

**IN THE MATTER OF ONTARIO REGULATION 123/98
MADE UNDER THE POLICE SERVICES ACT, R.S.O. 1990, C.P.15
AND AMENDMENTS THERETO;**

AND IN THE MATTER OF

**POLICE CONSTABLE STEPHEN WILLIAMS, #410412
AND THE
LONDON POLICE SERVICE**

APPEARANCES:

Ms. Patty Malone Legal Counsel	- for the London Police Service
Mr. Bernard Cummins Legal Counsel	- for Constable Williams
Ms. Megan Walker Executive Director, London Abused Women's Centre	- for Ms. Agora (Complainant)

BEFORE:

Superintendent (retired) Robert J. Fitches

Hearing Date: July 22nd, 2019

Decision Date: August 8th, 2019

Reasons for Disposition

Allegations of Misconduct

COUNT ONE – Discreditable Conduct

Contrary to section 2(1)(a)(xi) of the Code of Conduct, Police Service Act – acts in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the police force.

COUNT TWO – Neglect of Duty

Contrary to section 2(1)(c)(i) of the Code of Conduct, Police Services Act – without lawful excuse, neglects or omits promptly and diligently to perform a duty as a member of the police force.

COUNT THREE – Discreditable Conduct

Contrary to Section 2(1)(a)(xi) of the Code of Conduct, Police Services Act – acts in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the police force.

Summary of Findings

Prior to convening the hearing into allegations of misconduct against Constable Stephen Williams, it was made known that Constable Williams intended to plead guilty, based upon an agreed-to statement of facts that had been developed among the parties.

The agreed-to statement of facts was read into the record and the officer entered a guilty plea. Based on the allegations before the tribunal, the agreed-to statement of facts and the subsequent plea, Constable Williams was found guilty of three (3) counts of misconduct.

Exhibits

During this hearing, there were two exhibits tendered:

- Exhibit 1 – Agreed Statement of Facts
- Exhibit 2 – Book of Documents¹

Agreed Statement of Facts

Background

1. Constable Stephen Williams has been employed as a police officer with the London Police Service since August 30, 2015. He is presently a 2nd class constable. At the time of the facts underlying this public complaint and hearing, Constable Williams was a 3rd class constable.
2. Constable Williams grew up with and was friends with the complainant's now ex-husband (CW2).
3. At the time of the facts underlying this complaint and hearing, the complainant had recently separated from CW2.
4. CW2 had ongoing communications with Constable Williams with respect to his separation from the complainant.
5. Constable Williams provided advice to CW2 with respect to the separation and related family court processes.
6. On March 30, 2017 the complainant was arrested and charged with Harassing Telecommunications contrary to section 372(3) of the Criminal Code of Canada. Following her arrest, she was released by the Officer in Charge subject to specific undertakings.

¹ It needs to be clearly understood that within Exhibit 2 (Book of Documents) are a number of Performance Evaluations and a Disciplinary Record. Given that these two items are *Personnel Records*, they are protected documents and do not form part of Exhibit 2 insofar as public disclosure is concerned.

Count 1 – Discreditable Conduct

Contrary to Section 2(1)(a)(xi) of the Code of Conduct, Police Services Act – acts in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the police force.

7. The complainant was subject to an undertaking to reside at a specified address in the City of London.
8. Following the complainant's arrest, Constable Williams became aware of the complainant's conditions of release as a result of a conversation with the complainant's husband.
9. On April 12, 2017, Constable Williams contacted two other London Police Service officers and requested that a bail check be conducted on the complainant to determine if she was abiding by the terms of release.
10. When the officers conducted the bail check, the complainant was not at the address as noted within the CPIC system.
11. Upon further investigation it was determined that the complainant was residing at the permitted address and that the address as noted in the CPIC system was incorrect.
12. In requesting his fellow officer undertake a bail check, Constable Williams acknowledged that doing the bail check himself would be a conflict of interest and advised his fellow officers that he had a conflict.
13. Constable Williams request for a bail check was personally motivated. In his related police witness statement, Constable Williams stated the following as the reason he requested the bail check to be done:
 - a. "I requested the bail check as I became aware that my personal email was breached and pictures on my email account were used without my knowledge. I recall (CW2) state (sic) in the past that AGORA would gain access to his personal phone and email's (sic) and delete messages without his knowledge."
14. Constable Williams had no independent investigative purpose for inserting himself into the police involvement relating to the complainant.
15. Constable Williams did not report the conflict of investigative interest to his supervisors as required by LPS procedures.
16. Constable Williams did not document in his duty book that he requested the bail check or the reasons that the bail check be completed.

