

**ONTARIO PROVINCIAL POLICE DISCIPLINE HEARING  
IN THE MATTER OF ONTARIO REGULATION 268/10  
MADE UNDER THE *POLICE SERVICES ACT*, RSO 1990,  
AND AMENDMENTS THERETO;**

**AND IN THE MATTER OF  
THE ONTARIO PROVINCIAL POLICE**

**AND**

**DETECTIVE CONSTABLE Sean McGAGHRAN, #11001**

**CHARGE:**

**DISCREDITABLE CONDUCT**

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**DISPOSITION**

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**Before: Superintendent Mike Bickerton**

**Counsel for the Prosecution: A/Inspector Ian Vickers  
Ontario Provincial Police**

**Counsel for the Defence: Mr. David Butt**

**Public Complainant: Ms. S.S.**

**Disposition Date: May 18, 2022**

This decision is parsed into the following parts:  
PART I: OVERVIEW;  
PART II: HEARING;  
PART III: SUBMISSIONS, ANALYSIS and FINDINGS; and,  
PART IV: DISPOSITION

## **PART I: OVERVIEW**

### Allegations of Misconduct

Detective Constable Sean McGaghran, #11001 is alleged to have committed discreditable conduct in that he did act in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the Ontario Provincial Police, contrary to section 2(1)(a)(xi) of the Code of Conduct contained in the Schedule to Ontario Reg. 268/10, as amended.

### Particulars of Allegations:

On or about April 3, 2019, while on duty, he testified at the Timmins Ontario Court of Justice in the preliminary hearing for a Controlled Drugs and Substances (CDSA) matter.

It was reported he took the stand on April 3, 2019, at 9:41am and concluded his evidence in chief and cross examination at 10:22am.

It is alleged that he committed the following misconduct in his actions:

- He was aware a “WhatsApp” chat group had been created for the members of his investigative team, including himself.
- While giving his testimony, when asked by defence counsel, S.S., if he had “WhatsApp” group chat messages on his phone from April 17, 2018, between himself and other officers, he responded that he did not know whether or not he had messages from that date. Although elsewhere in his testimony he did acknowledge existence of the chat.
- He was less than forthcoming in his testimony regarding the use of the “WhatsApp” messaging application by his investigative team. Were aware a “WhatsApp” chat group had been created for the members of his investigative team, including himself.

- He deleted the “WhatsApp” group chat from your phone approximately eight minutes after he testified. He failed to notify the officer in charge of the case, or the Crown Attorney of this action.
- During preparation for the trial, on or about November 17, 2020, he was less than forthcoming with the Crown Prosecutor, telling him that he removed himself from the group chat by accident. He knew it required several steps to remove “WhatsApp” chats from his phone.
- On or about November 17, 2020, he sent a text message to Sergeant Ryan Coughlin and stated words to the effect of – *I deny there being a chat which is fine. Its ongoing...it shows I left the chat 3 April 2019 at 1030hrs. Guess when that was? It was at the prelim when I was on the stand denying there was a chat in the first place.* In this text, he acknowledged denying the existence of the chat when he gave evidence in court. Although later in his testimony he did acknowledge existence of the chat.
- He was less than forthcoming during his interview with Toronto Police Service Professional Standards on February 27, 2021, by stating he did not deliberately leave this “WhatsApp” chat group. He knew it took a deliberate effort to remove a chat, and that the program was designed to prevent accidental removals by using a multi-step process to delete.
- While at the residence of S.S. client, he took a photograph of anal lubricant, posted it on the group chat, and told a fellow officer words to the effect of – *I found your prescription.* He knew this action and communication was unprofessional.

D/C McGaghran knew or reasonably ought to have known his actions were discreditable.

## **Representation**

In this matter, D/C McGaghran was represented by defence counsel, Mr. Butt, while A/Inspector Vickers represented the OPP. The public complainant, S.S. attended virtually and was an active participant.

## **Plea / Penalty Position**

On May 18, 2022, D/C McGaghran, accompanied by his counsel Mr. Butt, entered a plea of guilty and was found guilty of discreditable conduct, based on clear and convincing evidence. The amended Notice of Hearing (NOH) was adopted to also

represent an Agreed Statement of Facts (ASOF). The hearing was held at OPP General Headquarters with some participants appearing virtually.

Mr. Butt and A/Inspector Vickers submitted a joint penalty proposal of a demotion from first class constable to second class constable for a period of six months. The public complainant participated in the tribunal and did not express opposition to the proposed disposition.

## **Decision**

Having reviewed and considered the submissions from counsel, I am satisfied there is clear and convincing evidence from the Agreed Statement of Facts and D/C McGaghran's guilty plea to support the proposed penalty.

I order D/C McGaghran demoted from first class constable to second class constable for a period of six months. Upon completion of the six month demotion D/C McGaghran will be reinstated to first class constable. This order is being made pursuant to section 85(1)(c) of the *Police Services Act*.

