

**YORK REGIONAL 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
YORK REGIONAL POLICE**

AND

POLICE CONSTABLE REBECCA BOYD #1449

CHARGE: INSUBORDINATION

DISPOSITION WITH REASONS

APPEARANCES:

Ms. Carley Valente	for	York Regional Police
Mr. William MacKenzie	for	Constable Rebecca Boyd #1449

HEARING OFFICER:

Superintendent Russ Bellman #715	York Regional Police
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HEARING DATE:

October 27th , 2021

This decision is broken down into the following parts:

*PART I: OVERVIEW;
PART II: ABSENCE OF THE PUBLIC COMPLAINANT AT THE HEARING;
PART III: THE HEARING;
PART IV: SUBMISSIONS, ANALYSIS AND FINDINGS and,
PART V: DISPOSITION.*

PART I: OVERVIEW

Background

Police Constable Rebecca Boyd (Constable Boyd) has been a member of York Regional Police since April 2004. She currently holds the rank of First Class Constable.

Constable Boyd is currently assigned to the Call Diversion Unit, where she has worked since September 2020. At all material times, Constable Boyd was assigned to the Quality Assurance and Risk Management Unit.

Allegations of Misconduct

Constable Boyd stands charged with five counts of Insubordination by not adhering to York Regional Police Procedure AI-007 – CPIC and Management of Police Records, contrary to the Police Services Act, Ontario Regulation 268/10, Schedule, Code of Conduct Section 2(b)(ii).

The summary of the allegations are as follows:

1. In September 2018, Constable Boyd commenced a romantic relationship with F.C. which ended in 2019. At the time, F.C. was also in a relationship with Ms. Alice Juskovic (also known as Allison Juskovic, Alice Rochon and Allison Fairchild). Constable Boyd contacted Ms. Juskovic on Facebook on March 22nd, 2019, and again on February 11th, 2020, to discuss their respective relationships with F.C. The Facebook account identified Constable Boyd as being employed with York Regional Police.
2. On April 1st, 2020, Ms. Juskovic submitted a complaint with the Office of the Independent Police Review Director (“OIPRD”) regarding the conduct of Constable

Boyd. The OIPRD forwarded the complaint to York Regional Police on July 7th, 2020, for investigation.

3. A subsequent investigation by the Professional Standards Bureau revealed that in 2018, Constable Boyd conducted five unauthorized queries on CPIC in relation to Ms. Juskovic and F.C.:
 - On September 25th, 2018 and November 14th, 2018, Constable Boyd queried F.C.'s name.
 - On December 17th, 2018, Constable Boyd queried F.C. and his licence plate, BXWT 792.
 - On October 3rd, 2018 and November 19th, 2018, Constable Boyd queried the names Alice Rochon and Allison Fairchild, respectively.
4. Constable Boyd conducted these queries while on duty in the Quality Assurance and Risk Management Unit for personal use. There is no evidence to suggest that Constable Boyd saved, recorded or disclosed the CPIC results.
5. Constable Boyd failed to comply with General Procedure AI 007, Canadian Police Information Centre and Management of Police Records, having regard to the following provisions:

D. SECURITY OF INFORMATION

1. It is the responsibility of every member to ensure that confidential information is safeguarded against unauthorized access, removal or misuse.
2. Members must not use or access CPIC or any York Regional Police information for any purpose other than official business related to the duties of their position.
6. During her compelled statement with the Professional Standards Bureau, Constable Boyd acknowledged and accepted responsibility for her misuse of CPIC, apologizing for her conduct.
7. Constable Boyd has no prior discipline on file.

Absence of Public Complainant

This hearing was directed by the Office of the Independent Police Review Director (OIPRD), as a result of a public complaint. As such, Ms. Alice Juskovic, who is the Public Complainant (hereafter referred to as the “Complainant”) is entitled to have standing at the hearing. On the date of the hearing (October 27th, 2021), the Complainant informed the Prosecution that she was unable to attend, as she was delayed on a flight from Europe. The Complainant had previously sent an email to the Prosecution on October 19th, 2021, requesting a change in the date of hearing. The Prosecution advised the Complainant that a motion for adjournment would be required and that if she was not represented by counsel, that the Prosecution could provide further procedural assistance. While there was subsequent correspondence between the Prosecution and the Complainant, there was no submissions or motions brought forward by the Complainant (or received by the Prosecution) to further support the Complainant’s wish for an adjournment.

The Prosecution requested that I make a ruling on whether the hearing should proceed in the absence of the Complainant. I asked both the Prosecution and the Defence to make submissions in that regard, in order to make a ruling on this request.

As part of the Prosecution’s submission, a series of email and letter correspondence between the Prosecution and the Complainant were submitted as exhibits and are categorized in Appendix “A”.

Based on the submissions put forward by the Prosecution as well as the Defence and upon careful review and consideration of the correspondence from the Complainant, I have directed that the hearing proceed as previously scheduled and agreed to by all parties.

Plea

A *Notice of Hearing* was served on Constable Boyd on February 12th, 2021, for a first appearance before this tribunal on March 10th, 2021. At the onset, it was clearly indicated by Defence that Constable Boyd wished to enter a guilty plea and accept full responsibility for her actions.

