

This judgment relates to an allegation of unnecessary exercise of authority in relation to a young person, whose identity is protected under the *Youth Criminal Justice Act*. Accordingly, the name of the complainant has been redacted from the judgment.

# **YORK REGIONAL POLICE**

**POLICE SERVICES ACT R.S.O. 1990, c. P. 15, as amended**

**IN THE MATTER OF** a hearing held in accordance with section 76(9) of the Police Services Act into allegations of misconduct against Constable Pha-Luan Ho #1590 of the York Regional Police;

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## **Disposition - Discreditable Conduct**

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**Before:**

Superintendent David Downer  
Peel Regional Police

**Appearances:**

Mr. Bruce Brown  
Ms. Pamela Machado  
Cst. P. Ho #1590  
[REDACTED]

Counsel for the Chief of Police  
Counsel for Cst. P. Ho  
Subject Officer  
Public Complainant

**Hearing Date:**

February 4, 2014

## **REASONS FOR DISPOSITION**

### **Finding of Misconduct**

On February 4, 2014 Constable Pha-Luan Ho (HO) #1590 of the York Regional Police (YRP) appeared before me with respect to one Notice of Hearing issued May 13, 2013 containing a total of two charges; one count of Unlawful or Unnecessary Exercise of Authority and one count of Discreditable Conduct.

On February 4, 2014 Mr. Brown, representing YRP, requested the charge of Unlawful or Unnecessary Exercise of Authority be withdrawn.

As a result, HO faced the remaining charge, Discreditable Conduct.

HO entered a guilty plea to the count.

Mr. Brown tendered an Agreed Statement of Facts (ASoF), filed as Exhibit #3. Based on the facts as contained in the ASoF and upon confirmation the facts were substantially correct, a finding of misconduct was registered.

### **Agreed Statement of Facts**

An unedited version of the ASoF is as follows:

#### **Count Two – Discreditable Conduct**

1. Constable Pha-Luan (Richie) Ho #1590, has been a member of York Regional Police Service since April 2005.
2. On October 18, 2012, Constable Ho was assigned to the Core Unit in District 5 and was working in uniform. This Unit is a community oriented response unit dealing primarily with non-emergency matters such as traffic incidents, community needs, special events and drug complaints.
3. On October 18, 2012 at approximately 10:00 a.m., Constable Ho was conducting a follow-up investigation as a result of complaints received from employees at the daycare located in the Bur Oak Avenue and Kennedy Road plaza in Markham, Ontario.
4. These complaints concerned students from Pierre Elliott Trudeau High School consuming and trafficking marijuana in the plaza.
5. Constable Ho also received information that occupant(s) of a specific vehicle, silver Honda Civic, were supplying the students with marijuana and potentially

weapons, and were believed to be armed themselves. This information originated from an arrested party approximately three weeks prior, by Cst. Ho, and can be confirmed in his notebook.

6. The complainants also provided a description of one of the males, who Constable Ho observed skateboarding back and forth in an area of the loading dock in the plaza. Constable Ho later identified this individual as the “Affected Person” as a result of this individual’s arrest on October 19, 2012.
7. On October 19, 2012, Constable Ho was operating an unmarked police vehicle, in uniform, and was again completing a follow-up investigation on the drug complaint from the day prior.
8. Constable Ho had occasion to observe the same male that he observed on October 18, 2012 (the “Affected Person”) with three other males in the laneway between the plaza and Pierre Elliott Trudeau High School. All four males proceeded to walk south across Bur Oak Avenue to a laneway where they remained.
9. The males were observed lighting and passing what Constable Ho believed, and was later confirmed, to be a marijuana cigarette to each other. This occurred for approximately five minutes, before Constable Ho determined the males had observed him sitting in his unmarked vehicle.
10. Constable Ho activated his emergency lights and proceeded towards the males in his vehicle. At this time, two of the males began to run across the street.
11. Following a brief pursuit, Constable Ho instructed the males to line up against a wall, advising them they were under arrest for the possession of marijuana.
12. Two of the males refused Constable Ho’s direction to remain with their hands on the wall, as they continued to move. Constable Ho directed these males to stop moving several times.
13. Constable Ho drew his firearm, and pointed it down to the ground in a ready position, as he distanced himself approximately eight to ten feet from all four males.
14. Following Constable Ho issuing the police challenge of “Police. Don’t move.” one of the males continued to reach down toward his waistline. At this point, Constable Ho directed, “Don’t try anything, or I’ll bust a cap.”, in order to gain compliance from the males. Following this, all four males complied and remained still. Constable Ho holstered his weapon when another officer arrived to assist him.

