

**OTTAWA POLICE SERVICE DISCIPLINE HEARING
IN THE MATTER OF ONTARIO REGULATION 268/10**

**MADE UNDER THE POLICE SERVICES ACT, RSO 1990,
AND AMENDMENTS THERETO;**

**IN THE MATTER OF
OTTAWA POLICE SERVICE**

AND

CONSTABLE TROY FORGIE #1782

CHARGES:

- 1. INSUBORDINATION**
- 2. BREACH OF CONFIDENCE**
- 3. DISCREDITABLE CONDUCT**

DECISION ON DISPOSITION AND PENALTY

Before: Superintendent (Retired) Chris Renwick

Counsel for the Prosecution: Ms. Vanessa Stewart

Counsel for the Defence: Ms. Connie D'Angelo

Disposition Hearing Dates: April 27-29, and May 16, 2022.

Allegations of Misconduct (amended)

Constable (Cst.) Troy Forgie is before this hearing accused of the following charges:

Count one: Insubordination

Cst. Forgie is alleged to have committed Insubordination in that on or about December 14, 2020, and January 12, 2021, without lawful excuse, disobeyed a lawful order by accessing the Records Management System (RMS) and the Canadian Police Information Centre (CPIC) database and conducting unauthorized queries for personal reasons thereby constituting an offence against discipline as prescribed in section 2(1)(b)(ii) of the Code of Conduct, Ontario Regulation 268/10, as amended, and therefore contrary to section 80(1) of the *Police Services Act*.

Count two: Breach of Confidence

Cst. Forgie is alleged to have committed a Breach of Confidence on or about December 14, 2020, by divulging information to a female member of the public, identified here by her initials, J.F., that was his duty to keep secret thereby constituting an offence against discipline as prescribed in section 2(1)(e)(i) of the Code of Conduct, Ontario Regulation 268/10, as amended, and therefore contrary to section 80(1) of the *Police Services Act*.

Count three: Discreditable Conduct

Cst. Forgie is alleged to have committed Discreditable Conduct on or about December 14, 2020, by acting in a manner likely to bring discredit upon the reputation of the Ottawa Police Service by sending inappropriate electronic messages to J.F., regarding an accused person currently before the court thereby constituting an offence against discipline as prescribed in section 2(1)(a)(xi) of the Code of Conduct, Ontario Regulation 268/10, as amended, and therefore contrary to section 80(1) of the *Police Services Act*.

Representation

Cst. Forgie was represented by Ms. Connie D'Angelo throughout the four-day videoconference hearing while the Ottawa Police Service (OPS) was represented by Ms. Vanessa Stewart, as prosecutor. An agreed Statement of Facts was read into the record by Ms. Stewart and substantiated by Ms. D'Angelo as being correct and accepted by Cst. Forgie.

Plea/Positions on Penalty

Cst. Forgie initially faced four counts of alleged misconduct. At the request of the Prosecution, Cst. Forgie was arraigned on the first three counts at the commencement of the April 27, 2022, appearance. He entered a plea of guilty followed by the Prosecution asking for a stay on count four, which was accepted.

With the totality of the details provided in the Notice of Hearing, the jointly submitted Agreed Statement of Facts, and the oral submissions of both the Prosecution and Defence, I accept Cst. Forgie's guilty plea on all three counts of misconduct, based on clear and convincing evidence.

As for penalty, there was no joint position proposed. The Prosecution argued that a two-year demotion was appropriate while the Defence countered that the forfeiture of days would be more fitting with the circumstances and supported by similar fact case law. Ms. D'Angelo submitted a sanction of 160 hours for counts one and two with a concurrent sanction of 40 hours for count three.

The remaining hearing dates were dedicated to written and oral submissions on penalty.

Agreed Statement of Facts

The subject officer, Cst. Forgie, is a sworn member of the OPS, hired on February 19, 2005.

In August 2020, the OPS Partner Assault Unit launched an investigation regarding a male subject, referred to by his initials M.E., in relation to allegations of sexual assault and assault against his ex-girlfriend, also referred to by her initials as J.F. Criminal charges were before the courts. Detective (Det.) Tena Gallichon is the investigating officer on that case. As part of that investigation, J.F. attended the police station and gave OPS consent to download her cellphone for evidentiary purposes.

In August 2020, Cst. Forgie received a message via Facebook Messenger from the victim, J.F., requesting help getting away from her boyfriend who was currently in her residence. Cst. Forgie was not on duty at that time. He messaged J.F. with a plan for her to contact him when her boyfriend left the residence, and he would have officers attend. J.F. told Cst. Forgie that the subject male was jealous and takes her phone, at which point, Cst. Forgie advised J.F. to delete the messages. Cst. Forgie then contacted the West Division Staff Sergeant's desk, where he spoke with the staff sergeant on duty and had a call for service placed. Cst. Forgie then received a message from J.F. that her boyfriend had left the residence. Cst. Forgie liaised with Cst. Harley Shaw, and arrangements were made for J.F. to attend Huntmar station for a statement to be taken.

