

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *O'Brien v Assistant Commissioner Paul Taylor & Anor*
[2019] QCAT 127

PARTIES: **KATIE O'BRIEN**
(applicant)

v

ASSISTANT COMMISSIONER PAUL TAYLOR
(first respondent)

CRIME AND CORRUPTION COMMISSION
(second respondent)

APPLICATION NO/S: OCR085-18

MATTER TYPE: Occupational regulation matters

DELIVERED ON: 15 May 2019

HEARING DATE: 18 February 2019

HEARD AT: Brisbane

DECISION OF: Member Browne

ORDERS:

1. **The decision of Assistant Commissioner Paul Taylor dated 29 March 2018 in relation to sanction is set aside and the following decision is substituted:**
 - (a) **Katie O'Brien is demoted from Sergeant 3.3 to Senior Constable 2.10 effective from 29 March 2018.**
 - (b) **Katie O'Brien is eligible to progress subject to the usual industrial requirements effective from 29 March 2018.**
 - (c) **Within twelve (12) months of the date of this order Katie O'Brien must complete the following:**
 - (i) **Ethics and ethical decision-making - (QC1022-02-A);**
 - (ii) **Information Security - (QCA0544);**
and
 - (iii) **QPRIME fundamentals – (QC0544-02).**
2. **Other than to the parties to the proceeding, publication is prohibited of the names of any information that could identify or lead to the identification of any persons other than Katie O'Brien, Assistant Commissioner Paul Taylor and any other police officers.**

CATCHWORDS: POLICE – INTERNAL ADMINISTRATION – DISCIPLINE AND DISMISAL FOR MISCONDUCT – QUEENSLAND – where the applicant police officer accessed official information contained within the Queensland Police Service computer system – where the applicant police officer released confidential information accessed through the Queensland Police Service computer system – where allegations of misconduct were found to be substantiated – where sanction imposed – where police officer demoted in rank and pay point – where application to review the sanction imposed – whether sanction imposed is correct and preferable

Crime and Corruption Act 2001 (Qld), s 219BA, s 219H, Schedule 2

Police Service Administration Act 1990 (Qld), s 1.4, s 2.2, s 2.3, s 3.2

Police Service (Discipline) Regulations 1990 (Qld), s 3
Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 17, s 19, s 20, s 21, s 66

Aldrich v Ross [2001] 2 Qd R 235

Briginshaw v Briginshaw (1938) 60 CLR 336

Comptom v Deputy Commissioner Ian Stewart Queensland Police Service [2010] QCAT 384

Crime and Corruption Commission v Acting Deputy Commissioner Barron and Anor [2015] QCAT 96

Crime and Misconduct Commission v Swindells & Gardener [2010] QCAT 490

Hardcastle v Commissioner of Police (1984) 53 ALR 595

McKenzie v Acting Assistant Commissioner Tony Wright [2011] QCATA 309

Murray v Deputy Commissioner Stewart [2011] QCAT 583

Police Service Board v Morris (1985) 156 CLR 397

APPEARANCES & REPRESENTATION:

Applicant: C Gnech of the Queensland Police Union Legal Group
 Respondents: M O'Brien of the Queensland Police Service Legal Unit
 J Gorry of the Crime and Corruption Commission

REASONS FOR DECISION

- [1] Katie O'Brien was demoted from Sergeant pay point level 3.3 to Senior Constable 2.9 following a finding of misconduct by Assistant Commissioner Paul Taylor.¹
- [2] At the time of the conduct giving rise to the disciplinary proceedings Ms O'Brien was the officer in charge of a police station. Ms O'Brien accessed the Queensland Police Service ('QPS') computer system on 12 occasions without an official

¹ Decision made on 29 March 2018. See Exhibit 1, Part A pages 1-18.

purpose; and released confidential information on two occasions to a person known to Ms O'Brien without an official purpose.

- [3] Ms O'Brien wants to review the decision in relation to the sanction imposed. Ms O'Brien says, amongst other things, that the sanction imposed is purely punitive in nature and does not reflect the purpose of disciplinary proceedings.²
- [4] The Crime and Corruption Commission ('the CCC'), as a joined party to the proceeding, submits that the sanction imposed by the decision-maker reflects the serious nature of the conduct engaged in by Ms O'Brien particularly as a Sergeant of the QPS.³ The CCC submits that Ms O'Brien should be demoted from Sergeant 3.3 to Senior Constable 2.9 and she should be ordered to undertake courses to address her conduct, such as ethics and ethical decision-making; information security; and QPRIME fundamentals.⁴
- [5] Ms O'Brien accepts the decision-maker's findings about the misconduct as particularised in Matter One.⁵ The Tribunal adopts the following findings that Ms O'Brien accepts is the facts as found by the decision-maker, as follows:

In relation to Matter One (a), [Ms O'Brien] accessed confidential information through the Queensland Police computer system to check names and occurrences not in the performance of her official police duties. Namely:

