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# Case Review: Police Disciplinary Matters Proceeding through the QCAT

Robyn Schermer, Famin Ahmed, Loretta Benson, Sophie Blatcher

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# About the Authors

This paper was researched and authored by UQ law students **Robyn Schermer, Famin Ahmed, Loretta Benson** and **Sophie Blatcher** under the academic supervision of **Professor Heather Douglas**. It was prepared for and on behalf of Stephen Keim SC (Barrister-at-Law). Student researchers undertook this task on a *pro bono* basis, without any academic credit or reward, as part of their contribution to service as future members of the legal profession. The UQ Pro Bono Centre and student researchers thank Stephen Keim SC for allowing us to contribute to this important public interest issue.



# About this Case Review

This case review is a 'living document' that will be updated periodically to track and monitor complaints about Queensland police officers. Five UQ law students Robyn Schermer, Famin Ahmed, Loretta Benson and Sophie Blatcher are the original authors however it is anticipated that additional students will add to the document in future.

All case information contained in this review comes from the Queensland Civil and Administrative Tribunal (QCAT) website. The most recent case contained in this review was delivered on 20 January 2019. This document was last updated: **20 November 2019.**

# Disclaimer

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# Case Summaries

## *Crime and Corruption Commission v Assistant Commissioner Codd & Anor* [2019] QCAT 7

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|---|---|
| Case name | *Crime and Corruption Commission v Assistant Commissioner Codd & Anor* [2019] QCAT 7 |
| URL | https://archive.sclqld.org.au/qjudgment/2019/QCAT19-007.pdf |
| Court | QCAT |
| Date of judgment | 22 January 2019 |
| Type of matter | Whether charge substantiated |
| Complainant details | - |
| Offending officer | Unknown |
| Keywords | QPRIME – misconduct – misuse of computer system |
| Issue | Whether printing photograph of accused in a matter from QPS system and providing to complainant in that matter was improper conduct. |
| Facts | The officer released a photograph of a defendant accused of stealing a motorcycle to the man who reported his motorcycle was stolen.<br>There was some evidence in the form of police affidavits in objection to bail applications that the complainant was a member of another criminal motorcycle gang. Consequently, there was potential risk of retribution to the accused. |
| Decision and reasons | *The Police Service Administration Act 1990* (Qld) and police manuals allow the dissemination of images for operational purposes. The reasons for providing the photograph here, below, formed an operational purpose:<br>• to enable the recipient to identify the accused should he return to the venue;<br>• he thought the recipient could assist in solving further crime likely to be committed by the accused;<br>• he considered the recipient was fit to be a potential informant or witness to any further offending by the accused; and<br>• he considered the disclosure of information reasonably necessary for the prevention and detection of further offences by the accused.<br>It was possible the conduct was still improper based on the risk of safety of the accused. However, this was not so. There was no real evidence to support the recipient's association with the criminal motorcycle gang. The evidence from the previous police affidavits alleging this was merely speculative and hearsay. Thus, the risk to safety could not be determined by the judge. Additionally, the police officer had considered the recipient's age, presentation, employment and lack of criminal history before providing the photograph. |

## *Acreman v Deputy Commissioner Brett Pointing* [2018] QCAT 321

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|---|---|
| Case name | *Acreman v Deputy Commissioner Brett Pointing* [2018] QCAT 321 |
| URL | https://www.austlii.edu.au/cgi-bin/sign.cgi/au/cases/qld/QCAT/2018/321 |
| Court | QCAT |
| Date of judgment | 20 September 2018 |
| Type of matter | Whether the charge is substantiated; appeal of sanction – whether sanction excessive |
| Complainant details | - |
| Offending officer | Detective Inspector Geoffrey Owen Acreman, male |
| Keywords | QPRIME – misconduct – factors considered in mitigation – off-duty – non-publication order |
| Issue | Whether the police officer accessed confidential information contained in the QPS computer system without an official purpose. |
| Facts | The police officer and his wife went to a house to view an item for sale by the complainant. There, the complainant physically attacked the police officer unprovoked. The police officer subsequently searched the QPS computer system while off duty to make inquiries about the complainant. He claimed the searches were based on a suspicion that the complainant was a domestic violence perpetrator.<br>After the complaint was received, the police officer emailed a copy of the complaint folder on the QPS computer system to his private email address. |
| Decision and reasons | The police officer's conduct was improper.<br>In relation to the searches, the police officer's suspicions were formed during a private matter. There was no official purpose related to his duties as a police officer for him to make further inquiries about the complainant.<br>In relation to the emailing, the police officer was accessing a secure QPS system by means of a password and subject to relevant policies, including the Information Management manual. It followed that the documents emailed at all times remained confidential.<br>The sanction of reprimand was appropriate given the officer's long, blemish free service record. Though the officer argued his search was conducted in the public interest as he suspected the complainant to be violent, it was in relation to a private matter. Any connection to public interest was rejected in determining sanction. |

## *ZIL v Punchard & Anor* [2018] QCAT 274

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|---|---|
| Case name | *ZIL v Punchard & Anor* [2018] QCAT 274 |
| URL | https://archive.sclqld.org.au/qjudgment/2018/QCAT18-274.pdf |
| Court | QCAT |
| Date of judgment | 13 August 2018 |
| Type of matter | Interlocutory application (not appeal of Police Commissioner decision) |
| Complainant details | ZIL, female |
| Offending officer | Senior Constable Neil Punchard, male |
| Keywords | QPRIME – misconduct – domestic violence – non-publication order |
| Issue | Whether an employee police officer of an agency (Queensland Police Service) could be the respondent to a privacy complaint under the *Information Privacy Act*. |
| Facts | Punchard accessed the complainant's address on the QPS database and provided it to her violent ex-partner. Punchard had a personal relationship with the ex-partner.<br>Various domestic violence protection orders had been granted to prevent the ex-partner from contacting the complainant. As a result of the breach of privacy, the complainant and her children had to move. |
| Decision and reasons | The privacy obligations in the *Information Privacy Act* attach to the QPS rather than to individual employees. Privacy restrictions on employees would come from other sources. The police officer was thus removed as a party to the proceeding. |

## *Minns v Deputy Commissioner Martin* [2018] QCAT 213

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|---|---|
| Case name | *Minns v Deputy Commissioner Martin* [2018] QCAT 213 |
| URL | https://www.austlii.edu.au/cgi-bin/sign.cgi/au/cases/qld/QCAT/2018/213 |
| Court | QCAT |
| Date of judgment | 13 July 2018 |
| Type of matter | Appeal of sanction – whether too excessive |
| Complainant details | Multiple male complainants |
| Offending officer | Senior Constable Aaron Minns, male, Gold Coast region |
| Keywords | Use of force – complainant in custody – multiple complainants – misconduct |
| Issue | Whether deferral of promotion for five years is an excessive sanction |
| Facts | In an incident occurring in September 2014, after being involved in the arrest of a complainant, Minns kneed the man in the chest area after he spat at Minns. The complainant was restrained by handcuffs behind his back at the time.<br>In a second incident occurring in December 2014, following the complainant's arrest, Minns struck the handcuffed complainant with his fist in the back of his head and neck area. Minns then pushed the complainant into the police vehicle, resulting in injuries to his face.<br>In a third incident occurring in January 2015, Minns rushed past other officers who had control of the complainant, grabbed one of his wrists and dragged him to the floor, then striking him with a closed fist to the back of his head. The complainant was in custody and handcuffed at the time. |
| Decision and reasons | The use of force against the men were excessive and unnecessary, given they were already in handcuffs and practically defenceless.<br>The purpose of the sanction was to protect the public from future similar conduct by police officers, and thereby maintain public confidence in the police service. The serious misconduct required a substantial sanction. The seriousness was aggravated by the fact the complainants, though undoubtedly hostile at the time, were restrained and effectively defenceless.<br>Minns was considered of general good character and had a clean record of service, with the incidents representing brief lapses in this character. This was considered in mitigation of the sanction, along with the fact he exhibited remorse.<br>However, a year deferral of advancement was unduly harsh compared to similar cases. It would have a significant financial impact. A 12 month deferral was sufficient when combined with the other sanctions. |

## *Eaves v Commissioner of Police* [2018] QCAT 180

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| Case name | *Eaves v Commissioner of Police* [2018] QCAT 180 |
| URL | https://www.austlii.edu.au/cgi-bin/sign.cgi/au/cases/qld/QCAT/2018/180 |
| Court | QCAT |
| Date of judgment | 19 June 2018 |
| Type of matter | Appeal on issue of law |
| Complainant details | Female, age approx. 40, Caucasian |
| Offending officer | Multiple/non-specific |
| Keywords | QPRIME – privacy – misuse of computer system |
| Issue | Whether complainant could seek documents regarding QPRIME activity showing access to her records. |
| Facts | The complainant, a publicly known former model, obtained a redacted copy of a QPRIME (the Queensland Police Service information database) activity report. This showed her records had been accessed by at least 200 QPS staff. She believed such access was not for official or permitted purposes, as she had no criminal history other than minor traffic offences.<br>The redacted activity report was so heavily redacted that it was essentially meaningless. Thus the complainant sought an un-redacted activity report. She also sought documents relating to inquiries and audit that QPS made in relation to this complaint. |
| Decision and reasons | Public interest immunity under s 803 *PPRA* did not protect the documents from disclosure. Important considerations here included the complainant's fairness in presenting her case and public confidence in the police service, especially in circumstances where it is not denied by QPS that improper access had occurred.<br>However, blanket disclosure was also not appropriate due to the risks of indiscriminate release of QPRIME information. Further, much of the material would likely not assist the complainant.<br>To balance these concerns, the judge made an order allowing a Barrister acting for the complainant to view the material on a confidential basis to resolve the issue. |

## *Austin v Deputy Commissioner Peter Martin* [2018] QCAT 120

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| Case name | *Austin v Deputy Commissioner Peter Martin* [2018] QCAT 120 |
| URL | https://www.austlii.edu.au/cgi-bin/sign.cgi/au/cases/qld/QCAT/2018/120 |
| Court | QCAT |
| Date of judgment | 27 April 2018 |
| Type of matter | Appeal of sanction – whether too excessive |
| Complainant details | Middle aged woman, 15 YO male teenager, man (age unknown) |
| Offending officer | Constable Jason Marc Austin, male, station/region unknown |
| Keywords | Off-duty – dismissal – multiple complainants – misconduct |
| Issue | Whether police officer dismissed for conviction of criminal offences faced excessive sanction. |
| Facts | On an evening off duty, the police officer while heavily intoxicated at social gathering assaulted a woman, smashed her mobile phone, made inappropriate remarks to a man and struck another man.<br>Consequently, the police officer was dismissed from QPS. He sought review of this. |
| Decision and reasons | The delay in imposing the disciplinary sanction by QPS was not evidenced to have any specific detrimental effect on the police officer.<br>More weight should have been placed on the character references, which expressed opinions of prior good conduct and measures the officer had taken to deal with his relationship with alcohol. Further, the impact of the officer's diagnosed mental health condition (depression) was to be considered.<br>The sanction appropriate was dismissal from QPS, with dismissal wholly suspended on the condition that he does not commit further misconduct for two years. He was also ordered to participate in alcohol management programs. |

## *Crime and Corruption Commission v Assistant Commissioner Paul Taylor & Anor* [2018] QCAT 80

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|---|---|
| Case name | *Crime and Corruption Commission v Assistant Commissioner Paul Taylor & Anor* [2018] QCAT 80 |
| URL | https://archive.sclqld.org.au/qjudgment/2018/QCAT18-080.pdf |
| Court | QCAT |
| Date of judgment | 21 March 2018 |
| Type of matter | Appeal of sanction – whether too lenient |
| Complainant details | - |
| Offending officer | Constable Christopher Kevin Shepherd, male, Mount Isa region |
| Keywords | Dishonesty – theft – dismissal – misappropriation of funds |
| Issue | Whether officer should have been dismissed for dishonest dealings with funds, and whether penalty should be reduced due to delay in disciplinary action. |
| Facts | Officer was acting as president of the Mount Isa Police Recreation Club voluntarily. He acted dishonestly with club funds on nine occasions in using the PCYC debit card to make personal purchases. He continued to deny the dishonesty in subsequent interviews.<br>He was disciplined four years later by QPS, by having his pay reduced by two pay points for 12 months, the leniency influenced by delay. The Crime and Corruption Commission sought review of this decision. |
| Decision and reasons | The appropriate sanction was dismissal from QPS. This was mainly because the officer's ability to give truthful evidence as a witness in courts was undermined (and thus his value as a police officer) and that his conduct was a breach of trust. The conduct was demonstrative of an overall unfitness to serve as a police officer.<br>There were mitigating factors, such as the unfair effects of the delay meaning that dismissal now would be more severe than if it had occurred four years ago, however these factors did not change the fact that the officer remained unfit to serve as a police officer. |

