

**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**

**ONTARIO PROVINCIAL POLICE**

**AND**

**PROVINCIAL CONSTABLE Charles OSTROM, #10712**

**CHARGE:**

**DISCREDITABLE CONDUCT and NEGLECT OF DUTY**

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**DISPOSITION WITH REASONS**

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**Before:** Superintendent Melissa Barron  
Ontario Provincial Police

**For the Prosecution:** Inspector Rob Fournier  
Ontario Provincial Police

**Counsel for the Defence:** Mr. Gavin May  
Ontario Provincial Police Association

**Public Complainant:** Mr. Tyler Nicholson

**Hearing Date:** December 15, 2021

This decision is parsed into the following parts:

*PART I: OVERVIEW;*

*PART II: THE HEARING;*

*PART III: SUBMISSIONS, ANALYSIS and FINDINGS; and,*

*PART IV: DISPOSITION*

## **PART I: OVERVIEW**

### **Allegations of Misconduct**

The amended particulars of the allegation state:

Provincial Constable (P/C) Charles Ostrom, #10712 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 (OPP), 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 July 25, 2020 while off-duty P/C Ostrom initiated a noise complaint involving Tyler Nicholson. It is alleged that on or about July 27, 2020 while on-duty he searched the Niche Record Management System (RMS) occurrence to determine the outcome of his complaint. He knew or reasonably ought to have known accessing the police database for this purpose was a breach of OPP policy and a breach of Mr. Nicholson's privacy. It is further alleged that he conducted a second unrelated search on July 27, 2020 on Niche RMS in relation to Mr. Nicholson which indicated "Police Assistance", leading to a further breach of OPP policy and Mr. Nicholson's privacy. His breaches of OPP policy and Mr. Nicholson's privacy led to an investigation into Mr. Nicholson's driving conduct.

- P/C Ostrom could have approached the officer who responded to the noise complaint to determine the outcome, but chose not to.
- P/C Ostrom is an experienced 20 year veteran of the OPP and knew he was in a conflict of interest situation by searching the police database for non-police purposes.
- P/C Ostrom's actions occurred less than two months after the Commissioner issued a memorandum to all OPP members about unauthorized access to information, which also included the importance of documenting any conflict of interest issues in relation to accessing police databases.

P/C Ostrom knew or reasonably ought to have known his actions were discreditable.

## COUNT 2

P/C Charles Ostrom, #10712 is alleged to have committed neglect of duty in that he without lawful excuse, neglected or omitted to promptly and diligently perform a duty as a member of the OPP, contrary to Section 2(1)(c)(i) of the Code of Conduct contained in the Schedule to Ontario Reg. 268/10, as amended.

### Particulars of Allegations:

It is further alleged that P/C Ostrom failed to make proper notes in his notebook on July 27, 2020, July 29, 2020 and July 31, 2020 in relation to his investigation of Mr. Nicholson and the particulars of his police database searches on the Canadian Police Information Centre (CPIC), Niche RMS or the details of the assigned tasks given by Acting Sergeant (A/Sgt) Andrew MacDonald.

P/C Ostrom knew or reasonably ought to have known his actions were a neglect of duty.

### Representation

In this matter the parties are Mr. May who represented P/C Ostrom, Inspector Fournier who represented the OPP, and Mr. Tyler Nicholson, the public complainant.

### Plea / Positions on Penalty

On December 15, 2021 P/C Ostrom pled guilty to discreditable conduct and neglect of duty via his counsel, Mr. May. P/C Ostrom was found guilty of this misconduct based on clear and convincing evidence outlined in the Notice of Hearing.

Mr. May and Inspector Fournier submitted a joint penalty proposal of a forfeiture of 14 hours be imposed against P/C Ostrom. The parties presented this proposal with submissions which are addressed in Part III of this disposition. Mr. Nicholson had previously indicated in advance of the hearing that he would not be satisfied with anything short of P/C Ostrom's "removal from the force".

### Decision

Having reviewed and considered the submissions, I am satisfied the proposed joint penalty meets all the goals of discipline including to correct errant behaviour, to deter others from similar misconduct and to reassure the community.