Det. Gallichon searched the extracted data from the phone analysis and observed messages exchanged between J.F. and Cst. Forgie. Upon completing the phone extraction analysis, Det. Gallichon reported an apparent breach of CPIC by Cst. Forgie to her chain of command, who reported it to the Professional Standards Unit (PSU) for further investigation.

Cst. Forgie was not a responding officer on the original sexual assault call, nor did he speak to Det. Gallichon to advise her that J.F. was worried and fearful of her ex-boyfriend.

At the request of J.F., Cst. Forgie committed several CPIC and RMS searches:

- December 14, 2020:
 - At approximately 9:48:23 a.m., Cst. Forgie queried M.E. on RMS and CPIC databanks from an OPS office computer.
 - At approximately 9:48:45 a.m., Cst. Forgie queried the OPS occurrence number and accessed a "working draft" report submitted by Det. Gallichon.
 - At approximately 9:49:37 a.m., Cst. Forgie queried a second report under the OPS occurrence number on the RMS databank.
 - At approximately 10:34:11 a.m., Cst. Forgie queried the OPS occurrence number a second time on the RMS databank.
 - At approximately 10:34:13 a.m., Cst. Forgie queried M.E. on the RMS databank.
- December 24, 2020:
 - At approximately 10:14 a.m., Cst. Forgie queried M.E. on CPIC and RMS databanks.
- January 12, 2021:
 - At approximately 11:28 a.m., Cst. Forgie queried M.E. on CPIC and RMS databanks.

These queries were not related to any of Cst. Forgie's duties as a police officer on those dates and times.

Cst. Forgie was interviewed by the PSU investigator. He was not forthcoming about his true relationship with J.F. He initially indicated to the investigator that "she is not really a friend of mine". He did not acknowledge the extent of his relationship with her until he was shown the text message/social media evidence that the investigators had, which had shown an inappropriate relationship with a victim of a criminal offence and improper disclosure of police information to that victim in an on-going criminal investigation.

Cst. Forgie acknowledged in his interview that he had queried M.E. and the OPS RMS file where M.E. was the accused in an on-going sexual assault investigation. He further acknowledged that he was aware of the severity and potential consequences which may arise from completing unauthorized searches of RCMP records and the negative impact that his involvement in this matter could have on court proceedings.

Cst. Forgie shared the following information about M.E. to J.F. over their Facebook Messenger conversations:

- J.F. wrote the following to Cst. Forgie: "Hey remember how I was so frustrated with the system because my ex who I charged with sexual assault is allowed out. Isn't monitored and can pretty much do what he wants? Well he has been around my work. And yesterday I get a phone call telling me he has been arrested for a unrelated incident but they don't tell me for what. But to be aware????? How is it not my business to know what's going on? Are you able to look it up, or can you get in trouble for that? Its killing me cause I'm scared."

He's in Brockville being held for the weekend, Anyways, your the only cop I know lol so I just thought I'd ask you."

- Cst. Forgie agreed and asked J.F. to remind him the following Monday.
- J.F. sent her ex boyfriend's name (M.E.) and date of birth to Cst. Forgie.
- Cst. Forgie later replied to J.F. "He is still in custody".
- J.F. responds "Ok great! Wtf is he charged with. Thats whats killing me. Ugh at least I know if and when he does get released tena is taking him in for my breach".
- Cst. Forgie replied "I can't tell you. But similar offences to yours". "He is a piece of shit".
- J.F. replied "yep".
- Cst. Forgie replied "I know easier said than done but call police whenever he contacts you. Don't wait. Let us deal with him".
- J.F. replied "I definitely will! Thanks."
- Cst. Forgie replied "Don't let him scare you I'll deal with him".
- J.F. replied "I'm terrified now that I've done a new statement and I'm charging him with more. I just fucking hope they don't let him out. I have text messages of me reaching out to his brother who was his assurer, asking for help and showing screenshots of M. calling me like 50 times in a row, and Ben said okay he'd tell him to stop, but didn't. So hopefully he won't be able to be his assurance again".
- Cst. Forgie replied "every day shift im in and around Kanata. There are always officers around the station is 2 minutes away. Fuck him and his brother"
- J.F. replied "Thanks".
- Cst. Forgie replied "Anytime. Did offer you Victim Unit help?"
- J.F. replied "Yep. Hopefully I'll hear from them today. As time [sic] they offered me help I was an idiot and thought I could handle it myself and basically said no thanks. This time I reached out to them. I didn't realize that the first time around was just the tip of the iceberg and that I've actually been in a lot of danger".
- Cst. Forgie replied "Good for you. Talk with them use their advice for your mental health"
- J.F. sends a thumbs up.
- Cst. Forgie replied "have a great day, message me if you need anything".
- J.F. replied "Ik [sic] going to ask you a question, but you don't have to answer it if you're not allowed. Did it happen in carleton place, or Brockville? Cause he's used my car in carleton place to get around before. I dont want to get in some kind of trouble and have my car taken fml".
- Cst. Forgie replied "Brockville. You won't be in trouble. They would only need to search the car if he use it to commit a crime".
- J.F. replied "Ok thank you".

