

**YORK REGIONAL POLICE SERVICE 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 SERVICE**

AND

POLICE CONSTABLE REBECCA BOYD #1449

CHARGE: INSUBORDINATION

**REASONS FOR DECISION – ADMISSIBILITY OF EVIDENCE,
DETERMINATION OF FACTS, DISPOSITION**

Hearing Officer:	Superintendent Thai Truong York Regional Police Service
Counsel for the Prosecution:	Ms. Carley Valente York Regional Police Service
Counsel for the Defence:	Mr. Bill MacKenzie
Public Complainant:	Mr. Ferdi Cakmak
Hearing Date:	October 28, 2021

The breakdown of this disposition is divided into the following components:

1. PART I: OVERVIEW;
2. PART II: THE VOIR DIRE & THE HEARING;
3. PART III: SUBMISSIONS, ANALYSIS AND REASONS;
4. PART IV: DISPOSITION.

PART I: OVERVIEW

Parties to the Hearing

- 1) Parties to the hearing include the following:
 - a) The respondent officer, Police Constable (PC) Rebecca Boyd, badge #1449 (virtual attendance);
 - b) Defence counsel for the respondent officer, Mr. Bill MacKenzie;
 - c) The prosecution, counsel for York Regional Police (YRP), Ms. Carley Valente; and
 - d) The public complainant, Mr. Ferdi Cakmak (virtual attendance) who was self-represented.

Notice of Hearing: Allegation of Misconduct

- 2) PC Boyd, being a member of the YRP is alleged to have committed misconduct, in that she did commit insubordination by not adhering to YRP Procedure AI007- Canadian Police Information Centre (CPIC) and Management of Police Records, to wit: by conducting an unauthorized CPIC query of Fatma Cakmak, contrary to the *Police Services Act*, Ontario Regulation 268/10, Schedule, Code of Conduct Section 2(b)(ii).

Background

- 3) PC Boyd has been a member of YRP since 2004 and she currently holds the rank of First-Class Police Constable. The connection between PC Boyd and the public complainant in this matter involves a previous romantic relationship that dates back to 2018.
- 4) On October 29, 2018, PC Boyd performed a CPIC name query on the public complainant's mother, Ms. Fatma Cakmak. The public complainant later filed a complaint as a third party on behalf of his mother to the Office of the Independent Police Review Director (OIPRD). An investigation was subsequently launched and based on the findings, a Notice of Hearing under Part V of *the Police Services Act* was issued to PC Boyd on August 18, 2021.
- 5) On October 28, 2021, PC Boyd pled guilty to one count of insubordination. An agreed statement of facts was not reached amongst the three parties to this hearing. There are three issues in this matter to consider, the first involves the admissibility of evidence – in particular text messages between the public complainant and PC Boyd, the second issue is the determination of facts since an agreed statement of facts was not reached, and the third and final issue is the appropriate penalty for PC Boyd's misconduct. A *voir dire* was

held to determine the admissibility of the proposed text message evidence from the public complainant.

Position of the Parties

- 6) Defence counsel submits that text message communications between the complainant and PC Boyd are irrelevant to the allegation of misconduct and should not be admissible. Defence further submits that a penalty of 18 hours forfeiture is appropriate. The public complainant submits that the text message communications are relevant to the facts and that the contents of those communications speak to PC Boyd's motives for her actions of misconduct.
- 7) The prosecution relies on the facts as set out in the Notice of Hearing (Exhibit #3), and joins defence counsel for a penalty submission of 18 hours forfeiture. There were no penalty submissions made by the public complainant.

PART II: THE VOIR DIRE & THE HEARING

Exhibits

- 8) The exhibits tendered in this matter are listed in Appendix A.

