

IN THE MATTER OF
ONTARIO REGULATION 123/98
MADE UNDER THE *POLICE SERVICES ACT* R.S.O. 1990, C.P. 15
AND AMENDMENTS THERETO.
AND IN THE MATTER OF
POLICE CONSTABLE NICOLA HARRISON #2542
AND THE
OTTAWA POLICE SERVICE

SENTENCE

APPEARANCES:

Mr. Shawn Cleroux	for the Ottawa Police Service
Ms. Pamela Machado	for Police Constable Nicola Harrison
Mr. Michael Lamothe	for Ottawa Police Association

BEFORE:

Deputy Chief Terence Kelly
York Regional Police (Retired)
Hearing Officer

SENTENCE DATE:

SENTENCE

Police Constable Nicola Harrison #2542

May 14, 2021

Deputy Chief Terence Kelly (Ret.) before commencing with Sentence in this matter, I wish to thank Mr. Shawn Cleroux, the Service prosecutor, and Ms. Pam Machado, counsel for Police Constable Nicola Harrison, for their comments and exhibits entered, all of which have assisted me.

Police Constable Nicola Harrison #2542 has pleaded guilty and been found guilty of one count of Discreditable Conduct, and one count of Breach of Confidence laid under the *Police Services Act*.

The guilty pleas were advanced with an Agreed Statement of Facts (Exhibit 9).

Agreed Statement of Facts

Police Constable Nicola Harrison #2542 is a sworn member of the Ottawa Police Service (OPS). Constable Harrison has been a member of the OPS since April 15th, 2019.

On August 23rd, 2019, Probationary Constable Harrison swore her Oath of Office and Oath of Secrecy and was sworn in as a police officer.

On February 20th, 2020, Probationary Constable Nicola Harrison completed her mandatory 500 hours of training with a Coach Officer. Thereafter, she began engaging in her police duties independently without the oversight of a Coach Officer.

On March 1st, 2020, during her fifth shift after having completed her Coach Officer Training, Probationary Constable Harrison accessed CPIC and RMS in order to query a vehicle and a tenant staying at an Air B&B owned by Ms. P. and her ex-husband, Mr. L. The following entities were queried by Probationary Constable Harrison on CPIC and RMS:

- (1) An Ontario license plate, which is owned by "W.U."
- (2) W.U.
- (3) K.L. (associate of W.U.); and
- (4) C.U. (associate of W.U.).

None of these searches were related to Probationary Constable Harrison's police duties and none of the individuals queried in the searches had any dealings with the Ottawa Police Service in 2020.

Probationary Constable Harrison subsequently conveyed confidential information learned from these unauthorized queries to a third party, Mr. L.

On May 24th, 2020, patrol officers were dispatched to investigate a partner assault related disturbance. Over the course of their investigation, the responding officers were made aware of possible CPIC and RMS data breaches and a possible Breach of Confidence by Probationary Constable Harrison. This information was relayed to the OPS Professional Standards Section (PSS) for investigation.

Ms. P. advised the patrol officers that they had issues with one tenant and Probationary Constable Harrison provided them with information such as confirming the tenant is well known to police, his address and his “rap” sheet.

During the call for service, Mr. L. arrived at the residence and immediately advised officers that he was in a relationship with Probationary Constable Harrison. Probationary Constable Harrison has been involved in a romantic relationship with Mr. L. since February 2020.

During the subsequent Professional Standards investigation, Ms. P. provided investigators with text messages between her and Mr. L., including:

- (1) Mr. L.: “2% are assholes...Nic showed me this guy’s rap sheet...he’s a punk”
- (2) Mr. L.: “Anything happens to our places, I know who and where he is...”
- (3) Mr. L.: [Message translated from French] “Nicola suggest not to aggravate the situation, report the incident. The guy has an extensive criminal record within the last 8 year’s”
- (4) Mr. L.: [Message translated from French] “I’m not worried, Nicola inspected the unit, she has all the information on this guy, I have videos to show the damage...we have a police officer as a witness”

Ms. P. also provided screenshots of messages from their Air B&B profile which included a conversation between Mr. L. and an unknown tenant. It included the following.

- (1) “Listen, tell [W.U.] I know who he is and that he should not threaten me as he drives away with his rap sheet dangling from the trunk of his car with an expired tag...Choose your enemies wisely...Rule number one; it’s only illegal if you get caught...you got caught...I recommend walking away from this one and absorb your loss...”

On June 9th, 2020, Mr. L. was interviewed by a Professional Standards investigator. In this interview, he indicated:

- (1) On March 1st, 2020, he received a text message from Probationary Constable Harrison asking how he was doing, which led him to vent about the incident he was dealing with.
- (2) He took video and photos and sent them to Probationary Constable Harrison.
- (3) He did not know Probationary Constable Harrison would verify the information.
- (4) Probationary Constable Harrison confirmed with him that the photo he had sent her was, in fact, a photo of an individual named W.U.
- (5) Mr. L. advised that he no longer has the photos or messages he sent to Probationary Constable Harrison.