Cst. Forgie was not authorized to disclose this information to J.F. from police databases. Further, he inserted himself into J.F.'s case and referred to the accused, M.E., as "a piece of shit", which could be disclosed in criminal court.

On December 29, 2020, Cst. Forgie engaged in a series of text messages with J.F. The relationship between Cst. Forgie and J.F., a complainant in a sexual assault case, could

be disclosed in courts as these text messages are now Ottawa Police records viewed by the investigating officer, Det. Gallichon.

Cst. Forgie was hired by the OPS on February 19, 2005 and has worked in several capacities during his time of service. Cst. Forgie worked on B-Platoon West from August 28, 2006 to May 3, 2010. After that he was transferred to Neighbourhood Officer (NHO) West into a tenured position. On July 2, 2013, he was reassigned to D-Platoon West. On September 8, 2014, he was assigned to Front Desk Services West. On January 23, 2017, he went to Fixed Afternoons West. From April 16, 2018 to June 10, 2018, Cst. Forgie was placed on a temporary assignment as a School Resource Officer (SRO) which became permanent on July 2, 2018.

Cst. Forgie received formal Performance Reviews in 2006, 2007, 2008, 2009, 2011 and 2013. He was routinely documented as “meeting expectations” or “exceeding expectations” by his supervisors.

Cst. Forgie was suspended from duty on March 10, 2021, from his substantive position as a School Resource Officer. Cst. Forgie’s suspension was rescinded on February 8, 2022, and he was placed back in his substantive position.

Analysis

In considering and reaching an appropriate penalty, it is most helpful to turn to the objectives of *Police Service Act* discipline which are:

- i) Correct unacceptable behaviour.
- ii) Deter others from serious behaviour.
- iii) Assure the public that the police are under control.

In this matter before me, both the Prosecution and Defence spoke directly to 11 of the 15 established disposition considerations and I will summarize and analyse each one to reach a fair and appropriate decision. The 11 relevant considerations are: Public interest; seriousness of the misconduct; recognition of the seriousness of the misconduct; disability and other relevant personal circumstances; employment history; potential to reform or rehabilitate the police officer; effect on the police officer and police officer’s family; consistency of disposition; specific and general deterrence; damage to the reputation of the police service; and effect of publicity.

I will also consider and weigh each of the disposition factors as either aggravating or mitigating to ensure the appropriate balancing is applied.

Public Interest

Ms. Stewart submitted that public interest is at the heart of all disciplinary actions and must be a consideration in order to maintain the public's trust and confidence in their police service. When misconduct is established, a Hearing Officer must attach the appropriate sanctions to restore the damage caused in the eyes of the public.

Ms. Stewart argued that police officers are given significant power to collect, retain, and disclose personal information relating to members of the public and there are many checks and balances in the Charter, common law, legislation, and regulations to ensure there are no breaches of this significant trust. It is clear that our society values privacy and safeguarding of personal information and, as society evolves and changes, so do societal values on privacy and disclosure. Citing *R. Vs. Quenelle* (2014 SCC 46), Ms. Stewart submitted that the subjects of police reports can reasonably expect the police to safeguard their information outside of criminal court.

Ms. Stewart referred to the Prosecution Exhibit Book (exhibit #13) and submitted that Cst. Forgie breached: his Oath of Office (Appendix G); OPS General Order EX/ORD/2013-532 (Appendix B); OPS Policy 2.23 Acceptable Use of Information and Technology Policy (dated November 19, 2020) (Appendix D); and the August 27, 2020, revised OPS Policy 2.23 Acceptable Use of Information and Technology Policy (Appendix E.)

Ms. Stewart submitted that Cst. Forgie's misconduct fell short and a clear message to the public must be sent that there will be accountability. The community would be shocked to find that Cst. Forgie abused the RMS and CPIC systems for a period of over a month to access information that he was not authorized to access; shocked that he disclosed the information to a member of the public, a victim of a sexual assault with whom he had a relationship with; and again shocked that he inserted himself in a serious sexual assault investigation without properly recording or performing the required duties in relation to notes, reports, and evidence.

Ms. Stewart submitted public interest is an extremely aggravating factor.

For the Defence, Ms. D'Angelo submitted that this was not a case of bad faith or prolonged actions, rather a genuine response to J.F.'s fears and concerns out of compassion in which Cst. Forgie provided her the least amount of information to reassure her. There is no public complainant, neither M.E. or J.F. was required to attend as a witness, and Cst. Forgie clearly urged J.F. to utilize victim assistance.

Ms. D'Angelo cited *Husseini vs. York Regional Police Service* (2018 ONSC 283) which at paragraph 36 reads:

“We agree that the OCPC properly concluded that no one of the 13 factors is paramount over the others and that the factors are intended to be flexible, contextual and may evolve over time.”

Ms. D’Angelo submitted that this is a very important principle in making a fair and appropriate penalty. If the disposition factor is not applicable, then it is a neutral factor and, in this case, it is indeed in the public’s interest to keep Cst. Forgie on the service and this fits with public confidence.