On October 27th, 2021, Constable Boyd plead guilty to five counts of Insubordination.

Decision

As a result of the submissions made by the Prosecution and the Defence, I have weighed the guilty plea and find there is clear and convincing evidence to support a finding of guilt against Constable Boyd, contrary to section 2(b)(ii) of the Code of Conduct contained in the Schedule to Ontario Regulation 268/10, as amended.

After a full analysis, I order Constable Boyd to forfeit 90 hours.

My reasons for the decision on permitting the hearing to proceed in the absence of the Complainant as well as my decision on penalty are as follows:

PART II: THE ABSENCE OF THE PUBLIC COMPLAINANT

Background

This hearing was directed by the OIPRD as a result of a public complaint. As such, the Complainant is entitled to have standing at the hearing. Due to the COVID-19 Pandemic, all pre-hearing appearances took place via teleconference and “Zoom” videoconference.

Following the first appearance date of March 10th, 2021, there were five subsequent pre-hearing appearances, followed by the hearing, which took place on October 27th, 2021.

In order to clearly identify the participation by the Complainant in this disciplinary process, the following time line of all appearances before this tribunal is detailed below:

March 10th, 2021 – (via Zoom) This was the first appearance following the service of the *Notice of Hearing* on Constable Boyd. The Prosecution and Counsel for Constable Boyd were present. The Complainant was not present. The Prosecution advised the tribunal that a copy of the *Notice of Hearing* and appearance date had been delivered to the Complainant. Production had been completed by the Prosecution and had been provided to both the Defence and the Complainant. The matter was adjourned to April 20th, 2021 and the Prosecution advised the tribunal that they will attempt to notify the Complainant of the adjourned date.

April 20th, 2021 - (via teleconference). The Prosecution, the Defence and the Complainant were all present. The tribunal reminded the Complainant that she is entitled to be

represented by counsel. The Complainant responded that she had a lawyer and would be represented. The Prosecution directed that the matter adjourn to June 1st, for an anticipated guilty plea/resolution hearing and that submissions could be made by all three parties on that date. The tribunal asked the Complainant if she understood the process and she advised the tribunal that she understood. The Complainant stated that she did not have any further questions and was agreeable to returning on June 1st, 2021.

June 1st, 2021 (via teleconference). The Prosecution and the Defence were present. The Complainant was not present. The Prosecution stated that there had been no previous communication from the Complainant and that there was no information or explanation as to why the Complainant was not present for this plea/resolution hearing. At this appearance, the Prosecution advised the tribunal that a second public complaint against Constable Boyd had been received and accepted by the OIPRD and that it was related to the current complaint being dealt with by this tribunal. The Prosecution requested an adjournment to allow time for the second complaint to be investigated by the Professional Standards Bureau, in the event that the new allegations from the second complaint were sufficiently connected to this matter and that they could possibly be dealt with together. The Prosecution also advised this tribunal that they had not received a response from the Complainant as to whether she was being represented by counsel. The matter was adjourned to July 7th, 2021 and the Prosecution advised the tribunal that they would notify the Complainant of the new date.

July 7th, 2021 (via teleconference). The Prosecution, the Defence and the Complainant were all present. The Prosecution advised the tribunal that the second complaint was still under investigation and requested a six week adjournment to await the outcome of the second investigation to determine next steps on proceeding with this matter. The Complainant was agreeable to this adjournment and advised the tribunal that she understood the reasons for the adjournment. Defence was agreeable to this as well and all parties agreed to the subsequent appearance date of August 17th, 2021.

August 17th, 2021 (via teleconference). The Prosecution and The Defence were present. The Complainant was not present but the Prosecution advised the tribunal that they had been contacted by the Complainant stating that she was unable to attend but still wished to have standing and had asked for an adjournment. The Prosecution stated that the investigation into the second complaint was complete and that it will not be combined with this matter and will result in a separate *Notice of Hearing* being filed and an independent appearance before another tribunal in order to deal with that matter. This matter can now continue as originally planned and an adjournment date of September 22nd, 2021 was set to determine further steps.

September 22nd, 2021 (via teleconference). The Prosecution, The Defence and the Complainant were all present. The Prosecution requested a date for an in-person resolution hearing for an anticipated guilty plea. A date of October 27th, 2021 was set. The Defence and the Complainant both agreed and advised the tribunal that October 27th, 2021, was suitable and would be appearing in person.

October 27th, 2021 (in person). At the start of the hearing, the Prosecution advised the tribunal that they had just received an email earlier that morning from the Complainant, stating that she was unable to attend the hearing, as she was delayed on a flight from Europe.

The Prosecution asked the tribunal to rule on whether the hearing should proceed as previously ordered, or whether it should be further delayed. The tribunal requested submissions from the Prosecution and the Defence in order to make a ruling on this request.

Submissions by the Prosecution

The Prosecution took no position on this request, but submitted a series of emails and correspondence between the Complainant and the Prosecution, which took place between October 8th and October 27th, 2021. These items were marked as exhibits and are categorized in Appendix "A".

