

**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  
THE ONTARIO PROVINCIAL POLICE**

**AND**

**PROVINCIAL CONSTABLE Chris PICKEN #7829**

**CHARGE: DISCREDITABLE CONDUCT**

---

**DISPOSITION**

---

**Before:** Superintendent Lisa Taylor  
Ontario Provincial Police

**Representing the Prosecution:** Inspector Lori Doonan  
Ontario Provincial Police

**Counsel for the Defence:** Mr. James Girvin  
Ontario Provincial Police Association

**Public Complainant:**  
(not represented) C.K.<sup>1</sup>

**Hearing Date:** April 7, 2020

---

<sup>1</sup> Initials used to respect the privacy of the public complainant

*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**

### **Allegation of Misconduct**

Provincial Constable (P/C) Picken stands charged with 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, contrary to Section 2(1)(a)(xi) of the Code of Conduct contained in the Schedule to Ontario Reg. 268/10, as amended.

The amended particulars of the allegation state:

- On or about July 30, 2017 P/C Picken queried C.K., his ex-spouse's husband, on CPIC and PIP after receiving information in and around July 26, 2017 that caused him to have concerns about the safety and well-being of his children. When doing so C.K. was not the subject of a police/criminal investigation being conducted by P/C Picken in the capacity of his law enforcement profession.
- On or about June 17, 2018 P/C Picken sent D.Y. a *Facebook* message about C.K. and advised him that C.K. "has been arrested by Peel,' is a 'meth addict' and has attempted to commit suicide in front of A.P.
- P/C Picken also sent this message to a second individual on Facebook.

He knew or ought to have known his actions in this matter were discreditable.

### **Representation**

In this matter, Mr. Girvin represented P/C Picken and Inspector Doonan represented the OPP.

C.K., the public complainant was not represented in the hearing however he acknowledged he was aware he had the right to be represented by counsel in this matter.

## **Plea / Penalty Position**

On April 7, 2020 P/C Picken, represented by his counsel, Mr. Girvin, pleaded guilty and was found guilty of discreditable conduct, based on clear and convincing evidence. The hearing was held via teleconference given the State of Emergency imposed in the Province of Ontario at the time due to Covid-19.

Mr. Girvin and Inspector Doonan submitted a joint penalty proposal of a 24 hour forfeiture. Mr. Girvin requested that the forfeiture of hours be permitted to be taken from P/C Picken's bank. The prosecution had no objection to the request that the officer be permitted to extract the time from his bank. Counsel supported the joint proposal with submissions which are detailed in Part III of this decision.

The public complainant in this matter was on the teleconference dealing with the plea and the joint proposal. The public complainant provided the tribunal information about the impacts of the officer's misconduct, not only on his own life but on the life of the officer's daughter.

## **Decision**

Having reviewed and carefully considered the submissions of all the parties as well as the relevant penalty factors, I am satisfied the proposed penalty meets all the goals of discipline including to correct specific behaviour, to deter others from similar misconduct and to reassure the community. The proposed penalty is within the range of penalties imposed for misconduct similar in nature.

I order P/C Picken to forfeit 24 hours, by working without compensation, at a time convenient to his detachment commander and within a period of 12 months. This order is being made pursuant to section 85 (1)(f) the *Police Services Act*.

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 (amended)**

At the commencement of the hearing, the prosecution and defence counsel submitted an Agreed Statement of Facts which mirrors the Notice of Hearing as outlined on page two of this decision.

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

### **Issues**

P/C Picken pleaded guilty to discreditable conduct and assented to the Agreed Statement of Facts after they were read before the tribunal by Inspector Doonan. Based on clear and convincing evidence, I find P/C Picken guilty of discreditable conduct.

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 and fairness to the officer.

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

### **Analysis**

#### Public Interest

The prosecution outlined that this factor arises where the misconduct has offended or undermined the public interest or public confidence, or would do so; the misconduct has generated a demonstrable risk or there is a need to demonstrate confidence in the police service and its discipline process. P/C Picken's behaviour in this matter deals with off-duty misconduct wherein he used his position as a police officer to access Canadian Police Information Centre (CPIC) and Police Information Portal (PIP) databases for a non-police related purpose.