15. The “Affected Person” was found to be in possession of drug paraphernalia, mainly a glass pipe, 21 empty dime bags (small plastic bags or packets), and two devices to grind marijuana, all which were located in his backpack.
16. In utilizing this language toward the males, Constable Ho acted in a disorderly manner prejudicial to discipline or likely to bring discredit upon the reputation of the police force and thereby engaged in **Discreditable** Conduct contrary to the Police Services Act, Ontario Regulation 268/10, Section 2(1)(a)(v), when he issued the command to the males in the manner described above.
17. The Code of Conduct pursuant to the *Police Services Act* states a member commits discreditable conduct when without lawful excuse they
  - a)(i) fails to treat or protect persons equally without discrimination with respect to police services because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or disability,
  - (ii) uses profane, abusive or insulting language that relates to a person’s race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or disability,
  - (iii) is guilty of oppressive or tyrannical conduct towards an inferior in rank,
  - (iv) uses profane, abusive or insulting language to any member of a police force,
  - (v) **uses profane, abusive or insulting language or is otherwise uncivil to a member of the public,**
  - (vi) wilfully or negligently makes any false complaint or statement against any member of a police force,
  - (vii) assaults any other member of a police force,
  - (viii) withholds or suppresses a complaint or report against a member of a police force or about the policies of or services provided by the police force of which the officer is a member,
  - (ix) is guilty of a criminal offence that is an indictable offence or an offence punishable upon summary conviction,
  - (x) contravenes any provision of the Act or the regulations, or
  - (xi) acts in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the police force of which the

officer is a member; as prescribed in section 2(1)(a)(v) of the Code of Conduct.

18. The above actions of Constable Ho constitute Discreditable Conduct in accordance with section 2(1)(a)(v) of the prescribed Code of Conduct.

### **Penalty Positions**

Counsel submitted jointly that a forfeiture of thirty-nine and one-half hours and further training in use of force and tactical communication techniques be sanctioned on HO.

### **Exhibits**

The following exhibits were tendered:

- Exhibit #1 – Hearing Officer’s Delegation (Downer) from Chief J. Evans (Peel Regional Police)
- Exhibit #2 – Hearing Officer’s Delegation (Downer) from Chief E, Jolliffe (York Regional Police)
- Exhibit #3 – ASoF
- Exhibit #4 – Case Brief of the Prosecution
  - Tab 1 – *Tighe and York Regional Police*, May 17, 2009, (Finn)
  - Tab 2 – *Sylvester and York Regional Police*, December 14, 2009, (Carrique)
  - Tab 3 – *Pacitto and Toronto Police Service*, May 6, 2004, (OCCPS)
  - Tab 4 – *Burdett and Guelph Police Service*, May 13, 1999, (OCCPS)
- Exhibit #5 – Sentencing Brief/Book of Authorities
  - Tab A – Letters of Support (5)
  - Tab B – Community Involvement (6)
  - Tab C – *Wilson and Toronto Police Service*, September 23, 2013, (McElary-Downer)

### **Prosecution’s Submissions**

Mr. Brown tendered the case of *Sylvester* and spoke specifically to the unlawful use of force used in that case and the force used by HO in this case. Cst. Sylvester was sanctioned thirty hours and is in line with the present case.

Mr. Brown spoke of *Pacitto*, a 2004 case where an off duty Toronto Police Service officer was verbally abusive to a store employee and refused to return to comply with store security. The officer was charged with one count of discreditable conduct and received a penalty of five days. Upon appeal, the penalty was upheld. This is similar because HO’s abusive comments impacted individuals just as Cst. Pacitto’s did. It is

different in the fact HO never physically assaulted anyone. Pacitto's sanction of forty hours is within range of the HO matter.