On June 9th, 2020, Probationary Constable Harrison attended Professional Standards office to complete a compelled interview. In this interview, she stated the following.

- (1) She is in a boyfriend/girlfriend relationship with Mr. L.
- (2) She completed RMS and CPIC queries for personal reasons.
- (3) Mr. L. called her because one of his tenants had caused damage to his unit and breached the rental agreement.
- (4) She was worried for Mr. L.'s safety which is why she made the queries.
- (5) Mr. L. sent her a video in which a vehicle was observed, and the license plate was visible.
- (6) She queried the license plate on her own will, without Mr. L. asking her.
- (7) She then queried the registered owner of the vehicle, W.U., on RMS and CPIC and later, his associates on both RMS and CPIC as well.
- (8) She does not remember the exact confidential information she disseminated to Mr. L. as a result of these unauthorized searches but confirmed to PSS investigators that she provided Mr. L. with the registered owner's name and advised him that the male could be violent and was well known to police.
- (9) She denied receiving money or a rent discount for completing the queries and providing the information to Mr. L.

- (10) She confirmed that she just recently learned about CPIC breaches both at Ontario Police College and at the Ottawa Police Service Professional Development Centre and was also aware of OPS policy related to CPIC and RMS access.
- (11) She confirmed that she was aware that she could not query entities unrelated to her police duties.
- (12) She understands that every name and plate she queries on RMS and CPIC constituted a separate data breach.
- (13) She advised PSS Investigators that she is ready to take full responsibility for her actions.

After carefully studying all the evidence and exhibits submitted by both counsel during their written submissions to sentence in this case, together with my notes and observations during the process, it is the decision of this Trier of Fact to address the two charges collectively for penalty.

Ms. Machado, defence counsel, and Mr. Shawn Cleroux the Service prosecutor both presented able arguments in their written submissions, all of which I carefully considered when deciding the appropriate disposition in these matters.

Ms. Machado in her submissions argued that the proper penalty in this case would be as follows.

- i) One Count of Insubordination:
 - a) Constable Harrison will forfeit 24 hours (3 days) to be taken from her vacation, stat or overtime bank forthwith.

- ii) One Count of Breach of Confidence:
 - a) Constable Harrison will forfeit 24 hours (3 days) to be taken from her vacation, stat or overtime bank forthwith.

She spoke to several factors set out in *Ceyssens' Legal Aspects of Policing* that should be taken into consideration in sentencing when it comes to policing.

The key elements being: Public interest; Seriousness of the misconduct; Recognition of the seriousness of the misconduct; Ability to reform or rehabilitate the officer; and the Damage to the reputation of the police service. She noted several other factors which also are of significance to the herein matter. Other considerations being the need for general and specific deterrence, handicap or other relevant personal or family circumstances.

Defence Counsel also referenced several previous decisions by other Hearing Officers, stating this Tribunal ought to treat such past decisions as strongly persuasive and indicative of the prevailing trends in police discipline. I have also read and considered the cases provided. These cases are provided for guidance with respect to the appropriate disposition in this matter.

Prior decisions may be important for a number of reasons. They may represent a clear binding articulation of some principle of law, rule of evidence or procedure. They may also in the penalty process, indicate a standard by which the penalty in the particular case is also to be measured or applied.

Counsel further argues that each case is to be judged on its merits, and the facts of this matter, being at the low end of the spectrum, and the accountability being shown, equate to the proposed resolution being well within the range of reasonable.

Ms. Machado stated it was appropriate to consider the previous history of Police Constable Harrison, the nature and seriousness of the misconduct and the issues of her ability to reform and also the damage to the reputation the Police Service. She also introduced many character references, stressing the good character of the officer and her consistency in faithfully representing the image of the Ottawa Police Service, which represents a future that is reflective of the community in which she serves.

Also, the performance reviews through her short tenure with the Ottawa Police Service, noting her probationary term has been exemplary. She is described as dependable and reliable. Her supervisors have commented regarding her value to the organization, in addition to her ability to interact with members of the public, and her colleagues. Her performance reviews also demonstrate her ability to reform and progress through any challenges she faces. In addition, she meets, or exceeds all expectations in the assessed competencies.

She also spoke to the fact; Police Constable Harrison acknowledged her guilt at the first opportunity, and that she is now aware of the extent of her misconduct.

In his submissions, Mr. Cleroux, the Service prosecutor argued that the proper penalty for these acts of misconduct is:

- a. a forfeiture of 20 days or 160 hours off pursuant to s. 85 (1)(f) of the *Police Services Act*, and
- b. a forfeiture of 3 days or 24 hours pay pursuant to s. 85 (1)(e) of the *Police Services Act*.