I order P/C Ostrom to forfeit fourteen (14) hours, to be worked at a time convenient to his employer. This order is being made pursuant to section 85(1)(f) of the *Police Services Act (PSA)*.

My reasons for the decision are as follows:

## **PART II: THE HEARING**

### **Exhibits**

The exhibits for this matter are listed in Appendix A.

### **Agreed Statement of Facts**

At the commencement of the hearing, the prosecution and defence counsel jointly agreed to adopt the allegations as outlined in the Notice of Hearing as the facts to be relied upon.

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

### **Prosecution submissions (abbreviated)**

Inspector Fournier submitted that the public interest was undermined when P/C Ostrom made a conscious decision to query his own initiated noise complaint on the RMS Niche database. He accessed an unrelated occurrence report involving the public complainant, including two separate documents, which then led to an investigation into the public complainant's driving conduct. P/C Ostrom utilized the position of his office to access police databases for a non-police related purpose, and in doing so exhibited poor judgement, placing his personal interest above that of the public interest.

He noted however that P/C Ostrom was extremely cooperative throughout his dealings with the OPP Professional Standards Unit (PSU) investigators and prosecutions, took accountability for his actions and demonstrated remorse. P/C Ostrom entered a guilty plea in order to resolve the *PSA* matter, and in doing so, he has accepted responsibility for his misconduct. Inspector Fournier tendered three performance evaluations<sup>1</sup> for P/C Ostrom and submitted that based on the facts in this matter, this is an isolated incident.

He submitted that officers who engage in this type of misconduct erode the public's confidence

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<sup>1</sup> Exhibit 8 – P/C Ostrom Career Profile and PLDPs

and undermine the hard work the rest of the OPP puts forth serving the community. He reminded the tribunal that internal messaging has been clear, consistent and impressed upon our membership. There is no excuse for officer conduct of this nature.

It was submitted that public awareness of this incident will be detrimental to the reputation of the organization. The erosion of trust, confidence and respect is damaging to the OPP's reputation. It tarnishes the OPP's public image and elevates the burden each officer bears in restoring that trust, confidence and respect.

Inspector Fournier emphasised that misuse of police databases for personal interest must not be tolerated. He submitted that the joint penalty position was reasonable and warranted, demonstrating to the public that the OPP takes misconduct of this nature seriously.

### **Defence submissions (abbreviated)**

Mr. May appeared on behalf of P/C Ostrom who was not present due to medical leave. He provided background regarding the misconduct allegations, stating they were initiated by way of a public complaint which was subsequently investigated by PSU. The main allegations made by the public complainant were not substantiated by the investigation, but the Niche RMS audit revealed there had been inappropriate RMS checks, and also that P/C Ostrom had not made notes in accordance with policy regarding some other authorised checks. Upon review, the Office of the Independent Police Review Director (OIPRD) upheld the main findings that the initial allegations were not substantiated and confirmed the substantiated findings of both the improper RMS check and insufficient notes.

Mr. May advised that P/C Ostrom was away from the workplace due to medical reasons but rather than delay the proceedings, the officer wanted a plea entered on his behalf in order to deal with the matter expeditiously. He pointed out that P/C Ostrom has a very positive employment record, exceeding in multiple areas, as well as being an advocate for mental wellness both within the OPP and also with external institutions such as the Homewood Health Centre and Georgian College.

Mr. May read a statement prepared by P/C Ostrom to the tribunal on his behalf. The statement illustrated that P/C Ostrom has experienced significant challenges in his personal and professional life, including both accidental death and suicide of close friends, an immediate family member's terminal illness diagnosis, and work-related stressors, all of which were aggravated around the time of the misconduct. Mr. May advised that P/C Ostrom was extremely remorseful for his conduct and accepts full responsibility for his actions.

Additionally, Mr. May provided five cases<sup>2</sup> for review which will be more closely examined below.

## **Public Complainant**

Communication was had with Mr. Nicholson via email in advance of the hearing to ensure that he understood the roles of the parties, the purpose and the process of the hearing. He was advised of his right to have legal representation and provided with the *Statutory Powers Procedure Act, R.S.O 1990* as well as the link to the OIPRD website containing information on hearings. In his initial response to my introductory email, he replied *"I want him prosecuted to the furthest extent. He has shown clear indication of his ill intent and should be removed from his position and made an example of"*.