## *Commissioner of Police v Flanagan* [2018] QCA 109

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|---|---|
| Case name | *Commissioner of Police v Flanagan* [2018] QCA 109 |
| URL | https://archive.sclqld.org.au/qjudgment/2018/QCA18-109.pdf |
| Court | Court of Appeal |
| Date of judgment | 5 June 2018 |
| Type of matter | Appeal on issue of law |
| Complainant details | Male |
| Offending officer | Senior Constable Stephen Flanagan, Longreach |
| Keywords | Use of force – use of a weapon – complainant in custody |
| Issue | Jurisdictional error – whether there was an error of law in the interpretation of s 615 of the PPRA. |
| Facts | The officer pulled over the complainant for speeding. The officer perceived it to be a high-risk traffic stop after the complainant failed to pull over initially. The officer's lights and siren were apparently not working. As the complainant reached for his license, the officer approached the car and pointed a gun at the complainant. The officer told the complainant to get out of the car, then forced the complainant up against the car and put him in handcuffs. The complainant alleged the officer had the gun pressed to his back.<br>The magistrate found the officer guilty of criminal offences. The prosecution disproved that the mistake of fact defence.<br>The District Court on appeal, remitted the matter back down to the Magistrate. In its view, the Magistrate incorrectly failed to consider whether the officer was lawfully exercising power under the PPRA (i.e. whether he held a reasonable suspicion to give rise to PPRA powers, and whether the force used was reasonably necessary).<br>The Commissioner now appealed the District Court decision on two grounds. |
| Decision and reasons | The District Court decision was partially correct, but the matter need not be remitted back down. The officer's convictions remained.<br>Ground 1 - error as to operation of s 615 PPRA: The District Court was correct in holding the Magistrate needed to consider whether the officer's conduct was lawful under the PPRA (and accordingly consider reasonable suspicion and reasonably necessary force).<br>Ground 2 – failed to conduct appeal as rehearing instead of remitting: The District Court erred in remitting the matter. The Court now was able to determine whether the officer's conduct was lawful pursuant to the PPRA based on the uncontested findings of fact made by the Magistrate. Given the Magistrate's rejection of the officer's evidence that he thought the vehicle was stolen and there was a weapon, it was not open to conclude the officer acted lawfully under the PPRA. |

## *Officer OJM v Deputy Commissioner Stephen Gollschewski* [2018] QCAT 89

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|---|---|
| Case name | *Officer OJM v Deputy Commissioner Stephen Gollschewski* [2018] QCAT 89 |
| URL | https://www.austlii.edu.au/cgi-bin/sign.cgi/au/cases/qld/QCAT/2018/89 |
| Court | QCAT |
| Date of judgment | 8 February 2018 |
| Type of matter | Appeal on issue of law; whether charge substantiated |
| Complainant details | Female (officer's spouse) |
| Offending officer | Redacted – name "OJM", Constable, Central region |
| Keywords | Off-duty – domestic violence – dismissal – misconduct |
| Issue | Whether allegations can be reconsidered in a disciplinary action after officer was notified earlier that no further disciplinary action was to be taken. |
| Facts | In 2004, allegations were made that the police officer had physically attacked his child. In 2005, QPS investigation was undertaken. The officer was notified that the allegation in relation to the attack on his child was substantiated and recorded, however no further action was warranted.<br>His wife also made allegations as to inappropriate conduct by the officer but these allegations, at the time, were found to be unsubstantiated. |
| Decision and reasons | Here, in finding a disciplinary allegation was substantiated, disciplinary action was taken irrespective of the sanction imposed (which in this case, was none). In recording the substantiation on OJM's service record a sanction of some sort arguably was imposed, irrespective of the advice that no further action would be taken.<br>Unless there is compelling argument that construction of the statutory scheme allows the repeated exercise of the statutory power taking disciplinary action for the same allegations, the power cannot be reopened. The judge allowed for the parties to make further submissions on this point. |

## *Jackson v Deputy Commissioner Gollschewski* [2017] QCAT 464

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|---|---|
| Case name | *Jackson v Deputy Commissioner Gollschewski* [2017] QCAT 464 |
| URL | https://www.austlii.edu.au/cgi-bin/sign.cgi/au/cases/qld/QCAT/2017/464 |
| Court | QCAT |
| Date of judgment | 22 December 2017 |
| Type of matter | Whether charge substantiated |
| Complainant details | 2 x female police officers, 3 x other females, no vulnerabilities from age |
| Offending officer | Detective Senior Sergeant Paul Jackson, Child Protection and Investigation Unit Surfers Paradise |
| Keywords | Sexual harassment – misconduct – factors considered in mitigation |
| Issue | Whether on review the relevant incidents regarding sexual harassment were substantiated, and whether the substantiated incidents amounted to misconduct. |
| Facts | The male police officer had personal relationship with female officer under his command. He was alleged to have sexually harassed the female officer, another female officer and other women. This harassment was in the form of verbal comments, text messages, touching. The Deputy Commissioner found all incidents substantiated. |
| Decision and reasons | The tribunal categorised the alleged incidents into ones that did occur and amounted to sexual harassment under s 119 *Anti-Discrimination Act 1991* (Qld), ones that did occur but did not amount to sexual harassment, and ones that did not occur.<br>Overall, aggravating factors the judge discussed included: that there was multiple woman, and it was a course of conduct over a period of time. Mitigating factors included: none of the woman were vulnerable due to age, it was not suggested any suffered emotional or psychological harm, the operation of the unit was not adversely affected, and none of the women complained about his behaviour to a senior officer (although it was accepted this was influenced by the officer's seniority and dominance).<br>For each specific woman, the judge made the following comments:<br>Ms A – no misconduct, due to their sexual relationship;<br>Ms B - misconduct as she clearly indicated her disapproval, and as officer in command his conduct had the potential of affecting morale and discipline;<br>Ms C – misconduct as his behaviour capable of affecting relationship between her organisation and the unit;<br>Ms D – misconduct, as comments were made at a time he commanded the unit and during police time, and during an official call to the unit; and<br>Ms E – not misconduct as it did not amount to sexual harassment, and she was not directly under his command. |

## *O'Keefe v Deputy Commissioner Brett Pointing & Anor* [2017] QCAT 299

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|---|---|
| Case name | *O'Keefe v Deputy Commissioner Brett Pointing & Anor* [2017] QCAT 299 |
| URL | http://www.austlii.edu.au/cgi-bin/sign.cgi/au/cases/qld/QCAT/2017/299 |
| Court | QCAT |
| Date of judgment | 5 September 2017 |
| Type of matter | Whether charge substantiated |
| Complainant details | Male |
| Offending officer | Constable Christopher O'Keefe |
| Keywords | Personal relationship – Dishonesty – conflict of interest |
| Issue | Whether misconduct is substantiated on the facts, whether officer deliberately untruthful during disciplinary hearing. |
| Facts | Constable O'Keefe attended the scene of a hit and run. O'Keefe was in telephone contact with former Sergeant Olsen whom he knew to be a friend of Nathan Choi's father. O'Keefe subsequently charged Nathan Choi with unlicensed driving but no other applicable offences.<br>In a disciplinary hearing the Commissioner found O'Keefe had diligently fulfilled his duties despite his personal interest involving Nathan Choi and that he had not provided false and misleading information on a QPS form.<br>O'Keefe disputed that he was untruthful during two disciplinary interviews relating to his conduct in the investigation of the accident. It was alleged that O'Keefe's lapses in memory were deliberately selective and self-serving, in an attempt to cover up poor work performance.<br>O'Keefe also disputed the charge itself as defective because 'deliberate' untruthfulness was not alleged. |
| Decision and reasons | The decision that Mr O'Keefe was untruthful is unsubstantiated.<br>Untruthfulness cannot be established through mere inaccuracy or mistake, unlike the charge of providing falsely stating or providing information. As such the charge was not found to be defective in itself.<br>Ultimately the Commissioner failed to negative the reasonable hypothesis that O'Keefe simply couldn't recall certain aspects of the conversation. The Commissioner also cannot point to any other facts or evidence which are consistent with untruthfulness. The fact that the memory lapses support O'Keefe's story is insufficient in itself. |

## *King v Deputy Commissioner Peter Martin* [2017] QCAT 291

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| Case name | *King v Deputy Commissioner Peter Martin* [2017] QCAT 291 |
| URL | http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/qld/QCAT/2017/291.html |
| Court | QCAT |
| Date of judgment | 28 August 2017 |
| Type of matter | Whether charge substantiated |
| Complainant details | Male |
| Offending officer | Sergeant David King, Townsville |
| Keywords | Theft/stealing – body camera |
| Issue | Whether misconduct substantiated on the facts. |
| Facts | King was called to assist two officers with an arrest. The initial responding officers searched and questioned a man who handed them $905 in cash. One officer placed the cash on the flat tray on the driver's side of the accused's utility.<br>Body camera footage shows King standing near where the money was last seen, and movements of his arms and upper torso allegedly depict him taking the money. King argued he was checking under the vehicle.<br>King denied taking the money, and maintained he was unaware of it until after the incident.<br>King contended the evidence gives rise to an alternative, plausible and innocent explanation for the missing money. |
| Decision and reasons | King did not know about the money when he arrived at the scene and was still unaware of it when he was standing at the passenger side of the vehicle. His explanation for his arm movements when standing near the location the money was last stated to be seen was plausible.<br>Evidence of the other officers was inconsistent as to the locations of different officers at different points and which officers searched the inside of the vehicle and toolbox. On the evidence King is not the only officer who could account for the missing money.<br>This decision was supported by body camera footage and testimony of other officers at the scene. |

## *Officer JGB v Deputy Commissioner Gollschewski* [2017] QCAT 146

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| Case name | *Officer JGB v Deputy Commissioner Gollschewski* [2017] QCAT 146 |
| URL | http://www.austlii.edu.au/cgi-bin/sign.cgi/au/cases/qld/QCAT/2017/146 |
| Court | QCAT |
| Date of judgment | 5 May 2017 |
| Type of matter | Appeal of sanction – whether too lenient |
| Complainant details | Female |
| Offending officer | Senior Constable, male, [station unknown] |
| Keywords | Misconduct – domestic violence – off-duty – personal relationship – QPRME – privacy – misusing computer system – factors mitigating sanction |
| Issue | Whether sanction appropriate given seriousness of misconduct |
| Facts | Number of acts of misconduct substantiated against the officer including: acts of domestic violence; threats to kill another person; improper behaviour towards wife and more junior officers in presence of wife.<br>It was also found he accessed confidential information from the police database, searching records of his wife and a variety of his and her family members and close friends, without official purpose. |
| Decision and reasons | The sanction of dismissal was appropriate, and suspension was not. Aggravating factors included:<br>• For police to effectively administer the *Domestic Violence Act* and criminal law in accordance with community and QPS expectations, the public is entitled to have confidence that officers will not commit acts of domestic violence or make threats to kill others.<br>• The officer improperly used his status, skills or authority by:<br>➢ before performing acts of misconduct, he often identified himself as a police officer to assert authority before performing some acts of misconduct;<br>➢ in one incident used a police-style take-down manoeuvre; and<br>➢ accessing of information on the QPS database.<br>• The conduct spanned over a lengthy period. It was irrelevant that some of the conduct involved off-duty conduct.<br>The argued mitigating factors were diminished by their circumstances:<br>• The behaviour was not 'out of character' given the lengthy period;<br>• Marriage breakdown stress did not excuse the behaviour, many police officers experience this while serving;<br>• Despite being while off duty, the conduct's nature & circumstances and misuse of status as a police officer renders it serious;<br>• His denials diminished any remorse;<br>• Delay in finalising charges was overwhelmed by seriousness of improper conduct;<br>• Rehabilitation sought only in due to disciplinary proceedings. |