Count 2 – Neglect of Duty

Contrary to section 2(1)(c)(i) of the Code of Conduct, Police Services Act – without lawful excuse, neglects or omits promptly and diligently to perform a duty as a member of the police force.

17. Commencing in approximately December 2016, Constable Williams communicated with CW2 on multiple occasions discussing the challenges CW2 was experiencing in his relationship with the complainant, including incidents of police involvement. Constable Williams advised that he could not assist because it would be a conflict of interest.
18. On February 17, 2017 Constable Williams received a number of messages from the complainant through Facebook Messenger. At some point between February 23, 2017 and March 30, 2017, Constable Williams contacted the complainant via Facebook Messenger and informed her not to contact him either directly or indirectly.
19. At some point between February 27, 2017 and March 30, 2017, CW2 sought advice from Constable Williams with respect to unwanted communications from the complainant. Constable Williams provided CW2 with a draft message to send to the complainant to assist him in his desire to stop unwanted communications from the complainant.
20. Following the complainant's arrest on March 30, 2017, Constable Williams had two further conversations with CW2. Initially CW2 sought advice regarding what to do if the complainant contacted him. Constable Williams states that he advised that this would be a breach of conditions and that CW2 should call the police. CW2 later sought advice on how to gain custody of his child and related issues around child support.
21. Constable Williams failed to make any notes regarding his conversations with CW2.
22. The extent of Constable Williams's duty book notes with respect to his involvement with CW2 and the Complainant is as follows:
 - a. "2056 Follow-up to 17-3662 Supplemental Statement in regards to bail check on Agora, Andrea 1979-June-11 2202 clear call."
23. On April 13, 2017, Constable Williams did complete a Police Witness Statement with respect to the bail check. Constable Williams completed the Police Witness Statement at the direction of his Supervisor.
24. The Police Services Act provides for the duties of a police officer, including the duty to assist in the laying of charges and in prosecutions and performing the lawful duties that the chief of police assigns. The requirement to prepare accurate, detailed and comprehensive notes is part of the duty to assist in the laying of charges and in prosecutions.
25. LPS procedure requires that a member's notes contain a complete and accurate record of the significant events in an occurrence. LPS procedure further requires that all members shall, while on duty, keep up to date notes containing independent recollections with sufficient detail to account for their observations, location, activities and actions.

Count 3 – Discreditable Conduct

Contrary to section 2(1)(a)(xi) of the Code of Conduct, Police Services Act – acts in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the police force.

26. Constable Williams ran multiple unauthorized computer checks on the complainant through both CPIC and the LPS Records Management System.
27. Constable Williams conducted improper CPIC queries on the complainant as follows:

	DATE	TIME
i.	2017-02-24	2127
ii.	2017-03-25	1747
iii.	2017-04-01	1705
iv.	2017-04-11	1707

28. Constable Williams conducted CPIC Vehicle queries on the complainant's vehicle as follows:

	DATE	TIME
i.	2017-03-05	1454

29. The CPIC Manual and LPS Procedure dictate that CPIC access is only permitted where there is a valid investigative or business purpose and that CPIC access for personal use is not permitted.
30. LPS Procedure directs that where there is any doubt as to what constitutes professional use versus personal use, the member shall contact a supervisor for direction. If there is a legitimate purpose, the Supervisor may conduct the CPIC query and must submit an occurrence report outlining the purpose of the query, the actions taken and the rationale for such actions.
31. Constable Williams had no lawful or business reason to run either LPS Records or CPIC checks relating to the complainant.
32. Constable Williams acknowledges that he ran and reviewed LPS records relating to the complainant because he was told by a fellow officer that the complainant was making allegations about him.