It is my finding that that public interest is an aggravating factor and certainly not neutral, as the unauthorized accessing of CPIC and RMS protected information and the sharing of information to a member of the public, no matter what the motivation or the level of information shared, will give cause for the public to lessen their trust and confidence in their police service. The penalty for such breaches of oaths, policy, and general orders must reflect the seriousness of the loss in public trust.

Seriousness of the Misconduct

Ms. Stewart submitted that the seriousness of the misconduct should be the primary focus of the Tribunal, that the conduct of Cst. Forgie is egregious and can and has led to the most severe penalty of dismissal in other circumstances. Public officers who clearly breach confidentiality policy, orders, and oaths can and do cause serious damage to the employer/employee relationship. The misconduct of Cst. Forgie occurred in four categories: He accessed CPIC and RMS for personal use outside of the CPIC user agreement and OPS RMS policy; he disclosed confirmation of specific information to a third person (a member of the public); he intervened into a sexual assault investigation without the knowledge of the assigned investigating officer from the Partner Assault Unit and without following investigative directives on note taking and report submissions; and fourthly, he sent inappropriate messages to a member of the public regarding an accused person before the courts.

As an aggravating factor, Ms. Stewart submitted that Cst. Forgie was not forthcoming in his interview with the PSU investigator about the nature of his relationship with J.F. and that he continued to communicate with her in an unofficial capacity when he became aware of her status as the victim of an alleged sexual assault on December 12, 2020, and again after he was served his Notice of Chief’s Complaint on February 17, 2020, (exhibit #15), which specifically directed him not to discuss the matter with other persons involved in the incident. Ms. Stewart points out an inconsistency in the evidence before the Tribunal, which suggests that the meeting on the Bumble on-line dating application occurred after J.F. was a victim of an alleged sexual assault and after Cst. Forgie learned of it.

In carefully reviewing the evidence before me I can find no direct evidence to establish when the Bumble match and initial communication between J.F. and Cst. Forgie occurred. The Facebook Messenger messages retrieved and examined by the PSU investigator were confined to December 9, 2020, to December 30, 2020. It is apparent from the content of the December 9th message that there were messages preceding it and there was no evidence other than J.F.'s PSU statement that she was in communication with Cst. Forgie as late as February 19, 2021.

The one troubling, aggravating fact that is clear from the evidence is that Cst. Forgie initiated further contact with J.F. on December 29, 2020, sending her a Facebook Messenger message stating "Bumble match". This was 15 days after becoming aware of her status as the alleged victim of a sexual assault under investigation by the OPS Partner Assault Unit and is followed by back-and-forth flirtatious messages resulting in J.F. sharing two images that, based on the response of Cst. Forgie, were of J.F. in a state of undress.

It is relevant to restate here that there was no allegation of misconduct resulting from the December 29, 2020, Messenger exchange nor any direct evidence speaking to any further misconduct. What is clear in the evidence submitted to support the three charges of insubordination, breach of confidence, and discreditable conduct before this Tribunal is that Cst. Forgie knowingly engaged in flirtatious messaging of a sexual nature with J.F. after becoming aware of her status as an alleged victim and after he inappropriately intervened into the investigation without the knowledge of the assigned investigating detective.

This is a significant aggravating factor that will factor into the severity of the sanctions imposed.

Recognition of the Seriousness of the Misconduct

Ms. D'Angelo recognised the serious of the misconduct and cited *Carsons vs. Pembroke Police Service* (2001, OCCPS) which establishes that a pleading of guilt constitutes a mitigation factor regarding the recognition of the seriousness of misconduct by the Respondent Officer. The guilty plea was entered at the first opportunity that presented, after the Prosecution agreed to abandon their initial position to seek dismissal. She submitted that Cst. Forgie's address to the Hearing Officer on April 27, 2020, was a demonstration of his remorse and his acceptance of responsibility.

Ms. D'Angelo submitted that Cst. Forgie acknowledged that he made the unauthorized inquires and that he revealed contents to J.F. Although he was not authorized to disclose, Ms. D'Angelo submitted that context is important as it was information that J.F., as a victim, was entitled to know, and it was information she already had, only being confirmed by Cst. Forgie in his efforts to provide her some peace of mind. This was confirmed by

J.F. in her statement to the PSU investigator who stated: “He never gave me any new information. Everything that he said was what I already knew, like what Tina (the lead investigator for the sexual assault) had already told me”.

The Prosecution acknowledged that Cst. Forgie’s guilty plea and statement before the Tribunal taking full responsibility for this behaviour can be a mitigating factor but did submit that this was followed by three days of evidence and submissions on a wide range of reasons why he is not taking responsibility.

I found that the statement made by Cst. Forgie to the Tribunal offered an explanation into his mindset at the time of his misconduct and summarized the great personal and family difficulties he has been experiencing as a direct result of his actions. He took full responsibility including the unprofessional language he used in the communication to J.F. for the derogatory reference to M.E. I will deem this portion as mitigating; however, concerns remain over Cst. Forgie’s interactions with J.F. after his learning of her status as a sexual assault victim and after his missteps to assist her. Cst. Forgie did not offer any clarification or insight to this point within his verbal statement and apology.