## *RM v Queensland Police Service* [2017] QCAT 71

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|---|---|
| Case name | *RM v Queensland Police Service* [2017] QCAT 71 |
| URL | https://archive.sclqld.org.au/qjudgment/2017/QCAT17-071.pdf |
| Court | QCAT |
| Date of judgment | 7 March 2017 |
| Type of matter | Whether privacy breach substantiated |
| Complainant details | Former member of QPS, Age unknown |
| Offending officer | 'CF', rank unknown, station unknown |
| Keywords | Privacy |
| Issue | Whether the release of an email was a breach of privacy. |
| Facts | Complainant officer commenced a WorkCover claim for work related stress, anxiety and bullying. QPS needed to provide additional information to WorkCover. Offending officer sent an email to 10 QPS staff outlining:<br>• Complainant's name<br>• WorkCover Number<br>• The claimed injuries' nature and causes<br>Complainant contends that sending this email violates information privacy principles (IPP) in the *Information Privacy Act 2009* and interfered with the WorkCover claim and ongoing job prospects. QPS contends the email did not contain personal information and did not breach IPP, and if there was a breach it was legally justified. |
| Decision and reasons | **IPP 10 Breach – Substantiated**<br>*An agency can't use personal information for a purpose other than the purpose for which it was obtained*. There was personal information in the email. The information was not used for the purposes it was obtained for. 'Email was sent to address rumours relating to the WorkCover claim due to his responsibility for staff welfare,' rather than to respond to the claim.<br>**IPP 4 Breach – Not substantiated**<br>*An agency with control over documents of personal information must protect it against unauthorised access, use and disclosure.* QPS took all reasonable steps to safeguard the information, despite the email being an unauthorised use. It is not a provision of strict liability.<br>**IPP 9 Breach – Not substantiated**<br>*An agency must use only the parts of the personal information that are directly relevant to fulfilling the particular purpose.* The disclosure of all the information to the witnesses was relevant to the breach of IPP 10.<br>**IPP 11 Breach – Not substantiated**<br>*Agency cannot disclose information except to the individuals unless an exception applies.* The email did not constitute 'disclosure' as it was not sent to people outside the QPS and was just 'use' of information.<br>QPS ordered to apologise, reimburse costs and pay compensation. |

## *Crime and Corruption Commission v Dawes & Anor* [2017] QCAT 66

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| Case name | *Crime and Corruption Commission v Dawes & Anor* [2017] QCAT 66 |
| URL | https://www.austlii.edu.au/cgi-bin/sign.cgi/au/cases/qld/QCAT/2017/66 |
| Court | QCAT |
| Date of judgment | 6 March 2017 |
| Type of matter | Appeal of sanction – whether too lenient |
| Complainant details | Unknown |
| Offending officer | Sergeant Gregory Dawes, [station unknown] |
| Keywords | Breach of discipline – reviewable decision |
| Issue | Whether finding of breach of discipline and sanction was reviewable decision. |
| Facts | The regional police station received a call about a missing 83-year-old person. Sergeant Dawes told the officer who answered the call to check local hospitals and medical centres, offering no further advice. Another public member approached Mr Dawes about the missing person the next day. No action was taken until multiple hours later, when he notified the relevant search and rescue coordinator. The missing person was subsequently found deceased in a local national park.<br>In subsequent internal disciplinary action, it was found the conduct was breach of discipline. A sanction of two penalty points was imposed. The Crime and Corruption Commission (CCC) sought review of this decision, however the police officer argued the decision of was not reviewable. |
| Decision and reasons | Review application filed by the CCC was struck out.<br>A reviewable decision under the *CCC Act* does not extend to review of decision where a breach of discipline is alleged and found against an officer. There is no provision for a QCAT notice to be given when an allegation of breach of discipline is found to be substantiated. Further, reviewable decisions must be 'allegations of corruption', which include allegations of misconduct, but are distinct from breach of discipline. |

## *Nesterowich v Acting Assistant Commissioner Deborah Platz* [2017] QCAT 139

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|---|---|
| Case name | *Nesterowich v Acting Assistant Commissioner Deborah Platz* [2017] QCAT 139 |
| URL | http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/qld/QCAT/2017/139.html?context=1;query=police;mask_path=au/cases/qld/QCAT |
| Court | QCAT |
| Date of judgment | 3 May 2017 |
| Type of matter | Appeal of issue of law |
| Complainant details | Other police officers |
| Offending officer | Mr Kurt Nesterowich, Constable, Unknown station |
| Keywords | Reviewable decision – off duty – verbal aggression – intoxicated officer |
| Issue | Whether decision of Assistant Commissioner to terminate probationary constable for unlawful public conduct is reviewable. |
| Facts | Mr Nesterowich, while off duty and within his probationary period, approached three police officers. He touched the female officer's police radio fitted at chest level. He made offensive gestures and verbally abusive comments to the officers. He appeared intoxicated.<br>The Acting Assistant Commissioner issued a notice to Mr Nesterowich, to show cause for why he should not be terminated. This under s5.12(4) of the *Police Service Administration Act*, which grants the Commissioner power to terminate officer employment in the probationary period.<br>Despite his response, Mr Nesterowich's actions were held to be conflicting with organisational values and his employment was terminated. |
| Decision and reasons | The Acting Assistant Commissioner's decision to terminate probation was not reviewable. Having been made under s5.12(4) of the *Police Service Administration Act*, it was not a disciplinary action and therefore not a reviewable decision.<br>Mr Nesterowich also did not have a right to review the decision under s219BA of the *Crime and Corruption Commission Act*, as an 'allegation of misconduct'. Decisions must be 'disciplinary' in nature to be reviewable under s219BA. As the termination of probation is not disciplinary, it was not reviewable. |

## *Crime and Corruption Commission v Assistant Commissioner Dawson & Anor* [2017] QCAT 37

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| Case name | *Crime and Corruption Commission v Assistant Commissioner Dawson & Anor* [2017] QCAT 37 |
| URL | http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/qld/QCAT/2017/37.html?context=1;query=police;mask_path=au/cases/qld/QCAT |
| Court | QCAT |
| Date of judgment | 1 February 2017 |
| Type of matter | Appeal of sanction – whether too lenient |
| Complainant details | Unknown |
| Offending officer | Andrew Jacob Bayley, Constable, Rockhampton |
| Keywords | Use of force – misconduct – complainant in custody |
| Issue | Whether sanction imposed by Assistant Commissioner sufficiently reflected seriousness of misconduct. |
| Facts | A prisoner spat on Constable Bayley through the door of a Watchhouse cell. He responded by entering the cell and striking the complainant in the face with a closed fist.<br>For this misconduct, the Assistant Commissioner imposed a sanction of two penalty points.<br>The CCC applied for review, arguing the imposed sanction was disproportionate to misconduct involving excessive and inappropriate force. The parties presented a joint submission that an appropriate sanction would be reducing Constable Bayley's pay from Constable 1.4 to Constable 1.2 for 12 months. |
| Decision and reasons | The tribunal should not depart from the proposed sanction unless it falls outside the permissible range for the conduct. The proposed sanction of reduced pay was accepted. It appropriately reflected:<br>• the steps taken by Constable Bayley to address his actions, including admitting the misconduct and undertaking training sessions to improve his responses in future scenarios;<br>• his relatively junior position (only inducted into QPS 2 years prior), unlike other cases involving more senior officials and thus more serious sanctions;<br>• he was subject to provocative behaviour by the prisoner; and<br>• nevertheless, this was serious misconduct as police officers must be restrained and professional when encountering such behaviour. |

## *Kuhn v Deputy Commissioner of Police Brett Pointing* [2017] QCAT 16

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| Case name | *Kuhn v Deputy Commissioner of Police Brett Pointing* [2017] QCAT 16 |
| URL | http://www8.austlii.edu.au/cgi-bin/sign.cgi/au/cases/qld/QCAT/2017/16 |
| Court | QCAT |
| Date of judgment | 18 January 2017 |
| Type of matter | Appeal of sanction – whether too excessive |
| Complainant details | Female |
| Offending officer | Senior Constable Michael Kuhn, Toowoomba watchhouse |
| Keywords | Use of force – complainant in custody - CCTV |
| Issue | Whether the sanction was excessive in light of mitigating circumstances and unintended financial consequences. |
| Facts | After apparently suffering verbal abuse from the complainant, the officer extracted her from her cell and placed her in a throat grip, not intended to choke her, and walked her backwards along a hallway. The officer then, using both hands, forcefully pushed her backwards into a padded cell, where she stumbled backwards and fell, striking the wall of the cell.<br>The officer appealed the sanction of 12 months demotion. |
| Decision and reasons | Mitigating factors included:<br>• Early acknowledgment and acceptance of responsibility for his actions;<br>• Early cooperation with the disciplinary process;<br>• Admission of misconduct in its entirety;<br>• Agreement to seek counselling and complete community service;<br>• Lengthy good service record (26 years), though the officer had previously committed misconduct in 2012.<br>These are insufficient of themselves to outweigh the conduct entirely, thus a demotion is still appropriate.<br>Demotion is a severe penalty, it carries both financial penalty and considerable social disgrace. The officer suffered additional, unintended, financial penalty from a marginal pay-rise that was backdated to the period during which the officer was under the demotion. Because this compounded the penalty, a six-month demotion was more appropriate. |

## *Crime & Corruption Commission v Deputy Commissioner Pointing; O'Sullivan v Deputy Commissioner Pointing* [2016] QCAT 510

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| Case name | *Crime & Corruption Commission v Deputy Commissioner Pointing; O'Sullivan v Deputy Commissioner Pointing* [2016] QCAT 510 |
| URL | http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/qld/QCAT/2016/510.html |
| Court | QCAT |
| Date of judgment | 23 December 2016 |
| Type of matter | Appeal of sanction – whether too excessive |
| Complainant details | Male, unspecified disability |
| Offending officer | Senior Constable Michael O'Sullivan, Deagon |
| Keywords | Use of force – off-duty – factors mitigating sanction |
| Issue | Whether the sanction is excessive, whether certain facts within ambit of charge and influential of the imposed sanction. |
| Facts | O'Sullivan, while off-duty, confronted GTB in a service station, alleging he had been involved in a driving incident. After brief argument, O'Sullivan applied force to GTB's arm, pushing him into a bowser. GTB fell to the ground and at some point prior had been incontinent of urine. At some point during the incident O'Sullivan identified himself as a police officer.<br>The charge related to O'Sullivan's use of force.<br>Multiple disputed facts which could potentially affect the sanction, but their relevance to the specific charge was disputed. |
| Decision and reasons | Facts which CCC alleged that were irrelevant to the charge included:<br>• The speed at which O'Sullivan entered the service station.<br>• Whether O'Sullivan knew the complainant was a disability pensioner.<br>• Whether O'Sullivan expressed his intention to arrest. It does not make the charge more serious that force was used under circumstances not associated with an arrest. Even if it was relevant it would not add to the objective seriousness of the conduct. It was not clear what GTB was to be arrested for and on what basis – failure to declare it as an arrest is secondary to this and therefore does not affect the severity.<br>The original sanction was too excessive. A substituted sanction reduced his pay-point from 2.4 to 2.1 for 12 months and a suspended demotion on certain conditions. This reflected:<br>• Mitigating factors – including<br>➢ remorse (he sought counselling without prompting); and<br>➢ good work history and performance.<br>• Aggravating factors including:<br>➢ the serious misuse of power by a police officer against a member of the public; and<br>➢ causing distress to witnesses and GTB's partner, reflecting poorly on the QPS. |