- a. On 22 May 2015 [Ms O'Brien] conducted checks on [TT] and [NT]. These checks were conducted in the presence of [NT];
- b. On 26 May 2015 [Ms O'Brien] conducted a check on [NT];
- c. On 21 June 2015 [Ms O'Brien] conducted checks on [NN] and [NT]. These searches were conducted in the presence of [NT] at the [Redacted] Police Station. Both of these searches were found not to be in [Ms O'Brien's] performance of her duties;
- d. On 22 May 2015 [Ms O'Brien] conducted a check relating to the [Redacted] Hotel;
- e. On 28 August 2015 [Ms O'Brien] conducted checks on [CC];
- f. On 9 September 2015 [Ms O'Brien] conducted checks on [DHS]. This person was searched when [Ms O'Brien] was provided with this name by [NT] (a member of the public) and was done so to satisfy the interests of [NT];
- g. On 11 November 2015 [Ms O'Brien] conducted checks on [NP]. This search was conducted by [Ms O'Brien] when she used Constable Tom Ayling's login details to access this information. Further, this check was conducted in the presence of [NT] at the [Redacted] Hotel;

² Application to review a decision filed 4 April 2018 and notice of contentions filed 4 April 2018.

³ Submissions on behalf of the second respondent filed 18 January 2019.

⁴ Ibid.

⁵ Exhibit 1, Part A, pages 1, 4 and 7. Matter One (a) was amended by deleting the word 'disclosed', see page 7 of the decision-maker's reasons.

- h. On 2 December 2015 [Ms O'Brien] conducted checks on [NP] and [QG]. These searches were conducted in the presence of [NT] and were performed as a matter of curiosity;
- i. On 18 January 2016 [Ms O'Brien] conducted checks on [NT]; and
- j. On 31 March 2016 [Ms O'Brien] conducted checks on [TT].

In relation to Matter One (b) [Ms O'Brien] released confidential information accessed through the Queensland Police computer system to [NT]. [NT] is a member of the public who formed a friendship with [Ms O'Brien]. This release was not in the performance of [Ms O'Brien's] official duties, namely:

- a. On 22 May 2015 [Ms O'Brien] accessed an intelligence submission relating to the [Redacted] Hotel and released information to [NT]. [NT] is the publican of this hotel. This intelligence submission was conducted when [NT] was with [Ms O'Brien] at the [Redacted] Police Station; and
- b. On 28 August 2015 [Ms O'Brien] released confidential information relating to [CC] to [NT] via a mobile phone text message. [Ms O'Brien] sent a message to [NT] stating "just got done for a bit of weed and cone piece in his car, nothing found in the house".⁶

What is the Tribunal's Power on review?

- [6] The Tribunal effectively stands in the shoes of the decision-maker exercising the same powers as the decision-maker under the enabling act to produce the correct and preferable decision.⁷ The review proceeds before the Tribunal as a rehearing on evidence that was before the decision-maker.⁸ It is settled law that it is appropriate to give 'considerable respect' to the views of the decision-maker as to what is needed for the 'maintenance of internal discipline'.⁹ The Tribunal does, however, have a duty to bring the public perspective to bear and is bound to make its own decision on the evidence before it.¹⁰
- [7] The material before the Tribunal on review includes the material that was before the decision-maker when he made the decision commonly referred to as the 'section 21 material'.¹¹ There is also fresh evidence filed by Ms O'Brien.¹²
- [8] In assessing the evidence, the Tribunal applies the common law standard of proof 'on the balance of probabilities'.¹³ The Tribunal must be satisfied and find accordingly that the conduct complained of is police misconduct. 'Misconduct' is conduct that, if proven, is disgraceful, improper or unbecoming an officer; or shows

⁶ At the oral hearing, Mr Gnech on behalf of the applicant confirmed that the applicant accepts the facts as set out by the CCC. See submissions on behalf of the CCC filed 18 January 2019, p 3.

⁷ *Queensland Civil and Administrative Act* 2009 (Qld) ('QCAT Act'), s 19.

⁸ *Crime and Corruption Act* 2001 Queensland, s 219 H.

⁹ *Aldrich v Ross* [2001] 2 Qd R 235, 257-258 (Thomas J).

¹⁰ *Murray v Deputy Commissioner Stewart* [2011] QCAT 583, [40].

¹¹ Material filed by the respondent in accordance with s 21 of the QCAT Act.

¹² Exhibit 2. Leave was given to the applicant at the oral hearing to rely on the fresh evidence. See application for miscellaneous matters filed 14 February 2019.

¹³ *Briginshaw v Briginshaw* (1938) 60 CLR 336.

unfitness to be or continue as an officer; or does not meet the standard of conduct the community reasonably expects of a police officer.¹⁴

- [9] In determining the correct and preferable decision and the sanction to be imposed, the purpose of disciplinary proceedings as provided under s 3 of the *Police Service (Discipline) Regulations* 1990 (Qld) applies: to protect the public; to uphold ethical standards within the QPS; and to promote and maintain public confidence in the QPS.¹⁵ The object of disciplinary proceedings is to ‘protect the public, to maintain proper standards of conduct...and to promote the reputation of that body. The object is not to punish or exact retribution’.¹⁶ The purpose of discipline is the ‘maintenance of public confidence in the police force, of the self-esteem of police officers and of efficiency’.¹⁷
- [10] Here, Ms O’Brien seeks to set aside the sanction imposed by the decision-maker for Matter One. Ms O’Brien says that there are a number of options to be considered that involve a period of demotion with Ms O’Brien returning to her position as Sergeant within the QPS.¹⁸
- [11] Ms O’Brien says that the decision-maker was correct in finding that her conduct was due to *naivety* in her dealing with [NT]. Ms O’Brien says that there is no evidence whatsoever to support a conclusion that she engaged in criminal or corrupt mischief. Ms O’Brien submits that this finding is significant when properly considering what the correct and preferable sanction is to be.¹⁹ Further, Ms O’Brien relies on a number of matters that she says is relevant to sanction including, the new discipline system introduced by the QPS on 1 July 2018; the effect of the sanction imposed in terms of a permanent demotion; relevant comparatives; the delay in the proceedings; and mitigating circumstances.²⁰