Guilty Plea

- 9) PC Boyd pled guilty to one count of misconduct as outlined in the Notice of Hearing. An agreed statement of facts was not reached amongst the three parties to this hearing. The prosecution relied solely upon the facts as set out in the Notice of Hearing, whereby:
 - a) *On or about October 29, 2018, Constable Rebecca Boyd #1449 did commit Insubordination by not adhering to York Regional Police Procedure AI 007-CPIC and Management of Police Records, to wit: by conducting an unauthorized CPIC query of Fatma Cakmak, contrary to the Police Services Act, Ontario Regulation 268/10, Schedule, Code of Conduct Section 2(b)(ii).*
- 10) Two sets of documents identified as Procedure AI 007-CPIC and Management of Police Records, and the unauthorized CPIC printout were both tendered as evidence by the prosecution as exhibits #4 & #5, respectively. The prosecution submits that the elements of the offence have been met on clear and convincing evidence. That a lawful order was communicated to PC Boyd by way of Procedure AI 007, and that she had no reasonable excuse to contravene the order. The prosecution did not provide or rely on any additional evidence for the tribunal. The defence did not call evidence and submits that the facts as set out in the Notice of Hearing were substantially correct.

Application: Public Complainant

11) The public complainant made application to enter evidence in the form of “Whatsapp” – text message communications between himself and PC Boyd. He was sworn-in before he gave evidence, describing his relationship with PC Boyd at the time period of the CPIC query. The tribunal heard that PC Boyd had not met the public complainant’s mother when the unauthorized query was made and although the public complainant and PC Boyd are currently undergoing family court matters, the relationship was relatively progressing before and shortly after the unauthorized CPIC query in October 2018. The public complainant submits that there was no reason for PC Boyd to conduct the CPIC query and that the reason for the unauthorized query had nothing to do with any personal safety concerns. The public complainant submits that the text message communications between himself and PC Boyd are relevant as they show evidence of a positive and developing relationship with one another, depicting no evidence of fear or safety concerns.

Submissions: Prosecution

12) The prosecution submits that the only facts before the tribunal is the Notice of Hearing, the YRP Procedure and the unauthorized CPIC printout. The prosecution is not relying or asking the tribunal to accept that PC Boyd conducted the CPIC query based on any safety concerns. There are no facts before the tribunal with respect to PC Boyd’s motives or reasons for conducting the unauthorized CPIC query. The prosecution simply submits that PC Boyd conducted the query contrary to procedure and that she had no lawful excuse for doing so.

Submissions: Defence

13) The defence position is that the text message communications are not relevant to the hearing and that the contents provide no value to the tribunal for the purposes of determining a guilty plea. What led PC Boyd to conduct the unauthorized CPIC query is immaterial, the officer pled guilty and had accepted responsibility for her actions. Why she conducted the unauthorized search is not an issue for the tribunal as the prosecution did not introduce any evidence for motivation.

Analysis

14) The tribunal heard evidence from the public complainant that he first met PC Boyd online in July or September 2018. It was known to PC Boyd that the public complainant was a licenced security guard and private investigator at the time. The tribunal heard that the two were involved in a romantic relationship and there were discussions of cohabitating and having children together. The public complainant testified that there was a time when the two ended their relationship yet discussions continued to reunite. He further testified that PC Boyd had not met his mother at anytime before the unauthorized CPIC query and that he believed PC Boyd was not concerned for her own safety or the safety of his mother.

15) During cross-examination by defence counsel, the public complainant acknowledged that in October 2018, he told PC Boyd that his mother was attempting to divorce the public complainant’s father. Through a series of additional questions by defence counsel, the

tribunal heard evidence that during their relationship, the public complainant told PC Boyd “In Turkey, when the women leave the men, the men kill the women.”