## *Newman v Assistant Commissioner Condon* (No 2) [2016] QCAT 448

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| Case name | *Newman v Assistant Commissioner Condon* (No 2) [2016] QCAT 448 [see also [2016] QCAT 153 below] |
| URL | https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/qld/QCAT/2016/448.html?context=1;query=police;mask_path=au/cases/qld/QCAT |
| Court | QCAT |
| Date of judgment | 18 November 2016 |
| Type of matter | Whether charge substantiated |
| Complainant details | Multiple QPS staff |
| Offending officer | Nikolas Newman, Senior Constable, Mackay |
| Keywords | Misconduct – breach of discipline – dishonesty – off duty – multiple complainants – verbal aggression |
| Issue | Whether disciplinary findings substantiated and appropriate sanction. |
| Facts | Multiple misconduct charges were substantiated in a previous QCAT decision (summarised separately):<br>1. Failed to treat members with dignity and respect.<br>• Counts 1-2: speaking to QPS staff at precinct aggressively<br>• Counts 3-4: phone communication with QPS<br>2. Drove police vehicle at excessive speed when not justified.<br>3. Submitted official report with false/misleading information<br>4. Unprofessional towards members of public while off duty, including grabbing hold of a person without authorisation, justification or excuse.<br>5. Knowingly provided false information during investigation.<br>Mr Newman accepted matters 2, 3, 4, but contested 1 and 5. |
| Decision and reasons | In relation to whether charges substantiated:<br>• Matter 1:<br>➢ Counts 1-2: substantiated, but amounted to breach of discipline, not misconduct. How he spoke to colleagues did not 'cross the line' and amounted to conduct the public would say is not befitting of an officer. QCAT cannot impose sanctions for breach of discipline.<br>➢ Counts 3-4: charges not substantiated, given the context of the events Mr Newman was dealing with.<br>• Matter 5: misconduct charge substantiated.<br>The sanction was reducing from rank 4.2 to 2.9 for 1 year, a serious sanction reflecting the fact that:<br>• Matters 1, 2 and 4 involved unrestrained behaviour, and volatility contrary to controlled and professional behaviour required of police officers;<br>• Matter 2 placed other road users at risk;<br>• Matter 3 and 5 undermine trust between QPS and its officers, and the confidence it can have to bestow authority on the officer. |

## *Koekemoer v Deputy Commissioner Gollschewski* [2016] QCAT 355

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| Case name | *Koekemoer v Deputy Commissioner Gollschewski* [2016] QCAT 355 |
| URL | http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/qld/QCAT/2016/355.html?context=1;query=police;mask_path=au/cases/qld/QCAT |
| Court | QCAT |
| Date of judgment | 6 October 2016 |
| Type of matter | Appeal of sanction – whether too excessive |
| Complainant details | - |
| Offending officer | Douglas Koekemoer, Sergeant, Ayr |
| Keywords | Theft – dishonesty |
| Issue | Whether the sanction imposed taking private property was excessive |
| Facts | Mr Koekemoer took a bench seat from Ayr Golf Course while patrolling, and moved it to Ayr Police Station, without the owner's permission or knowledge. It was used as a seat by police officers smoking at the station.<br>Mr Koekemoer admitted to the conduct and asserted his belief that the bench was no longer being used. He stated he had intended to return to the Club during the day and tell them. |
| Decision and reasons | The sanction was a demotion from Sergeant pay 1 to Constable pay 6, for 12 months, a transfer to Kirwan station (given the impact this conduct can have for police reputation in small towns). He is not eligible for promotion for 12 months.<br>Mitigating factors included:<br>• No previous misconduct in long service as police officer<br>• 31 references to attest to his character<br>• Conduct was different to his usual standard of conduct<br>• He admitted to the conduct, and expressed clear remorse<br>• Time delay in proceedings<br>• Significant financial loss suffered from the sanction<br>Aggravating factors included:<br>• He was a senior officer<br>• He was on duty, and acted with the assistance of a Junior Officer<br>• It was done for personal advantage<br>• The patrol was undertaken to look for a bench, which was not a suitable use of resources<br>• Reckless to conclude no one was using the bench<br>• No evidence he planned to tell the club<br>• Damaged the reputation of the police in Ayr, especially given complainant was a community organisation in a small town |

## *Rohweder v Acting Assistant Commissioner Keating* [2016] QCAT 347

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| Case name | *Rohweder v Acting Assistant Commissioner Keating* [2016] QCAT 347 |
| URL | http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/qld/QCAT/2016/347.html?context=1;query=police;mask_path=au/cases/qld/QCAT |
| Court | QCAT |
| Date of judgment | 27 September 2016 |
| Type of matter | Appeal of sanction – whether too excessive |
| Complainant details | Unknown |
| Offending officer | Paul Rohweder, Senior Constable |
| Keywords | Vehicle pursuit – dishonesty |
| Issue | Whether sanctions imposed for various acts of misconduct was excessive. |
| Facts | Over six months, the officer:<br>1. Failed to stop at a red traffic light.<br>2. Submitted a misleading report about the failure to stop, stating he was following an offending vehicle through the intersection.<br>3. Engaged in an unjustified pursuit. The officer first tried to intercept the vehicle which registered on the ANPR system (for an unknown reason), then commenced pursuit. He stopped when advised the car was not stolen, rather its registration expired.<br>The commissioner initially imposed a sanction of reduction of rank from Senior Constable 2.9 to Constable 1.6 for three months. |
| Decision and reasons | The sanction was affirmed. It appropriately reflected that:<br>• in relation to Matter 2, the officer intended to mislead;<br>• in relation to Matter 3, the QPS pursuits policy forbids pursuits except in specified circumstances not met here, and there was a serious safety risk;<br>• the officer's depression did not explain or mitigate the conduct;<br>• the need for specific and general deterrence;<br>• the need to maintain public confidence;<br>• as an officer of 20 years' experience, he influences other officers;<br>• he was employed at Road Policing Command; and<br>• his history of earlier incidents, including disciplinary charges for other road policy breaches for which he was under a suspension period. |

## *Officer JGB v Deputy Commissioner Gollschewski and Anor* [2016] QCAT 348

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| Case name | *Officer JGB v Deputy Commissioner Gollschewski and Anor* [2016] QCAT 348 [see also appeal of sanction – [2017] QCAT 146 |
| URL | https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/qld/QCAT/2016/348.html |
| Court | QCAT |
| Date of judgment | 26 September 2016 |
| Type of matter | Whether charges substantiated |
| Complainant details | Female, Age Unknown, Spouse of Officer |
| Offending officer | 'Officer JGB', Senior Constable, Station Unknown |
| Keywords | Domestic violence – off duty |
| Issue | Whether numerous acts of misconduct related to domestic violence substantiated. |
| Facts | The conduct related to one core charge regarding ongoing acts of domestic violence against his spouse ALB. Claims included that JGB:<br>1. Committed acts of domestic violence against his spouse<br>2. Made abusive/threatening phone calls to DC<br>3. For unofficial purposes, accessed confidential QPS information<br>4. Failed to treat ALB and 2 Constables with respect (when they arrived at the scene of domestic violence)<br>5. Failed to treat Court and Magistrate with respect<br>6. Conducted unauthorised investigations regarding an application for a domestic violence protection order<br>7. Inappropriately involved himself in communications with his aggrieved spouse prior to withdrawal of DVO<br>8. Used QPS email to send personal external emails<br>9. Applied for recreation leave when 2 days related to sick leave<br>JGB seeks finding that (1) is unsubstantiated; (4) & (6) are unsubstantiated or only a breach of discipline, (5) is not misconduct, (7) is denied. Matters (2), (3), (8) and (9) were not challenged. |
| Decision and reasons | 1. Substantiated. Given the role of police officers in administering the *Domestic Violence Act*, these acts demonstrate a lack of integrity and substantially erode the trust and confidence of colleagues and members of the public. Thus they amount to misconduct.<br>4. Amounts to misconduct. Neither the officer's stress levels nor the fact he was off duty were mitigating factors.<br>5. Charge unsubstantiated. No failure to accord dignity as the comments were not unusual/disrespectful given the context of the high stress/high conflict situation.<br>6. Charge unsubstantiated. While JGB did speak to a lady about a DV issue he did not purport to treat it like an investigation.<br>7. Charge unsubstantiated. Some communication did occur but it did not amount to 'inappropriate involvement'.<br>Sanction hearing would be heard at a later date. |

## *Frazer v Assistant Commissioner Michael James Condon* [2016] QCAT 271

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| Case name | *Frazer v Assistant Commissioner Michael James Condon* [2016] QCAT 271 |
| URL | http://www.austlii.edu.au/cgi-bin/sign.cgi/au/cases/qld/QCAT/2016/271 |
| Court | QCAT |
| Date of judgment | 20 July 2016 |
| Type of matter | Appeal of sanction – whether too excessive |
| Complainant details | - |
| Offending officer | Jeffrey Frazer, Senior Constable, Caloundra Station |
| Keywords | Privacy – conflict of interest – QPRIME |
| Issue | Whether proportionate sanction imposed for accessing and releasing confidential information and misusing police resources. |
| Facts | A sanction of reduction in rank from Senior Constable 2.9 to Senior Constable 2.5 (causing approximately $7200 loss per year) was originally imposed for two matters:<br>1. Accessing and releasing confidential information without official purpose. The information was intelligence reports and transport records about people he knew.<br>2. Misuse of police resources and unexplained absences. Without authorisation, the officer on separate occasions:<br>• Collected a friend in a police vehicle, dropped him to a party and stayed there for 20 minutes;<br>• Asked on-duty colleagues to drop him to a private location, and again to collect him; and<br>• Attended a residential address and stayed for 20 minutes. |
| Decision and reasons | Sanction was affirmed. It reflected the fact that:<br>• In relation to the confidential information:<br>➢ there was a breach of the *Police Service Administration Act* 1990 and the applicable professional guidelines; and<br>➢ even though his actions were to assist his friends (not for personal gain), this erodes the public confidence in the neutrality of the policing service.<br>• In relation to the improper use of resources:<br>➢ the conduct affects all taxpayers; and<br>➢ the cumulative impact of the conduct was serious.<br>• The officer had a history of two disciplinary proceedings (one involving alcohol at the police station and the other involving an unexplained absence). |

## *Marigliano v Queensland Police Service* [2016] QCAT 110

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| Case name | *Marigliano v Queensland Police Service* [2016] QCAT 110 |
| URL | https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/qld/QCAT/2016/110.html?context=1;query=police;mask_path=au/cases/qld/QCAT |
| Court | QCAT |
| Date of judgment | 10 May 2016 |
| Type of matter | Whether privacy breach substantiated |
| Complainant details | Male, Age Unknown, Vulnerabilities Unknown |
| Offending officer | Senior Constable Anthony Cooney |
| Keywords | Privacy – body camera |
| Issue | Whether QPS breached Information Privacy Principles when entering private property to serve documents. |
| Facts | Two Senior Constables drove to complainant's residence. Senior Constable Cooney activated his body camera and walked to the front door. He served the complainant with a Notice to Appear. The complainant was not informed that the camera recorded the 10-minute conversation, and alleged this breached IPP 1, 2 and 3 from the Information Privacy Act. |
| Decision and reasons | None of the alleged IPPs were breached:<br>• **IPP 1** (*Prohibits the collection of personal information unless lawful and fair*): While the complainant was not told about the recording, the recording was not deceptive, or outside the scope of the investigation. Further, he was acting in the scope of his duty as the notice was served correctly.<br>• **IPP 2 & 3**: These IPPs do not apply to police under s29 of IPA if noncompliance is necessary for the enforcement of QPS duties.<br>Further, in terms of other relevant legislation:<br>• the *Invasion of Privacy Act* does not prohibit the use of a listening device for private conversation, where the person using the device is a party to the conversation; and<br>• the use of the optical component is allowed under *PPRA* s325(6), when the presence of the officer is not an offence. Since they were lawfully at the residence, recording the images was also lawful. |

