner. On the third occasion, P/Sgt. Comte told her that he had been attempting to contact Mr. Singh, but had not been able to reach him. Ms. Raien testified that the mood was light, but that within that context P/Sgt. Comte told her that the police needed the footage, and that if they did not receive it they might have to come back on the hotel's busiest night to obtain it. On the facts, I find that this was a semi-veiled threat of business disruption if the footage was not produced, and the beginning of a pattern of behaviour by P/Sgt. Comte in that regard.

[8] On October 21, 2015, P/Sgt. Comte returned, this time alone. P/Sgt. Comte told Ms. Raien that he wanted to speak to her privately, so she took him upstairs to the hotel's second floor lobby. Ms. Raien testified that P/Sgt. Comte told her two or three times that they were not providing the requested evidence. She stated he told her that they could arrest "Johnny" - a reference to her boss, Mr. Singh. - for this. P/Sgt. Comte said this more than once, and he was loud and appeared frustrated. She said she felt frightened, this was her boss, and she did not want him to go to jail. Ms. Raien told P/Sgt. Comte that she did not have access to the server room, where the videotapes were located, but P/Sgt. Comte repeatedly said that he was "on an official order". Although claimed, there was at the time no such order. I have found that the above-noted threats were made in order to coerce Ms. Raien into providing access to the private server room of the Green Brier Inn.

[9] Ms. Raien said she ultimately relented, testifying that she "felt she had no choice", and allowed P/Sgt. Comte into the server room. Once inside, P/Sgt. Comte viewed the video footage. Having done so, he told Ms. Raien that that's what he wanted to see, and now had proof that the footage was in the possession of the Green Brier Inn, but that "they" did not want to turn it over to police.

[10] He then asked for Mr. Singh's cell phone number, which he called using the hotel's phone. Ms. Raien said that Mr. Singh answered the phone, at which point P/Sgt. Comte "burst out" on his end. She described P/Sgt. Comte as loud and abusive, and that his voice was "so aggressive, like...fighting". She heard P/Sgt. Comte tell Mr. Singh that he had been looking for him for a long time, and that "I've got you now". Ms. Raien heard P/Sgt. Comte repeat the threat that he'd made to her about returning to the Green Brier Inn on its busiest night, and that they would see how Mr. Singh was able to run his business under those circumstances. I have found that P/Sgt. Comte threatened to send police cars to Mr. Singh's hotel at

night, rather than during the day, as an attempt to coerce the production of the video, and as punishment for what P/Sgt. Comte perceived to be a lack of cooperation by Mr. Singh and his employees.

[11] In the telephone call to Mr. Singh, P/Sgt. Comte also threatened to arrest Mr. Singh, specifically if he, P/Sgt. Comte, did not get what he wanted.

[12] Cst. Andrew Tighe, a Constable with 24 years of experience with the Winnipeg Police Service, and a friend of Mr. Singh's, testified at the hearing with respect to a telephone conversation that took place shortly after the above-noted telephone conversation between P/Sgt. Comte and Mr. Singh.

[13] Cst. Tighe recorded the conversation.

[14] In the conversation, Cst. Tighe told P/Sgt. Comte that he believed he had brought up his (Cst. Tighe's) name in the course of the telephone conversation with Mr. Singh. He objected to this having been done. Cst. Tighe also attempted to explain Mr. Singh's position, including that he was a busy man who received multiple requests for videotapes weekly, was generally cooperative with respect to those requests, travelled frequently, was presently in the U.S., and had not necessarily even received the request for the videotape that P/Sgt. Comte was seeking. He also suggested that by seeking a production order for the video, which P/Sgt. Comte had by that point decided to do, as opposed to continuing to pursue the voluntary cooperation of Mr. Singh, P/Sgt. Comte was going to "ruin things" for other officers who would need videotape evidence from the Green Brier Inn in the future.