P/C Picken also sent a Facebook message to two individuals referencing the arrest of C.K. as well as information related to his drug use and his mental health. I strongly agree that conduct of this nature is never warranted but it is particularly concerning when it involves a police officer.

P/C Picken's conduct was highly unprofessional and runs counter to the expectations that the public must have of police officers. Every officer must recognize their responsibility as a public servant and to conduct oneself to a high level of professionalism at all times, even in times of relationship discord.

Officers while on-duty or off-duty are accountable for: *promoting a positive professional image; serving with honesty and integrity, in a manner that places public interest above personal interests.* Through his actions, P/C Picken has failed in each of these aspects. The primary function of the police is to serve the public and so the public interest must always be considered. Accessing confidential police information that is accessible strictly due to one's profession as a police officer, to serve one's personal interests is a clear conflict of interest and the public expects officers to be held accountable in this regard.

Regretfully, this misconduct has negatively impacted the life of the public complainant. I concur with the prosecution and find that P/C Picken's misconduct has undermined the public's confidence and trust in police and this is a strongly aggravating factor.

#### Nature and Seriousness of Misconduct

I find this a very serious matter and a very serious breach of OPP policy as described by the prosecution. The prosecution outlined that P/C Picken himself admitted that he should have sought the assistance of a supervisor and addressed his concerns openly and transparently. The prosecution submitted that given sound rationale, P/C Picken may have garnered the assistance of his supervisor to assess and guide the officer's further actions.

P/C Picken used his vocation as a police officer to garner information and then share information with the purpose of disparaging the reputation of a member of the public. I concur with the prosecution who outlined that police are provided with useful tools such as CPIC or PIP in order to do our jobs effectively and properly; any misuse of these databases demands a swift and responsible measure of accountability.

In his July 17, 2015 memorandum,<sup>2</sup> Commissioner Hawkes' reminded all OPP members of their obligations in respect to the appropriate use of CPIC and other police databases. Commissioner Hawkes highlighted how the misuse of personal information in those databases is seen by oversight bodies as an increasingly serious misconduct. Further, Commissioner Hawkes outlined:

*The OPP is accountable to safeguard the overall integrity, confidentiality and security of information in its possession. Personal information held in databases available to OPP members can only be accessed and used for specified and lawful*

---

<sup>2</sup> Exhibit 17 – Commissioner Hawkes Memorandum July 17, 2015

*purposes, and must not be used for personal interests.*

As a requirement for their duties, police officers are entrusted with access to confidential databases. As clearly articulated by the prosecution, information stored in police databases are extremely important for police to use in preventing, detecting and solving crime. The use of any police database for personal reasons is not allowed. The public has a right to expect that OPP members diligently safeguard the confidentiality of police databases. The need to ensure integrity and confidentiality in respect to confidential police databases cannot be overstated.

The prosecution submitted that personal matters can often lead to poor judgement and emotionally poor decisions and that is not lost, however an officer's oath is paramount, reflected poorly on himself and the OPP. Although I acknowledge the prosecution submission in respect to the human frailty factor given this involved a marital break-up and the officer's children, there is little doubt in my mind that P/C Picken used his position to garner and share information from a confidential police database. He failed in a core police responsibility to safeguard private information.

Through his actions, P/C Picken has negatively impacted his family as well as the public complainant. The public complainant addressed the tribunal and is clearly very angry over the conduct of P/C Picken, and rightly so. This type of misconduct is never acceptable; P/C Picken knowingly violated the sanctity of confidential police databases and then posted disparaging comments on Facebook. Given his personal involvement with the complainant, P/C Picken, who is an experienced police officer, should have readily recognized the conflict of interest involved and engaged his supervisor if he had concerns about his children.

This misconduct is deemed very serious by the OPP as well as by the police oversight agencies in Ontario and I find this an aggravating consideration.

#### Recognition of the Seriousness of Misconduct

The prosecution submitted that that P/C Picken has expressed embarrassment over his conduct and that this has weighed heavily on his mind. Further, P/C Picken takes great pride in his career and is spoken of highly from fellow officers and supervisors and he understands the seriousness of his misconduct and the tribunal should consider this a mitigating factor.

I find P/C Picken's plea represents an acceptance of responsibility for the misconduct and is indicative of his desire to move forward in a positive manner. Additionally, the plea alleviated the need for civilian and police officer witnesses to testify before the tribunal.