The purpose of the *PSA*, specifically the Code of Conduct, was explained to Mr. Nicholson as well as the administrative nature of a discipline hearing and possible outcomes. In his last response Mr. Nicholson wrote *"I will be suing all parties involved so please make sure not to sweep this under the rug... this isn't a case of an employee being a bad employee so he gets his lunch money confiscated this is an officer of the law breaking the law... anything short of his removal from the force and criminal charges will not be satisfactory"*.

Mr. Nicholson was advised of the date, time and location of the hearing. He was also provided with a Skype link, step-by-step instructions to access the link, the offer of a practice run in advance and contact information should he encounter any difficulties accessing the hearing.

At the start of the hearing Mr. Nicholson was not present however I was satisfied that he had been made aware of the pertinent details, given options to attend and had not communicated any difficulties with joining.

At the conclusion of the hearing it was discovered that at approximately 30 minutes after the commencement of the hearing, Mr. Nicholson had emailed the court reporter to advise he was having difficulties with the Skype link. It should be noted however that defence counsel was able to successfully use the same link as provided to Mr. Nicholson. In conducting my analysis, based on his email responses, I presumed that had Mr. Nicholson been able to join the hearing and participate in submissions, he would have opposed the joint penalty position and suggested the maximum penalty possible up to and including dismissal.

## **Analysis and Findings**

P/C Ostrom pled guilty to discreditable conduct and neglect of duty and assented to the facts

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<sup>2</sup> Exhibit 9 – Defence Book of Authorities

outlined in the Particulars of Allegations in the Notice of Hearing. Based on clear and convincing evidence, I found P/C Ostrom guilty of discreditable conduct and neglect of duty.

My duty now, as the trier-of-fact, is to ensure any disposition imposed will strike a balance between the expectations of the community, the needs of the organization, fairness to the officer and to the public complainant.

Paul Ceysens' *Legal Aspects of Policing*, specifically Chapter 5, section 5.10 – *Disposition: Principles Governing the Determination of a Disposition*, details the guiding principles for a decision-maker to follow -

- 1) The disposition “*must fully accord with the purposes of the police discipline process*” i.e. – the public interest, the employer’s interest, the rights of the respondent officer and the interests of involved individual members of the public.
- 2) Corrective dispositions should prevail, and the context or contributing factors must be taken into account, so that correction and education precedes punishment, unless the proposed sanction would bring the administration of police discipline into disrepute.
- 3) The presumption of the least onerous disposition (once again, balanced with the public confidence in police discipline, and maintaining the organizational effectiveness of the police service).
- 4) Proportionality – in that all relevant mitigating, aggravating and neutral factors be considered and weighed appropriately.
- 5) The application of a higher standard – “*because police hold a position of trust, the law holds police officers’ conduct to a higher standard, compared to employees generally, or to the general public*”.

The following analysis is based on the submissions of the prosecution and defence counsel. To assist me in this process, I will rely upon the commonly-held proportionality considerations relevant to this matter. In my analysis, mitigating and aggravating factors will be balanced and weighed.

### Public Interest

Inspector Fournier submitted that P/C Ostrom’s misconduct has undermined the public interest and there is a need to demonstrate confidence in the OPP and its discipline process. He referenced OPP Police Orders which requires each employee to regard the discharge of their duties as a public trust and to recognise their responsibilities as a public servant. In carrying out their duties, an employee is accountable for behaving above reproach, both on- and off-duty, and not bringing discredit upon the reputation of the OPP; promoting a positive, professional

image, and serving with honesty and integrity in a manner that places public interest above personal interest. He submitted that P/C Ostrom utilized the position of his office to access police databases for a non-police related purpose, and in doing so exhibited poor judgement, placing his personal interest above that of the public interest. Inspector Fournier reminded the tribunal that the OPP has repeatedly distributed internal notifications<sup>3</sup> from various Commissioners over the past several years citing the need for our membership to be above reproach in this area, and noted that P/C Ostrom accessed the Niche RMS database only two months after the most recent memo.