Disability and Other Relevant Personal Circumstances

Ms. D’Angelo advised the Tribunal that Cst. Forgie is Indigenous and entered a copy of his Native Alliance of Quebec card as evidence. (Exhibit # 22). Ms. D’Angelo tabled the OPS 2020 Executive Report (exhibit #49) which places indigenous representation within the OPS at 8.82% of the Service.

Ms. Stewart submitted that there are different ways that Cst. Forgie’s indigenous heritage can be brought into a penalty and suggested consideration be given to some form of a Healing Circle.

I will certainly accept Cst. Forgie’s indigenous status as a mitigating factor which reinforces his past and future value and contribution to both the Service and the community. Although not a part of the submission by the Defence, some form of Restorative Justice is not outside of my consideration.

Employment History

Ms. D’Angelo took a full day of submissions to detail Cst. Forgie’s employment history, arguing that it is a significant mitigating factor and that he is a valuable and contributing officer with initiative, a strong work ethic, and a valuable team member. Ms. D’Angelo submitted: Training records over 15 years of employment; two internal commendations; dozens of records of recognition from colleagues and superiors (including the Chief) over 11 years; and performance reviews and tracking log entries over Cst. Forgie’s 15-year career.

Ms. D'Angelo also submitted 15 internal police letters of support from colleagues (including four sergeants), all addressed to myself as the hearing officer, all attesting to the effectiveness and value of Cst. Forgie as an officer, and most acknowledging some knowledge of the alleged misconduct before this Tribunal. There were also eight similar letters of support from members of the community and a very powerful letter from Special Constable Karen Forgie, the wife of Cst. Forgie.

Ms. Stewart submitted that the Prosecution had no objection to any of the employment records and reference letters submitted, however the issue lies in the weight the Tribunal puts on documents and that there should not be significant mitigation attached. Further, the letters of support all speak to Cst. Forgie's continued usefulness as a police officer and the issue here is one of an appropriate penalty excluding dismissal.

Ms. Stewart submitted that Cst. Forgie's strong employment history needs to be tempered as he was subjected to a disciplinary hearing in 2014 in which he was demoted for eight months for discreditable conduct and neglect of duty. The circumstances were deemed serious and involved failing to properly process and file documentation in relation to a shoplifting investigation and for misrepresenting the actions of a loss prevention officer. Ms. Stewart was not asking for progressive discipline but did submit that the Tribunal weigh the previous misconduct as an aggravating factor in penalty.

In its totality, Cst. Forgie's employment record clearly establishes that he is a most competent, respected, and able police officer and an asset to the OPS and the greater Ottawa community. There is no denying his 15 years of clear demonstrations of good character and the OPS has benefited from having such a high functioning and valued indigenous member within its ranks. If dismissal remained a consideration here, Cst. Forgie's employment history would certainly be a tipping point to ensure his continued employment.

As strong as the employment history is, I am compelled to take into consideration his previous serious misconduct in 2014 as it is indeed a part of his employment history and did result in a nine-month demotion. Appreciating the Prosecution's position in not applying progressive discipline, I do find some similarities in the facts and issues in that Cst. Forgie failed to document investigative actions and to follow investigative procedures and policies. This is an aggravating factor that I would be remiss not to consider, despite Ms. D'Angelo's submission that the discipline is dated, subject to expungement, and not related to this hearing. I deem that it is very relevant as this is a second instance of serious misconduct within a six-year timeframe.

Potential to Reform or Rehabilitate the Police Officer

Ms. Stewart submitted although Cst. Forgie's actions were intentional and misguided, there is no reason to believe that the behaviour that resulted in misconduct will reoccur following the imposition of an appropriate penalty.

Ms. D'Angelo submitted that Cst. Forgie has indeed learned from his misconduct and, being a police officer who is valued by his Service and the community, a balanced, appropriate penalty, consistent with similar decisions, will negate the need for further rehabilitation.

I concur with both counsels and will not put any consideration on the need to reform or rehabilitate and it is simply not applicable with his 15 years of experience and, for the most part, consistent employment history. I do not have concerns that a firm, but fair penalty will fail to have the intended consequences nor is it likely that we will see Cst. Forgie before a Tribunal for similar misconduct as his career progresses.

Specific and General Deterrence

As to specific deterrence, the Prosecution submitted that a two-year demotion would serve as sufficient to demonstrate the severity to Cst. Forgie so it does not happen again. As for general deterrence, a clear message must be sent to all police officers that breaches of privacy and confidentiality are taken seriously and when disregarded, there will be significant consequences.

Ms. D'Angelo submitted that the message of deterrence has been, for the most part, already addressed and fulfilled with Cst. Forgie's suspension, and the media attention that followed. The humiliation and stigma of loss of status within the community has already accomplished specific deterrence and the public posting of this decision will further add to it.

It is most unfortunate that Cst. Forgie and his family will once again be the focus of negative media and community attention, and the publicity will no doubt bring on more angst and suffering. Serving members of the OPS will certainly take note of the consequences of Cst. Forgie's misconduct and a clear message of general deterrence will be conveyed.

