

This judgement relates to findings of breach of confidence. Portions of this decision have been redacted in order to respect the identity of a deceased teacher named in the judgement.

YORK REGIONAL POLICE SERVICE

**In The Matter of a Misconduct Hearing under Part V,
s.68(5) of the *Police Services Act*, R.S.O. 1990, c. P.15**

**And in the Matter of a Public Complaint made
by Mr. D [REDACTED] C [REDACTED]**

**And In The Matter of Allegations of Misconduct
against Constable Shona Wood #779**

Decision and Reasons upon Plea of Guilty

Hearing Officer: Staff Inspector Brian Fazackerley,
Durham Regional Police Service (Retired)

Prosecutor: Ms. Judith Sidlofsky-Stoffman, Counsel

Defence: Mr. William R. MacKenzie, Counsel

Complainant: Mr. D [REDACTED] C [REDACTED], self-represented

Background

[1] PC Shona Wood #779 was the subject of a public complaint made under Part V of the *Police Services Act* by D [REDACTED] C [REDACTED]. The complaint investigation was conducted by the OIPRD and, on September 18, 2013, the Director notified the Chief of Police there were reasonable grounds to believe PC Wood had committed misconduct of a serious nature, requiring a hearing under s.68(5). A notice of Hearing (Exhibit 1) was issued and served containing two counts of misconduct. The Chief further authorized me to conduct the Hearing (Exhibit 2).

[2] On April 17, 2014, PC Wood pled guilty to count 1, BREACH OF CONFIDENCE. Ms. Sidlofsky-Stoffman asked me to mark count 2 withdrawn, as it was – with the concurrence of the Director – to be dealt with otherwise under Part V as misconduct not of a serious nature. Mr. C [REDACTED] indicated his understanding of this procedure.

[3] The specific allegation to which the officer pled guilty was as follows:

Between January 11, 2013 and January 31, 2013, divulged any matter which it is his or her duty to keep secret and thereby engaged in **Breach of Confidence** contrary to the Police Services Act, Ontario Regulation 268/10, section 2(1)(e)(i)....

[4] Ms. Sidlofsky-Stoffman further tendered to me an Agreed Statement of Facts ("ASF") (Exhibit 4) on joint behalf of Mr. MacKenzie. I reminded Mr. C [REDACTED] of his entitlement to representation set out in s.83(4) of the Act, which he acknowledged but waived. I ensured that Mr. C [REDACTED] understood that this ASF process was intended to be substituted for the hearing of evidence and fact finding by me in the matter. After he took the opportunity to review and discuss it with the prosecutor during a brief recess, he indicated his understanding of and assent to this way of proceeding. He also agreed to the contents of the ASF.

[5] The prosecutor read the ASF into the Record as follows:

AGREED STATEMENT OF FACTS

SERVICE HISTORY

Shona Wood (dob. Oct. 1, 1970) joined the York Regional Police Service ("YRPS") as a cadet in 1989. Thereafter, in 1991, Cst. Wood became a 4th class constable with YRPS. She was accorded 1st class constable status in 1993.

In her present capacity as a 1st class constable with YRPS, Cst. Wood has been assigned, since May 30, 2011, to 1 District Community Services as a Youth Education Officer responsible for providing the "*Values, Influences and Peers*" ("VIP") program to students in grades 3, 6, 7 and 8 in a total of 31 public and private elementary schools in Aurora, Nobleton, Schomberg, King City and Newmarket. St. [REDACTED] ("St. [REDACTED]") is one of the schools to which she is assigned. Of note is the fact that St. [REDACTED] is the educational institution at which Cst. Wood's son is in attendance (presently in grade [REDACTED]) and Cst. Wood has a personal relationship with some of the teachers who have worked with her son over years.

At the time of the incidents which form the basis of the subject charges, Cst. Wood had served approximately twenty four years with YRPS.

THE EVENTS OF JANUARY 11/12/13, 2013

On January 11 or January 12, 2013 Cst. Wood became aware of the Friday January 11th suicide of a St. [REDACTED] teacher with whom Cst. Wood had personally interacted for a year through the school's VIP program. In the result, Cst. Wood reviewed the occurrence reports to apprise herself of the circumstances of the case and, in so doing, read the suicide notes (three) left by the deceased.

Subsequently, over lunch on Saturday January 12th, Cst. Wood had a conversation with a teacher from St. [REDACTED] with whom Cst. Wood was friends at which time she advised that teacher that the deceased had taken his own life and had left a positive note.

As well, Cst. Wood spoke with another teacher from St. [REDACTED] with whom she was friends by telephone on Sunday January 13th at which time Cst. Wood discussed the manner of the deceased's demise and the existence and contents of three suicide notes including one left for the family and two others for each of two St. [REDACTED] teachers who were unknown to Cst. Wood at the time.