Decision-maker’s findings relevant to sanction

- [12] The decision-maker found Ms O’Brien’s conduct to be serious and observed that Ms O’Brien ‘could have been charged criminally’ and referred to s 10.1 of the *Police Service Administration Act* 1990 (Qld) that prescribes offence provisions for disclosure of QPS information without authorisation.²¹ In relation to the disclosures of information by Ms O’Brien to [NT], the decision-maker found the conduct to be at the ‘serious end’ and found the conduct to be a ‘serious breach of [Ms O’Brien’s] integrity’.²²
- [13] The decision-maker referred to the conduct taking place soon after Ms O’Brien was promoted to Sergeant at the station in April 2015 because the conduct occurred in May 2015. Following the conduct, Ms O’Brien was transferred to another location and station. The decision-maker accepted Ms O’Brien’s submission that there was a ‘certain naivety’ in allowing the relationship with [NT] to become ‘as friendly as it

¹⁴ *Police Service Administration Act* 1990 (Qld), s 1.4.

¹⁵ *Police Service (Discipline) Regulations* 1990 (Qld), s 3.

¹⁶ *Hardcastle v Commissioner of Police* (1984) 53 ALR 593, 597.

¹⁷ *Police Service Board v Morris* (1985) 156 CLR 397, 412.

¹⁸ Applicant’s review submissions (sanction) filed 19 December 2018.

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ Exhibit 1, Part A, page 15.

²² *Ibid.*

did'.²³ The decision-maker acknowledged the several good character references that praised Ms O'Brien for her work ethic and commitment during the investigation for misconduct as well as Ms O'Brien's favourable service history.

- [14] The decision-maker considered the fact that all except one of the instances relating to information access occurred prior to the Commissioner's 'state-wide' email sent on 30 March 2016. The Commissioner's email dated 30 March 2016 was sent as a 'direction' to all members of the QPS regarding access of information and stated that, amongst other things, there has been a 'move in community attitudes towards the misuse of information held by the QPS and as a consequence the QPS and community's tolerance for what amounts to criminal behaviour is very low'.²⁴ Further, the email stated that '[d]iscipline sanctions for inappropriate access of QPS information which have applied in the past will no longer apply into the future as the bar has been raised in order to clearly reflect organisational and community disapproval for such conduct'.²⁵
- [15] The decision-maker said that the fact that all but one of the instances relating to information access by Ms O'Brien took place prior to the 30 March 2016 when the Commissioner's email was sent, in no way 'diminishes the serious nature of the conduct'.²⁶ The decision-maker said that it has always been the case that unauthorised disclosure of information held within QPRIME is 'strictly prohibited' and no QPS member is authorised to access information for personal reasons. The decision-maker found that the seriousness of the misconduct is 'exacerbated by the fact it has taken place over an extended period of time consisting of 12 separate instances between 21 May 2015 and 1 April 2015'.
- [16] The decision-maker also found Ms O'Brien's conduct as being a 'serious breach of ethics' and referred to the sending of a text message by Ms O'Brien to [NT] that read '[j]ust got done for a bit of weed and cone piece in his car, nothing found in the house'. The decision-maker found that the text message coincides with a QPRIME activity report where Ms O'Brien conducted a check at 2:40pm on 28 August 2015 on [CC]. The decision-maker also found that Ms O'Brien's conduct is 'exacerbated' given that it commenced only a month after she was promoted to Sergeant. The decision-maker said:

It is relevant this course of conduct in accessing confidential information for personal reasons commenced after you had been promoted to Sergeant, demonstrating a lack of judgement and insight into the conduct and the inappropriate nature of it.²⁷

- [17] The decision-maker considered Ms O'Brien's period of service as a police officer. Relevantly, at the time of the conduct Ms O'Brien had 6 years and 7 months of service and had attained the rank of Sergeant, officer in charge of a police station. The decision-maker said that as Sergeant, Ms O'Brien is considered a 'senior member of the QPS' and is expected to provide leadership and guidance to junior officers and play an integral role in maintaining discipline within operational police ranks. The decision-maker found that both the length of service and position within

²³ Exhibit 1, Part A, page 15.

²⁴ Exhibit 3.

²⁵ Ibid.

²⁶ Exhibit 1, Part A, page 16.

²⁷ Ibid.

the QPS ‘aggravate’ the circumstances of the conduct. Further, the decision-maker referred to the ‘inappropriate access and disclosure of information over a period of time is a serious matter’. The decision-maker referred to Ms O’Brien’s further disclosure of drug offences and confidential intelligence to [NT]. Ms O’Brien also disclosed to [NT] personal information relating to [CC]. The decision-maker referred to ‘these compounding factors’ and the ‘seriousness of the matter’ and determined that Ms O’Brien ‘significantly failed on this occasion’. The decision maker said:

This is extremely concerning for you as a Sergeant, and a person who should be upholding the values of the organisation, particularly in a leadership role...