I agree that the public interest is significant in this matter. Police officers are given access to sensitive, personal information in the course of their duties and are relied upon to exercise their authority with honesty and integrity. The public expects that members of a police service will safeguard their individual information objectively and in confidence. It clearly undermines public trust to know that a member of the police service has accessed an individual's private information for a personal reason. Members of the public have the absolute right to expect that a police officer would have the integrity and self-control to refrain from using police databases for their own means. P/C Ostrom's unauthorised accessing of Niche RMS regarding the public complainant was a conflict of interest and contrary to the expectations the public and the OPP have of him.

The public interest is significantly aggravating.

#### Seriousness of the Misconduct

Inspector Fournier submitted that P/C Ostrom accessing confidential police databases to view private information of individuals for non-police related purposes is serious misconduct. I concur. As submitted by the prosecution, there have been numerous internal memorandums over the years regarding the use of personal information in police databases. P/C Ostrom could have had no misunderstanding on this point. His action was deliberate, and for a non-police related reason. However, there was no apparent disclosure of private information by P/C Ostrom and the misconduct was limited to two instances over two days. Furthermore with respect to his failure to take notes regarding his authorised searches, I am mindful that it was limited to three instances and that those searches were, in fact, legitimate.

As noted further below in my analysis, this behaviour appears to be out of character for P/C Ostrom. However, the Notice of Hearing – assented to as being relied upon as the facts – indicated that “*his breaches of OPP policy and Mr. Nicholson's privacy led to an investigation into Mr. Nicholson's driving conduct*”. It was not evident during the hearing whether this subsequent investigation was warranted or not, but the fact remains that a police action followed

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<sup>3</sup> Exhibit 7 – Internal OPP memos

P/C Ostrom's unauthorised Niche RMS access, which impacted a member of the public.

Consequently I find that while not the most egregious of misconduct, it is serious and considered moderately aggravating.

### Recognition of the Seriousness of the Misconduct

The OPP expects its members to take responsibility for their misconduct, to demonstrate integrity and accept the consequences of their actions. Both Inspector Fournier and Mr. May noted that P/C Ostrom was extremely cooperative throughout his dealings with PSU investigators and prosecutions, took accountability for his actions and demonstrated remorse. His actions, combined with his guilty plea, clearly speaks to his acceptance of his misconduct and desire to resolve the *PSA* matters.

In his statement that was read to the tribunal by Mr. May, P/C Ostrom wrote "*to be clear, what I did was wrong*" and acknowledged "*a regrettable lapse in judgement*" on his part. It is clear that P/C Ostrom has demonstrated an understanding of his misconduct and an acceptance of the consequences. His plea was entered at its earliest opportunity, even while he was on leave. He assented to the allegations as outlined on the Notice of Hearing, he cooperated with investigators and he wrote a lengthy statement for the tribunal, asking his counsel to facilitate both the plea and the reading of his statement. That he has examined his actions, reflected upon the reasons for them and accepted responsibility is highly mitigating.

### Employment history

Inspector Fournier tendered three performance evaluations<sup>4</sup> for P/C Ostrom. The earliest Performance, Learning and Development Plan (PLDP) spanned November 2017 – April 2018. P/C Ostrom met all of his required personal qualities, technical skills and core competencies. He was noted for extracurricular activities including speaking at Georgian College and Homewood Health Centre as well as volunteering with the Student Olympics at Mara Provincial Park. Among the comments from his direct supervisor – "*Charles, the work you do does not go unnoticed. You fulfil an important and much needed role*".

The next PLDP covered the period from April 2018-2019. He exceeded in the categories of professionalism, supporting a diverse and inclusive workplace, communication, conflict resolution, use of technology and teamwork. It was again noted that he was a speaker at Georgian College and Homewood Health Centre. His supervisor wrote – "*Charles, you play an important role in the daily operations at the Orillia Detachment. Your openness and welcoming demeanor has brought a higher degree of awareness about mental health issues to detachment*

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<sup>4</sup> Exhibit 8 - P/C Ostrom Career Profile and PLDPs