Mr. Brown tendered the *Burdett* case. This was a case of an officer sending a threatening Christmas card to an individual he believed broke into his house. He was sanctioned fifty-six hours. Mr. Brown advised this was in line with the penalty submitted for HO.

Lastly, Mr. Brown tendered the *Tighe* case. This is a case where an YRP officer grabbed two grade seven students by the back of their shirt collars and made disparaging remarks to them. He was sanctioned thirty-six hours. Mr. Brown stated this is also within the range of penalty for HO's actions.

Mr. Brown stated the officer has accepted responsibility for his failings and accepts the penalty. He advised that HO is a good officer with no previous disciplinary history. He stated this penalty meets the requirement for general and specific deterrence.

Mr. Brown believes the penalty along with the recommended training is the proper corrective measure in this case.

### **Defence's Submissions**

Ms. Machado submitted the officer has entered a guilty plea, accepted responsibility and knows his actions reflect poorly on his self and the organization. Ms. Machado described HO as a father of two who has been a police officer with YRP for just under nine years. He has a discipline free career and a bright future ahead of him. He has an excellent relationship with the community he serves and the individuals he works with and who supervise him. This incident has had an impact on his family and he knows it will affect his future promotional aspirations. She stated the joint submission met all the requirements of general and specific deterrence.

Ms. Machado spoke to the five letters of support within her case brief. Four of the letters of support were from citizens within the community thanking HO for his dedication, generosity, knowledge, and being a positive role model. The fifth letter was from HO's direct supervisor; Sergeant E. Morash. She has supervised HO for the past five years and utilizes him as an Acting Sergeant in her absence. Sgt. Morash stated he is a dedicated, accommodating and flexible officer who represented YRP at ninety percent of their community events in 2013. She went on to say he has an honourable work ethic and is the second highest producer of provincial offence tickets in his district. Sgt. Morash believes that HO was frightened during this incident and spoke the language of the youth for them to take notice and comply.

Ms. Machado tendered the *Wilson* case and spoke specifically to the unnecessary force used by Cst. Wilson on an accused by stepping on him with her foot. She received a sanction of forty hours.

This case is similar to the HO matter in the fact it was also an Office of the Independent Police Review Director (OIPRD) complaint, the officer had no previous discipline history, it precludes the officer from entering the promotional process for two years and the resultant McNeil Report. The penalty in the *Wilson* case is in line with this case.

Ms. Machado also touched base on the cases of *Durham Regional Police Service v. Partridge*, 1998 and *Turgeon v. Ontario Provincial Police*, 1999, (OCCPS). These cases were mentioned in the *Wilson* matter. In *Partridge*, the officer kicked and hit a female accused and was convicted of assault in criminal court. He was sanctioned forty-eight hours in the police disciplinary tribunal. In *Turgeon*, the officer struck a young offender in the face and pushed him against a van while threatening him. Cst. Turgeon was sanctioned eighty hours. Ms. Machado stated that the thirty-nine and one half hours submitted in the HO matter is proportionate to the misconduct when compared to the other cases.

Ms. Machado spoke to the sentencing principles as laid out in Paul Ceysens book, *Legal Aspects of Policing* and addressed the following:

#### Recognition of the Seriousness of the Misconduct

HO made all efforts to resolve this case as quickly as possible. He pled guilty at the first opportunity and is remorseful for his actions.

#### Damage to the Reputation of the Police Force

This incident was investigated fully through the public complaint process and by OIPRD investigators. There was full accountability and the officer has agreed to the training recommended in the joint submission. The letters of support from citizens in HO's file speak for themselves and the work he has done in drug enforcement and prevention has made the community safer. Ms. Machado acknowledged the public complainant has a certain view on this matter and that the public's view is paramount. Ms. Machado stated that HO's work in drug enforcement outweighs the damage in this matter.

