

**IN THE MATTER OF THE POLICE SERVICES ACT  
R.S.O. 1990, C.P. 15, as amended:**

B E T W E E N:

THE TORONTO POLICE SERVICE

Police Service

- and -

POLICE CONSTABLE CHRISTOPHER McFADYEN (#10506)

Subject Officer

Ian B. Johnstone  
Johnstone & Cowling LLP  
Counsel for Toronto Police Service

Melanie J. Webb  
Alan D. Gold Professional Corporation  
Counsel for Constable Christopher McFadyen

**REASONS FOR DECISION  
(The Honourable Colin L. Campbell, Q.C.)**

1. The undersigned was designated as Hearing Officer in respect of the following charge of discreditable conduct against Constable Christopher McFadyen:

(1) YOU ARE ALLEGED TO HAVE COMMITTED MISCONDUCT IN THAT YOU, on April 24, 2011 did act 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 you are a member, contrary to subsection 2(1)(a)(xi) of the Code of Conduct, O. Reg. 268/10, as amended and, therefore contrary to subsection 80(1)(a) of the *Police Services Act*, R.S.O. 1990, c. P. 15, (the "Act") as amended.

**STATEMENT OF PARTICULARS**

On April 24, 2011 Constable McFadyen and Sergeant Facchetti were dispatched to the report of an assault on a Parking Enforcement Officer ("PEO"). Mr. Keith Ryan (the "Complainant") was identified by witnesses as

the suspect. Constable McFadyen recognized the Complainant as his girlfriend's ex-boyfriend.

Constable Ramos and Constable McFadyen arrested the Complainant for the assault on the PEO. The Complainant was seated in the back of Constable McFadyen's scout car. Constable McFadyen confronted the complainant about making late night telephone calls to his girlfriend, advising him that it "wasn't cool".

2. Before me Constable McFadyen pleaded guilty to the above-referenced charge and I was asked to accept a joint-submission as to penalty reached between the prosecution, defence and concurred in by the complainant, Keith Ryan.

3. The remaining charges being Count #2 in Notice of Hearing #1 and Counts #3 and #4 in Notice of Hearing #2 were formally withdrawn with no objection from the Complainant, Mr. Ryan. I conclude that those facts which are accepted for the purpose of the remaining charge are sufficient for the purpose of considering the joint submission as to penalty and form the basis for the decision to accept the plea.

4. Attached is the Agreed Statement of Facts from the Sentencing Submissions of the Toronto Police Service (Exhibit 3B) [see pages 2 and 3] which was read and formed the basis on which the plea of guilt was made and accepted. I conclude those facts as accepted are sufficient to enable penalty to be considered.

5. Oral submissions with respect to the proposed Joint Penalty were made both by Mr. Johnstone for the prosecution and Ms. Webb on behalf of Constable McFadyen.

6. I note that Mr. Ryan the complainant concurred in the joint submission and simply wished the tribunal to be aware that the entire process, including the delay from the incident which took place on April 24, 2011 to the day of hearing had been very stressful.

7. Following submissions and review of the filed material, I retired briefly and advised the parties that upon review I was satisfied to accept the joint penalty submission of 5 days or 40 hours and would in due course deliver written reasons for decision as herein. It was on this basis that the remaining counts were withdrawn on joint consent with concurrence of the complainant

8. To be accepted a joint submission as to penalty must meet the test of fairness as measured not only by being consistent and proportional having regard to the specific facts of the case but

as well being consistent with the disposition of cases that may be regarded as similar while recognizing that the facts of each case will vary.

9. The statement to which I was referred from *Constable Peter White and Constable Thomas (Scott) Reid v. Windsor Police Service*

The penalty also must be consistent with similar cases in order to maintain consistency in sentencing. While fact situations vary, a spectrum of misconduct and resulting penalties can provide a good comparative analysis to assist the Commission in determining an appropriate and fair penalty.

is an apt description of the principle.

10. I was referred to a number of cases that may be considered comparable however it is conceded that there is a lack of case law on the specific issue of failing to comply with O. Reg. 267/10.

11. Notwithstanding the lack of specific comparators, I am satisfied that the cases of *Toronto Police Service and Constable Janna Senyk*, Case Number 2010.23, 2011.04.05 at page 11 and 12, and a penalty of 4 days together with *Constable Grbich and the Aylmer Police Service*, OCPC #02-07 page 10 – 12 offer some guidance that the proposed penalty meets the above described principle.

12. There are numerous decisions in this Province involving alleged misconduct in the delivery of Police Services that have set out and confirmed the factors relevant to an appropriate disposition with respect to sentence.

13. By way of example, see *Bennet (Re)*, OCPC-INQ #15-03 and *Markham and Waterloo Regional Police Service* 2015 ONCPC.

14. The principles start with the recognition that the public in this Province holds the police in a position of high trust and accountability.

15. As a result, the penalty must be regarded as being in the public interest. Given the facts being within the realm of similarity to penalties comparable to the one proposed here, the concurrence of the complainant, Keith Ryan and along with the consideration of the other factors (referred to below) favouring the constable, I am satisfied that the public interest is served with the proposed penalty.

16. Another feature of the public interest is that the plea and joint submission brings to an end at least for this charge what has been a long and difficult matter in its prosecution which would further demand time and resources but for the plea.

17. I note from the employment history of the constable that this incident took place early on (14 months) into his career and that since that time his employment has been exemplary (aside from the technical misconduct of not renewing his motor vehicle licence on time).

18. I was referred to the details of the awards and commendation referred to in the Agreed Statement and am satisfied they are consistent with those of an exemplary officer.

19. I note that by virtue of this charge being outstanding in one sense since 2011, the officer has been deprived of the employment advancement his conduct in the intervening time would otherwise have warranted.

20. While any police intervention which may be open to question as being of a personal motivation is serious, when I have regard to the specific conduct relied on for this specific charge and “put in factual context” the joint submission it is a more minor infringement than might have been the case had other counts proceeded to hearing.

21. I am satisfied that the officer has by his statements accepted the seriousness of his conduct and demonstrated remorse.

22. By his conduct both at the time and following particularly with this plea, Constable McFadyen has limited any damage to the reputation of the Police Service.

23. This conduct was in my view a “one off” given the particular relationship between the officer and Mr. Ryan and nothing of the kind is likely to occur in the future.

24. It is often not understood that the loss of an opportunity for advancement in the face of a potential of a greater penalty than actually imposed, when accepted does operate as a deterrence by the officer.

25. The importance of the proposed penalty which is accepted comes from the acceptance of conduct as being inappropriate. From a review of the cases provided one can see that in contested hearings the boundaries of personal conduct has not always been accepted by police officers.

26. For the above reasons I accept the joint submission as to penalty of 5 days or 40 hours to be served within one year under direction of the unit commander.

Dated at Toronto this 15th day of September, 2016.



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The Honourable Colin L. Campbell, Q.C.  
Hearing Officer