...

When considering your choices and cumulative conduct, I lack confidence in your ability and suitability at this time to perform the duties associated with that of a Sergeant. The position of Sergeant is a trusted position within the [QPS], gained after several years of demonstrating sound decision making. A key responsibility of a Sergeant is that of guiding Constables at the coal face of policing, and to assist them in developing required skills to transition from junior member to senior member in frontline policing. The impact and influence Sergeants have on the development of Constables is a vital part of our organisational structure and one that can never be undermined.²⁸

- [18] In ordering a demotion in rank from Sergeant 3.3 to Senior Constable 2.9, the decision-maker said that given the delay in the proceedings of this matter, he considered that Ms O’Brien is able to apply for the rank of Sergeant on merit, effective immediately.²⁹ The decision-maker considered the effect of the sanction and said that it was not to cause embarrassment or a financial detriment. The decision-maker said:

The sanction I have ordered is an unavoidable consequence of the imposition of an appropriate sanction. The sanction is twofold, decisively addressing your conduct whilst sending a clear message of deterrence to all members of the Service of the unacceptable nature of this type of conduct. The primary intent of this sanction is not to cause you embarrassment for a financial detriment, but to resonate that your actions and choices did not meet the expectations the organisation would expect from a Sergeant of the [QPS].³⁰

What is the correct and preferable decision?

- [19] Ms O’Brien, on 12 separate instances between 21 May 2015 and 1 April 2016, accessed information held on the QPS computer system without an official purpose. In relation to the two disclosures of information, Ms O’Brien accessed an intelligence report in the presence of [NT], a member of the public. I find that Ms O’Brien’s conduct is serious.
- [20] Ms O’Brien also disclosed confidential information in a text message to [NT]. It is important to note that in the oral hearing of the review application, Mr Gnech appearing for Ms O’Brien submitted that although Ms O’Brien does not recall

²⁸ Exhibit 1, Part A, page 16, 17.

²⁹ Ibid, page 18.

³⁰ Ibid.

sending the text message, she accepts that she sent it on the basis that the evidence speaks for itself.

- [21] I am satisfied that Ms O'Brien's conduct for Matter One (that she is accepts) is misconduct in that it does not meet the standard of conduct the community reasonably expects of a police officer.³¹
- [22] In the oral hearing, Mr Gnech submitted that one of the critical issues to be considered in this matter is whether Ms O'Brien is not fit to be a Sergeant of the QPS. Mr Gnech referred the Tribunal to the evidence that was before the decision-maker that he said is relevant to the context of the relationship between Ms O'Brien and [NT], the local publican and [NT's] husband, [TT].
- [23] Mr Gnech submitted that [NT] was working behind the bar at the local pub and provided Ms O'Brien with information about certain people. Mr Gnech submitted that Ms O'Brien believed it was her duty to look these people up. Mr Gnech referred the Tribunal to the relevant extract of Ms O'Brien's transcript of interview now set out as follows:

...[NT] was working behind the bar um and they were, she was providing an intelligence to myself and to the relieving officer down there at the time, um [NT] knows a lot of people in town and I hadn't been in [the town] long and we ran names through she was giving us, as I would with ah anyone that provided names for me, [NT] seemed to know a lot about these people, providing that they were drug dealers, or um quite violent, as the officer in charge I believed it was my duty to look up these people, at no stage was [NT] provided with any information or shown the QLITE or anything like that, ah she was a few matters away from us whilst we did this, but close enough to still have a conversation as she did provide us names. Um, at one point [NT] did ask that she wanted a police Ipad and um she thought it was, she always [been] inquisitive at what police do, and she said how great it is that you can just look up names, ah so easily and I just laughed off her, her saying that she, ah well can you get me one of those, I took it as a joke um and I just took all the information in....³²

- [24] Mr Gnech submitted that the relationship between Ms O'Brien and [NT] was friendly at first and then 'soured'. Mr Gnech referred the Tribunal to the relevant extracts of Ms O'Brien's transcript of interview and submitted that the relationship between Ms O'Brien and [NT] soured after [NT's] husband, [TT] told Ms O'Brien that he was in love with her (Ms O'Brien). Mr Gnech submitted that the context of the relationship between Ms O'Brien and [NT] is relevant to support his submission that Ms O'Brien was 'naive' in relation to the conduct.
- [25] I accept Mr Gnech's submission that Ms O'Brien and [NT] had a relationship that may be described as a close friendship. During her interview Ms O'Brien, said that she would regularly go to the hotel in her 'own time' and would go there 'socially after work, after [her] shift'.³³ Further, Ms O'Brien's described her relationship with [NT] and [TT] as 'friendly'.³⁴ In her interview with the QPS, Ms O'Brien referred to first meeting [NT] and her husband in October 2013 when she was

³¹ See *Police Service Administration Act* 1990 (Qld), s 1.4.

³² Exhibit 1, Part A, page 121 line 146 to 166.

³³ Ibid, page 125 line 290 to 304.

³⁴ Exhibit 1, page 125.