In order to ensure clarity with the exchange of correspondence between the Prosecution and the Complainant, a chronological summary of the correspondence is outlined below:

On October 8th, 2021, the Prosecution sent a letter to the Complainant which outlined several items including:

- A reminder that Constable Boyd's resolution hearing is set for October 27th, 2021 at 10:00am;
- Notification that Constable Boyd intends to plead guilty to five counts of Insubordination as outlined in the *Notice of Hearing*, a copy of which was provided to the Complainant on March 1st, 2021;

- Notifying the Complainant that the Prosecution has prepared and included in this letter an “Agreed Statement of Facts” which sets out the essential facts and evidence which are required to substantiate each count of misconduct;
- A request of the Complainant to respond no later than October 20th, 2021, as to her position on the Agreed Statement of Facts;
- A summary of the procedural aspects of the resolution hearing – specifically, that the Complainant is a party to the proceedings and that she would be able to:
 - Call evidence
 - Testify
 - Call other witnesses to testify
 - Provide documentary evidence;
 - and be cross-examined on any of the above
- It was explained in the letter that if the Complainant wished to submit documentary evidence, that copies are to be provided in advance, and that if witnesses were intended to be called, that a witness list and anticipated evidence summary also be provided in advance of the hearing date.
- An attachment of the *York Regional Police Rules for Disciplinary Hearings* under Part V of the *Police Services Act* was also provided.
- That the Complainant may make submissions to the tribunal on an appropriate penalty for Constable Boyd and that if demotion or dismissal was being sought, that Constable Boyd be served notice in accordance with the attached rules.
- That the Prosecution and the Defence are both seeking a penalty of a forfeiture of 90 hours pursuant to Section 85(1) of the *Police Services Act*.
- That the Prosecution will be relying on five cases to support the joint position on penalty at the resolution hearing and provided the list.
- Finally, the Prosecution indicated that they believed that the Complainant was self-represented and provided a link to the Canadian Legal Information Institute (CanLII) website should the Complainant wish to conduct their own research.
- The Prosecution closed the letter by offering assistance to the Complainant regarding the rules and procedures surrounding the police disciplinary process.

On October 10th, 2021, the Complainant replied to the Prosecution's letter. Her reply stated that she was in disagreement with the number of counts of misconduct and believed that it should be higher. The Complainant made several statements to express her dissatisfaction with the initial investigation and the corollary effect that it has had on her personal life, Family Court proceedings and the disclosure of the complaint to others. She closed by stating that she would be calling the Chief of Police and F.C. as witnesses and stated that "*I am not agreeing to this*", and is requesting a "*stronger sentence*" as a result of Constable Boyd's "*continuing lies and misuse of police services*".

On October 18th, 2021, the Complainant sent an email to the Prosecution stating that she does not agree with the *Agreed Statement of Facts* and provided a detailed discussion on various concerns relating to the investigation and made further complaints regarding Constable Boyd. She closed by stating that she will provide an affidavit from F.C.

On October 19th, 2021, the Complainant sent an email to the Prosecutor requesting the hearing date be changed to Friday October 29th, 2021, or later.

On October 19th, 2021, the Prosecution responded to these emails via a letter which contained an amended *Agreed Statement of Facts* and requested a response by October 20th, 2021. The letter further reminded the Complainant that she may call further evidence at the hearing and if she wished to adjourn the upcoming resolution hearing date as per her request, that she would be required to bring a motion for adjournment and follow the rules as previously provided.

On October 19th, 2021, the Complainant sent an email to the Prosecution, stating that "*Constable Boyd and her team have had several delays and adjournments*" for which she had not been served notice and suggested that favoritism existed toward Constable Boyd.

On the evening of October 26th, 2021, the Prosecution advised the complainant that Constable Boyd would be appearing by Zoom rather than in person on October 27th due to her having COVID-like symptoms and that a Zoom link would also be provided to the Complainant.

The Complainant responded that she had previously asked for the hearing to be rescheduled and asked again that it be rescheduled because she was travelling back from Switzerland and that her witness will be unavailable on October 27th, 2021.

On October 27th, 2021, the Complainant was offered a Zoom link and she replied that she was unable to access Zoom as she was on a delayed flight from Switzerland.

The Prosecution also referenced the Statutory Powers and Procedures Act (SPPA), Section 7(1) which states:

7 (1) Where notice of an oral hearing has been given to a party to a proceeding in accordance with this Act and the party does not attend at the hearing, the tribunal may proceed in the absence of the party and the party is not entitled to any further notice in the proceeding. R.S.O. 1990, c. S.22, s. 7; 1994, c. 27, s. 56 (14).

The Prosecution made reference to the case of *Brudlo v. TPS* in which an appeal decision by the Ontario Civilian Commission on Police Services (OCCPS) stated in part by the tribunal:

*“There is no right to an adjournment. The onus is on a party requesting an adjournment to show that it is required. The tribunal is obliged to assess any such request in light of a number of considerations. This would obviously include the history of the particular proceeding in question. Broader concerns can entail the importance of expeditious resolution of disciplinary proceedings involving public officials exercising significant powers”. *Brudlo v. Toronto Police Service, 2005 ONCPC 8 (CanLII)*, <<https://canlii.ca/t/hphj3>>, retrieved on 2022-02-20*

The Prosecution submitted a reference to “*Administrative Law in Canada*”, by Sara Blake, referencing pages 86 through 88 which highlight various cases surrounding the granting or denial of adjournments. The Prosecution submitted that it is clear that the Complainant has an interest in these proceedings. However, the onus is on the party requesting an adjournment to show that it is required. There has been no supporting materials provided which support that request.