Damage to the Reputation of the Police Service

Ms. Stewart submitted that police database breaches undermine the criminal justice system and the public's trust which makes the OPS appear unprofessional. Ms. Stewart cited *McFee vs. Brantford Police Service* (2012 ONCPC 12 (CanLII)) where the Commission ruled (paragraph 127) that:

“The conduct of Const. McPhee has seriously undermined the public’s confidence and trust that police officers will honour their sworn oath to protect the public and uphold the laws including those governing the use of the confidential CPIC and PIP systems. Such conduct has also seriously eroded the trust with other police services, specifically the RCMP, under the terms of the operating agreements allowing the Service to access these search systems. ... We therefore concur with the conclusion that only a substantial meaningful penalty will prevent or reduce the damage to the reputation of the Service.”

Ms. Stewart concluded that a substantial, meaningful penalty is required and to be seen that the OPS treats seriously instances of breaches of trust by members its Service. Police misconduct hearings are the subject of media coverage, and this decision will be publicly posted and reported on. The reputation of the OPS demands that a meaningful sanction be applied.

As with the seriousness of the misconduct, I deem this to be a main aggravating factor for my penalty consideration.

Effect on Police Officer and Police Officer’s Family/Effect on Publicity

Ms. D’Angelo submitted that the impact of the past year, since Cst. Forgie’s suspension, has had a profound effect on the Forgie family and the initial threat of dismissal has caused significant stress. Cst. Forgie’s wife has been diagnosed with an autoimmune disease and is unable to work, and she has recently lost her father and mother. His children are aware of the circumstances which have been reported in the Ottawa media, including an article titled “Ottawa police officer accused of giving information to romantic interest”, detailing information attributed to a leak to the media. (Exhibit # 25). Cst. Forgie was also temporarily removed from youth baseball coaching. Overall, the process has taken a significant toll on Cst. Forgie and his family.

As to the effect of publicity, Ms. D’Angelo further submitted that the OPS decision is posted by the OPS in the public domain which compounds the effect on Cst. Forgie and his family.

Ms. Stewart submitted that the impact on a police officer and his family is an appropriate factor in determining sanction, including financial impact. The Prosecutions position is that the consequences to Cst. Forgie and his family are the direct result of his behaviour and his cavalier use of OPS systems, breach of public trust, breach of polices, and breach of oath of office and must fall squarely on his shoulders. The behaviour was extreme, the deterrence is overriding and necessary, and the impact on his family should not influence a sanction.

Paul Ceyskens and Scott Childs address the factor of the effect on a police officer and family in their 2017 edition of Ontario Police Services Act, Fully Annotated (page 364), stating that:

“A hearing officer must consider the effect of the disposition on a respondent police officer in that officer’s particular circumstances...The case law appears to require ‘extenuating’ economic or other impact for this disposition factor to be relevant.”

Ms. D’Angelo cited Cst. Favretto and OPP (2001, OCCPS) (referred to in at tab 6, Casebook Volume II, exhibit # 18), establishing that the penalty must deter and be fair, but without undue or excessive hardship. If the penalty is unfair or not partial, it must be changed.

The Prosecution is seeking a two-year demotion from first class constable down to second class constable. The monetary penalty for a demotion would be the loss of the salary difference between a first class and a second-class constable. The Defence is asking the Tribunal for a forfeiture of 20 days for count one, 20 days for count two, and five days for count three, all to be served concurrently. From the Defence’s calculations and submissions, the financial impact of a two- year demotion would be \$25,454 in lost wages while a forfeiture of 20 days would result is a loss of \$8,600. I will view this as a mitigating factor in my reaching a fair penalty, however, will note here that both submissions are significant financial penalties.

Consistency of Penalty

Much of the submissions by both counsels focused on consistency of disposition to assist me in reaching a fair, yet appropriate penalty with the facts and issues of the particular case before me.

Ms. Stewart included six Ontario cases in her Book of Authorities, dating from 1996 to 2020, (Cst. Ioan Floria vs. Toronto Police Service; Markham and Waterloo Regional Police Service; McPhee vs. Brantford Police Service; Nesbeth and Windsor Police Service; Ontario Provincial Police Vs. Favretto; and Cst. Kleinsteiber and the Ontario Provincial Police). Four of the cases cited had CPIC and/or RMS breaches as a basis (with the exception of Nesbeth and the Windsor Police Service and Favretto and the Ontario Provincial Police) and all six initially resulted in dismissals by the respective hearing officer.

Ms. Stewart also cited the case of CUPE Local 933 vs. Cape Breton (2001, Carswell NS 527) in which, on appeal, a civilian employee was reinstated from her ordered dismissal to a penalty of a one-year suspension without pay and a permanent demotion from supervisor to operator.

Although no two cases share identical facts and issues, and different aggravating and mitigating factors require consideration, it is of great assistance to have a close study of similar fact decisions to at least set a range boundary for a fair decision in the penalty phase of a contested penalty hearing. It is clear from previous rulings, many upheld at appeal, that dismissal is certainly within the accepted range for CPIC based breaches, however that is no longer the position of the Prosecution in this case, who are asking for a two-year demotion.