My reasons for the decision are as follows:

## **Part II: THE HEARING**

### **Exhibits**

The exhibits for this matter are listed as Appendix A.

### **Agreed Statement of Facts**

At the commencement of the hearing, counsel requested the Notice of Hearing be adopted as the Agreed Statement of Facts.

## **Part III: SUBMISSIONS, ANALYSIS AND FINDINGS**

### **Analysis**

I accepted D/C McGaghran's guilty plea to one count of discreditable conduct and found him guilty based on the facts outlined in the ASOF. The NOH/ASOF illustrates facts succinctly in support of a finding of guilt. D/C McGaghran's misconduct has been confirmed. The purpose of this decision is to address the proposed and accepted disposition.

In their submissions, the parties relied upon commonly held proportionality considerations and other submissions applicable to this particular matter. The following penalty factors provide guidance in acceding to the joint disposition proposition.

### Public Interest/Public trust

I am aware through training and experience it is commonly acknowledged that police hold a position of great power and great trust in our communities. It necessarily follows that the law holds police officers' conduct to a higher standard than that to which the general public is held. Courts and tribunals have affirmed moral rectitude, the highest ethical standards, and unwavering integrity are essential characteristics desired of and deserved from our police officers by our society.

Although not alone in the described chat group, the behaviours described in the NOH/ASOF were an affront to the honourable and lawful standards expected of the police. D/C McGaghran's actions served to at least attempt to undermine the right to a fair trial of an accused person and subverted the integrity of the court process.

The Police Service must be the first line of defence against this type of conduct. Police officers must recognize that support from the community and trust of participants in the judicial system cannot be sustained if the officers betray trust resulting in the community and the courts doubting the uprightness of the Police Service.

We, the police, cannot approach our duties and responsibilities with a brash attitude that the "*end justifies the means*" and sacrifice our integrity by bending or breaking rules in order to arrest and convict offenders. This occurs if officers consider that a desired result is so virtuous or vital that any method, even a morally corrupt one, may be used to achieve it. Regardless of how odious we find certain criminal acts we are investigating to have been, we must conform to the law and the high moral standards inculcated and expected of us at all times and without exception.

When police break the rules as described, by improperly and secretly discussing evidence in an ongoing trial with the belief nobody would find out, and are less than truthful when it comes to light; it serves to destroy the trust the community has placed in us to do the right thing, no matter the situation.

The public complainant's submissions were entirely fair and poignant and spoke to public interest and public trust amongst other concerns. Their submissions included (paraphrased):

- They had no intention of interfering with the disposition.

- They were glad the officer was not losing his job.
- They were disappointed the officer did not initially admit his wrong doing and that he denied his behaviour to the crown attorney.
- In being less than forthcoming the officer perpetuated his misconduct and narrowly avoided more serious consequences.
- When officers are willing to do wrong things for what they perceive as the right reasons it undermines public perception of the police.
- Expressed concerns, speculatively, of what goes on in other investigations where there is no evidence to prove suspicions of police mischief like there was in this case with D/C McGaghran and his involved cohorts.
- Spoke highly of the officer and his reputation and accepted this misconduct was a “one off”.
- Suggested that none of the accused persons were worth a police officer risking their reputation and that, in the future, officers should accept losing a case rather than sacrificing their integrity.
- Was hopeful, looking forward, D/C McGaghran would be in a position to help other officers who might face ethical conundrums.

Public interest and public trust is aggravating and significantly weighty.

### Seriousness of the Misconduct

This was decidedly serious misconduct. The fact that the Toronto Police Service were asked to criminally investigate this incident may have been prompted for several reasons not necessarily addressed in submissions. I am confident when I infer that the gravity and possible criminal nature of the allegations, at least in part, prompted consideration of an outside agency conducting the investigation.

Wrongly and clandestinely discussing evidence during an ongoing trial was highly irregular, improper, at least in theory, illegal and immoral and showed a stark disregard of the standards expected by the OPP, by the Judiciary, and by the communities we serve. The behaviour described in the NOH casts a shadow on the ethical conduct of not just the officers involved, but all police officers, where some might assume this behaviour is somehow prevalent or acceptable. It absolutely is not either.

The seriousness of the misconduct is aggravating and considerably weighty.

## Recognition / Remorse of the Seriousness of Misconduct

D/C McGaghran's plea of guilty is an important recognition of the seriousness of his behaviour and it demonstrates compunction for his actions. Indeed, as the officer appeared before this tribunal, he appeared genuinely troubled and abashed by his behaviour leading to misconduct.

The OPP looks for their members to take ownership of their transgressions when they occur and D/C McGaghran's acceptance of wrong doing is a strong indicator of his taking responsibility and his desire to move forward in a positive manner. It is my position, notwithstanding the serious nature of the misconduct, this speaks to his character and bodes well for his ability to rehabilitate.

I consider Recognition of the Seriousness of Misconduct to be a significant mitigating factor.