The Prosecution submitted that this matter had been set for a resolution as early as the second appearance date and that Constable Boyd’s position was to resolve this matter expeditiously and has been unable to do so.

Submissions by Defence

The Defence submitted that Constable Boyd had been served the *Notice of Hearing* on February 12th, 2021, eight months prior to the hearing date. Her first appearance was over seven months prior to the hearing date.

Defence submitted that it has been Constable Boyd’s desire from the start to plead guilty and move past this incident.

On September 22nd, 2021, The Complainant was a party to the proceedings and was agreeable to the October 27th, 2021 date.

The Defence submitted that on October 19th, 2021, the Prosecution essentially received, a one-line message stating that the Complainant is requesting a later hearing date. There was no insight or reasons given for the request. The Defence suggested that, given the date, that the Complainant's decision to travel did not appear to be an emergent one – or at the very least, had not alerted anyone to that fact. If this was something that was not foreseeable, or of an urgent nature, then the Defence and the Prosecution would certainly have considered that. Defence submitted that if this travel was not emergent (and there is no indication that it was), then when the hearing date of October 27th, 2021 was agreed to by all parties on the 22nd of September 2021, there was a period of five weeks that the Complainant could have addressed it and chose not to.

The Defence further submitted that in reference to the Prosecution's letter to the Complainant on October 19th, 2021, that both the Prosecution and the Defence's email addresses were contained within the letter – the Defence submitted that they wouldn't expect the Complainant (who is believed to be unrepresented by counsel), to submit a proper motion in the approved format, but – at the very least, *“could have drafted an email to both of us and set out some information on her wish to adjourn the matter and relay the reasons why”*.

The Defence submitted that the Complainant goes quiet on this issue until the morning of the hearing – which is when the tribunal first learns that she is in another country on the day of the hearing and wants a delay.

The Defence submitted that this is a labour relations tribunal – The Complainant was aware that Constable Boyd was going to plead guilty – and in the correspondence on October 26th, 2021, (the day before the hearing), the Complainant makes a veiled indication that she has a witness - not something the Defence had been previously made aware of. It had been previously explained to the Complainant in writing that she has an obligation to disclose this information ahead of time. The Defence submitted that this gives the appearance of attempting to delay proceedings on the day of the hearing by trying to put a witness forward that may not have been available on the hearing date.

The Defence submitted that, while he appreciates that the Complainant is a party to the proceedings:

- She could have retained counsel to ensure proper representation – and chose not to.

- That she does not have the absolute right to an adjournment,
- That she could have provided some insight as to why she required an adjournment – and has not done that
- That she could have been receptive to some procedural assistance offered by the Prosecution - and was not.

The Defence submitted that the hearing should continue, as previous delays had occurred as a result of another public complaint being submitted to the OIPRD subsequent to the public complaint which precipitated this hearing. It was submitted that the other complaint may be related to this matter and that the possibility existed of combining the new complaint with the current complaint to address both matters at once.

The Defence submitted that the Complainant has not been diligent – Constable Boyd is entitled to potential witness information in advance and any subsequent information that the Complainant intended to provide, nor has she been courteous with providing any insight into why she wished the delay.

Defence submitted that this matter should proceed in her absence, on this date.

Analysis and findings

Based on the submissions made by the Prosecution and the Defence, it is clear to me that the Complainant was afforded every opportunity to submit a motion for adjournment and did not.

This tribunal recognizes that the Complainant appears to be unrepresented by counsel. On April 20th, 2021, the Complainant advised this tribunal that she would be retaining counsel for future dates, but has not provided any future reference to that status. As a result, it is important that this tribunal consider her to be self-represented and afford additional procedural latitude and to ensure that added clarity exists in order that the Complainant is fully aware of the rules and procedures and that her equal standing at the hearing is maintained.

I am satisfied that this additional latitude and clarity was provided.

I have weighed the submissions by the Prosecution and the Defence as well as the series of email correspondence between the Prosecution and the Complainant. I have also weighed my direct contact with the Complainant at previous appearance dates. I also

considered the interests of procedural fairness, the fairness to the officer, the necessity to adhere to the rules and procedures and the necessity to resolve these matters in a timely manner.

The Prosecution has, at various times, provided the following to the Complainant:

- A copy of the rules of procedure for police disciplinary hearings;
- An offer of assistance on procedural aspects of this hearing;
- Specific notification on the process of requesting an adjournment;
- Specific notification on the process to call witnesses and make submissions.

The Defence submitted that they provided their email address in correspondence and a willingness to also assist with procedural aspects of the hearing to ensure a fair and equitable participation from all parties.

In spite of these specifics, the Complainant has shown a lack of procedural cooperation and has disregarded the process or chosen not to adhere to the rules of procedure.

I have ruled that this resolution hearing will proceed as originally scheduled.

PART III: THE HEARING

Exhibits

The exhibits for this matter are listed in Appendix “B”.

