

SUPERINTENDENT Bond: Before commencing sentencing in this matter, I wish to thank Mike Cruse, defence counsel and Marco Visentini Hamilton Police Service prosecutor, for their arguments and exhibits tendered, all of which have assisted me in reaching my decision.

On May 13, 2011, Police Constable Paul Mallon pled guilty and was found guilty of 1 count of Insubordination laid under the Police Services Act.

AGREED STATEMENT OF FACTS

In late June, 2010, Police Constable Paul Mallen and a female individual met on an on-line dating website. Police Constable Mallen and the female individual had been texting and chatting back and forth for approximately a week leading up to June 27, 2010.

On June 27, 2010, Police Constable Mallen requested the female individual's surname. She provided her surname to Police Constable Mallen.

In the early morning hours of June 28, 2010, after learning the female individual's surname, Police Constable Mallen informed the female individual that she should have told him about her "charges". He also referenced that she had "conditions" and a "suspended sentence". Police Constable Mallen advised her not to communicate with him anymore.

The female individual believed that Police Constable Mallen must have used the Canadian Police Information Centre (C.P.I.C.) system to obtain this information. On June 28, 2010, she filed a public complaint to the Office of the Independent Police Review Director.

Further to the public complaint, investigators requested an Off-Line Search from the Canadian Police Information Centre (C.P.I.C.) to establish whether Police

Constable Mallen did conduct searches on the system in relation to the female individual.

The Off-Line Search, dated July 27, 2010, revealed that Police Constable Mallen had performed a C.P.I.C. check on the female individual on June 28, 2010 at 1:14 a.m. from the Mobile Data Terminal (M.D.T.) in police cruiser number 202. Police Constable Mallen was on-duty at the time that he conducted the C.P.I.C. search on June 28, 2010.

Hamilton Police Service Policy and Procedure 5.2.02, entitled *Canadian Police Information Centre (CPIC) Information Handling and Dissemination*, states:

“CPIC queries shall not be conducted for the sole purpose of satisfying a Member’s personal interest in any individual. All queries shall be for specific, authorized, work related activities. The use of any other purpose is prohibited”.

The C.P.I.C. search conducted by Police Constable Mallen on June 28, 2010 was not conducted for specific, authorized, work related activities. Further, Police Constable Mallen did not have a lawful excuse for disobeying the clear directive of the Hamilton Police Service.

Both the Service prosecutor and the Defense Counsel have agreed on a penalty of 5 days 40 hours for this misconduct.

Decision:

The factors to be considered with respect to penalty are clear. As was stated in Carson and Pembroke Police Service (9 March, 2006, O.C.C.P.S.) at pages 14 and 15:

The factors to be taken into account when assessing a suitable penalty are well established. In Williams and Ontario Provincial Police. This Commission identified three key elements. 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 that would occur if the police officer remained on the force.

Further considerations can include the need for deterrence, provocation , or concerns arising from management's approach. other factors can be relevant either mitigating or aggravating a penalty, depending on the conduct in question. These include the officer's employment history and experience., recognition of the seriousness of the transgression and handicap or relevant personal considerations.

In addition, when imposing penalty, it is important to take into account prior disciplinary cases dealing with similar types of misconduct. This is to ensure consistency.

I have considered how the three major principals of penalty apply, namely; the seriousness of the misconduct, the ability to reform the officer, and the damage to the police service if the officer remained employed.

The first principal is the seriousness of the misconduct.

Breaches of confidentiality involving CPIC abuse are considered serious misconduct by both police management and by civilian oversight, as the conduct offends not only the Service's contract with the RCMP, but also violates individual privacy rights. The Service Prosecutor provided the policy that clearly delineates that using CPIC for anything but police related matters is prohibited.

What may appear to a minor transgression can cause the collapse of an investigation, allow offenders to go free or place an officer in a compromising

position. The fact that this did not occur does not take away from the seriousness of this misconduct.

Police officers are expected to protect the rights and freedoms of the public. CPIC access is a privilege that is not to be taken lightly. The public expects police officers to access protected information for official police business and not for personal reasons.

The Service prosecutor further submits that Constable Mallon violated his oath of office and that the query was for circumstances in his personal life. To his credit and a mitigating factor is the fact that Constable Mallon accepted his responsibility by pleading guilty at the earliest opportunity. He admitted the facts as alleged and agreed that he was not justified in conducting this CPIC query as it was not for official police business or duties.

Defense Counsel provided numerous commendations that Constable Mallon has received over the years. He is obviously an officer who has many attributes that make him a valuable resource to our service. He has expressed remorse for the poor judgement he used in regard to this incident. He has also been embarrassed by his actions as a result of the media stories generated from this tribunal. I have no doubt that this experience has certainly made an impact on him and that he will move forward from here. I have no doubt that rehabilitation is a consequence of this process and he has learned greatly from it.

The last principal is the need for deterrence both specific and general. It is important that management is clear that officers must not engage in CPIC use that interferes with the performance of their responsibilities as police officers. Management is responsible for sending a strong message to officers across the organization, but very specific declaration must be delivered to Constable Mallon that his behaviour was unacceptable and that any reoccurrence is not acceptable

and will not be tolerated. As such penalties are designed to discipline the specific officer(offender) as well as deterring other members.

It is to be understood by all Hamilton Police Service members that there is no acceptable explanation to justify the use of police information systems for personal use. Those who violate the rules will be held accountable, the public demands it.

The Service prosecutor and Defense counsel have provided me with a number of historical cases. One case in particular was very helpful. This case **Zayack 2006, Toronto Police Service** was very similar and assisted me in my decision. In this case the officer was a veteran officer with over 15 years of service. Constable Mallon is a 14 year veteran. Constable Zayak accessed CPIC twice for personal reasons but did not gain monetarily. Constable Mallon accessed CPIC once and did so for personal reasons. Also similar to this case is the fact that Constable Zayack had a serious police act conviction from a criminal conviction that was over 6 years old. Constable Mallon as well has a serious police act charge which is 8 years old. In Zayak's case the historic police act charge was considered but not used in sentencing by the hearing officer. Constable Zayack was assessed a forfeiture of 5 days which is the penalty agreed to by the Service Prosecutor and Defence Counsel in the Mallon matter. Obviously this case helps in the area of being consistent.

Consequently, as was the case in Zayak in assessing the penalty for Constable Mallon I am not taking into consideration the penalty of an unrelated offence that occurred 8 years ago. I am treating this matter as a first offence.

Constable Mallon please stand:

I accept the joint sentence submission from the Service Prosecutor and Defence Counsel. The penalty in this matter will be the forfeiture of five days or 40 hours off.

The penalty in this matter is under section 68(1) (f) of the Police Service Act.

Ken Bond
Superintendent
Hearing Officer.