As noted by the prosecution, P/C Picken has acknowledged his poor judgement in accessing private information and sending Facebook messages. The public complainant outlined before the tribunal that P/C Picken has not yet apologized to his daughter for the embarrassment his actions have caused her. I expect that P/C Picken may have some work yet to do in ensuring his daughter is addressed in respect to the consequences of the officer's actions on her life.

Overall, I consider recognition of seriousness of misconduct a mitigating factor.

### Employment History and Ability to Reform

I will address these two factors together given I find the officer's employment history provides me significant insight into P/C Picken's ability to reform and rehabilitate.

P/C Picken became a police officer with the OPP on April 23, 1990. In the course of his career he has been the recipient of three Commissioner Citations between the years of 2009 and 2019. Two citations were in respect to exemplary investigations and one was in respect to a selfless act of rescuing a child. P/C Picken's file contains numerous other positive examples of his contributions to the community and police work, including many letters of appreciation from community.

I have reviewed all the Performance Learning and Development Plans<sup>3</sup> and clearly P/C Picken has exceeded detachment goals; he has taken on a leadership role and mentored junior members. P/C Picken's positive and professional work history is something he should be proud of. Addressing this misconduct matter at this stage in his career is commendable when he may have had other avenues available to him including retirement.

The prosecution outlined that P/C Picken is a well thought of officer who has dedicated the majority of his career to frontline policing and one who is consistently called upon by others for knowledge and guidance. I acknowledge the prosecution submission that the officer has been cooperative and understands his shortcomings. Inspector Doonan outlined that the officer was guided by emotion when committing this misconduct but has now pleaded guilty and wants this matter resolved for all those involved. Following the plea, the officer can put this matter in the past and move forward in his career. I find these mitigating aspects.

I concur with defence counsel who submitted that it is worth noting that in all three evaluations provided to the tribunal, there are multiple categories where Picken has exceeded the required standard. Mr. Girvin highlighted that in P/C Picken's 30 year career,

---

<sup>3</sup> Exhibit 18: Career Profile and Performance and Development Plans – 23 Apr 2016 thru to 23 April 2019

he continues to exceed in these categories and the fact he is still a frontline officer speaks volumes. I concur that performing a frontline role is the most challenging role in policing, particularly as a 30 year officer. I strongly agree with the sentiments of defence counsel but also concur in that all of these positive evaluations do not diminish the negative impact to the public complainant and others affected.

Mr. Girvin provided the tribunal the most recent Commissioner's Citation from September 2019 that commended P/C Picken for his response to a May 2018 armed robbery at a pharmacy.<sup>4</sup> Further, Mr. Girvin drew the attention of the tribunal to P/C Picken's strong involvement in community such as charity hockey tournaments and more recently engaging with a local distillery to secure needed hand sanitizer.

P/C Picken's evaluations portray a community-minded, knowledgeable police officer who has consistently demonstrated initiative and leadership; I find these impressive traits for a 30 year member working frontline duties. P/C Picken's guilty plea along with his lengthy and positive employment history bode well for his ability to reform. He has taken accountability for his actions and has pleaded guilty, sparing additional stressors on his family. Through his counsel, P/C Picken has provided an apology to the tribunal and more importantly to the public complainant in this matter.

I am satisfied P/C Picken's positive employment history and his ability to reform are intrinsically linked and both are strong mitigating factors for consideration.

### Specific and General Deterrence

The prosecution submitted that P/C Picken did not set out to be before the tribunal and it is expected he not appear again in the future. The OPP needs to reinforce to all members of the organization that despite personal circumstances, the expectation is always to conduct oneself professionally and to a high standard, both on-duty and off-duty. I find a 24 hour sanction is a reminder to P/C Picken that the OPP takes such matters seriously.

Misconduct involving accessing police databases is serious on its own but disparaging members of the public is unacceptable. Police officers must remember to conduct themselves to a high standard at all times particularly in a public forum such as social media. Specific and general deterrence are aggravating factors however I find this penalty satisfies both specific and general deterrence.

---

<sup>4</sup> Exhibit 20: Commissioner Carrique Commendation – September 2019

### Damage to the Reputation of the OPP

I concur with prosecution who highlighted that *Police Services Act* disciplinary matters are inevitably subject to media requests. This was a public complaint made through a provincial oversight body, the Office of the Independent Police Director, and clearly this matter is, and will remain, in the public domain.