Agreed Statement of Facts

The facts of this matter are agreed upon between Constable Boyd and the Prosecution. The Complainant in this matter was provided a copy of the proposed *Agreed Statement of Facts*. In email correspondence between the Prosecutor and the Complainant, the Complainant stated that she disagreed. However, her disagreement focused on extraneous issues that she believed were not addressed in the initial investigation and are not contained within the “four corners” of the *Notice of Hearing*. There has been no submission or correspondence by the Complainant to suggest that the elements contained in the *Agreed Statement of Facts* were inaccurate.

Therefore, I accept the *Agreed Statement of Facts* filed by the Prosecution and Defence.

The submitted *Agreed Statement of Facts* prove the essential elements of misconduct as outlined in the *Notice of Hearing*. While I am aware of the Complainant's comments to the Prosecutor, it does not change the essential elements of the misconduct identified specifically within the *Notice of Hearing*.

At the hearing, the Prosecution and the Defence submitted the *Agreed Statement of Facts* reproduced verbatim as it appears in the exhibit, it reads as follows:

1. Police Constable Rebecca Boyd has been a member of York Regional Police ("York Regional Police") since April 2004. She currently holds the rank of First Class Constable.
2. Constable Boyd is currently assigned to the Call Diversion Unit, where she has worked since September 2020. At all material times, Constable Boyd was assigned to Quality Assurance and Risk Management.
3. In September 2018, Constable Boyd commenced a romantic relationship with F.C, which ended in 2019. At the time, F.C. was also in a relationship with Ms. Alice Juskovic (also known as Allison Juskovic, Alice Rochon and Allison Fairchild). Constable Boyd contacted Ms. Juskovic on Facebook on March 22, 2019, and again on February 11, 2020, to discuss their respective relationships with F.C. The Facebook account identified Constable Boyd as being employed with York Regional Police.
4. On April 1, 2020, Ms. Juskovic submitted a complaint with the Office of the Independent Police Review Director ("OIPRD") regarding the conduct of Constable Boyd. The OIPRD forwarded the complaint to York Regional Police on July 7, 2020, for investigation.
5. A subsequent investigation by the Professional Standards Bureau revealed that in 2018, Constable Boyd conducted five unauthorized queries on CPIC in relation to Ms. Juskovic and F.C.:
 - a. On September 25, 2018 and November 14, 2018, Constable Boyd queried F.C.'s name.
 - b. On December 17, 2018, Constable Boyd queried F.C. and his licence plate, BXWT 792.

- c. On October 3, 2018 and November 19, 2018, Constable Boyd queried the names Alice Rochon and Allison Fairchild, respectively.
6. On January 31, 2019, Constable Boyd also queried Ms. Juskovic and Ms. Juskovic's ex-husband on York Regional Police's Records Management Systems.
7. Constable Boyd conducted these queries while on duty in Quality Assurance and Risk Management for personal use. There is no evidence to suggest that Constable Boyd saved, recorded or disclosed the CPIC results.
8. Constable Boyd failed to comply with General Procedure AI 007, Canadian Police Information Centre and Management of Police Records, having regard to the following provisions:
 9. D. SECURITY OF INFORMATION
 10. It is the responsibility of every member to ensure that confidential information is safeguarded against unauthorized access, removal or misuse.
 11. Members must not use or access CPIC or any York Regional Police information for any purpose other than official business related to the duties of their position.
 12. Any use of CPIC for anything other than official police business will not be tolerated. Members can expect appropriate disciplinary action in response to any breach of confidentiality or unauthorized dissemination. Appendix A of this procedure provides guidance on the dissemination or release of CPIC information.
 13. E. RELEASING CPIC INFORMATION - GENERAL
 14. It is an offence to access CPIC information for purposes other than those related to the authorized activities of York Regional Police. Similarly, it is an offence to share information in contravention of any applicable statutory provisions and the policies stated in this procedure. Breaches of this procedure may be subject to disciplinary action and/or prosecution.
 15. During her compelled statement with the Professional Standards Bureau, Constable Boyd acknowledged and accepted responsibility for her misuse of CPIC, apologizing for her conduct.
 16. Constable Boyd has no prior discipline on file.

PART IV: SUBMISSIONS, ANALYSIS AND FINDINGS

The issue in this matter is my decision on the appropriate disposition for Constable Boyd's misconduct. In making this assessment, I will consider the submissions of Prosecution and Defence counsel and will consider the fact that a third party complainant also has standing but was not present. I will balance and weigh all applicable mitigating and aggravating circumstances in arriving at my decision.

The tribunal has accepted the guilty plea of Constable Boyd. The Agreed Statement of Facts between the Prosecution and Defence clearly illustrates the details of the misconduct. My task is to ensure any disposition imposed fully accords with the governing principles of an appropriate sanction. In doing so, the goals of the discipline process must be met including: maintaining discipline in the workplace, treating the officer fairly and upholding the public trust.

Submissions by the Prosecution

The Prosecution proceeded to outline the applicable factors to be considered in determining a disposition in discipline cases which have become well established in *Krug and Ottawa Police Service*, (January 21, 2003, OCCPS) at pp.12-13.

Joint position on penalty

The Prosecution and Defence have jointly submitted a position on penalty – the forfeiture of 90 hours.