*members. You persevered interacting with others in the workplace and broke down barriers and earned their trust and respect. You should be very proud of yourself, I know this did not come without challenges. I look forward to working with you this next year". His detachment commander added "Thank you for all you do. You are a valued member of the Detachment and play a vital role here. Thank you for your dedication to Orillia Detachment".*

The most recent PLDP was from April 2019-2020. In this evaluation, P/C Ostrom exceeded in his commitment to organizational values, professionalism, supporting a diverse and inclusive workplace, legal/policy knowledge, communication, use of technology and initiative. Among the comments from his supervisor – *"P/C Ostrom is an integral member of the Orillia OPP Detachment. He maintains a professional attitude towards his assigned duties and is a great role model for detachment members for dress and deportment. His outgoing demeanor and dedicated work ethic are a great representation of the OPP... PC Ostrom is fully aware that the OPP and its members are responsible and accountable for safeguarding the overall integrity, confidentiality and security of information in its, and his, possession. He is aware that information available to OPP members can only be accessed and used for specified and lawful purposes, and not used for personal reasons... P/C Ostrom it is a pleasure to work with you. Your dedication in the workplace is seen and respected".* Comments from a local Assistant Crown Attorney included *"I have had the pleasure of reaching out to P/C Ostrom from time to time when technical matters arise and have always found him to be extraordinarily prompt, dedicated and thorough.... P/C Ostrom responds professionally and communicates in a way regarding technical issues that is easily understood. When P/C Ostrom says he is going to follow up with something I don't have to wonder if he will – it just gets done".*

I concur with Inspector Fournier who stated that it is evident that P/C Ostrom is well respected by both his peers and supervisors and has worked diligently to perform to the best of his ability. I place great weight upon an officer's employment record, as it frequently gives the best indicator of intrinsic character qualities and flaws, integrity and morals, as well as likelihood of recurrence and rehabilitation. P/C Ostrom has demonstrated that he has the ability to overcome challenges, and that he performs his duties at Orillia OPP detachment with professionalism and pride. The comments from his supervisors and others describe him as equally important, valued, trustworthy, dedicated and thorough. After 20 years of service (including many letters of thanks from the public on his career profile<sup>5</sup>), P/C Ostrom continues to receive positive work evaluations which I consider very mitigating in his favour.

#### Potential to Reform or Rehabilitate

It was pointed out by counsel that P/C Ostrom is a 20 year member of the OPP and has no prior disciplinary matters on record. P/C Ostrom has accepted responsibility for his actions and

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<sup>5</sup> Exhibit 8 - P/C Ostrom career profile and PLDPs

Inspector Fournier submitted there is every reason to believe this is an isolated incident.

I am particularly struck by A/Sgt Murphy's comments in P/C Ostrom's 2019-2020 PLDP regarding his awareness that *"information available to OPP members can only be accessed and used for specified and lawful purposes, and not used for personal reasons"*, as it was only a matter a months after these comments that P/C Ostrom committed this misconduct. It leads me to believe that this was completely out of character for him. In fact, in his role at Orillia OPP detachment he manages the Prisoner Monitoring and Recording Unit, and there is every indication, based on his performance evaluations, that he does so with the utmost integrity and in strict accordance with Police Orders.

P/C Ostrom provided a statement to the tribunal which was read by his counsel. In the statement he outlined a number of events that had occurred in the months leading up to his misconduct. It was clear that P/C Ostrom has reflected on his actions and not only taken responsibility for them but also examined why they occurred. This level of self-awareness is critical to prevent a reoccurrence of such misconduct.

P/C Ostrom's potential to reform is a highly mitigating factor.

#### Disability and other personal circumstances

Mr. May read a statement to the tribunal that had been prepared by P/C Ostrom. The statement explained that in *"the months leading up to the events which prompted the complaint resulting in this hearing there were several personal trials that contributed to a deterioration of my mental health and judgment"*. These trials included the suicide of an OPP colleague and childhood friend, whose brother had been killed several years earlier, a terminal medical diagnosis for an immediate family member and a traumatic event at his workplace, all of which exacerbated personal struggles that P/C Ostrom already faced. Given the issues that P/C Ostrom was dealing with, he acknowledged in his statement that he had not been looking after himself the way he ought to have been and that he perhaps should not have even been in the workplace.