Submissions by the Parties

On behalf of the London Police Service

Ms. Patty Malone, acting on behalf of the London Police Service, read the Agreed Statement of Facts into the record.

On behalf of the complainant, Ms. Andrea Agora

Ms. Megan Walker, who is the Executive Director of the London Abused Women's Centre, requested that she be permitted to represent Ms. Andrea Agora and make oral submissions on her behalf. The other parties and the tribunal were in agreement that she be permitted to do so.²

² It should be noted that although Ms. Walker's submissions were somewhat out of sync with the usual procedures in that she was addressing disposition prior the disposition phase of the proceedings, considerable latitude was afforded her due to her unfamiliarity with the process.

Ms. Walker submitted that Ms. Agora was a client of the Centre and was receiving long term support and counselling. It was suggested that as a result of Constable Williams' actions, Ms. Agora feared that her child could be taken away. It was also revealed that Ms. Agora is not in agreement with the penalty being suggested; 70 hours – particularly when considering Ms. Agora's psychological and financial costs. Nevertheless, Ms. Walker suggested that Ms. Agora does not wish to have these matters hanging over her head – she hopes to see these matters resolved. Her present financial position is such that hiring a solicitor is not possible; thus she is being represented by Ms. Walker.

Ms. Walker next spoke of the likelihood of these matters being decided by way of precedent; that tribunals and courts tend to look backward when deciding an issue; ensuring that decisions are based upon what has been decided previously by other similar bodies in somewhat similar circumstances. It was Ms. Agora's position that the use of precedent often results in an inability to set precedent for victims; who must in large measure remain silent.

Through Ms. Walker, Ms. Agora asked that I consider applying the financial equivalent of the 70 hours deduction being considered as an appropriate penalty and grant that financial equivalent to Ms. Agora to account for her financial and psychological losses. It was suggested that the London Police Service Board could easily write off 70 hours' pay, but Ms. Agora is unable to do anything of the sort.

Ms. Walker stated that because of the sensitive nature of the work being done at the Centre, the Centre intends to ban Constable Williams permanently from their facility. If he were to appear at the door of the facility, Ms. Walker or her staff would ensure that clients and staff enter their 'safe room' and call 911.

In conclusion, Ms. Walker submitted that police officers must be held to a higher standard and that the proposed penalty of 70 hours seems insufficient.

Disposition Considerations

Ms. Malone offered a joint submission that after canvassing all 15 points normally addressed within a disposition, it was felt that 70 hours would be an appropriate penalty. Although all 15 considerations are important, Ms. Malone indicated that several would be emphasized.

When considering the Public interest, it was agreed that all police actions must live up to rigorous scrutiny. In these matters, Constable Williams' actions did not do so. The negative implications suffered by Ms. Agora are serious and her trust in the police will very likely suffer permanent damage. Constable Williams has compromised the public trust. This must serve as an aggravating factor when determining disposition.

Relating to the seriousness of the misconduct, *Smith and Toronto Police Service*³ is helpful to consider. In his reasons, Inspector Cyril Gillis differentiated between two different categories of misuse of CPIC; one intended to obstruct the course of justice and the other for personal reasons. It was suggested that Constable Williams' misuse of CPIC was clearly not intended to obstruct the course of justice but was for purely personal reasons. Consequently, while it remains a serious breach, it is the less serious of the two.

³ Constable Daniel Smith & Toronto Police Service, March 7, 2019, Hearing Officer Disposition

Constable Williams' plea is a strong indication that he accepts responsibility for his actions. This must act as a significant mitigating factor.

Constable Williams has had one previous experience with the disciplinary system – one count of insubordination for which he was assessed 16 hours' time. This is an aggravating factor. When considering the larger picture of his employment history, however, his prior disciplinary record must be considered within a broader, more positive context.