Acting Sergeant and completing relieving duties as the officer in charge working with another Senior Constable.³⁵ Ms O'Brien said during the police interview that she was 'warned by the sergeant there' at the time to be 'careful of them' referring to [NT] and her husband.³⁶ Despite the warning, Ms O'Brien decided to make her own mind up about [NT] and [TT]. The relevant extract from the transcript of interview is as follows:

... I was warned by the Sergeant there [at the time] to be careful of them, I however make my own mind up about people and giving people a go. I became quite friendly with them, ah they seemed quite pleasant to me...³⁷

- [26] Ms O'Brien's evidence is that she was friends with [NT] on Facebook and when the position at the local police station was advertised [NT] became aware that the former Sergeant was leaving. Ms O'Brien said that [NT] and her husband [TT] telephoned her asking her (Ms O'Brien) to apply for the position. Ms O'Brien's evidence is that everything was fine until 13 February 2016 when [NT] went away. Ms O'Brien said;

...Um, then the Sergeant position at [the location] was advertised a couple of times I believe, ah [NT] was aware that [the officer] was leaving. I got a phone call from her, um and her husband I believe her was present as well [TT], um asking me to put in for the spot at [the location], which I ended up doing. Not because they asked me to but that was the outcome, um I had a great relationship with them and every previous sergeant has made a complaint about them from these people. Um, and they've got to the two or three month mark before getting a complaint, so for the past 12 months I've had a great relationship with the publicans there and also a great relationship with the people in town. There's a few people in town that don't like publicans, that has caused me a little bit of grief in town, however I've managed to sort it, to uh sort that out to a certain extent while I've been there. Um, so everything was fine going well, then on the, on the 13th of February 2016, [NT] was away with her brother [Redacted] and it was just [TT] running the pub. [NT] had asked myself and Daniel if we could come down and help [TT] ...³⁸

- [27] Ms O'Brien's evidence is that she visited the hotel on the 13 February 2016 and [TT] told her he was in love with her and said that her (Ms O'Brien's) tenure is up at the end of the year and that he had been planning to leave [NT]. Ms O'Brien's evidence is that [TT] said to her that 'we should leave together'.³⁹ Ms O'Brien's evidence is that she felt 'extremely uncomfortable'.⁴⁰ Ms O'Brien referred to her relationship with [NT] and [TT] as 'professional' and said that off duty she would consider them to be her 'friends'.⁴¹
- [28] Following the incident involving [TT], Ms O'Brien's evidence is that she went on holidays and when she came back [NT] would ring her a couple of times a day and send text messages asking why she was not going to the pub.⁴² Ms O'Brien's evidence is that she was continually getting phone calls and that she would say to [NT] that she is extremely busy at work. Ms O'Brien's evidence is that she told

³⁵ Exhibit 1, Part A, page 125.

³⁶ Exhibit 1, Part A page 125 line 305 to 309.

³⁷ Ibid, page 125, line 305 to 316.

³⁸ ibid page 126 line 321 – line 345.

³⁹ ibid page 127 line 358.

⁴⁰ Ibid, page 127, line 366.

⁴¹ Ibid, page 127, line 383.

⁴² Exhibit 1, Page 129.

[NT] about what happened at the pub on the 13 of February 2016. Ms O'Brien said she knew by doing that, that she would get a complaint made to the QPS.⁴³ During the police interview Ms O'Brien was asked whether the complaints were made by [NT] as a result of her telling [NT] about her husband and what he has said to her in particular that he wanted to be involved in a relationship with her. Ms O'Brien's said 'without a doubt. Absolutely'.⁴⁴

- [29] I accept Mr Gnech's submission that Ms O'Brien was 'naïve' in dealing with and being associated with [NT]. Ms O'Brien's evidence is that [NT] was providing information to her. Ms O'Brien said during her interview with the QPS that 'I saw this more as a friend telling me information about these people and obviously, I got a bit clouded there. Possibly should've not got so close to them'.⁴⁵ Ms O'Brien accepted that she had been warned by many people including 'hierarchy' in another police station to be 'careful'.⁴⁶ Ms O'Brien's evidence is that she 'ignored them' and accepts that she made an error in judgement referring to the error as learning as an officer in charge. Ms O'Brien's said 'this is a huge learning curve for me'.⁴⁷ The relevant extract from the police interview is as follows:

...I believe that I'm extremely capable ah in my role at [the location] um I run ah an extremely efficient station, my station has just been audited and ah found nothing wrong with it. I work hard, I have no issues, [the other officer] and I have no HR issues, we get on extremely well, our town [is] very happy with us, um, and I'd also like to say that I was warned um by many people including hierarchy in Mount Isa police station, ah to be careful. Um, I ignored that, I understand I've made an error in judgement, um learning as an officer in charge. And um this is a huge learning curve for me. ...⁴⁸

- [30] I accept Mr Gnech's submission made at the hearing that the context of the relationship between Ms O'Brien and [NT] may be described as a relationship that evolved into something unhealthy. Further, Mr Gnech's submitted at the hearing that Ms O'Brien was 'clouded' in the way that she dealt with her relationship with [NT]. I accept Mr Gnech's submission that there is evidence before the Tribunal about [NT's] character. Mr Gnech referred the Tribunal to a number of references completed by a member of the community where Ms O'Brien was stationed at the relevant time, and a reference from a police officer.⁴⁹ The references present [NT] in an unfavourable light in that they refer to [NT] as being, amongst other things, a 'vindictive' person⁵⁰ and a person who makes 'vexatious complaints about most police officers'.⁵¹
- [31] I do not accept, however, that the evidence about [NT's] character or that Ms O'Brien may have been 'clouded' in the way she dealt with [NT], in any way detracts from the seriousness of Ms O'Brien's conduct. The fact remains that [NT] and [TT] were members of the public and not police officers or 'professionals', as

⁴³ Exhibit 1, Part A, page 130 line 489.