It is clear, based on P/C Ostrom's account, that he was under significant emotional stress during the time of this misconduct. While it does not excuse the misconduct, it does offer some insight into why it may have occurred. It is common knowledge that rational thought and cognitive processing can be affected by mental health disorders. I find that the circumstances surrounding P/C Ostrom and the toll they took on his health provide mitigation with respect to this misconduct and I commend him for examining the causes of his behaviour with the goal of preventing it again in the future.

### Specific and General Deterrence

Inspector Fournier submitted that both specific and general deterrence are required. He stated that as a member of the OPP, P/C Ostrom is familiar with internal messaging regarding the misuse of police databases, and he is accountable for serving in a manner that places public interest over personal interest and behaving above reproach both on- and off-duty. Additionally he submitted that internal messaging has been clear, consistent and impressed upon our membership.

Notwithstanding that there may have been significant events occurring in P/C Ostrom's life that contributed to a lack of judgement, his misconduct in searching the public complainant on Niche RMS was deliberate and done wilfully. While I have found that P/C Ostrom's potential to reform is mitigating, there still must be some specific deterrence to ensure that P/C Ostrom stays vigilant against similar misconduct in the future. Likewise, it should serve as a reminder to him that the OPP expects accurate and responsible note-taking.

Also, for the same reason that specific deterrence is required, so is general deterrence. As pointed out by the prosecution, there have been repeated internal memorandums issued regarding the misuse of police databases, and yet this type of misconduct still occasionally occurs. It must be impressed upon our members once more that the OPP will not tolerate unauthorised access of police information. Searching an individual on police databases for personal interests will incur a penalty, and the OPP has been very clear and consistent on this position. Even if information gained through a search is not disclosed, members must know that such a breach of privacy will result in consequences.

I find that the proposed joint penalty of 14 hours will be a sufficient deterrent for P/C Ostrom, and that as a general deterrence, members will once again be reminded of the consequences of inappropriate use of police databases.

### Damage to Reputation of the Police Force and the Effect of Publicity

It was submitted by the prosecution that public awareness of this incident and the subsequent erosion of trust, confidence and respect of the public is damaging to the OPP's reputation. It tarnishes the OPP's public image and elevates the burden each officer bears in restoring that trust, confidence and respect. Inspector Fournier stated that the matter was investigated as a public complaint and has proceeded through the formal discipline process. It is well known that media regularly requests and receives discipline decisions and they are subsequently in the public domain. He submitted that once there it is reasonably assessed that this misconduct will result in a negative impact to the reputation of the OPP and P/C Ostrom.

There will be some publicity of this incident by virtue of it being raised as a public complaint and

posted on a widely available, public website. I find too that there will be some damage to the reputation of the OPP were any reasonable, objective person to know that one of our officers had searched a confidential police database for personal reasons. However given the balance of aggravating and mitigating factors in this case, the penalty must be tailored to fit the offence. The public, upon learning of this incident, must have confidence that it has been dealt with appropriately and with consideration of the relevant context. I find this to be a neutral factor as long as the final disposition is appropriate and measured against the misconduct.

### Consistency of Disposition

Mr. May submitted five similar OPP decisions and advised that the range of penalties varied from a reprimand to 40 hours.

The *Johnston* decision from 2010 was a guilty plea to a breach of confidence allegation in which P/C Johnston provided confidential information from CPIC to the Law Society of Upper Canada. The disposition was a formal reprimand however I note that P/C Johnston was acting in good faith and believed he was sharing information appropriately.

The *Bergsma* decision from 2013 in which Sgt. Bergsma conducted multiple searches on RMS, MTO and internal police databases over more than a month period and subsequently shared that information with others. This was a guilty plea and joint penalty position of 30 hours which was accepted by the hearing officer.

The *Peck* decision from 2014 was a guilty plea and joint penalty submission regarding a constable who conducted non-police related inquiries using MTO, RMS and CPIC databases more than 550 times between 2008 and 2014. She received a 30 hour forfeiture.