Ms. D'Angelo devoted a considerable amount of time in her submissions on consistency of penalty and submitted a Book of Authorities, Volume I (exhibit # 17) citing 35 hearing decisions throughout Ontario, dated from 1993 through 2021, and a further 27 cases in Volume II.

In summary, all the cases in Volume I fell into a penalty range of a reprimand to a two-year demotion.

Volume II consisted of nine cases that spoke to general principles and the remaining 18 cases where OPS decisions, 12 of which were various forms of CPIC and RMS breach related misconduct. The cases cited were particularly relevant and of great assistance.

Ms. D'Angelo cited Carson and Pembroke Police Service (2001 OCCPS) and submitted that the notion of consistency of sanctions is very important, and that the penalty should be "fair and appropriate based upon the prevailing fact situation."

Further, Ms. D'Angelo cited Husseini vs. York Regional Police (2018 ONSC 283) wherein it was ruled that "no one of the 13 factors is paramount over the others and that the factors are intended to be flexible, contextual, and may evolve over time."

I acknowledge and will apply the notion that consistency is key for fairness and that each of the disposition factors need to be carefully considered based on the case before me.

I have reviewed the 27 cases in the Defence's Book of Authorities Volume II and find that five of them are particularly relevant to arriving at a penalty and I will briefly discuss each, highlighting some of the similarities as well as some of the differences in circumstances.

In Cst. Daniel Bargh and the Ottawa Police Service (2011 ONCOP 3 (CanLII)), the facts and issue are CPIC breach related in that Cst. Bargh was found guilty of two counts of insubordination for CPIC search breaches on five separate occasions but, dissimilar, as he was charged with two counts of insubordination, two counts of discreditable conduct, and one count of deceit. There was no evidence that Cst. Barge shared information with a member of the public. Cst. Bargh received a two-year demotion.

Cst. Michael Bond (Cst. Michael Bond and Ottawa Police Service, decision not dated) pled guilty to discreditable conduct for engaging in an inappropriate personal interaction with an acquaintance while on duty and to insubordination for an unauthorized CPIC search, resulting in a four-month demotion.

S/Sgt. Fournier (Lyse Fournier and Ottawa Police Service, decision dated May 18, 2012) pled guilty to two counts of insubordination for conducting 169 CPIC and RMS unauthorized queries over a four-year period for personal reasons. She was sentenced to a seven-month demotion.

Cst. Jennifer Finniss (Cst. Finniss and the Ottawa Police Service, decision dated June 26, 2015) was charged and pled guilty to two counts of insubordination for unauthorized CPIC and RMS searches on a young person and one charge of breach of confidence for disclosure of confidential information to a friend. She admitted to verbally providing protected information in relation to a young person to a friend who was involved in an incident under investigation by an OPS School Resource Officer. Cst. Finniss had no previous misconduct and was ordered to forfeit 160 hours (20 days) on counts one and two and 24 hours (3 days) on count three.

The final OPS case I will refer to is that of Cst. Jason Bond (Cst. Jason Bond and the Ottawa Police Service dated December 8, 2016) which involved Cst. Bond pleading guilty to 11 counts of discreditable conduct, three counts of neglect of duty, and two counts of insubordination. The facts include 100 plus unauthorized CPIC inquiries over a four-month period, involved a failure to initiate or submit police reports, and inappropriate communication of a sexual nature with 10 separate women as complainants and/or victims to criminal investigations. Cst. Bond was given a two-year demotion along with various training and supervisory restrictions during his demotion.

Decision

Much to his credit, Cst. Forgie entered a guilty plea to all three counts at the start of the four-day hearing, and an Agreement of Facts was read into the record by the Prosecution. The remainder of the hearing focused on submissions as to penalty with the Prosecution asking for a two-year demotion and the Defence requesting 160 hours (20 days) on counts one and two and 40 hours (five days) on count three. Clearly, as presented in the submissions and the cases cited in the Books of Authority, dismissal is not out of scope and indeed warranted in some cases of data breaches and divulging confidential information. With the most severe sanction taken off the table by the Prosecution prior to the commencement of hearing, my consideration here is whether to impose a period of demotion versus a substantial forfeiture of time penalty.

There are several mitigating disposition factors present in Cst. Forgie's favor: Recognition of the seriousness of the misconduct; disability and other relevant personal

circumstances; potential to reform; effects on the police officer and his family, and effect of publicity.

As to aggravating factors, the two most significant are the seriousness of the misconduct and the damage to the reputation of the Service. For employment history, I find his 15 years of stellar service, as documented by his performance reviews, professional commendations, and letters of support, to be highly mitigating, however, his previous formal discipline resulting in a nine-month demotion adds an element of an aggravating factor to this employment history that cannot be reconciled.

For these reasons I find a period of demotion to be warranted, indeed necessary with the facts in issue before me. With a demotion being a much more severe sanction than a forfeiture of pay, I have decided against any further sanctions such as Restorative Justice or a Healing Circle which would complement Cst. Forgie's indigenous status.

Lastly, but just as important, is consistency of disposition which I deem as a neutral factor. A penalty should be consistent with similar cases, and I have been provided several cases to review and measure against the set of circumstances before me.