I find P/C Picken's actions have not only damaged his own reputation but the reputation of police officers in general, who come to work daily to serve their communities placing public before personal interests. P/C Picken failed to live up to the high expectations of the OPP and his community in accessing police databases for personal interests. Although I concur with defence counsel that the OPP has responded appropriately in addressing this misconduct, this matter may still have a negative impact on the public's trust and confidence in the police.

I find this is an aggravating factor for consideration.

### Effect on the Police Officer and Police Officer's Family

Although the proposed penalty will have an impact on P/C Picken and his family, both financially and in terms of time, it is not disproportionate to the seriousness of his misconduct. This is a serious matter with significant deterrence concerns and I find this a neutral factor for consideration.

### Consistency of Disposition

Both the prosecution and defence counsel assured the tribunal that a 24 hour penalty is consistent with other such misconducts. Although the circumstances of *St. Gelais and Ontario Provincial Police*<sup>5</sup> are not exactly on point with those in the current matter, both dealt with the unauthorized/personal use of confidential databases; each matter involved a guilty plea and an Agreed Statement of Facts. In *St. Gelais*, the officer accessed police databases on a number occasions throughout a three year time frame. Officers in both matters had the mitigation of positive employment histories and aggravating factors of a deliberate access to police databases for personal reasons. The current matter is of similar seriousness to *St. Gelais* and both matters have a similar public interest concern.

Defence counsel reminded the tribunal of the Supreme Court of Canada decision in *R v Anthony Cook* which essentially outlines that a joint penalty proposal should be given deference by the trier-of-fact unless, through its acceptance, it would bring the

---

<sup>5</sup> Exhibit 19: *St. Gelais and the Ontario Provincial Police*, August 20, 2019

administration of justice into disrepute. I have considered the jurisprudence provided as well as the circumstances outlined in this matter and I find the penalty is within the range for conduct of a similar nature.

## Conclusion

I find the proposed penalty is reasonable and warranted. I have considered the proposal by defence counsel that these hours could be forfeited from P/C Picken's bank however in order to ensure consistency in penalty, I order the forfeited hours to be worked.

## PART IV: DISPOSITION

I order P/C Picken to forfeit 24 hours, by working without compensation, at a time convenient to his detachment commander and within a period of 12 months.

This order is made pursuant to section 85(1)(f) of the *Police Services Act*, R.S.O. 1990.

2020-05-07

X 

Signed by: Lisa Taylor LS (M)

Lisa Taylor  
Superintendent  
OPP Adjudicator

Date electronically delivered: May 7, 2020

## Appendix A

The following exhibits were tendered during the hearing:

- Exhibit 1: Delegation - Adjudicator Superintendent Taylor (A/Comm. Couture)
- Exhibit 2: Delegation - Adjudicator Superintendent Bickerton
- Exhibit 3: Designation – Prosecutor, Inspector Doonan
- Exhibit 4: Designation - Prosecutor, Inspector Young
- Exhibit 5: Designation - Prosecutor, A/Inspector LePage
- Exhibit 6: Delegation – All Officers
- Exhibit 7: Delegation - Adjudicator Superintendent Taylor (Comm. Carrique)
- Exhibit 8: Delegation - Adjudicator Superintendent Bickerton
- Exhibit 9: Designation – Prosecutor, Inspector Young
- Exhibit 10: Designation – Prosecutor, Inspector Doonan
- Exhibit 11: Designation – Prosecutor, A/Inspector LePage
- Exhibit 12: Delegation – All Officers
- Exhibit 13: Delegation – Adjudicator Inspector Nash
- Exhibit 14: Designation – Prosecutor, Ms. Donnelly
- Exhibit 15: Designation – Prosecutor, Ms. Brabazon
- Exhibit 16: Agreed Statement of Facts
- Exhibit 17: Commissioner Hawkes memo – July 17, 2015
- Exhibit 18: Career Profile and Performance and Development Plans – 23 Apr 2016 thru to 23 April 2019
- Exhibit 19: *St. Gelais and the Ontario Provincial Police*, August 20, 2019
- Exhibit 20: Commissioner Carrique Commendation – September 2019