[15] Of particular significance in that recorded conversation are the following exchanges:

P/Sgt. Comte: He's the guy that took it to the next step, so in the same token, if he wants to play that same game with us, then realize that next time he's got a whole

bunch of Manitoba Warrior assholes in his bar, he's not going to get any fucken play from us, and if he wants a bunch of guys breathing down his fucken neck, then keep going that production route.

Cst. Tighe: That's fine, I mean, if you want to threaten him that way, that's, go right ahead, I really don't care.

P/Sgt. Comte: That's the reality because he's threatening (inaudible).

Cst. Tighe: (inaudible) that's a straight up threat Rick, and that's bullshit.

P/Sgt. Comte: And him doing the production order threat is a threat as well.

Cst. Tighe: What threat?

P/Sgt. Comte: I'm saying that's the, that's the reality of what it is.

[16] The exchanges continue in a similar vein. The thrust of P/Sgt. Comte's subsequent comments in this regard was that when there was a call for service to the Green Brier Inn police would attend, but that the quality of service would be negatively impacted; to wit:

P/Sgt. Comte: ... You know damn well what happens to establishments who are not police friendly, cause that's what I'm telling you from officer to officer.

[17] There should be no mistake or confusion. What has just been recited are comments made by P/Sgt. Comte in the course of an audio-recorded telephone conversation, played at the hearing and filed as an exhibit in these proceedings. These were not comments that were determined to have been made by P/Sgt. Comte following contested issues of credibility that were resolved in favour of the complainant and his witnesses. Nor were P/Sgt. Comte's views in this regard a matter of inferences drawn from ambiguous comments made by him. The comments in question are precisely what P/Sgt. Comte said, and was recorded to have said, along with the thoughts and feelings that they convey.

[18] These exchanges, and other similar comments elsewhere in the recorded conversation, were a clear threat by P/Sgt. Comte that police service to Mr. Singh's establishment would be either delayed or downgraded as a result of what he

perceived to be Mr. Singh's lack of cooperation with respect to provision of the videotape. This was an escalation from the comments P/Sgt. Comte is alleged to have made to Mr. Singh and Ms. Raien with respect to attending to Mr. Singh's place of business during its busiest hours, which latter comments amounted to a threat of interference with the conduct of Mr. Singh's business. Here, P/Sgt. Comte was in fact threatening a course of conduct by police that would interfere with Mr. Singh's ability to conduct business in safety and, potentially, to conduct business at all.

[19] While this threat was made to Cst. Tighe and not to Mr. Singh, P/Sgt. Comte was clearly aware that the two were friends. P/Sgt. Comte would have known that there was a substantial likelihood that this threat would be conveyed to Mr. Singh. One need only note in this respect that Cst. Tighe was calling as a result of having spoken to Mr. Singh about it. At the very least, what Mr. Singh was being told, through the medium of his friend Cst. Tighe, was that by "compelling" P/Sgt. Comte to go to the effort of applying for a production order, he ran the risk, if not the likelihood, of his livelihood being negatively impacted.

[20] While there was undisputed evidence presented at the hearing that no officer could effect what was described as a non-service to a business, this unchallenged fact is beside the point. The substance of P/Sgt. Comte's comments to Cst. Tighe in this respect was not that there would be an outright denial of service to the Green Brier Inn, but rather a negative impact on the quality of police service to that business, including response times. Given P/Sgt. Comte's comments to Cst. Tighe in this regard ("you know damn well...") quoted above, P/Sgt. Comte clearly believed this to be a real and viable outcome. I reach this conclusion not simply because P/Sgt. Comte said so, but because he said this, in both content and tone, in a matter-of-fact, "everybody knows" manner, to a fellow officer, and one with

considerable experience. It is clear from the way in which this assertion was presented by P/Sgt. Comte that he clearly did not expect to be challenged on this point.

[21] Even were I to have concluded that what P/Sgt. Comte was threatening was a patently unlikely outcome, which, based on the evidence, I did not, there was clearly enough of an air of reality to it, for the reasons I have mentioned, to leave the Complainant with a reasonable concern that it could come to pass.