⁴⁴ Ibid, page 131 line 509 to 511.

⁴⁵ Ibid, page 144 line 163 to 166.

⁴⁶ Ibid, page 154 line 533 to 535.

⁴⁷ Ibid, page 154 line 535 to 537.

⁴⁸ Ibid, page 154 line 528 to 543.

⁴⁹ Ibid, page 49.

⁵⁰ Ibid, page 49.

⁵¹ Ibid, page 51.

referred to by Ms O'Brien.⁵² Ms O'Brien on the other hand was a Sergeant and police officer in charge of a police station with some 7 years' experience and because of her position Ms O'Brien had access to information contained in the QPS computer system.

- [32] A police officer with some 7 years' experience should be aware of professional boundaries that must exist when working with members of the public, particularly when working in a regional area. More importantly, when dealing with a member of the public a police officer should maintain a professional relationship to ensure that his or her judgment necessary to perform police duties to a standard expected by the community, is not clouded by emotion or personal preference. Here, Ms O'Brien as a senior police officer, has allowed her judgment to be clouded in the exercise of her duties when dealing with a member of the public. This is clear from Ms O'Brien's evidence that she had a 'professional' relationship with [NT] and [TT] and that off-duty she considered them her 'friends'.⁵³
- [33] In relation to accessing the intelligence submission as particularised in Matter One (b), Mr Gnech submitted that there was no criminal mischief or corrupt mischief intended by Ms O'Brien. Indeed Ms O'Brien's evidence given during her interview with the QPS is that, as stated by Ms O'Brien, 'I've made an error in judgement, um learning as an officer in charge'.
- [34] The CCC says that the two disclosures of information related to matters associated with the *Drugs Misuse Act* 1986 (Qld).⁵⁴ The CCC submits that the accessing of an intelligence report in the presence of [NT] is the more serious of the two disclosures in that the intelligence report could have contained highly sensitive information.
- [35] I accept the CCC's submission that the intelligence report could have contained highly sensitive information. Further, I accept the CCC's submission that the intelligence report could have led to Ms O'Brien identifying an informant to [NT] in circumstances where the identification of an informant is 'strictly protected in legislation'.⁵⁵ I accept the CCC's submission that Ms O'Brien's actions in making the disclosure in the presence of a member of the public is 'nothing short of unprofessional and a gross lack of professional judgment particularly for a Sergeant of police'.⁵⁶ I also accept the CCC's submission that Ms O'Brien's use of another Constable of police's login details to access information on 11 November 2015 aggravates the conduct.⁵⁷ I accept the CCC's submission that this conduct in using another Constable's access details is a 'serious failing' by Ms O'Brien of her role as a Sergeant of police.⁵⁸ Further, I accept the CCC's submission that Ms O'Brien should be setting the example of appropriate conduct not utilising a junior officer's login details to commit the misconduct.⁵⁹
- [36] I accept that Ms O'Brien's conduct may as submitted by Mr Gnech, been out of character for Ms O'Brien. The fact remains, however, that Ms O'Brien was, at the time of the conduct, a Sergeant with a number of years' experience as a police

⁵² See Exhibit 1, Part A, p 127 line 382 to 383.

⁵³ Ibid.

⁵⁴ Submissions on behalf of the second respondent filed 18 January 2019, p 6.

⁵⁵ Ibid and see the *Drugs Misuse Act* 1986, s 119.

⁵⁶ Submissions on behalf of the second respondent filed 18 January 2019, p 6.

⁵⁷ Ibid, p 7.

⁵⁸ Submissions on behalf of the second respondent filed 18 January 2019, p 7.

⁵⁹ Submissions on behalf of the second respondent filed 18 January 2019, p 7.

officer. Further, Ms O'Brien was warned about [NT]. It is open for me to find that Ms O'Brien's conduct was not an isolated incident or a momentary lapse in judgement. Ms O'Brien has on 12 separate occasions accessed the QPS system. Some of the searches conducted by Ms O'Brien were in the presence of [NT]. Ms O'Brien has also released confidential information to [NT] using a mobile phone text messaging service. This conduct is very serious and although Ms O'Brien does not recall sending the text message I accept that the evidence clearly establishes that a text message was sent from Ms O'Brien's phone to [NT] containing the information as particularised in the charge.