The *St-Gelais* decision from 2019 in which P/C St-Gelais was found guilty of discreditable conduct for her criminal conviction of one count of Unauthorized Use of Computer contrary to section 342.1(1)(a) of the Criminal Code. In this matter P/C St-Gelais had accessed CPIC, Niche RMS and the MTO database a total of eight times over a three year period. She pled guilty and the joint penalty position of 24 hours was accepted.

Lastly the *Gravelle* decision from 2021, in which a sergeant conducted a number of both MTO and CPIC queries over a period of several months to advance a civil proceeding he was engaged in. He pled guilty and received 40 hours' forfeiture.

When I consider P/C Ostrom's matter in the context of the above cases, I am mindful that P/C Ostrom conducted only two unauthorised searches on Niche RMS, over a period of two days. This is significantly less than the cases above and warrants an accordingly lower penalty.

Furthermore I would expect that the *Bergsma* and *Gravelle* dispositions would be more significant by virtue of the rank of the officers involved. There was no criminal charge against P/C Ostrom which would have also increased the gravity of the sanction, as in *St-Gelais*. While I am cognizant that P/C Ostrom was also found guilty of neglect of duty, I do not find that the circumstances of this count – failing to take notes of a Niche RMS search that was otherwise authorised – would necessarily add to the overall disposition. As a result, having considered P/C Ostrom’s matter against those provided by counsel, I am satisfied that the joint penalty proposal is within the range of suitable penalties for this type of misconduct and would meet the goals of the discipline process.

## **Conclusion**

I am mindful, as referred to by Mr. May, of the Supreme Court of Canada decision *R. v. Anthony-Cook, 2016 SCC*. It is noted within that decision that “*joint submissions on sentence — that is, when Crown and defence counsel agree to recommend a particular sentence to the trial judge, in exchange for the accused entering a plea of guilty — are vitally important to the well-being of the criminal justice system, as well as the justice system at large... Crown and defence counsel are well placed to arrive at a joint submission that addresses the interests of both the public and the accused. Trial judges should not reject a joint submission lightly. They should only do so where the proposed sentence would be viewed by reasonable and informed persons as a breakdown in the proper functioning of the justice system. A lower threshold than this would cast the efficacy of resolution agreements into too great a degree of uncertainty*”. Should the judge have concerns with a joint penalty proposal, there are a number of steps that must be taken, including the possibility of allowing the accused to withdraw their guilty plea.

Built on the same principles of fairness, transparency and the balancing of public interest with the rights of the accused, a hearing officer must apply the same stringency and scrutiny with regards to the public interest if considering a deviation from a joint penalty in a *PSA* hearing. Having considered and assessed the factors presented through the submissions of both counsel, I find the proposed penalty meets the all the goals of discipline including to correct specific behaviour, to deter others from similar misconduct and to reassure the community.

Finally, I am aware that the public complainant in this matter took the position that P/C Ostrom should be removed from the OPP. Based on my experience as a hearing officer, and as a senior member with 23 years of policing experience, I find that for this type of misconduct, this is clearly an unrealistic and overly excessive penalty position which was not supported by any meaningful submissions or evidence. Having been guided by the well-established disposition factors that are supported by case law, I find that the circumstances in this matter would not support a penalty greater than a loss of hours, and that based on these factors, the joint penalty proposal

is appropriate and proportionate to the misconduct.

#### **PART IV: DECISION**

I order P/C Ostrom to forfeit 14 hours, to be worked at the discretion of his Detachment Commander. This order is being made pursuant to section 85(1)(f) of the *Police Services Act*.

*Melissa Barron*

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Melissa Barron  
Superintendent  
OPP Adjudicator

Date electronically delivered: December 21, 2021

## Appendix “A”

The following exhibits were tendered during the hearing:

- Exhibit 1: Delegation – Adjudicator, Superintendent Bickerton
- Exhibit 2: Delegation – Adjudicator, Superintendent Barron
- Exhibit 3: Designation – Inspector Young
- Exhibit 4: Designation – Inspector Doonan
- Exhibit 5: Designation – Inspector Fournier
- Exhibit 6: Delegation All Officers
- Exhibit 7: Internal OPP memorandums (4)
- Exhibit 8: P/C Ostrom career profile and PLDPs (3)
- Exhibit 9: Defence book of authorities (5)