## *Francis v Crime and Corruption Commission & Anor* [2015] QCA 218

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| Case name | *Francis v Crime and Corruption Commission & Anor* [2015] QCA 218 |
| URL | https://archive.sclqld.org.au/qjudgment/2015/QCA15-218.pdf |
| Court | Supreme Court of Queensland |
| Date of judgment | 6 November 2015 |
| Type of matter | Appeal of sanction – whether too excessive |
| Complainant details | - |
| Offending officer | Anthony Richard Francis, Constable, Station Unknown |
| Keywords | Dishonesty – multiple complainants – conflict of interest |
| Issue | Applying for leave to appeal a decision by QCAT which ordered that the applicant be dismissed from the Queensland Police Service. |
| Facts | Three matters were substantiated in disciplinary proceedings:<br>1. Improper conduct relating to inappropriate use of police vehicles.<br>2. Improper conduct falling in four categories:<br>• Reported a stolen a vehicle subject to dispute involving the officer's acquaintance, and returned the vehicle to the acquaintance against policy;<br>• Investigated the theft of a flatmate's property, entered a dwelling, seized property and arrested the suspect;<br>• Searched and accessed records of various people for purposes unrelated to official duties and improperly released information; and<br>• Discussed with another officer in public questions about a CMC investigation that had a non-publication order and 'the need to get [their] stories straight.'<br>3. Improper conduct in two categories:<br>• Engaged in reprisal against another officer. He purchased dog food and bowl and sent to the officer to open around others.<br>• Failed to report improper conduct of another officer<br>The officer sought leave to appeal QCAT's decision to impose a sanction of dismissal for Matter 2. Judicial review was only available on questions of law. The officer argued that QCAT:<br>• failed to consider his conduct & post-suspension performance; and<br>• misunderstood the reasons for the original decision. |
| Decision and reasons | Application for leave to appeal refused.<br>There were no errors in law. QCAT had not misconstrued the reasons for the original decision. Further, his conduct and post-suspension performance were taken into account, they were simply given little weight. |

## *Scott v Assistant Commissioner Peter Martin* [2015] QCAT 423

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| Case name | *Scott v Assistant Commissioner Peter Martin* [2015] QCAT 423 |
| URL | http://www.austlii.edu.au/cgi-bin/sign.cgi/au/cases/qld/QCAT/2015/423 |
| Court | QCAT |
| Date of judgment | 21 October 2015 |
| Type of matter | Appeal of sanction – whether too excessive |
| Complainant details | - |
| Offending officer | Senior Constable Lyane Scott, female, Indooroopilly Station |
| Keywords | Driving under the influence – intoxicated officer – factors mitigating sanction – dishonesty – misconduct |
| Issue | Whether sanction reducing officer from Senior Constable to Constable for a minimum of six months was excessive. |
| Facts | The police officer presented for work under influence of alcohol. Alcohol testing during her shift returned readings of 0.121% and 0.118%. She untruthfully told a senior officer she had caught a bus to work. When later confronted, she admitted she had driven herself.<br>Three weeks later, she wrote a letter of apology, expressing her shame and embarrassment, and outlining the personal circumstances at the time:<br>• her mother had passed away approximately a year earlier;<br>• her father had two heart attacks that required hospitalisation;<br>• she had a back injury less than a year ago; and<br>• she had unresolved concerns about a senior officer who made unwarranted workplace behaviour against her, with whom she had to continue to work with.<br>Following the incident, she voluntarily initiated a rehabilitation program and attended counselling to address her issues. |
| Decision and reasons | The demotion for six months appropriately reflected the seriousness of the conduct while considering the mitigating factors.<br>The aggravating factors were:<br>• Being intoxicated as a police officer carries serious implications. She had a loaded fire gun and may have been required to decide whether to use it, and may have been required to drive a police vehicle.<br>• Police officers are responsible for administering drink-driving laws, there cannot be a public perception of double standards. Her alcohol reading was more than twice the legal driving limit.<br>• Her lie about driving contradicted the oath of a sworn officer.<br>The mitigating factors were:<br>• The officer had an exemplary service history;<br>• Her willingness to co-operate and take responsibility for her actions.<br>• Her initiative to rehabilitative steps |

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

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| Case name | *Crime and Corruption Commission v Acting Deputy Commissioner Barron & Anor* [2015] QCAT 96 |
| URL | https://archive.sclqld.org.au/qjudgment/2015/QCAT15-096.pdf |
| Court | QCAT |
| Date of judgment | 27 February 2015 |
| Type of matter | Appeal of sanction – whether too lenient |
| Complainant details | Male |
| Offending officer | Constable Scott Miers |
| Keywords | QPRIME – misuse of computer system – privacy – conflict of interest – personal relationship – misconduct – factors considered in mitigation |
| Issue | Whether the sanction was appropriate given the seriousness and ongoing nature of the misconduct. |
| Facts | The officer accessed and released confidential information from the QPS database about two different investigations. The suspects involved were the officer's friends. In one of the matters, the friend then contacted the complainant saying that his 'mate' is a police officer so he knew of the complaint details.<br>The QPS disciplinary proceedings followed and a sanction reducing one pay point suspended for a period of 12 months on condition of community service. |
| Decision and reasons | The sanction imposed was inadequate. It was replaced with reduction of one pay-point for six months and 80 hours community service. The financial impact of reducing pay was an important deterrent effect.<br>Mitigating factors included:<br>• the officer fully cooperated in the disciplinary process;<br>• the conduct was not maliciously or improperly motivated, and he received no personal gain from it.<br>Aggravating factors included:<br>• the conduct occurred over a protracted period and was not a brief lapse of judgment;<br>• an earlier conversation with another senior officer, where Mr Miers asked about the file, should have placed him on notice that he should not disclose any confidential information on database;<br>• police officers receive training about inappropriate accessing and disclosing of information;<br>• the potential consequences could have been very serious; and<br>• the misconduct has the potential to undermine confidence in the police service and integrity in police performing duties. |

## *Harvie v Commissioner Ian Stewart* [2014] QCAT 388

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| Case name | *Harvie v Commissioner Ian Stewart* [2014] QCAT 388 |
| URL | https://archive.sclqld.org.au/qjudgment/2014/QCAT14-388.pdf |
| Court | QCAT |
| Date of judgment | 6 August 2014 |
| Type of matter | Whether charge substantiated; appeal of sanction – whether too excessive |
| Complainant details | - |
| Offending officer | Senior Constable Paul William Harvie, Broadbeach Station |
| Keywords | Conflict of interest – personal relationship – dishonesty |
| Issue | Whether the charges are factually substantiated; whether the sanction is excessive |
| Facts | The officer developed a relationship with an aggrieved person who made a complaint about the conduct of her estranged husband.<br>The complaint resulted in a domestic violence protection order against the husband (the complainant). One year later, the officer was on duty with another officer in a marked vehicle when they stopped a vehicle driven by the complainant to undertake a random breath test. It was alleged the interception was deliberate.<br>The officer was alleged to have been untruthful in a disciplinary hearing when denying the interception was deliberate. |
| Decision and reasons | Misconduct in engaging in the relationship was substantiated. It is imperative there is a perception of impartiality in order to preserve public faith in the police force. The conduct of the officer called that into question.<br>The charge as to deliberate interception of the complainant's vehicle was unsubstantiated. The officer avoided interaction with the complainant and stayed in the police vehicle. As the complainant had a personal history with the officer, his evidence was found to be unreliable.<br>Consequently, the charge as to untruthfulness was also found to be unsubstantiated.<br>A three-month suspension was the most appropriate sanction. Demotion would impose excessive financial loss. Fine or reprimand would be too lenient and not reflective of the seriousness of the misconduct. Mitigating factors included:<br>• lengthy delay, resulting in financial detriment; and<br>• long service record with no incidents. |

## *O'Brien v Assistant Commissioner Stephen Gollschewski, Queensland Police Service* [2014] QCATA 148

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| Case name | *O'Brien v Assistant Commissioner Stephen Gollschewski, Queensland Police Service* [2014] QCATA 148 |
| URL | https://archive.sclqld.org.au/qjudgment/2014/QCATA14-148.pdf |
| Court | QCAT Appeals |
| Date of judgment | 24 June 2014 |
| Type of matter | Whether charge substantiated; Appeal of sanction – whether too excessive |
| Complainant details | - |
| Offending officer | Senior Constable Kelly O'Brien |
| Keywords | Driving under the influence – off-duty – factors considered in mitigation – breach of discipline |
| Issue | Whether drink-driving off duty constituted 'misconduct' or better suited breach of discipline and whether sanction of reducing salary to Senior Constable pay point 2.8 for nine months was excessive. |
| Facts | A police officer was caught drink driving off duty, with a blood-alcohol level of 0.070%. She had consumed 2.5 glasses of wine, water and a meal, and believed she was under the legal limit considering the time involved.<br>The QPS disciplinary process found the conduct substantiated and imposed a sanction reducing her salary from pay level 2.9 to pay level 2.8 for 12 months. A QCAT review reduced this period for 9 months. |
| Decision and reasons | Drink driving is an offence that the community does not expect its law enforcers to commit, and which the public is sensitive to the possibility of double standards. A police officer who drink drives, unless exceptional circumstances apply, meets the standard of 'misconduct'.<br>In terms of the sanction, the mitigating factors were a fairly low-level reading for an off-duty police officer with an excellent service record, and miscalculation. There are no aggravating factors. Considering the deterrence effected by the relevant financial loss, and a tarnished service record, a six month pay point reduction was more appropriate. |

## *Crime and Misconduct Commission v Acting Deputy Commissioner Barron & Alexander* [2014] QCAT 241

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| Case name | *Crime and Misconduct Commission v Acting Deputy Commissioner Barron & Alexander* [2014] QCAT 241 |
| URL | http://archive.sclqld.org.au/qjudgment/2014/QCAT14-241.pdf |
| Court | QCAT |
| Date of judgment | 13 May 2014 |
| Type of matter | Appeal of sanction – whether too lenient |
| Complainant details | Male |
| Offending officer | Senior Constable Stephen John Alexander, Male, Mt Gravatt |
| Keywords | Use of force – factors mitigating sanction |
| Issue | Whether the sanction was too lenient given the circumstances |
| Facts | Constable Alexander arrested a person assaulting a traffic control officer. When Alexander requested the person to 'shut up' and he did not respond, Alexander put his knee into his head, knocking him unconscious briefly.<br>He was dismissed, suspended on a conditional basis requiring mentoring by senior officers on 50% of shifts, community service and counselling. Mitigating factors included his initiative in seeking counselling and his personal circumstances.<br>The CMC applied for review of the imposed sanction, seeking a more rigorous mentoring scheme. |
| Decision and reasons | The sanction imposed must reflect the overall purpose of police disciplinary proceedings in Queensland.<br>The original decision on sanctions was set aside, substituting the conditions proposed jointly by the parties. The substituted conditions required completion of the community service within a stricter timeframe, imposed a more rigorous mentoring scheme and clarified the basis on which counselling was to occur.<br>These greater sanctions better reflective the level of disapproval of the Constable's actions and were rehabilitative. |

## *Biggin v Assistant Commissioner O'Regan* [2014] QCAT 175

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| Case name | *Biggin v Assistant Commissioner O'Regan* [2014] QCAT 175 |
| URL | https://archive.sclqld.org.au/qjudgment/2014/QCAT14-175.pdf |
| Court | QCAT |
| Date of judgment | 14 April 2014 |
| Type of matter | Whether charge substantiated; appeal of sanction – whether too excessive |
| Complainant details | Female |
| Offending officer | Inspector Paul Biggins, Mt Isa region |
| Keywords | Misconduct – CCTV – sexual harassment – dishonesty – off-duty |
| Issue | Whether finding of misconduct was appropriate and whether sanction imposed was excessive. |
| Facts | The officer and his colleagues had a social evening at a hotel. A female administrative assistant who was sitting next to him later complained to her supervisor that the Inspector touched her leg and made inappropriate comments at the event.<br>The supervisor told Inspector Biggins, who then contacted the manager of the hotel to obtain CCTV footage from the evening. He told the manager he needed the footage as someone made a complaint that he consumed liquor whilst on call.<br>Disciplinary action was taken for the inappropriate conduct towards the female and false representation to obtain the footage. The conduct was substantiated and sanction imposed for reducing by one pay point for 12 months. |
| Decision and reasons | The request for the CCTV footage showed a lack of understanding of the importance of the need for transparency in investigations. The misrepresentation compounded this. The conduct was misconduct.<br>The sanction imposed was not excessive. Again, Biggin demonstrated a lack of understanding of the importance of maintaining the integrity of an investigation into possible misconduct. It is important for the public to be satisfied that this process is fair and transparent.<br>The decision of the Commissioner was confirmed. |