The consistency of a penalty has been described as the hallmark of fairness. While I agree wholeheartedly with this sentiment, I would suggest that this hallmark of fairness is a somewhat illusive entity. Every effort must be made to seek out consistency whenever possible. It was submitted that when considering previous cases, 70 hours falls within the range of what would be deemed to be acceptable. The cases placed before the tribunal range from 40 hours to 96 hours.

To assist me in determining the appropriateness of the proposed sanction, I was directed to page 11 of Corcoran and Toronto Police, where the Hearing Officer summarizes the manner in which he applied the case law relating to disposition. I will quote from that decision.

... The prosecutor provided a brief synopsis of each case referenced, pointing out that while there were differences in circumstances present in each, all centred on the accessing of information from CPIC in a manner and for a purpose not relating to official police business. He pointed out that the penalties in these cases ranged from a forfeiture of 5 to 9 days.

The prosecutor then presented an additional three cases, indicating that these cases involved officers who had prior discipline records.

... in those matters, the penalties assessed ranged from forfeiture of 12 days to gradation in rank from first class to third class constable, for a period of six months then reclassified to second class for a further six months.

The prosecutor summarized by submitting that the number of aggravating factors in the matter before the Tribunal outweighed the mitigating factors present. He submitted that the penalty recommendation of 12 days forfeiture, jointly presented with the defence was appropriate in the circumstances.⁴

In the matters now before me, it was the submission by the prosecutor, joined by defence that the penalty of 70 hours would be appropriate and within the range that would be acceptable, when considering all aspects of these matters.

On Constable Williams' behalf, Mr. Bernard Cummins addressed some of the submissions offered on Ms. Agora's behalf by Ms. Walker.

Mr. Cummins suggested that when assessing the trauma experienced by Ms. Agora, it was necessary to determine whether that trauma, as described, is objectively reasonable. It was submitted, for example, that Constable Williams had nothing to do with Ms. Agora being banned from her own home.

⁴ Constable Jay Corcoran and Toronto Police Service, August 14, 2012 (Hearing officer Disposition)

It was also submitted that this hearing is all about recognizing behaviour that need to be disciplined and assisting somehow in rehabilitation. Constable Williams' banishment from the Centre would fail to recognize that people can be rehabilitated, which is one of the objectives of this disciplinary scheme.

I was asked to consider that Constable Williams generated an occurrence report – acknowledged what he had done. He has pled guilty at the first reasonable opportunity and has participated in the creation of the Agreed Statement of Facts. Both of these actions show very clearly that he takes responsibility for his actions and by so doing, saves witnesses from testifying before this tribunal.

I was also asked to consider that the prior disciplinary history is not in any way related to the details now before this tribunal. This officer has not in any way demonstrated that he cannot be rehabilitated. The disciplinary event appears within a very positive work history that needs to be considered as well.

Ms. Agora asked to make submissions on her own behalf. Unfortunately, the nature of Ms. Agora's statements before the tribunal was such that she was giving evidence as opposed to making submissions. Consequently, I am unable to give these statements any meaningful consideration.

Ms. Walker also asked to make further submissions. She submitted that the only reason that Ms. Agora faced an investigation was because Constable Williams was a friend of her ex-husband's. Without Williams, Ms. Agora would not be here today – she would be living a better life than she is now.

Discussion

When considering an appropriate sanction for specific allegations of misconduct, it is important that the penalty addresses various disposition considerations and is, to the degree possible, consistent with sanctions that have been applied in previous disciplinary hearings and in a variety of different fact situations. It has been stated that consistency is the hallmark of fairness. While I subscribe to that notion, I also need to establish that consistency is, in many cases, a somewhat elusive goal. While consistency is the ideal in establishing an appropriate sanction, the variables that enter into such deliberations can have innumerable implications on the final outcome.

The most dependable means by which a tribunal can begin to approach consistency is by leaning on and learning from previous disciplinary cases that have similar characteristics. Woe betide the tribunal which attempts to strike out on its own and create a sanction from whole cloth. The likelihood of such an exercise resulting in an appropriate and/or defensible outcome would be extremely remote.