Public interest (aggravating factor)

The Prosecution submitted that in this case, the public interest is undoubtedly high. Public interest is engaged as a disposition factor when the officer's misconduct has, or would offend or undermine public confidence and trust in policing, or where there is a need to demonstrate confidence in the police discipline process.

Police have considerable power and discretion over matters that can affect the fundamental rights of members of the public and as is often quoted from the Supreme

Court of Canada, police work requires officers not only to exercise a significant degree of judgment and integrity, it is also a position that requires the utmost public trust. In conducting multiple unauthorized CPIC queries, Constable Boyd violated that public trust. She violated the Complainant and F.C's privacy and abused her position as a police officer.

Seriousness of the misconduct (aggravating factor)

The Prosecution submitted that the seriousness of the misconduct is related to the public interest. It is clear that Constable Boyd's unauthorized use of CPIC is unacceptable and amounts to serious misconduct and that Constable Boyd used her position as a police officer for personal use.

The Prosecution also submitted that the misconduct was not an isolated incident, but rather a series of unauthorized CPIC queries over an approximate four-month period. Her conduct violated the privacy of the Complainant and other members of the community.

Damage to reputation of the police service (aggravating factor)

It is clear that Constable Boyd's misconduct damaged the reputation of York Regional Police. It is contrary to York Regional Police's *Code of Ethics*. York Regional Police and the community they serve demand more from their officers.

The Prosecution made specific reference to the first bullet point within the *York Regional Police Code of Ethics*:

"We uphold our position of public trust by serving the community with integrity, professionalism and honesty. We are accountable for our behaviour both in the community and in the workplace".

York Regional Police and the community demand high ethical standards from our officers. That standard was breached in this case. The Prosecution submitted that any penalty imposed by this tribunal needs to hold the officer accountable for that breach.

The Prosecution submitted that a penalty of the forfeiture of 90 hours would restore and maintain public trust and confidence in the police disciplinary process and would communicate that this misconduct will not be tolerated.

Need for deterrence (aggravating factor)

The Prosecution submitted that general and specific deterrence are legitimate objectives of police discipline. In the circumstances of this case and particularly with Constable Boyd's lack of prior discipline and positive employment history, the Prosecution suggested that specific deterrence has likely been accomplished by virtue of the formal hearing itself.

General deterrence remains an important disposition factor for this tribunal's consideration and the disposition imposed in this case must reflect York Regional Police's commitment to its values and high ethical standards and that the disposition needs to send a very clear message to other members that such behavior is unacceptable and will not be tolerated.

Employment history (mitigating factor)

The Prosecution submitted that Constable Boyd is a valued and experienced police officer. She was hired in 2004 as a police cadet. She is now a first class constable and has 10 letters of recognition on file. She has no prior discipline on her record. Constable Boyd received two awards in 2017 – The *Leading Women, Leading Girls award* and she was a recipient of the *Arthur Troop Scholarship Award from the International Police Association*. The Prosecution submitted that Constable Boyd has demonstrated a clear commitment to the community

Recognition of the seriousness of the misconduct (mitigating factor)

The Prosecution submitted that Constable Boyd has taken responsibility for her actions. She has plead guilty to all counts of misconduct, cooperated with the Professional Standards Bureau in their investigation and apologized during her compelled statement. Her apology, cooperation and guilty plea are all indicators of remorse and she appears to understand the seriousness of her misconduct.

Ability to reform or rehabilitate the police officer (mitigating factor)

Constable Boyd's positive employment history and her recognition of the misconduct are strong indicators of her ability to reform and rehabilitate. It is expected that she will learn from this misconduct and having taken responsibility, will go on to have a promising future with York Regional Police.

The Prosecution submitted that the joint position of a forfeiture of 90 hours appropriately balances both the aggravating and mitigating factors in this case and is a just and proportionate sentence. It is a significant penalty for Constable Boyd and holds her

accountable for her misconduct while simultaneously restoring and maintaining public trust and confidence in the police disciplinary process.

Consistency of disposition (neutral factor)

The Prosecution submitted and made reference to the OCCPS decision of *York Regional Police v. Detective Sergeant Jack More*. In Paragraph 43, it references the applicability of the concept of totality, where, in situations where there are multiple disciplinary charges arising from a closely connected series of events, it would be contrary to the principal of totality to impose multiple penalties which, when taken together, would be considered excessive.

The Prosecution submitted the OCCPS appeal decision in the case of *Hampel and the Toronto Police Service*. This was similar to the case before this tribunal in that it involved Constable Hampel making unauthorized CPIC queries. The Prosecution points out that the significant differences were, that Constable Hampel disclosed the results of the queries and that he did not plead guilty, but was found guilty after a hearing. In this case, Constable Hampel's original disposition penalty of 56 hours, was reduced on appeal to 24 hours.

The Prosecution submitted the case of *Castle and York Regional Police*. The Prosecution submitted that this case was the most similar to the case before this tribunal. Constable Castle made eight unauthorized CPIC queries over a period of 10 months. Constable Castle did not disclose those queries. The officer plead guilty and showed a similar level of remorse to that of Constable Boyd. Constable Castle also had no prior discipline on file. The penalty imposed was a forfeiture of 24 hours.