## *O'Brien v Assistant Commissioner Gollschewski* [2012] QCAT 612

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| Case name | *O'Brien v Assistant Commissioner Gollschewski* [2012] QCAT 612 |
| URL | https://archive.sclqld.org.au/qjudgment/2013/QCAT13-612.pdf |
| Court | QCAT |
| Date of judgment | 8 November 2013 |
| Type of matter | Whether charge substantiated; appeal of sanction – whether too excessive |
| Complainant details | - |
| Offending officer | Senior Constable Kelly O'Brien, Kawana Police Station |
| Keywords | Off-duty – driving under the influence – breach of discipline – factors in mitigation |
| Issue | Whether the conduct constitutes 'misconduct' or a 'breach of discipline', and was the sanction imposed excessive? |
| Facts | On 20 May 2012, Senior Constable Kelly O'Brien, off-duty, assessed her level of sobriety after consuming two and a half glasses of wine at a police social event, and then decided to drive herself from the event. At approximately 8:50pm, O'Brien was stopped in a Random Breath Test (RBT) line in Mooloolaba. At 8:55pm, O'Brien submitted an RBT which was positive. At 9:10pm, a further RBT indicated a positive result. O'Brien had no recognized alcohol problem and had an unblemished QPS record. It was noted O'Brien served in the Forensic Crash Unit (2000 to 2003), gaining "significant experience in regard to traffic offences and detecting those who commit offences such as these". O'Brien pleaded guilty in court and was fined $400 and her driver's license was disqualified for one month. No conviction was recorded.<br>At first instance, O'Brien's salary was reduced from pay point 2.9 to 2.8 for a maximum period of 12 months, with O'Brien eligible to immediately return to pay point 2.9, subject to completion of all relevant progression requirements. |
| Decision and reasons | The tribunal found misconduct, but not 'breach of discipline'. O'Brien's conduct was a breach of criminal law, and inconsistent with community expectations of police officer conduct (e.g., not drinking in excess whilst driving).<br>The tribunal found the sanction excessive in the circumstances, referring to previous cases involving more serious offending. Embarrassment from media coverage of this case was not considered to be a mitigating factor for a lesser sanction. However, the officer's long and clean record of service was considered in her favour. The sanction of salary reduction from pay point 2.9 to 2.8 was amended to a maximum period of nine months, as opposed to 12. |

## *Wheeler v Assistant Commissioner Paul Wilson* [2013] QCAT 519

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| Case name | *Wheeler v Assistant Commissioner Paul Wilson* [2013] QCAT 519 |
| URL | https://archive.sclqld.org.au/qjudgment/2013/QCAT13-519.pdf |
| Court | QCAT |
| Date of judgment | 25 September 2013 |
| Type of matter | Appeal of sanction – whether too excessive |
| Complainant details | Multiple complainants |
| Offending officer | Senior Constable Jason Wheeler, Male, Toowoomba region |
| Keywords | Off-duty – use of force – factors mitigating sanction – multiple complainants – complainant in custody – minor complainant – verbal aggression |
| Issue | Whether the sanction was too excessive given the nature of the incident and various mitigating factors? |
| Facts | Around 12am, in Toowoomba, on the 13 December 2010, while walking home alone from a Police Christmas function, off duty Senior Constable Jason Wheeler was confronted by two youths who threatened him with a garden stake and threatened to 'roll him'. Afraid, Wheeler identified himself as a Police Officer and ran from the scene. The youths, allegedly up to six, gave chase. He called for police assistance. Soon after, police attended the area and arrested three youths. Wheeler returned to the scene, identified two of the three persons lying on the ground in custody, pushed past the arresting Police Officer, swore at the persons, and assaulted a youth by kicking him in the ribs. The three persons were charged with attempted armed robbery against Wheeler, but were not prosecuted further. Based on Wheeler's conduct, constituting unlawful assault and a criminal offence, Assistant Commissioner Wilson imposed the sanction: reduction of pay point from Senior Constable 2.9 to Constable 1.6 for two years, where afterwards he immediately return to his original rank and salary at Senior Constable 2.9, and the reduction in rank be suspended for 2 years provided Wheeler does not commit further acts of misconduct during the period, completes 250 hours of community service within two years, and not perform higher duties. |
| Decision and reasons | The tribunal found the sanction was too excessive given the nature of incident and external factors. The tribunal substituted a suspended sanction of reduction in rank from Senior Constable 2.9 to Senior Constable 2.5 for a period of one year conditional on only 70 hours of community service.<br>Factors in mitigation included: the frightening nature of the incident, even for an experienced police officer; Wheeler was left very agitated during all subsequent events, where 20 minutes was not considered a sufficient cooling-off period; the assaulted youth was also not in pain or harmed; there was considerable delay between the events and sanction imposition; the events had a considerable impact on both Wheeler and his family; and Wheeler was remorseful during the investigation of the complaint against him.Comparative sanctions were also considered in deciding the sanction was excessive. |

## *VG v Deputy Commissioner Barnett* [2013] QCAT 449

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| Case name | *VG v Deputy Commissioner Barnett* [2013] QCAT 449 |
| URL | http://www8.austlii.edu.au/cgi-bin/sign.cgi/au/cases/qld/QCAT/2013/449 |
| Court | QCAT |
| Date of judgment | 22 August 2013 |
| Type of matter | Appeal of sanction – whether too excessive |
| Complainant details | QPS Officer |
| Offending officer | Inspector, Brisbane |
| Keywords | Workplace harassment – dishonesty |
| Issue | Whether the sanction is excessive |
| Facts | The officer placed a can of dog food on the desk of another officer with whom he had had disagreements with. He denied being responsible for the can during a disciplinary interview and subsequently contacted other officers who knew of his involvement after being told not to discuss the investigation. He confessed a few days after his initial interview.<br>The initial decision found the officer demoted from Inspector to Senior Sergeant, with further pay point demotion conditionally suspended for 24 months. |
| Decision and reasons | The sanction was confirmed.<br>Mitigating factors included:<br>• stressful personal circumstances around the incident time; and<br>• general good character.<br>However, it was found the officer had no demonstrated insight into the seriousness of the conduct. Further, emphasis was placed on the especially high ethical standards expected of the role of Inspector. |

## *Crime and Misconduct Commission v Commissioner of Police & Anor* [2013] QCAT 362

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| Case name | *Crime and Misconduct Commission v Commissioner of Police & Anor* [2013] QCAT 362 |
| URL | https://archive.sclqld.org.au/qjudgment/2013/QCAT13-362.pdf |
| Court | QCAT |
| Date of judgment | 10 July 2013 |
| Type of matter | Whether charge is substantiated |
| Complainant details | Male, prisoner |
| Offending officer | Sergeant Shaun Groufsky, Southport Police Station |
| Keywords | Use of force – misconduct – CCTV – complainant in custody – non-publication order |
| Issue | The issue was whether force was inappropriate and if so, did it amount to misconduct? |
| Facts | On 11 March, 2009, a prisoner at the Southport Watch-house, whilst in a holding cell, interfered with the CCTV camera, was in possession of contraband (i.e., tobacco and a lighter), and was 'aggressive, angry, threatening'. The prisoner was placed in a padded cell for a strip search, and for the safety of police officers. The prisoner continued to yell and threaten to kill officers, punch and kick the walls, spit, and yell. Groufsky claimed he had exercised several other options before he entered. CCTV footage showed Groufsky entered the padded cell, the complainant stepped backwards and clenched his fists at his side, but then moved them upwards towards his waist. Groufsky then struck the prisoner in the head. The two men wrestled until the complainant fell unconscious. Groufsky and another officer disrobed and searched him. They did not dress the unconscious prisoner afterwards, leaving a suicide smock on the floor next to the prisoner's naked body.<br>Groufsky did not complete the search register, an operational requirement, following the incident. |
| Decision and reasons | There were significant inconsistencies between the accounts of Groufsky and the complainant, and with other witness accounts. As such, CCTV footage was regarded with greater weight than evidence of witnesses in making a decision. CCTV was inconsistent with the account of the complainant, which resulted in his evidence being considered unreliable.<br>Because the Tribunal was satisfied the prisoner was rendered unconscious because of the wrestling, not because of the punch, disproportionate force was not considered to be used. Thus, the size disparity between the two was also not given much weight. The punch was deemed self-defence.<br>Expert evidence also concluded Groufsky used legitimate force and was primarily defending himself. Rather, a headlock - deemed a legitimate use of force - and wrestling the prisoner to the ground, rendered the prisoner unconscious.<br>A non-publication order was granted to prohibit publication of the CCTV footage and prevent the names of other parties from being released. |

## *Hearn v Assistant Commissioner Carroll* [2012] QCAT 412

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| Case name | *Hearn v Assistant Commissioner Carroll* [2012] QCAT 412 |
| URL | https://archive.sclqld.org.au/qjudgment/2012/QCAT12-412.pdf |
| Court | QCAT |
| Date of judgment | 4 September 2012 |
| Type of matter | Whether charge substantiated |
| Complainant details | Female, 54, small build |
| Offending officer | Constable Logan Hearn, [Brisbane CBD] |
| Keywords | Use of force – intoxicated complainant – CCTV |
| Issue | Whether the use of force was disproportionate and excessive, amounting to improper conduct. |
| Facts | Constable Hearn arrested GM after she was evicted from a casino. Two officers attempted to restrain GM, Constable Hearn approached from behind and, according to casino CCTV footage, pushed the back of the complainant's neck onto the bonnet of a police vehicle. As a result, her glasses were skewed and there was a cut on her nose.<br>The complainant was taken back to the watch-house where CCTV footage further showed the complainant's violent nature. The complainant ultimately suffered a broken nose.<br>The charge was ultimately substantiated and Constable Hearn was reprimanded. |
| Decision and reasons | The initial charge and sanction were confirmed. The use of force was disproportionate and excessive and therefore improper conduct.<br>There was considerable disparity between the size of Constable Hearn and the force he applied comparable to the size, age and level of intoxication of the complainant. Hearn was also experienced in dealing with intoxicated persons.<br>While it was possible the complainant sustained the broken from the incident, it is also plausible the fracture occurred later in the evening as she may have hit her head in the back of the police van or was shown hitting her head in the watch-house.<br>Greater reliance was placed on CCTV footage than the complainant's account given her intoxication. |

## *Watson v Acting Deputy Commissioner McCallum* [2012] QCAT 165

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| Case name | *Watson v Acting Deputy Commissioner McCallum* [2012] QCAT 165 |
| URL | https://archive.sclqld.org.au/qjudgment/2012/QCAT12-165.pdf |
| Court | QCAT |
| Date of judgment | 20 April 2012 |
| Type of matter | Whether charges substantiated |
| Complainant details | Male |
| Offending officer | Constable Mitchel Watson, male, West End |
| Keywords | Police misconduct – breach of discipline – CCTV – dishonesty – dismissal – police dog – factors in mitigation |
| Issue | Whether the charges are substantiated on the facts (no issue as to sanction should charges be substantiated). |
| Facts | On 8 September 2009 he officer attended an address in West End concerning a break and enter with his police dog. He was rude and disrespectful to the complainant when he was unable to open a locked gate. As Watson was patrolling the area with his dog, he fell and dropped the dog's lead. The dog, unrestrained, bit the complainant twice on his leg, breaking the skin. Watson did not arrange medical attention and did not complete a report of the incident until 14 September 2009. The report falsely claimed the dog contact was non-forceful.<br>In a separate incident occurring on 2 September 2009, Watson failed to stop at a red light en route to another break-and-enter. He submitted a misleading report claiming he stopped at the intersection, a claim that was proved false by CCTV footage.<br>At first instance, four charges of misconduct and one charge of breach of discipline were found to be substantiated. Watson was dismissed. |
| Decision and reasons | The tribunal found all charges to be substantiated.<br>In confirming the charges as to the dog bite incident, the tribunal considered that Watson had been connected to fifteen other dog bite incidents. Further, the misinformation contained in his report satisfied the standard of misconduct. Watson failed to treat the complainant with respect and dignity (i.e., swearing, response when he had been bitten). Although, due allowance for conduct of police officers in 'high adrenaline' situations was considered in mitigation, "misconduct" was still substantiated in respect of this interaction.<br>The Tribunal considered no dangerous situation was created when Watson drove through a red light without stopping, and the seriousness of misconduct was low. The words Watson used in the report were clear (i.e., "stopped approximately 10 metres short of the intersection"), and untrue. The charge was substantiated to deter police from similar future behaviour. |