#### Employee History

HO has no previous discipline in his file. He has had an outstanding career during his eight year tenure with excellent relationships with the community and coworkers. He has been involved in numerous community events and organizations and has six documents in his file outlining his involvement.

#### Consistency in Penalty

Ms. Machado advised the cases presented before the Hearing Officer are within the range of penalty for this type of misconduct.

## **Public Complainant's Submission**

The public complainant stated she was a gun owner and that HO required more training in firearm safety and use of force. She explained how her gun licence would have been taken away from her if she had done what HO had done with his firearm. She believed he required more training on how to engage youth in a constructive manner.

She stated the “affected person” in this incident has been traumatized by the event and since this event continues to be harassed by police throughout the Province and has since moved away. This incident will have a lifelong impact on this individual.

## **Discussion**

In deciding the appropriate penalty in police disciplinary matters, there are key elements to be considered by a tribunal. They include the nature and seriousness of the misconduct, the ability to reform or rehabilitate the officer and the damage to the reputation of the police service. Other factors that may be considered include the officer's recognition of the seriousness of the misconduct, employment history, general and specific deterrence, public interest and consistency in penalty. In the matter at hand, each element is deserving of consideration.

I first turn my mind to the nature and seriousness of the misconduct. HO has been found guilty of one count of Discreditable Conduct as a result of his inappropriate language towards the “affected person”.

HO's misconduct can be best described as improper and serious. The seriousness of speaking to a member of the public in an unprofessional manner cannot be understated. Failing to adhere to the Code of Conduct in accordance with the *Police Services Act* (PSA) violates the fundamental requirements of a police officer. The nature and seriousness of HO's misconduct is aggravating and warrants an appropriate penalty and retraining.

In regard to public interest, HO's misconduct has betrayed the public complainant's and the “affected person's” trust and shattered their confidence in the YRP. The public expects their police to be accountable for their actions. Part of this accountability rests with treating everyone in an equal and professional manner. HO's actions in this matter did not do this. A strong message needs to be sent to the public that HO's conduct is not the norm and is not condoned by the Service. The public interest is a significant aggravating factor and will be weighed accordingly in my decision.

In regard to HO's employment history, I have considered his service record. He has been a member of YRP for just under nine years and should be well aware of the expectations of an officer by the public and this Service. His employment record is unspotted and his letters of support and community service are extremely positive, mitigating, and weighty.

I have considered HO's recognition of the seriousness of his misconduct and find it mitigates the sanction to be imposed. His plea of guilty and joint penalty submission amounts to a significant forfeiture of hours and a commitment to improving himself. It is indicative of acceptance and remorse for his wrong doing. I consider these constructive steps towards HO recognizing the magnitude of his misconduct and desire to right his ill-doings.

The penalty leveraged against HO must send a strong message to him and others that serious sanctions will follow those who fail to execute their duties within the framework of the legislation.

In summary, counsel has provided me with guidance in determining an appropriate penalty.

I agree with the prosecution's assertion the misconduct, as agreed to in this Tribunal, has impacted the fine reputation of the YRP, and as such a specific and general deterrent must be imposed by an appropriate sanction.

### **Disposition**

As the Hearing Officer I am not bound by counsel's Joint Submission. However, having reviewed the relevant case law, there is no clear and cogent reason to vary from it. To this end, I accept the proposed sanction. I find it has taken into consideration the mitigating and aggravating considerations and addresses the seriousness and recognition of the misconduct, public interest, the need for specific and general deterrent, employee's history and consistency in penalty.

I therefore impose the following penalty:

**A forfeiture of thirty-nine and one half hours which may be removed from any bank other than the Sick Bank, pursuant to Section 85(1)(f) of the *Police Services Act* (PSA), R.S.O. 1990.**

**In addition, HO is to participate in an Use of Force Training course and a Tactical Communication course within the next year, pursuant to Section 85(7)(b) of the *Police Services Act* (PSA), R.S.O. 1990.**

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David Downer #871, Superintendent  
Peel Regional Police  
Hearing Officer

Date: February 10, 2014