- [37] At the oral hearing, Mr Gnech submitted that Ms O'Brien's matter does not 'comply' with the new disciplinary regime. In written submissions, the Tribunal is referred to, amongst other things, the fact that one of the aims of the new system is to improve performance by providing appropriate training and guidance to officers whose conduct has come into question due to an identified underlying issue.⁶⁰ In the oral hearing, Mr Gorry appearing for the CCC conceded that a feature of the new disciplinary system is to 'correct behaviour'. Mr Gorry submitted, however, and I accept Mr Gorry's submission, that any suitable programs or training do not take away the fact that Ms O'Brien is not fit to act as a Sergeant of police because of the misconduct.
- [38] I do not accept Mr Gnech's oral submission that there is 'a line drawn in the sand' with respect to the Commissioner's email about accessing information.⁶¹ I find that the community would expect that a Sergeant of police in a frontline position would be aware of boundaries and the safekeeping of information obtained or accessed from the QPS computer systems. Although it is uncertain as to whether Ms O'Brien received the Commissioner's email dated 30 March 2016 in relation to accessing the QPS database, this is but one of many matters to be considered in determining the correct and preferable sanction. Similarly the issue of delay although unfortunate is again one of many matters to consider.
- [39] I accept that Ms O'Brien has cooperated with the QPS and continued to perform her duties since the commencement of the disciplinary proceedings. As reflected in the reference from Senior Sergeant Neumann dated 23 February 2019 who attests to Ms O'Brien's duties performed between July 2017 and October 2017.⁶² Senior Sergeant Neumann states that Ms O'Brien undertook her duties to a high standard and demonstrated a high work ethic. Senior Sergeant Neumann attests to Ms O'Brien's willingness to undertake the full range of duties associated with the counter. There is no evidence before me, however, that Senior Sergeant Neumann is aware of the details of the disciplinary proceedings. Even if Senior Sergeant Nuemann was aware of Ms O'Brien's conduct concerning the disciplinary proceedings, the evidence of Ms O'Brien's commitment to her duties as a police officer since the date of the conduct giving rise to the disciplinary proceedings is one of a number of matters I must consider on review.
- [40] In relation to the period of delay in the disciplinary proceedings, I accept that any period of delay in disciplinary proceedings is regrettable. The delay in this matter is not excessive, although, should obviously be considered for the purposes of good conduct since the commencement of the disciplinary proceedings and furthermore

⁶⁰ Applicant's review submissions (sanction) filed 19 December 2018.

⁶¹ Exhibit 3.

⁶² Exhibit 1, Part A, page 40.

the effect of any sanction imposed may also be relevant.⁶³ The Tribunal in reviewing the sanction imposed is standing in the shoes of the decision maker and in determining the appropriate sanction cannot in any way downplay the aggravating features of the conduct that are particularly relevant given Ms O'Brien's rank as Sergeant at the time of the conduct, the fact that she was warned about [NT], and despite the warnings engaged in the conduct. Ms O'Brien held a trusted position within the QPS and more importantly was working in a small community. After Ms O'Brien was warned about [NT] she continued to engage in a relationship that may be described as becoming overly familiar and Ms O'Brien concedes that this was naivety on her part and in the breakdown of the friendly relationship has led to a complaint being made about Ms O'Brien. Ms O'Brien in her trusted position accessed information that could have contained informant details and released the information to [NT]. Some of the information was accessed by Ms O'Brien in the presence of [NT] and a text message was sent by Ms O'Brien to [NT] containing information from the QPS system. Further, Ms O'Brien has used another Constable's login details to conduct checks on 11 November 2015.

- [41] I have considered the comparatives referred to and relied upon by Ms O'Brien in these proceedings. In written submissions, the Tribunal is referred to *McKenzie v Acting Assistant Commissioner Tony Wright*⁶⁴ that is said to be relevant to the effect of demotion. In *McKenzie*, the Appeal Tribunal said that the effect of a demotion is 'very severe'. In *McKenzie*, the Appeal Tribunal also acknowledged that in more serious cases dismissal will be called for.⁶⁵ In *McKenzie*, the Honourable Thomas said:

The effect of demotion must be recognised as very severe. Apart from the disgrace associated with it, the demotion is accompanied by what is on any view a serious financial sanction.

Of course in more serious cases dismissal will be called for. In the present case we think that the appropriate response is demotion, accompanied by the equivalent of a serious fine. The only question is whether that which has been imposed is too great⁶⁶

- [42] In written submission, Mr Gnech says that Ms O'Brien's sanction is inconsistent with the sanctions imposed in other matters whether it be cases before or after the Commissioner's email dated 30 March 2016.⁶⁷ In written submissions, Mr Gnech refers the Tribunal to a number of matters involving the access of information on the QPS computer system by police officers who held various positions including, for example, the position of Constable, Senior Constable and Senior Sergeant.⁶⁸ I do not accept Mr Gnech's submission that the matters summarised in Mr Gnech's written submissions concern conduct that is similar to Ms O'Brien's matter taking into account Ms O'Brien's conduct and her position held. Unlike the matters identified in Mr Gnech's written submissions, Ms O'Brien, a Sergeant with 7 years' experience, has accessed the computer system on 12 occasions and released confidential

⁶³ See *Crime and Misconduct Commission v Swindells & Gardener* [2010] QCAT 490.

⁶⁴ [2011] QCATA 309.

⁶⁵ *Ibid*, [50].

⁶⁶ *Ibid*, [49]-[50].

⁶⁷ Applicant's review submissions (sanction) filed 19 December 2018 and see bundles of precedent cases.

⁶⁸ Applicant's review submissions (sanction) filed 19 December 2018 and see bundles of precedent cases.

information. Ms O'Brien has used another Constable's details to access information on 11 November 2015 and in relation to her dealings with [NT] and [TT] Ms O'Brien accepts that she was warned about [NT] and [TT] but chose to ignore the warnings.