## *Kennedy v Deputy Commissioner Stewart* [2011] QCAT 667

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| Case name | *Kennedy v Deputy Commissioner Stewart* [2011] QCAT 667 |
| URL | https://archive.sclqld.org.au/qjudgment/2011/QCAT11-667.pdf |
| Court | QCAT |
| Date of judgment | 22 December 2011 |
| Type of matter | Whether charges are substantiated |
| Complainant details | - |
| Offending officer | Sergeant Bryan George Kennedy, Male, Doomadgee Police Station |
| Keywords | Police misconduct – off-duty – dishonesty – dismissal |
| Issue | Did the conduct in three separate matters amount to misconduct? |
| Facts | 1. The officer facilitated the transfer of 20 cartons of beer into a community subject to an Alcohol Management Plan in a manner designed to circumvent the purpose of the alcohol restrictions (three cartons at a time, lawful and an accepted practice at Doomadgee), with Sergeant Nicole Gee.<br>2. Kennedy, and Gee, dishonestly gained the benefit of a fridge donated to the PCYC. The fridge was utilized at Kennedy's residence in Mt. Isa, then transported to his new residence in Rockhampton. The fridge was returned to the PCYC in January, 2009, after Kennedy became aware of investigations.<br>3. A civilian dressed in Kennedy's police uniform and had possession of official QPS accoutrement (including a firearm, OC spray and handcuffs) for approximately ten minutes before Kennedy told Gee to have the civilian remove the uniform. This occurred whilst Kennedy was off-duty, though other officers were present throughout. Kennedy was charged on the basis that he allowed a civilian to have possession of special police equipment, and failed to intervene quickly enough.<br>At first instance, all three charges of misconduct substantiated, and Kennedy was dismissed. |
| Decision and reasons | The Tribunal did not substantiate matters 1 and 3. Leave was granted to file further written submissions regarding the issue of sanction.<br>Matter 1, such behavior was deemed highly improper, unethical, "unbecoming of a police officer", and "not meet[ing] the standard of conduct the community would reasonably expect of a police officer". Kennedy knew the fridge had been donated for the PCYC.<br>Matter 2, Because there were no complaints regarding the alcohol, no proper basis for charge was found. The conduct did not amount to 'misconduct'.<br>The Tribunal recognised Kennedy's likely lack of vigilance at the time the civilian dressed up, but because the charge was he "allowed a civilian to have possession" of the accoutrements, and he had no conscious awareness that she had possession, mere lack of vigilance could not substantiate misconduct. Kennedy's decision to resolve the prank in good spirit rather than create a tense incident was within his discretion as chief officer. |

## *Chapman v Crime and Misconduct Commission & Rynders* [2012] QCATA 16

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| Case name | *Chapman v Crime and Misconduct Commission & Rynders* [2012] QCATA 16 |
| URL | https://archive.sclqld.org.au/qjudgment/2012/QCATA12-016.pdf |
| Court | QCATA |
| Date of judgment | 6 February 2012 |
| Type of matter | Whether charge substantiated |
| Complainant details | Male, 15 years old, illiterate |
| Offending officer | Sergeant Damien Chapman, Clontarf |
| Keywords | Use of force – minor complainant |
| Issue | Whether QCAT made errors of law and fact in finding the charge substantiated |
| Facts | In the course of an arrest the officer struck the complainant in his lower left back area. The complainant suffered a ruptured spleen.<br>At the initial QCAT review (**[2010] QCAT 564**) the charge of improper conduct was found to be substantiated. It was later ordered that had the officer not resigned he would have been dismissed (**No 2 [2010] QCAT 636**).<br>Appealing the initial decision, the officer contended QCAT failed to consider the reliability of the complainant's evidence, erred in not giving enough weight to the initial decision-maker, failed to consider the lawfulness of the arrest and reached the wrong conclusion in finding the charge was substantiated. |
| Decision and reasons | The appeal was dismissed.<br>The Members did consider the complaint's evidence to be somewhat unreliable, though his evidence as to the event itself was found to be reliable and was supported by medical evidence. The Tribunal was open to making this finding despite the evidence of the complainant and officer being diametrically opposed.<br>There is nothing to suggest the Members did not give enough weight to the original decision of the Deputy Commissioner. The Members did not make an error of law in not treating the case as a fresh hearing on the merits.<br>The finding of the improper conduct was open whether the arrest was lawful or not. The provision the officer was charged with is not affected by the lawfulness of the arrest. |

## *McKenzie v Acting Assistant Commissioner Wright* [2011] QCATA 309

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| Case name | *McKenzie v Acting Assistant Commissioner Wright* [2011] QCATA 309 |
| URL | https://archive.sclqld.org.au/qjudgment/2011/QCATA11-309.pdf |
| Court | QCAT Appeals |
| Date of judgment | 10 November 2011 |
| Type of matter | Appeal of sanction – whether too excessive |
| Complainant details | Female (fellow officer, off-duty) |
| Offending officer | Senior Constable Mark McKenzie, Male, Mt Isa region |
| Keywords | Off-duty – use of force – personal relationship – factors in mitigation |
| Issue | Was there error of law in the Tribunal's previous judgment, and was the sanction imposed excessive? |
| Facts | In 2007, Constable Jane Moran moved into police residence units in Mt Isa. A short-term sexual relationship with Senior Constable Mark McKenzie ensued. Their relationship ceased, as McKenzie believed Moran was mentally unstable. Moran sought McKenzie's help regarding a separate matter. McKenzie refused to help, until the 28 February 2008, when McKenzie invited Moran to speak to him after work, early next morning. McKenzie woke up to Moran, sitting on his bed, talking about the matter. An argument developed. Moran raised her fists. McKenzie ordered her out. McKenzie feared a knife, near his bed, to be within Moran's reach. Moran claimed no knowledge of the knife. The pair pushed and yelled. McKenzie grabbed Moran's right wrist, forced her face down on the bed, knees in her back, and handcuffed Moran's hands behind her back with QPS handcuffs. Moran was told she was being detained for domestic violence. McKenzie then lifted Moran off the bed by the handcuffs, placed pressure around her neck with a lateral vascular neck restraint, and forced her to walk by pushing and twisting the handcuffs up her back. Moran sustained multiple injuries (e.g., comminuted fracture to the lateral posterior margin of the right eye socket). McKenzie contacted police headquarters. No charges against Moran proceeded. Moran complained to police.<br>At first instance, the officer was demoted from pay point Sergeant 3.5 to Senior Constable 2.9 for two years from 2 February 2010. McKenzie sought review of substantiation and the sanction in QCAT. On 17 January 2011, a two Member Tribunal, confirmed the original decisions. McKenzie appealed the sanction decision. |
| Decision and reasons | The tribunal decided the earlier QCAT order be set aside. Instead, McKenzie's pay point be reduced from Sergeant 3.5 to Senior Constable 2.9 for 12 months.<br>McKenzie's good service was considered. In particular, because of McKenzie's senior prosecutor role, he was permitted to transfer to a Sergeant's position at Toowoomba following the incident. The tribunal did not see discernible risk of repetition of the incident in question.<br>Total economic loss of McKenzie was also considered (between $14,000 and $30,000, suffered over approximately six years). Aside from the disgrace, the demotion imposed significant financial sanction. |

## *Belz v Assistant Commissioner Wilson* [2011] QCAT 632

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| Case name | *Belz v Assistant Commissioner Wilson* [2011] QCAT 632 |
| URL | https://archive.sclqld.org.au/qjudgment/2011/QCAT11-632.pdf |
| Court | QCAT |
| Date of judgment | 28 October 2011 |
| Type of matter | Appeal of sanction – whether sanction too excessive |
| Complainant details | Female |
| Offending officer | Male, Sergeant Damien Belz, Surfers Paradise Police Station |
| Keywords | Use of force – CCTV – complainant in custody – intoxicated complainant |
| Issue | Whether the sanction was too excessive given the circumstances surrounding the incident, whether those circumstances mitigate |
| Facts | On 29 November 2009, Sergeant Damien Belz was on duty as a Shift Supervisor, in the Prisoner Processing Area at Surfers Paradise Police Station. As per CCTV footage, a handcuffed female prisoner was in custody, in a holding cell. She attempted to hit her head against fixed objects within the holding cell. Belz entered the holding cell took hold of the prisoner's hair and moved her from the cell floor to the cell bench seat. Shortly after, Belz re-entered the holding cell, took hold of the prisoner's hair and moved her from the cell bench seat to an area outside the holding cell. Belz did not immediately release the prisoner's hair once risk of self-harm had ceased. Assistant Commissioner Paul Wilson deemed the force excessive and inappropriate, on two counts, and sanctioned Belz with demotion from paypoint Sergeant 3.3 to Senior Constable 2.9 for a period of 12 months. Belz had the opportunity to re-apply for the rank of Sergeant at the end of the 12-month period, depending upon successful completion of Performance Planning and Assessment. |
| Decision and reasons | Belz's failure to treat the prisoner with dignity demonstrated a disregard for his oath of office, a failure of duty of care, and his behavior posed possible exposure to criminal proceedings had the prisoner reported assault. Belz set a poor example to subordinates, and his response was not reflective of service training.<br>The sanction was found to be appropriate with regard to public interest considerations (and preserving the integrity of the QPS), and was not, as Belz argued, merely a punitive sanction. The severity of the sanction was accurately reflective of the higher standard of behavior expected of Belz, an officer with many years of service and experience.<br>A further order was made prohibiting publication of the CCTV footage. |

## *Disley v Assistant Commissioner Wilson Queensland Police Service* [2011] QCAT 426

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| Case name | *Disley v Assistant Commissioner Wilson Queensland Police Service* [2011] QCAT 426 |
| URL | https://archive.sclqld.org.au/qjudgment/2011/QCAT11-426.pdf |
| Court | QCAT |
| Date of judgment | 12 September 2011 |
| Type of matter | Whether charge substantiated – appeal of issue of law |
| Complainant details | Female |
| Offending officer | Male, Senior Constable Stephen Disley, station unspecified (but, according to news article, was stationed at Pacific Pines (Gold Coast region) in 2011) |
| Keywords | Off-duty – personal relationship |
| Issue | Did Disley's behaviour amount to misconduct and was the imposed fine of an equivalent to two penalty units correct? |
| Facts | The officer, in his private capacity, purchased a residential property from the complainant in August. The complainant had left a spa bath on the property. The parties agreed the complainant could remove the spa bath but issues arose with removalists, no further attempts to remove the spa bath were made. The officer sought advice from his solicitor, who informed him the spa bath was abandoned property and could be removed. The officer attempted to contact the complainant to have the spa bath removed but was only able to leave a message with a relative. The officer removed the spa bath himself and informed the complainant of its legal status. In November the same year, the officer sold the spa bath to a friend for $3,500. The complainant lodged her complaint in December.<br>At first instance, it was found that the officer's actions amounted to misconduct and he was issued a fine. |
| Decision and reasons | The tribunal found there were no grounds to substantiate 'misconduct'.<br>The officer's actions were deemed to not constitute 'misconduct' or affect his fitness as a police officer. The officer acted in accordance with legal advice, he waited a considerable time before dealing with the spa bath, and the complainant did not contact the officer for a considerable period of time after settlement of the sale. The officer was capable of returning the spa bath, but chose not to. He was legally able to do so. The officer exercised his legal rights correctly. |