The Prosecution submitted the case of *Higgins and York Regional Police*. Constable Higgins made 26 unauthorized CPIC queries over a period of three years. Constable Higgins disclosed the results of those queries to his girlfriend, who acted on that information. Constable Higgins plead guilty, had positive performance appraisals and the penalty imposed was a forfeiture 40 hours.

The Prosecution submitted the case of *Combdon and York Regional Police*. Constable Combdon made one unauthorized CPIC query. However, he disclosed the information from the query to an unknown party with whom he had made an online purchase. This disclosure lead to that party committing a criminal offence based on the receipt of that information. Constable Combdon plead guilty and the penalty imposed was a forfeiture of 100 hours. The Prosecution submitted that while the conditions of this misconduct were far more serious, the penalty imposed was only slightly greater than the joint submission

on penalty in the case before this tribunal.

The Prosecution submitted that the cases put forward for consideration show a range of penalties, and that the joint position on penalty is proportionate using the principal of totality.

Submissions by the Defence

The Defence submitted that they agreed with the Prosecution's submissions in that they were presented fairly and showed a balance of both mitigating and aggravating factors.

The Defence submitted that Constable Boyd plead guilty to all five counts of insubordination. It was suggested that this was unique, in that, as is often the case in these matters, officers will agree to plead guilty to some, but not all of the initial allegations of misconduct.

The Defence submitted that due to the nature of the directed hearing by the OIPRD, that five individual counts of insubordination were levelled against Constable Boyd, one for each unauthorized query. In other similar situations, as noted by the Prosecution's submission of cases, multiple, unauthorized queries made by an officer were grouped into a single count of misconduct – often with many more queries than was the case with Constable Boyd.

The Defence submitted that of the five counts of Insubordination, only two actually apply to the Complainant, as the remaining three queries were not about the Complainant directly. Defence submitted that the Complainant was only impacted by two of the five counts and is therefore really only a Complainant on two 2 counts.

Defence submitted that Constable Boyd's performance appraisals have been consistently positive, with mostly "exceeds standards" in each of the performance categories.

Constable Boyd's supervisors acknowledge that she is "*a pleasure to supervise*" and her performance appraisals describe her as having a responsible and strong work ethic.

There were five letters of good character reference submitted by senior members of York Regional Police which speak to her long standing positive commitment to York Regional Police and her position as a police officer.

Constable Boyd has been trained in CISM (Critical Incident Stress Management), which the Defence submitted as further evidence of her commitment to be compassionate and

sympathetic to her coworkers under extreme circumstances.

The Defence agrees with the cases submitted for reference by the Prosecution and particularly noted the 2008 OCCPS decision in *Hampel*, where the penalty was reduced from 56 hours to 24 hours on appeal. This speaks to remorse on the part of Constable Boyd, as she plead guilty at the earliest opportunity, knowing that an agreed submission on penalty was significantly higher than in *Hampel*.

The Defence submitted that these cases for review establish a range of penalty and suggested that the forfeiture of 90 hours is more than fair and reasonable, and would amount to 18 hours penalty per count of insubordination.

Submissions by Constable Boyd

Constable Boyd addressed the Hearing and apologized for her error judgement. She takes full responsibility for what she did and is embarrassed by her actions. She wishes to move forward and advised that this will never be repeated.

Analysis and Findings

I would like to start my discussions on penalty by first outlining the objectives of discipline. The objectives of discipline are to:

- Correct unacceptable behaviour
- Deter others from similar behaviour
- Reassure the public

The following analysis is based on submissions of both the Prosecution and the Defence. In light of the Complainant not being present at the hearing and choosing not to make any submissions on penalty, I will nevertheless take into consideration, and will rely upon commonly held proportionality considerations relevant to this matter. In my analysis, mitigating and aggravating factors will be balanced and weighed.

The tribunal has accepted the guilty plea of Constable Boyd and the Agreed Statement of Facts clearly illustrated the details of the misconduct. It is my responsibility to ensure that the disposition imposed is in accordance with the governing principles of an appropriate sanction. In doing so, the goals of the discipline process must be met including: maintaining discipline in the workplace, treating the officer fairly and upholding public trust.

Public Interest

The public holds police officers in a position of high trust and accountability and would expect Constable Boyd to follow the appropriate laws and rules, especially as it relates to privacy and the use of her position for personal use and the access to confidential information. The type of behavior demonstrated by Constable Boyd cannot be tolerated. The citizens of York Region expect their officers to conduct themselves with honour and integrity. I consider this to be an aggravating factor.

Seriousness of the Misconduct

Undermining the policies and procedures of the Service as displayed by Constable Boyd, in relation to CPIC is extremely serious and as highlighted by the Prosecution, Public Interest is directly connected to the seriousness of misconduct. I consider this to be an aggravating factor.

Need for Deterrence

York Regional Police must send the message to all of its members that when in the public domain and in the performance of their duties, they must adhere to the policies and procedures especially as it relates to privacy and secrecy. Further, there must also be specific deterrence for Constable Boyd to send the message that this type of behavior is unacceptable. Specific deterrence has been satisfied in this case, given the formal hearing process and Constable Boyd's previously unblemished record. The general deterrence in this case can be found in the joint submission on penalty, which is significantly higher than previous, similar cases which have been submitted for consideration.