[22] If nothing else, P/Sgt. Comte's comments to the foregoing effect demonstrated him to be an apparently passionate advocate and proponent of this consequence for Mr. Singh; this, in turn, made it a more realistic possibility.

[23] Even if there had been absolutely no possibility that it could come to pass, I found that the mere uttering of this disquieting sentiment by P/Sgt. Comte, coupled with the real possibility that it would be conveyed to Mr. Singh, was sufficient to constitute an abuse of authority, as both oppressive language and conduct, and by constituting a threat to do harm to Mr. Singh's business.

[24] It is clear, and I have found, that P/Sgt. Comte was angered by the fact that he had been obliged, at least in his own mind, to obtain a production order, which he inexplicably viewed, as he explicitly stated to Cst. Tighe, as a threat from Mr. Singh.

[25] As I found in my decision on the merits, P/Sgt. Comte had continued to invest a significant amount of time in a course of conduct - attempting to secure the voluntary cooperation of the complainant - without any sign of progress in this potentially important area of the investigation. There was the real prospect that the videos could be overwritten. This is in fact what ultimately occurred in this case. The clock was ticking for P/Sgt. Comte. It was only on October 21st, having spent

days pursuing an unsuccessful path that he turned to the option that arguably could and should have been pursued soon after he concluded that he was not receiving cooperation: attempting to obtain a production order. His Sergeant had now directed him to do so. The result, I found, was anger and panic on P/Sgt. Comte's part, fuelling his behaviour toward Ms. Raien and Mr. Singh, and his comments to Cst. Tighe.

[26] The hearing also heard from Shannon Meyer, a liquor and gaming inspector with the Manitoba Liquor and Gaming Authority for 14 years. Ms. Meyer testified that she knew Mr. Singh as a friend, as well as in the course of her employment. She bumped into Mr. Singh at a wine festival on April 29, 2016. P/Sgt. Comte, whom Ms. Meyer knew as an acquaintance, also happened to be present, doing security work in a private capacity. Ms. Meyer had a conversation with Mr. Singh for about 10 minutes, and after it ended, P/Sgt. Comte came over and spoke to her. Ms. Meyer recalls P/Sgt. Comte asking her if she was still a liquor inspector. Ms. Meyer told him that she was. It was her evidence that P/Sgt. Comte then stated that the two of them should do a joint inspection of the Green Brier Inn. In cross-examination, she conceded that P/Sgt. Comte may have included the words "some day" in that suggestion, but maintained that the suggestion was specific to the Green Brier Inn. P/Sgt. Comte then stated to her that the hotel licensee (which I found to have been a clear reference to Mr. Singh) was obstructing him or them - she could not remember which - from doing their job.

[27] It is clear that P/Sgt. Comte had observed Ms. Meyer's conversation with Mr. Singh. The fact that P/Sgt. Comte then initiated a conversation with Ms. Meyer to propose a joint police/liquor control inspection of Mr. Singh's business leads to the inference that P/Sgt. Comte wanted Mr. Singh to be aware of his comments. The timing of the comments was more than mere coincidence. P/Sgt. Comte

observed the conversation, concluded that there was an acquaintanceship or friendship between the two, or at least the possibility thereof, and made the comments to Ms. Meyer with the intent to have those comments relayed to Mr. Singh. P/Sgt. Comte's goal in this regard was clearly to let Mr. Singh know he had not forgotten about their interaction, that his business was still in potential jeopardy, and to instill fear in Mr. Singh as a result. The modus operandi is the same as in P/Sgt. Comte's conversation with Cst. Tighe: making comments implicitly threatening Singh's business, and doing so through a third party who knows Mr. Singh, thereby increasing the chances that the comments would find their way to him.

[28] Of particular concern is the fact that P/Sgt. Comte's remarks to Ms. Meyer were made in April 2016, well after the LERA complaint had been filed by Mr. Singh. At a point in time when P/Sgt. Comte should have been chastened, he was, by all appearances unrepentant, and continuing to conduct himself in the same manner as before.