## *Crime and Misconduct Commission v Assistant Commissioner Barnett and Eaton* [2011] QCAT 161

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| Case name | *Crime and Misconduct Commission v Assistant Commissioner Barnett and Eaton* [2011] QCAT 161 |
| URL | https://archive.sclqld.org.au/qjudgment/2011/QCAT11-161.pdf |
| Court | QCAT |
| Date of judgment | 3 May 2011 |
| Type of matter | Appeal of sanction – whether too excessive |
| Complainant details | - |
| Offending officer | Senior Sergeant Bryan Eaton, Pine Rivers District Traffic Branch |
| Keywords | Whether sanction appropriate – vehicle pursuit – reference to previous conduct |
| Issue | Was the sanction imposed sufficient? |
| Facts | The officer was performing radar duty when at approximately 1:00am he gave pursuit to a speeding motorcycle. He drove his police vehicle at excessive speeds (approximately 225 kph in a 100 kph speed zone, and 150 to 160kmph in a 60kmph speed zone), commencing an unauthorized pursuit and failing to activate emergency lights and sirens of the police vehicle (in the first of two pursuit episodes only).<br>He was charged with misconduct and received a pay-point reduction for a period 12 months. |
| Decision and reasons | The substantial distance over which the chase took place (close to 15 kilometres) was considered an unacceptable risk and he failed to comply with the pursuit policy. The breaching of such a policy was considered an aggravating circumstance. In further aggravation was the officer's involvement in a 2003 incident, wherein two of the three people in the car being pursued by the officer were killed in the course of the chase. Evidence of this previous conduct was not presented to the initial decision-maker.<br>The tribunal did not think the addition of a reprimand would suffice and doubling the pay point reduction was too severe, the conduct was found to not be at the more serious end of police misconduct. While the conduct was reckless, it was not dishonest or indicative of bad character.<br>The original decision to impose a sanction of reduction of one pay point for a period of 12 months, was replaced with a reduction of two pay points for a period of nine months. |

## *Officer TXS v Acting Deputy Commissioner Colin McCallum* [2011] QCAT 739

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| Case name | *Officer TXS v Acting Deputy Commissioner Colin McCallum* [2011] QCAT 739 |
| URL | https://archive.sclqld.org.au/qjudgment/2011/QCAT11-739.pdf |
| Court | QCAT |
| Date of judgment | 25 March 2011 |
| Type of matter | Occupational regulation |
| Complainant details | Female |
| Offending officer | Female, Senior Constable, Brisbane region (unspecified) |
| Keywords | Off-duty – domestic violence – personal relationship – dismissal |
| Issue | Was the sanction of dismissal from the QPS too severe? |
| Facts | Senior Constable, TXS, was in a long term de facto relationship During a period of separation, CYF received abusive phone calls from TXS. On the 16 April, at approximately 9:30pm, off duty, TXS, without permission entered CYF's premises via the electric garage door. She saw CYF with HZM, and became violent. The assault included: punching CYF's face with a closed fist, causing her teeth to split her lip; tackling her to the ground and choking her; threatening to poison her dogs; ripping HZM's shirt; head-butting her twice and scratching her neck. TXS also damaged the property by punching five holes in a wall, smashing a bottle of perfume and two ceramic bowls, and damaging the garage door remote control. A neighbouring off duty police officer removed TXS from CYF's property. But, TXS returned to continue the assault. TXS also self-harmed in an attempt to fabricate an assault by CYF or HZM. Harassing phone calls continued after police' arrived that night. Criminal complaints were made by CYF and HZM, but were withdrawn and instead dealt with via a Protection Order made in the Magistrates Court. |
| Decision and reasons | Though there were potentially factors in mitigation, including that the officer did not contest the court order, cooperated with the disciplinary process, pleaded guilty to the charges, undertook psychological counselling, these factors were given little weight in light of the seriousness of the conduct. It was noted that the officer had a poor service record and had previously been subject to a 12-month suspended dismissal for an incident involving different circumstances.<br>The level of violence demonstrated was deemed serious and incompatible with the standard of conduct expected by the community in a police officer, the dismissal was confirmed. |

## *Whitelaw v O'Sullivan* [2010] QCA 366; *O'Sullivan v Whitelaw* [2010] QDC 549

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| Case name | *Whitelaw v O'Sullivan* [2010] QCA 366*; O'Sullivan v Whitelaw* [2010] QDC 549 |
| URL | https://archive.sclqld.org.au/qjudgment/2010/QDC10-549.pdf; https://archive.sclqld.org.au/qjudgment/2010/QCA10-366.pdf |
| Court | District Court / Court of Appeal |
| Date of judgment | 21 December 2010; 19 July 2010 |
| Type of matter | Appeal of issue of law |
| Complainant details | Male |
| Offending officer | Michael O'Sullivan |
| Keywords | Use of force – CCTV – use of weapon |
| Issue | Whether the officer was acting reasonably and whether the officer could rely on the mistake of fact defence |
| Facts | Officers were called to a dispute outside a nightclub. As the dispute ended officers arrived and ran towards the complainant who was walking down the street. The complainant was uncooperative and was detained. The officer sprayed the complainant twice with capsicum spray. Another officer joined in spraying the complainant the second time. The officer then struck the complainant with his baton three times in the upper thigh as the complainant was bent on one knee, consistent with training.<br>The officer alleged the assault was in self-defence and that he was attempting to subdue the complainant who he believed to be potentially violent. The complainant was significantly larger than the officer. |
| Decision and reasons | Magistrate: Found the officer was not acting in self-defence and could not rely on the defence of mistake of fact in acting on his belief that the complainant was violent.<br>District Court (8449/08): Set aside conviction on the basis that there was insufficient evidence to find beyond reasonable doubt that the officer was not acting in self-defence and did not honestly and reasonably but mistakenly believe that the complainant posed a threat.<br>QCA: The officer could not rely upon s 50 of the PPRA authorising use of force where he held the subjective belief that force was reasonably necessary when it was objectively not. While it was open for the judge to find in favour of the mistake of fact defence, he did not make clear why. Further, the judge did not adequately state the reasons for his rejection of the magistrate's findings. Appeal was allowed.<br>District Court (QDC 549): Evidence of police witnesses was largely rejected as unreliable. Emphasis was placed upon CCTV footage in making findings of fact. Verbal threats made by the complainant and his physical stance provided reasonable grounds for the officer to believe the complainant posed a threat. The use of force was reasonable given this threat, the size of the complainant and the fact the complainant only fell to the ground after the third strike. |

## *Wadham v Deputy Commissioner Ian Stewart Queensland Police Service* [2010] QCAT 578

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| Case name | *Wadham v Deputy Commissioner Ian Stewart Queensland Police Service* [2010] QCAT 578 |
| URL | https://archive.sclqld.org.au/qjudgment/2010/QCAT10-578.pdf |
| Court | QCAT |
| Date of judgment | 14 September 2010 |
| Type of matter | Whether charge substantiated; Appeal of sanction – whether too excessive |
| Complainant details | - |
| Offending officer | Senior Constable Laura Wadham, Coomera Police Station |
| Keywords | Misappropriating funds – theft/stealing – dishonesty – misusing computer system |
| Issue | Whether standard of proof was met for 'knowingly' misappropriating funds; and whether dismissal was excessive sanction |
| Facts | There were two relevant matters:<br>1. The officer transferred $1200 of funds out of an official police social fund to her own account on multiple occasions over two months. She claimed she didn't realise she was transferring money from the social fund, rather thinking it was her own account. She repaid the funds once she was discovered. The officer contested the standard of proof was met to show she 'knowingly' misappropriated these funds.<br>2. The officer accessed and used police computer systems with the account of another officer. She completed training units on behalf of the other officer and took steps to obtain pay point progression for him while he was on sick leave. The officer argued dismissal was too excessive. |
| Decision and reasons | Matter 1 was substantiated. The requisite standard of proof is a reasonably high standard on the balance of probabilities. On the factual evidence and the inferences available, this standard was met in relation to the officer 'knowingly' transferring the funds. The officer had failed to provide a reasonable explanation.<br>Dismissal was upheld for Matter 2. The officer was dishonest in completing the training and then attempting to cover up what she had done. This requires a serious sanction as a deterrent to other officers, conveying the conduct as dishonest and disgraceful. |

## *Crime and Misconduct Commission v Swindells & Gardiner* [2010] QCAT 490

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| Case name | *Crime and Misconduct Commission v Swindells & Gardiner* [2010] QCAT 490 |
| URL | https://archive.sclqld.org.au/qjudgment/2010/QCAT10-490.pdf |
| Court | QCAT |
| Date of judgment | 2 September 2010 |
| Type of matter | Appeal of sanction – whether too lenient |
| Complainant details | Six complainants – all male |
| Offending officer | Constable P Gardiner, Brisbane City Beat |
| Keywords | Use of force – complainant in custody – multiple complainants – intoxicated complainant |
| Issue | Whether suspension of sanction is appropriate and whether conditions should be imposed on the suspension |
| Facts | On multiple occasions from June 2004 until September 2004, the officer used excessive force against persons being held in custody, some being handcuffed. Uses of force include: open handed slapping across complainant's faces, punching complainants in the head and body, kicking the body of the complainants, forcing complainants against the wall, encouraged the complainants to fight him.<br>The officer initially denied the allegations even in the face of evidence of fellow officers. He asserted complaints against him would be futile. By the time of proceedings he had accepted responsibility.<br>Proceedings were brought in the Misconduct Tribunal, which was dissolved, and in the Supreme Court, leading to a delay. |
| Decision and reasons | The officer and the CMC jointly submitted the sanction should be dismissal, suspended for three years. The Tribunal accepted that submission and imposed conditions on the suspension.<br>Delay was considered to put the officer's career effectively on hold. This was not favoured as a mitigating circumstance given the severity of the conduct which potentially attracted the sanction of dismissal. Accepted mitigating factors included:<br>• in the six years since the incident, the officer was not subject to any complaints;<br>• he was inexperienced at the time, and some complainants acknowledged being intoxicated and abusive towards to the police;<br>• psychological assessment revealed the officer's actions to be born out of emotional immaturity, and the officer was counselled to develop better emotional skills.<br>Suspended sanction on the condition that the officer seeks counselling fulfils the objective to protect the public. |

## *Compton v Deputy Commissioner Ian Stewart Queensland Police Service* [2010] QCAT 384

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| Case name | *Compton v Deputy Commissioner Ian Stewart Queensland Police Service* [2010] QCAT 384 |
| URL | https://archive.sclqld.org.au/qjudgment/2010/QCAT10-384.pdf |
| Court | QCAT |
| Date of judgment | 17 August 2010 |
| Type of matter | Appeal of sanction – whether too excessive |
| Complainant details | - |
| Offending officer | Constable Joshua Compton, [Sunshine Coast], ATSI |
| Keywords | Drink driving |
| Issue | Whether sanction for drink driving too excessive |
| Facts | The officer was convicted of a drink driving offence. He was subsequently charged with improper conduct for the same offence. The offence was substantiated and he was dismissed. |
| Decision and reasons | The dismissal was suspended for two years on condition the officer complete counselling and community service and maintain a clean record. The officer was also demoted a pay point for two years.<br>Aggravating factors included:<br>• The level of intoxication;<br>• He was previously found to have engaged in 'inappropriate behaviour' as a recruit, though he was still inducted.<br>Mitigating factors included:<br>• Difficult family circumstances;<br>• He submitted to arrest and revealed genuine remorse;<br>• He was not on duty and in his own vehicle; and<br>• His personal character was excellent.<br>A guideline circulated by the Police indicated that someone under the same circumstances as the officer should have only received a demotion. |

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## Contact details

**UQ Pro Bono Centre**
T +61 7 **3365 8824**
E probono@law.uq.edu.au
W law.uq.edu.au/pro-bono

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