- [43] I have also considered the decisions identified by Mr Gnech as 'precedent cases' involving the accessing of information by police officers.⁶⁹ As held by the Tribunal in *Crime and Corruption Commission v Acting Deputy Commissioner Barron and Anor*⁷⁰, each case will ultimately 'turn on its own facts' because no two cases are identical and there are 'a range of factors which will be relevant'.⁷¹ *Barron's* case involved a Constable of police who accessed and released confidential information. There was no evidence in *Barron's* case that the officer gained a financial or other benefit and the Tribunal found that the 'lack of ill intent and lack of personal gain' to the officer mitigates the seriousness of the conduct to be sanctioned.⁷²
- [44] Here, Ms O'Brien was sworn in as a police officer on 12 September 2008 and promoted to Sergeant as officer in charge on the 13 April 2015. I accept that Ms O'Brien was a competent professional and respected officer. I cannot disregard, however, the seriousness of the conduct and in bringing the public perspective to bear I am duty bound to impose a sanction that is not only reflective of the serious nature of the conduct but will also serve to be a deterrent to others.
- [45] In arriving at the correct and preferable decision I must in exercising my discretion balance all of the relevant factors including any relevant personal factors of the case 'but do not prevail over the protective disciplinary requirements'.⁷³ I have carefully considered Ms O'Brien's written submission and Mr Gnech's oral submissions made at the hearing. I accept that the effect of a demotion is very severe. Having regard to the seriousness of the conduct and the submissions including the comparable decisions and the purpose of discipline, I accept the CCC's submission that this is a serious matter with aggravating features in respect of the conduct in using another Constable's login details, disclosing confidential information to a member of the public and despite warnings from 'hierarchy' Ms O'Brien has formed a friendly relationship with a member of the public who was providing information to Ms O'Brien in her capacity as a police officer.
- [46] The decision-maker has correctly observed that the seriousness of Ms O'Brien's conduct is exacerbated by the fact that it commenced only a month after she was promoted to Sergeant. As observed by the decision-maker this demonstrates 'a lack of judgement and insight into the conduct and the inappropriate nature of it'.⁷⁴ I accept the decision-maker's observations about Ms O'Brien's length of service and position within the QPS at the time of her conduct namely she was considered a senior member of the QPS, expected to provide leadership and guidance to junior officers and play an integral role in maintaining discipline within operational police ranks.⁷⁵

⁶⁹ See bundle of precedent cases relied upon by the applicant.

⁷⁰ [2015] QCAT 96.

⁷¹ [2015] QCAT 96, [72].

⁷² *Ibid*, [58].

⁷³ *Ibid*, [26].

⁷⁴ Exhibit 1, Part A, page 16.

⁷⁵ *Ibid*.

- [47] I accept that a demotion in rank that will result in a demotion of pay points will have an impact on Ms O'Brien's salary. In relation to the reduction in rank, Ms O'Brien is able to apply for the position of Sergeant where such application will be considered on merit and can be made at any time while she holds the position of Senior Constable. I have also considered the effect of a demotion in rank in terms of causing Ms O'Brien embarrassment and whether a suspension of the sanction is appropriate.
- [48] I consider that a demotion is necessary in this matter particularly in circumstances where the conduct is serious with aggravating features and the police officer concerned held a trusted position within the QPS and should have gained years of experience as a senior police officer in leadership and guidance. Weighing up the seriousness of the conduct, Ms O'Brien's rank and length of service, Ms O'Brien's cooperation with the QPS in the disciplinary proceedings, the purpose of disciplinary proceedings, relevant cases and all of the submissions made in the review proceeding, I am satisfied that the correct and preferable decision is a demotion in rank. I do not accept, however, that a reduction in pay point to Senior Constable 2.09 (instead of Senior Constable 2.10) is appropriate in this matter given that there will be an impact on Ms O'Brien's finances by reason of the demotion. I consider that a reduction in pay points to Senior Constable pay point 2.10 is correct and preferable taking into account Ms O'Brien's cooperation in the disciplinary proceedings.
- [49] In light of Ms O'Brien's evidence in relation to her naivety and given that the conduct involved ethical decision making and accessing QPS computer systems I consider it appropriate that Ms O'Brien undertake the appropriate courses to address her conduct such as the courses proposed by the CCC to be completed within 12 months as follows:
- (a) Ethics and ethical decision making – (QC1022-02-A);
 - (b) Information security – (QCA0544); and
 - (c) QPRIME fundamentals – (QC0544-02).
- [50] I order that the decision made on 29 March 2018 be set aside and a decision substituted that Ms O'Brien be demoted in rank from Sergeant 3.3 to Senior Constable 2.10, effective from 29 March 2018 and that Ms O'Brien is eligible to progress subject to the usual industrial requirements effective from 29 March 2018. Further, Ms O'Brien must complete appropriate courses within 12 months from the date of this order.

Non-Publication Order

- [51] The allegations of misconduct in this matter relate to the access of official and confidential information on the QPS computer system. It is therefore necessary in this matter to redact, where appropriate, the Tribunal's reasons to avoid the publication of confidential information or information that could identify or lead to the identification of any persons other than Katie O'Brien, Assistant Commissioner Paul Taylor and any other police officers.
- [52] I order accordingly.