[29] There were several clear themes that ran through the evidence of Ms. Raien, Mr. Singh, Cst Tighe, and Ms. Meyer: P/Sgt. Comte was of the very strong opinion that Mr. Singh was uncooperative with police, he viewed this conduct as being hostile to police, and he was clearly angered by it. As a result, he felt that police powers should be used, and indeed abused, to punish Mr. Singh.

[30] The manner by which P/Sgt. Comte proposed police powers should be used in this respect was as well consistent across these conversations: that the nature and quality of police attendance, and/or service, at Mr. Singh's place of business should and would be negatively impacted by Mr. Singh's purported transgression.

[31] In the course of cross-examination by Mr. Tapper, counsel for the Applicant, P/Sgt. Comte admitted that in the course of a 2016 lecture to junior police officers

on the topic of obtaining videos and the use of production orders, he mentioned Mr. Singh by name.

[32] P/Sgt. Comte told the junior officers that he had only one example of an instance where the use of a production order was required to obtain a video, and that was an incident involving Jonathan Singh and the Green Brier Inn.

[33] I found that there was only one reason for P/Sgt. Comte to have identified Mr. Singh and the Green Brier Inn by name in the course of his lecture: to poison the minds of his audience against Mr. Singh and his business. This act was particularly egregious for three reasons: it provided a misleading depiction of the incident in question, unfairly laying the blame for what had happened solely on Mr. Singh. As depicted in the second telephone conversation between them, Mr. Singh had told P/Sgt. Comte that he would provide the video to him regardless of whether or not P/Sgt. Comte obtained a production order. Further, the lecture was to a group of junior officers who were, definitionally, in attendance at the lecture in order to obtain the guidance and wisdom of a senior and experienced member of the Winnipeg Police Service. P/Sgt. Comte's remarks to these officers carried weight. What he said to them in this regard amounted to an abuse of his position.

[34] Finally, as with the incident involving Ms. Meyer, these comments were made at a point when the LERA complaint had already been filed. By this point, P/Sgt. Comte should have relented, not persisted.

[35] I am mindful of the fact that the allegations of disciplinary defaults faced by P/Sgt. Comte were those alleged to have occurred between October 11-31, and that his remarks to Ms. Meyer and to the junior officers were not made until well after the noted time period.

[36] P/Sgt. Comte is not to be penalized for allegations of default that were not the subject matter of the hearing.

[37] However, as noted by Chartier P.J., as he then was, at para. 11 of his decision in LERA complaint # 3704, at Tab 2 of the Respondent's casebook, the Respondent's conduct following the incident is a factor to be considered in determining the appropriate penalty.

[38] More specifically, P/Sgt. Comte's comments to Ms. Meyer and to the junior officers inform his previous comments to Ms. Raien, to Mr. Singh, and to Cst. Tighe.

[39] The comments to the junior officers in particular suggest that P/Sgt. Comte's previous conduct and remarks were not simply about scaring or intimidating Mr. Singh. Absent his comments to the junior officers, one might conclude that his remarks to Ms. Raien, Mr. Singh, Cst. Tighe, and perhaps even Ms. Meyer, were just talk: all bark and no bite. The comments made to the junior officers put his earlier remarks in a more concerning context. By making those comments, P/Sgt. Comte demonstrated that he was prepared to broadly disseminate his views of Mr. Singh and his business, and to do so to individuals who were in a position to accept and act upon those views, to Mr. Singh's detriment.

[40] This is not, unfortunately, a far-fetched scenario. One need only look to P/Sgt. Comte's own comments to Cst. Tighe in this respect:

You know damn well what happens to establishments who are not police friendly, cause that's what I'm telling you from officer to officer.

[41] By identifying Mr. Singh and the Green Brier Inn as the only example of a business that required a production order to turn over potential evidence, P/Sgt. Comte was actively identifying them, to an audience of police officers, as not

police friendly. That act places a more serious complexion on P/Sgt. Comte's earlier remarks in this regard.