Mr. Cleroux argues that the penalty is supported by dispositions in similar police discipline cases as well as disciplinary decisions in other professions. Moreover, the recommended penalty reflects the numerous aggravating factors present in this matter, including the significant and recently increasing public interest engaged by privacy breaches; the inherent seriousness of the misconduct, which is further aggravated by its deliberateness and number of data breaches. He also notes Constable Harrison's exceptionally brief term of employment and that she committed the acts of misconduct on just her fifth shift of independent patrol.

He also spoke to several factors set out in *Ceyssens' Legal Aspects of Policing*, that should be taken into consideration in sentencing when it comes to policing. The same ones referenced by defence counsel in her submissions. Factors that can be relevant: either aggravating or mitigating the penalty depending on the misconduct in question. These include the officer's employment history and experience and

recognition of the seriousness of the transgression. Other considerations which could include the need for general and specific deterrence, handicap or other relevant personal or family circumstances.

Counsel also noted several previous decisions by other Hearing Officers. I will not refer to these cases in totality. I have read and considered the cases provided by counsel. These cases are for guidance with respect to disposition of penalty which counsel have recommended to be appropriate for the findings of guilt on count of Insubordination and one count of Breach of Confidence.

Analysis and Decision

The law is clear in how a suitable disposition shall apply when misconduct has been established. In determining a suitable disposition in this matter, the Tribunal has heard submissions representing the position of both parties and has given careful consideration to this information. After a finding of guilt, the Tribunal must determine if the proposed sanctions achieve the objective. The misconduct relative to these charges have been adequately described by the prosecution. Defence has consented to its substance. Additionally, the submissions on penalty have established aggravating and mitigating factors that speak to the appropriateness of the penalty.

The Tribunal must however be careful of the fact that prior decisions, whether in the adjudicative or penalty process are always viewed in the context of their particular cases.

Public Interest

The police officer is the person most responsible for initially setting the wheels of the administration of justice in motion and therefore the general public cannot be expected to respect the law if it does not respect and believe in the dedication and integrity of the Police Service.

A police officer's conduct ought to set an example for the community to follow and thus any shortcomings in their conduct will colour the image of the Police Service in the eyes of the public.

It is appropriate to consider public expectations as one of the factors in the determination of an appropriate penalty. The penalty must impress the public that the misconduct on an officer's part attracts appropriate sanctions. The public confidence in the provision of the Police Service is affected by the actions of its policer officers.

The well-entrenched penalty factors described in the jurisprudence of police discipline; the public interest, the nature of the misconduct, and the damage to the reputation of the police service, all relate, in my view, to the concept of the public trust in policing, and our willingness and ability to address wrongdoing when it surfaces.

The disciplinary system of any organization is designed to ensure compliance with the rules and regulations that represent the minimum requirements of good standing. How effectively and fairly the disciplinary system does its job is one measure of organizational integrity.

These obligations can only be discharged by the strictest attention to duty, a high standard of conduct and the subordination of personal considerations to the interest of the Service and the community on the part of all ranks. In a service such as policing it is essential that a high standard of discipline should be maintained, and those irregularities of conduct that would not be noticed in other employment should be subject to disciplinary treatment.

An informed police officer possesses a sense of responsibility to the Service of which he or she is part, and the community, which they serve. It is unfortunate that when dealing with this situation that Police Constable Nicola Harrison would not have permitted herself to be guided by her better judgment and responsibility.

The public trust in policing remains fragile and the actions of an individual officer can influence many. Public trust for policing ebbs and flows, dependent on a variety of influences. While support and trust must be continually earned, it takes very little to destroy it.

Given all the information that was provided to me from her immediate supervisors and fellow officers regarding her work history during her short service with the Ottawa Police Service, I am left with the impression that Constable Harrison is a well thought-of, capable and respected member of the Service, and one who is engaged in the community in which she serves. It would appear that this is an isolated incident and that she will use this experience as an opportunity for learning and growth.

This disposition is not trifling and reflects to an appropriate degree the impact or at least the potential impact the Officer's actions had upon the Ottawa Police Service and its relationships with the community. It also reflects to an adequate degree the impact of her behaviour upon the relationship with her employer.

To reflect the seriousness of the offences, and as a general and specific deterrent, it is the decision of the Tribunal that **Police Constable Nicola Harrison, Badge #2542 for the finding of one count of Insubordination is a forfeiture of 60 hours off; and for the finding of one count of Breach of Confidence is a further 60 hours off to be served at the discretion of the designated unit commander.**

The penalties on Charge 1 and 2 will run concurrently.

The above penalty submitted in accordance with section 85(1)(f) of the *Police Services Act*.

Terence Kelly, Deputy Chief (Retired)

York Regional Police

Hearing Officer

May 14, 2021