- 16) It is clear to this tribunal that the relationship between PC Boyd and the public complainant was one that could be characterized as far from perfect. A reasonable person could infer a number of connotations if they were told that “In Turkey, when the women leave the men, the men kill the women.” However, that is not for this tribunal to deduce. This tribunal’s responsibility is not one of a criminal nature or family court. This tribunal is a labour relations tribunal and the only evidence relied upon by the prosecution are the facts as outlined in the Notice of Hearing, together with Exhibits #4 and #5.
- 17) There has been no evidence presented by the prosecution that speaks to motivation or reasoning for PC Boyd’s unauthorized CPIC search. PC Boyd has taken responsibility for her actions by pleading guilty and admitting that she conducted the unauthorized search. Her motivations, the perception of safety concerns, why she conducted the search and thus, the text message communications are irrelevant and not necessary for this tribunal to make a finding of guilt.

Conclusion: Admissibility of Evidence

- 18) The application by the public complainant is therefore, dismissed. The “Whatsapp” – text message communications between the public complainant and PC Boyd is not admissible.

Conclusion: Determination of Facts & Guilty Plea

- 19) Since an agreed statement of facts could not be reached, I have relied on the evidence and the submissions presented by all parties to make a finding of fact. This includes the facts as set out in the Notice of Hearing, Exhibits #4 and #5 which establish on clear and convincing evidence that the elements of the offence of insubordination, as previously outlined have been met. York Regional Police Procedure AI 007 is a lawful order and clearly communicates to officers the proper use of CPIC and other police databases. It is clear on the evidence that PC Boyd failed to comply with that procedure and she conducted an unauthorized CPIC query for personal reasons, unrelated to her official police duties, and that she did so without lawful excuse.
- 20) PC Boyd’s guilty plea and acknowledgement of the facts provides me with clear and convincing evidence that she is guilty of committing misconduct (insubordination).

PART III: SUBMISSIONS, ANALYSIS AND REASONS

- 21) Firstly, I would like to start my discussions on penalty by outlining the three main objectives of discipline:
- a) Correct unacceptable behaviour;
 - b) Deter others from similar behavior; and
 - c) Reassure the public.

Position of the Parties

- 22) The prosecution and defence jointly submit a position of 18 hours forfeiture on penalty. They have provided careful reasoning into the relevant factors in this case and they have applied fundamental principles of proportionality in doing so. The public complainant takes no position on penalty.
- 23) Although I am not bound by the joint submission of 18 hours forfeiture, I would have to find that it is outside the reasonable range of available dispositions for similar cases of misconduct, in effect the submission would have to be contrary to the public interest and community expectations if I were to depart from it. I do not see a reason to deviate from the joint submission and for the following reasons that I will outline below, I accept the joint submission, which in my opinion is fair, reasonable and proportionate.

Reasoning

- 24) The fundamental principles of proportionality require that I consider and weigh all relevant mitigating, aggravating and neutral considerations appropriately. I first must identify which disposition considerations are relevant, then I must determine whether those disposition considerations are aggravating, mitigating or neutral. Lastly, I must weigh those considerations in accordance with the factual background and the competing interests. The law is clear that no one factor should be considered in isolation and no single factor should be given unreasonable weight.
- 25) The 13 factors that I must consider of relevance are contained in Exhibit #6, Tab 3, *Senior Constable Alexander Krug and the Ottawa Police Service, Ontario Civilian Police Commission (2003)* at paragraph 69. I will address only those factors that are relevant in this particular case.

Consistency of Disposition

- 26) It is rare to find a case that has identical sets of facts. The disposition hearing record (Exhibit #6) has provided me with important guidance for what the appropriate range on penalty would be for misconduct of this nature. I have found that there are two cases from the disposition hearing record to be of most similar in circumstances, however those two cases involved additional aggravating considerations. The first case - *Hampel v. Toronto Police Service, Ontario Civilian Police Commission (2008)*, one count of insubordination encompassed more than one unauthorized CPIC query. A distinguishing difference from PC Boyd's case is that in *Hampel*, the officer was found guilty after a full hearing. In this case, PC Boyd has accepted responsibility for her misconduct and pled guilty before the tribunal. Additionally, in *Hampel* the officer disclosed the results of the CPIC query to his wife; and there is absolutely no evidence to suggest that PC Boyd disclosed the results of her unauthorized search. The Ontario Civilian Police Commission reduced the penalty in *Hampel* to 24 hours.