It is the decision of this Tribunal that, to address the seriousness of the offence, the damage caused to the reputation of the Ottawa Police Service, and the evidence of a previous nine-month demotion for serious misconduct, that Cst. Forgie be demoted from first class constable to second class constable for a period of 15 months.

I am hopeful yet confident that Cst. Forgie and his family will endure this rather extended period of professional and family turmoil, and he will continue in a very successful, rewarding career with the OPS.

This order is made pursuant to section 85(1)(c) of the Police Services Act, R.S.O. 1990.

Chris Renwick
Superintendent (Retired).

July 26, 2022.

Appendix A

Exhibits

- Exhibit 1: Hearing Officer Designation, Supt. (retired) Chris Renwick.
- Exhibit 2: Prosecutor Designation, Ms. Christiane Huneault.
- Exhibit 3: Prosecutor Designation, Mr. Shawn Cleroux.
- Exhibit 4: Prosecutor Designation, Ms. Vanessa Stewart.
- Exhibit 5: Notice of Disciplinary Hearing.
- Exhibit 6: Notice of Increased Penalty.
- Exhibit 7: Revised Notice of Disciplinary Hearing.
- Exhibit 8: Revised Notice of Increased Penalty.
- Exhibit 9: Revised Hearing Officer Designation, Supt. (retired) Chris Renwick.
- Exhibit 10: Revised Prosecutor Designation, Ms. Vanessa Stewart.
- Exhibit 11: Revised Prosecutor Designation, Ms. Christiane Huneault.
- Exhibit 12: Revised Prosecutor Designation, Mr. Shawn Cleroux.
- Exhibit 13: Prosecution Exhibit Book.
- Exhibit 14: Prosecution Book of Authorities.
- Exhibit 15: Notice of Internal (Chief's) Complaint.
- Exhibit 16: Cst. Troy Forgie vs. Ottawa Police Service (Decision, dated December 9, 2014, Supt. Dan Delaney).
- Exhibit 17: Defence Book of Authorities (CPIC/RMS Related Breaches) Volume I.
- Exhibit 18: Defence Casebook Volume II.
- Exhibit 19: Defence Casebook Chart for Volume I.
- Exhibit 20: Employment Related Records, Cst. Troy Forgie. **(Sealed document)**.
- Exhibit 21: Letters of Reference/Support.
- Exhibit 22: Native Alliance Card—Troy Forgie.
- Exhibit 23: PSA Part IV, section 42(1).
- Exhibit 24: OPS Strategic Plan (Diversity), 2020-22
- Exhibit 25: CBC Article, titled "OPS officer Accused of Giving Police Information".
- Exhibit 26: Gananoque Now news article.
- Exhibit 27: Carleton Place news article.
- Exhibit 28: Brockville Examiner news article.
- Exhibit 29: Brockville Recorder news article.
- Exhibit 30: City News Everywhere news article.
- Exhibit 31: Letter of Commendation.
- Exhibit 32: Chevrolet article.
- Exhibit 33: Good Deeds Cup article.
- Exhibit 34: Good Deeds Cup information.
- Exhibit 35: Ottawa Sun article, W.C. Warriors.
- Exhibit 36: Victim's Rights in Canada.
- Exhibit 37: Canadian Victim's Rights Bill.
- Exhibit 38: Ontario Victim's Bill of Rights.

- Exhibit 39: Domestic Violence, Ottawa Police Service.
- Exhibit 40: Ottawa Police Service.
- Exhibit 41: Covid-19 Risks, Government of Canada.
- Exhibit 42: E-mail titled “Information Requested”, Salary or First and Second Class Constables.
- Exhibit 43: Resume—Cst. Troy Forgie.
- Exhibit 44: Troy Forgie coaching document.
- Exhibit 45: CARA radio news interview.
- Exhibit 46: OPS media release, “Found Bikes”.
- Exhibit 47: Police Standards Manual, Domestic Violence.
- Exhibit 48: OPS online posted article.
- Exhibit 49: OPS Executive Report 2020.
- Exhibit 50: OPS Notice of Suspension, Cst. Troy Forgie.
- Exhibit 51: Letter Re: FOI Request for Ottawa Police Service Policies.
- Exhibit 52: OPS Policy 6.08: Bail and Violent Crime.
- Exhibit 53: Transcript of Audio Interview with J.F.
- Exhibit 54: Notes of PSU Investigator Sgt. Serge Berube.
- Exhibit 55: Letter of support—Sgt. Kelly Lyle.
- Exhibit 56: Macquarie University Course Certificate, Manage Change.
- Exhibit 57: OPP East Region Tweet re: M.E., dated January 29, 2021.
- Exhibit 58: Media Reports subsequent to April 27, 2022.
- Exhibit 59: Media Reports re: tow truck issue.
- Exhibit 60: Prosecution Book of Authorities (Reply).
- Exhibit 61: Prosecution Exhibit Book (Reply).
- Exhibit 62: Federal Ombudsman Victims Exhibit.
- Exhibit 63: Sgt. Rick Bates vs. Durham Regional Police Service. (2003 OCCPS.)
- Exhibit 64: Prosecutor Designation, Ms. Angela Stewart.