## Employment History

D/C McGaghran is an experienced officer with some 21 years of service. He has enjoyed a positive employment history. D/C McGaghran's personnel evaluations reflect an officer who has met, and in many cases, exceeded performance standards and has been the recipient of many positive comments and notations from his managers and supervisors. The comments of the public complainant included that D/C McGaghran enjoyed a positive reputation held by those who have interacted with him and that this occurrence seemed out of character or, at least, anomalous. D/C McGaghran has further demonstrated his reliability to accept extra duties and shifts and has continued to do so despite this pending disciplinary matter.

D/C McGaghran's employment history is significantly mitigating.

## Potential to Reform / Rehabilitate

D/C McGaghran's employment history and his willing acceptance of consequences for his misconduct bode well for his ability to move beyond this misconduct. The nature of this misconduct will result in other outcomes that will require D/C McGaghran to overcome the tarnish he has caused on his reputation and credibility. The fact that D/C McGaghran was not initially frank about his behaviour is a cause for some concern.

There was no evidence or submission that caused me substantial unease with respect to the officer's ability to reform from the behaviour resulting in misconduct.

D/C McGaghran's ability to rehabilitate is mitigating.

### Consistency in Disposition

No specific cases were submitted with respect to consistency of the disposition. A/Inspector Vickers and Mr. Butt both submitted that the proposed disposition followed significant consultations, was grounded in case law, and was fair, and consistent with other matters. I see no reason or basis for either party to risk their professional reputation by misleading this tribunal in this regard.

Mr. Butt reminded this tribunal of the Supreme Court of Canada decision; *Anthony-Cook*<sup>1</sup> regarding joint submission in dispositions being given deference. There was no evidence or submission that would cause me to consider accepting the joint submission in this matter would bring the administration of justice into disrepute.

### Specific and General Deterrence

Specific and general deterrence is required. As noted, I find it unlikely D/C McGaghran will repeat this type of misconduct. I am satisfied that the joint penalty proposed will send a clear message to D/C McGaghran and to other members of the OPP that this type of misconduct will not be tolerated and that this type of behaviour will result in a fittingly severe sanction. D/C McGaghran must realize that any future misconduct will likely result in more serious consequences. I am aware through experience that other<sup>2</sup> officers who, under different circumstances, have been dismissed for arguably analogous misconduct. I reminded D/C McGaghran of this point.

### Damage to the Reputation of the Police Service

Damage to the reputation of the OPP has occurred. The court proceeding was public, defence counsel (public complainant), the accused person(s), the crown attorney, the court and other members of the public are aware of the behaviours leading to the misconduct of D/C McGaghran and other officers. Members of the Toronto Police Service investigated the allegations and are also fully aware of what transpired.

The potential for further damage to the reputation is a live issue should this decision and underlying facts become more widely known. I have addressed the public interest and public trust elsewhere. Those assertions speak to the significant harm caused and likely to be caused to the reputation of the OPP. It is tempting for some members of our society to take a blanket or "wide brush" approach in assuming

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<sup>1</sup> *R. v. Anthony-Cook*, 2016 SCC 43 (CanLII), [2016] 2 SCR 204

<sup>2</sup> *Kobayashi and Waterloo Regional Police Service*, 2015 ONCPC 12 (CanLII)

that all police officers are capable of such unprincipled acts. Damage to the reputation of the OPP, on its own, warrants a weighty disposition.

Actual and potential damage to the reputation of the OPP is significantly aggravating.

#### Other Relevant Circumstances

Mr. Butt submitted D/C McGaghran and his spouse have a child with significant medical issues and are faced with daily challenges related to the child's health and care. As a father and grandfather I am sensitive to what must be, at times, heart rending scenario of having a child that is facing serious health challenges. I reminded D/C McGaghran of the tremendous support available to him and his family through the OPP and the Ontario Provincial Police Association (OPPA) and encouraged him to avail himself of these services if he had not done so already.

While not neutralizing other aggravating factors I consider the personal situation the officer and his family find themselves in to be mitigating to a degree. A demotion comes with a financial cost but I do not perceive, through the jointly proposed disposition, that the six month demotion will be excessively burdensome on D/C McGaghran and his family.

#### **PART IV: DISPOSITION**

I order D/C McGaghran demoted from first class constable to second class constable for a period of six months. Upon completion of the six month demotion D/C McGaghran will be restored to first class constable. This order is being made pursuant to section 85(1)(c) of the *Police Services Act*.



Superintendent Mike Bickerton  
OPP Adjudicator

Date: June 14, 2022

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## Appendix A

The following exhibits were tendered during the disposition:

- Exhibit 1: Delegation – Adjudicator Superintendent Bickerton
- Exhibit 2: Delegation – Adjudicator Superintendent Barron
- Exhibit 3: Designation – Prosecutor Inspector Young
- Exhibit 4: Designation – Prosecutor Inspector Doonan
- Exhibit 5: Designation – Prosecutor A/Inspector Vickers
- Exhibit 6: Delegation All Officers
- Exhibit 7: Career Profile and Evaluations