[42] All of this noted, the context and background of P/Sgt. Comte's conduct are equally important to bear in mind.

[43] As set out in my decision, I accept that P/Sgt. Comte made multiple efforts, over the course of multiple days, to contact Mr. Singh, whose permission he had been told he required in order to obtain the video.

[44] As described by Ms. Raien, P/Sgt. Comte was pleasant during these initial encounters.

[45] It is clear that P/Sgt. Comte's efforts in this regard were unsuccessful.

[46] I have accepted that P/Sgt. Comte believed, perhaps correctly, that Mr. Singh had made a specific effort to avoid speaking with him in the course of one of the calls that he made to him.

[47] P/Sgt. Comte testified, and I have accepted, that he had never had to resort to a production order to obtain a video, and that he had always received the cooperation of the businesses from whom he sought them.

[48] I have also accepted P/Sgt. Comte's evidence that he had previously been criticized by a judge for a delay in obtaining a video. I find that this had, as he testified, affected him, and thereafter he had attempted to obtain videos in a more timely way.

[49] I also accepted that P/Sgt. Comte was told that the videos he was seeking lasted for approximately a week. He explained the multiple calls that he made to the Green Brier Inn, seeking the videos, by saying that he was concerned about the possibility that the videos would be overwritten.

[50] I have also found that P/Sgt. Comte's view that this was a time-sensitive and serious matter was accurate.

[51] I have also weighed P/Sgt. Comte's persistently egregious behaviour in the course of this incident against his previously spotless service record over the course of the past 17 years.

[52] I have considered the length of time this matter has hung over P/Sgt. Comte's head, and the impact that this has had on the officer and his family.

[53] I have considered the glowing letters of reference that describe an otherwise exemplary police officer and human being.

[54] In that regard, however, I note that this incident did not involve a momentary loss of composure on the part of P/Sgt. Comte, but rather a persistent pattern of conduct that has, understandably and predictably, caused Mr. Singh high stress and severe anxiety, both of which continue to the present time.

[55] While I have concluded that P/Sgt. Comte's motives in conducting himself as he did during the course of the investigation were legitimate, and that he was focussed on furthering a thorough and proper investigation of a serious matter, I have also borne in mind that how he went about doing so fell far, far short of legitimacy or propriety.

[56] Further, I have noted that even after there was no investigation to further, P/Sgt. Comte continued to behave in a vindictive manner towards Mr. Singh and his business, and that he continued to do so, not once but twice, even after the LERA complaint was filed.

[57] I have read and considered the numerous authorities filed by Mr. Comte's counsel, the thrust of which being that even for disciplinary defaults involving

serious physical violence, reprimands and other dispositions at the lower end of the penalty scale have been imposed.

[58] It is difficult to compare and assess the seriousness of physical violence, especially arising from a one-time, time limited event, as was the case in many of the decisions filed, as against the infliction of sporadic but ongoing psychological harm, as was the case here, and the extent of the damage caused by each.

[59] It is trite, but true, that each case will ultimately turn on its own facts.

[60] In the instant case, I have determined that with respect to the disciplinary defaults contrary to subsections 29(a) (iii) and (iv) of *The Law Enforcement Review Act*, that is, by using oppressive and abusive conduct or language, and being discourteous and uncivil, to Jonathan Singh and Veerinder Raien, forfeiture of five days pay is the appropriate penalty for each, concurrent to each other.

[61] With respect to the third disciplinary default, an abuse of authority contrary to s. 29(a) of the *Act* by threatening to do harm to Mr. Singh's business: for the various reasons outlined, this is the most serious of the defaults committed by P/Sgt. Comte. I have determined that a reduction in rank is the necessary penalty for this default.

[62] As noted, then Cst. Comte has been promoted to Patrol Sergeant Comte. The reduction in rank will cause this officer to forfeit that promotion, and to return to his previous rank.

[63] Should it become necessary, I remain available to the concerned parties to provide clarification with respect to the application of these penalties to the specific circumstances of the Respondent.

"Original signed by:"

LERNER, P.J.