When determining whether or not the penalty being proposed by both the prosecutor and defense counsel is appropriate, I must begin by asking myself whether or not their proposal is unreasonable. When considering the cases offered for my consideration within Exhibit 2, and when applying the fact situation before me to dispositions in those cases, I am left with the irrefutable conclusion that the proposed sanction is not unreasonable. It most definitely falls

within a range that is reasonable and acceptable.

When considering all of the submissions made during this hearing, in particular when considering the submissions made on Ms. Agora's behalf by Ms. Walker insofar as precedent law is concerned, it need to state that the history of jurisprudence in this country – as in almost every democratic society – relies upon precedents as a basis for establishing an appropriate level of sanction. While one might subjectively argue for a particular penalty or level of sanction, subjectivity cannot be the means by which a tribunal or other adjudicatory body arrives at decisions. While I might empathize with the philosophical aspect of Ms. Walker's point of view in terms of the use of precedents, as a practical matter, I must reject her suggestion. I will rely upon precedent, as I am duty bound to do.

Another aspect of Ms. Agora's submissions on penalty had to do with the idea that the financial equivalent of 70 hours could be directed to Ms. Agora as recompense for her financial and psychological damages. Whether or not this would be a good idea is for others to decide. In my role as Hearing Officer, I am constrained by legislation. This legislation imposes clear and specific guidelines which define the limits of my authority. When the legislation addresses penalties or sanctions, there are clear limits on what I can and cannot impose upon an officer. The legislation makes no allowance for anything akin to the resolution being proposed by Ms. Agora. Therefore I cannot give any consideration to it.

Constable Williams very definitely misconducted himself on several occasions. While he appears not to have been motivated by some wicked purpose, he most assuredly acted in a manner which could bring discredit to the reputation of the police service generally and which in fact has brought discredit in the eyes of Ms. Agora specifically. If Constable Williams misused CPIC and/or the London Police Service Records System to somehow obstruct justice, the disposition that is being proposed would not suffice. That was not his motivation, however. Consequently, his actions need to be assessed within the context of misuse for his own personal reasons; loyalty to a long-time friend.

When considering the nature and motivation of Constable Williams' actions in relation to misuse of data and data systems, it is my view that the proposed penalty is within a range that would be deemed appropriate and reasonable.

It is obvious that Constable Williams' conduct has damaged his personal effectiveness insofar as his potential dealings with the Centre for Abused Women is concerned. While I will refrain from commenting upon his proposed banishment from the Centre, I would hope that consideration could be given to using this situation as a teachable moment for all concerned.

I am aware that this is not Constable Williams' first brush with the disciplinary system. His previous transgressions were not in any way similar to the misconduct now before me, however. If this current disciplinary matter was somehow similar or related to the previous situation, I would in all likelihood find significant aggravation. That is not the case, however. Constable Williams' previous discipline was unrelated and was dealt with at the Division level. There is no similarity between today's matters and the matters in 2017/2018. More importantly, the disciplinary report is among a number of positive work performance reports. This fact is important when considering the entire context of his career to date. While the disciplinary record can aggravate the disposition, his positive career profile must lessen the aggravation to a notable degree.

Constable Williams' early plea and cooperation with the prosecutor in coming to a resolution of

these matters without a hearing suggests very strongly that he is taking responsibility for his actions; which in turn suggests very strongly that his likelihood of rehabilitation and/or reform are good. This must mitigate the sanction.

Conclusion

When looking at the entire context of Constable Williams' misconduct and when assessing the consequences of his actions on the police service, on Ms. Agora and on the Centre for Abused Women, I do not believe that the proposed disposition is unreasonable or inappropriate. The proposed penalty falls well within a range of penalties that would be deemed appropriate, when considering all of the details of the matters before me. Consequently, I will not disturb the disposition as proposed by the Prosecutor and Defense Counsel.

Disposition

I hereby order Constable Stephen Williams to forfeit 70 hours' time in accordance with section 85(1)(f) of the Police Services Act.


Robert J. Fitches
Superintendent (ret'd)

August 8th, 2019
Date