27) The second case - *Castle v. York Regional Police*, involved one count of insubordination but it actually included eight unauthorized CPIC queries. The officer in that case pled guilty, he had no prior discipline and a positive employment record similar to that of PC Boyd. The tribunal imposed a penalty of 24 hours.

Public Interest & Seriousness of the Misconduct

28) The public interest and seriousness of the misconduct in this case is high and aggravating. PC Boyd's actions have undermined the public's confidence and trust in policing. There is a need to demonstrate confidence in the police disciplinary process. PC Boyd violated the public trust, she violated Ms. Cakmak's privacy and she abused her position as an officer with York Regional Police. Ms. Cakmak and the public in general have the right to protection of confidential information. They should not expect that police officers will abuse their position to access CPIC or other police databases.

Damage to the Reputation of York Regional Police

29) The actions of PC Boyd have damaged the reputation of York Regional Police and her actions are contrary to the organization's values and code of ethics. The organization and the community expect more from police officers. The community expect police officers to serve with integrity, professionalism and honesty. This consideration is one of an aggravating factor.

Need for Deterrence

30) Specific deterrence has been accomplished by this formal hearing, however, general deterrence remains an important aggravating factor for consideration. The penalty must reflect YRP's commitment to values and to the community, and should reaffirm that this type of misconduct will not be tolerated.

Employment History

31) PC Boyd is an experienced and valued member of YRP. She started with the organization in 2004 and she holds the rank of First-Class Police Constable. She has no prior discipline on file and also has ten incident recognitions to her credit. In 2017 she received the Arthur Troop award and the leading women leading girls award. Her most recent performance evaluations were positive, exceeding expectations in many areas and they reveal a dedicated and respected police officer who is devoted to the community. She has spent considerable time giving back to the community and she has a promising future with YRP. Her employment history is a mitigating factor that diminishes the weight of the aggravating factors.

Recognition of Seriousness of Misconduct

32) It is apparent that PC Boyd has taken responsibility for her misconduct. This is only the third appearance in this matter and she has pled guilty at the earliest possible opportunity. Her actions reflect that she recognizes the seriousness of the misconduct and therefore a mitigating factor for consideration.

Ability to Reform or Rehabilitate the Police Officer

33) PC Boyd’s positive employment history that include her numerous recognitions and awards, combined with the fact that she quickly accepted responsibility for her misconduct, strongly indicate her willingness to reform. This tribunal expects that she will learn from her actions and that she will continue on to have a promising career with York Regional Police. This consideration is a mitigating factor.

Acknowledgment

34) I would like to thank Ms. Carley Valente, prosecutor for York Regional Police, Mr. William MacKenzie, defence counsel for PC Boyd and Mr. Cakmak, public complainant, for their submissions and assistance in this matter.

PART IV: DISPOSITION

35) PC Boyd’s guilty plea and acknowledgement of the facts provides me with clear and convincing evidence. Consequently, I find PC Boyd guilty of committing misconduct (insubordination).

36) Given consideration to all of the factors, principles and evidence outlined before me, I order that Police Constable Rebecca Boyd forfeit 18 hours as penalty, which can be worked off subject to the discretion of her service commander.

37) This order is made pursuant to sections 85(1)(f) of the *Police Services Act*, R.S.O. 1990 and was delivered orally on October 28, 2021, taking effect immediately at that time.



X _____

Thai Truong
Superintendent #1227
York Regional Police

Date Electronically Delivered: February 6, 2023

APPENDIX A

The following exhibits were tendered during the hearing:

Exhibit #:

1. Delegation of Powers and Duties by Chief Jim MacSween;
2. Designation of Prosecutor by Chief Jim MacSween;
3. Notice of Hearing;
4. Procedure AI007-CPIC and Management of Police Records;
5. CPIC printout;
6. Disposition Hearing Record.