Damage to the reputation of the police service

The credibility of York Regional Police as a police agency is of paramount importance. The credibility of officers that engage in inappropriate behaviour or actions can and do result in the embarrassment to this Police Service. In this case, Constable Boyd's unauthorized access to private and confidential information on a member of the public by using her position as a police officer is very much part of the trust perspective by the public that could lead to a poor image of our officers. I consider this to be an aggravating factor.

The absence of the complainant

As discussed in Part II of this record, I am aware that the lack of procedural cooperation on the part of the Complainant may have created issues relating to the perception of procedural fairness. I recognize the apparent contradiction that has resulted from a hearing that is driven and initiated by the public complaint system, yet, has been allowed to proceed without the participation of the public complainant. However, given the lack of cooperation and disregard for the rules and procedures set out for the disciplinary process, I must also weigh the factors which presented themselves throughout the hearing process, which caused this perceived inconsistency to unfold and the circumstances and facts which I used to arrive at this apparent procedural inconsistency. I must also ensure that the established rules of procedure are followed in the interests of the officer and the reputation of the service.

The lack of procedural cooperation and responsiveness on the part of the Complainant frustrated the process and delayed the ability of Constable Boyd to plea guilty. These are mitigating factors for the officer when weighed against the need for a timely disposition and resolution. As a result of the Complainant's unwillingness to adhere to procedural tribunal rules, I consider this to be a mitigating factor.

Employment history

I accept that Constable Boyd is a valued member of York Regional Police, has been employed for 17 years and has no discipline history. She has demonstrated a consistently positive work ethic with a committed and diverse contribution to York Regional Police. I consider this to be a mitigating factor.

Recognition of the seriousness of the offence

Constable Boyd plead guilty at the first opportunity. She was willing to accept the five counts of Insubordination, when as the Defence pointed out, previous cited cases involve multiple unauthorized queries, yet only one count of misconduct was initiated to address them. This demonstrates her recognition of the impact the actions have on the Complainant, York Regional Police and the community. Her apology to this tribunal was sincere and demonstrated her recognition of the error in judgment that was made. I consider this to be a mitigating factor.

Disposition on penalty

The Prosecution submitted that the disposition on penalty is a neutral factor. Based on

the cases presented for consideration, I recognize that in each of these cases, the penalty was less for similar misconduct. In the case of *Combdon*, where it was slightly higher, it involved a significantly greater level of misconduct – in that CPIC information was shared resulting in the commission of a criminal offence. In the case before this tribunal, there is no indication that the information gleaned from her unauthorized queries was shared with anyone. I would consider this a mitigating factor in disposition. While the joint submission on penalty is reasonable and I accept it, I am of the opinion that it may be on the “high” side of what a fair and reasonable penalty would be under these circumstances. I consider this to be a mitigating factor.

Reform and rehabilitation

I am confident that by pleading guilty at the first opportunity, Constable Boyd has learned from her indiscretion and is prepared to take responsibility for her actions. Rehabilitation has been addressed. I consider this to be a mitigating factor.

PART V: DISPOSITION

Constable Boyd, you have plead guilty and I find on clear and convincing evidence that you are guilty of the offence of Insubordination as outlined in the Agreed Statement of Facts. I accept the joint submission on penalty of ninety (90) hours as put forth by both the Prosecution and the Defence and hereby direct that you forfeit 90 hours from your allotted time banks, other than your sick bank.

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



Supt 715

Russell Bellman, Superintendent #715

Date electronically delivered: February 28th, 2021

Appendix A

The following exhibits were tendered in relation to:

PART II: ABSENCE OF THE PUBLIC COMPLAINANT AT THE HEARING:

- **Exhibit 1:** Email correspondence between The Complainant, Alice Juskovic and the Prosecution, Carley Valente:
 - October 26th, 2021, 21:45hrs,
 - October 26th, 2021, 22:01hrs,
 - October 27th, 2021, 07:00hrs,
 - October 27th, 2021, 08:13hrs,
 - October 27th, 2021, 09:16hrs.

- **Exhibit 2:** Email and attached letter from the Prosecution to the Complainant dated October 8th, 2021 and emailed response from the Complainant to the Prosecution, October 10th, 2021.

- **Exhibit 3:** Email correspondence between the Complainant and the Prosecution:
 - October 10th, 2021,
 - October 13th, 2021,
 - October 15th, 2021,
 - October 18th, 2021,
 - October 19th, 2021.

- **Exhibit 4:** Email and attached letter from the Prosecution to the Complainant dated October 19th, 2021 and emailed response from the Complainant to the Prosecution, October 19th, 2021.

Appendix B

The following exhibits were tendered in relation to:

PART III: THE HEARING:

- Exhibit 1:** Designation of Superintendent Russ Bellman, Hearing Officer
- Exhibit 2:** Designation of Jason Fraser, Prosecutor
- Exhibit 3:** Designation of Carley Valente, Prosecutor
- Exhibit 4:** Agreed Statement of Facts
- Exhibit 5:** Disposition Hearing Record
- Exhibit 6:** Character reference letters submitted in support of Constable Boyd