Cst. Wood spoke, as well, sometime in the week following the suicide, to a third teacher with whom she was familiar in that third teacher's classroom over a lunch hour. This third teacher is Cst. Wood's son's teacher and although the initial conversation focussed on Cst. Wood's son, it moved to a discussion about the deceased and the disclosure by Cst. Wood that there was a suicide note left by the deceased for his family as well as two notes for two individual teachers at the school including specific reference to golf and hockey contained in the contents of those two notes.

OIPRD INVESTIGATION #130005741

A St. [REDACTED] teacher, independent of the three previously mentioned teachers; filed a Public Complaint with the OIPRD which caused an investigation to be undertaken resulting in the following charge under the Police Services Act:

- 1 COUNT -- BREACH OF CONFIDENCE

Cst. Wood disclosed confidential police information regarding the death of a teacher at St. [REDACTED].

[6] Upon conclusion of the reading-in of the ASF, I clarified with Mr. MacKenzie that the first two disclosures (on Saturday and Sunday) occurred when PC Wood was off duty, while the third (weekday in the classroom) occurred on duty.

[7] Mr. MacKenzie confirmed the contents of the ASF were substantially correct and were admitted. It was common ground that, at all relevant times, PC Wood had subscribed to and was bound by the oaths of office and secrecy set out [currently] in O. Reg. 268/10. I found PC Wood guilty and registered a conviction on Count 1. Count 2 was withdrawn.

Prosecution Submissions

[8] Ms. Sidlofsky-Stoffman put forward two decisions for my consideration. The first was *Kemp v. Bates* (1993), 1 P.L.R. 331 (Ont. Bd. of Inq.). This was a case in which an OPP officer had stopped a local tow truck driver for speeding but then let him go with a caution but no charge. The officer a day later divulged details of the matter to another local citizen who was also a member of the towing association. That person referred the officer to a member of the towing association executive with whom the officer spoke the next-following day, divulging similar details of the complainant's driving and investigation for speeding. The complainant filed a public complaint and the officer was made the subject of multiple allegations of misconduct. The Board of Inquiry, after a hearing, found him guilty of two counts of divulging information he was duty-bound to keep secret.

[9] The Board accepted that the officer apparently had good intentions related to assisting the complainant to improve his driving. Finding the disclosures nonetheless were in breach of duty, the Board considered his record, which included tributes and commendations as well as previous misconduct convictions. The Board assessed a penalty of forfeiture of 48 hours' time off, being 24 hours for each of the two separately alleged incidents.

[10] The Prosecutor also provided me with the penalty decision of Hearing Officer Sup't David Downer, in *Peel Regional Police and Constable Christy Clough #3352* (April 2, 2013). This followed a contested trial on a single count of discreditable conduct, arising from the officer's wrongfully obtaining CPIC and Durham Police occurrence information regarding the new girlfriend of her former domestic partner and father of her

children. That information was shared without authorization among other Peel Police members, a member of York Police and her lawyer. The events spanned about 50 weeks.

[11] The officer was young, with about 22 months service when these events began to unfold. She had no discipline record. The Hearing Officer imposed an 80 hour suspension without pay.

[12] Ms. Sidlofsky-Stoffman then addressed the familiar *Krug* sentencing factors. Under public interest she noted that PC Wood had sought and obtained confidential information in an unofficial capacity without permission. The public must maintain confidence in the ability of police to act in a trustworthy way. The three separate incidents of disclosure here were evidence of deliberate conduct on PC Wood's part.

[13] In terms of seriousness, the Prosecutor noted PC Wood's explanation that she was trying to assist the teachers in grieving. She submitted that PC Wood nonetheless instigated the breaches. The Prosecutor submitted that PC Wood did not recognize the seriousness of the misconduct, and that she made the complainant, a fellow teacher, feel uncomfortable.

[14] Under employment history, it was noted by the Prosecutor that PC Wood had pled guilty at a formal hearing in January, 2009, to neglect of duty for refusing to testify at POA court, resulting in loss of 60 hours from her time banks. There have been two further instances of informal Incident Discipline, first, in March, 2011, by a letter to her file for missing court for scheduled matters while off duty, and second, in April, 2012, by counselling for late submission of a Report into Versadex RMS. This record was filed as Exhibit 5 in the form of PC Wood's *McNeil* Disclosure package.

[15] Ms. Sidlofsky-Stoffman submitted that deterrence was specifically in play because PC Wood had disregarded her oaths of office and secrecy and needed to receive a message that this is inexcusable. Generally, this was a situation in which all YRP members needed a message that secrecy was not to be breached.

[16] Under ability to reform or rehabilitate the officer, the Prosecutor noted now two incidents of formal discipline within the last five years. This, she submitted, raises a question about the officer's awareness of her obligations and her ability to recognize wrongdoing.

[17] Regarding damage to the reputation of the police service, it was submitted that PC Wood's actions had damaged relations with a community partner, St. ██████████ ██████████, and that confidence in that relationship now had to be rebuilt. Management's approach to breach of confidence was one of serious censure.

[18] For consistency of disposition, the Prosecutor submitted it was a case of an experienced officer accessing confidential YRP records, sharing their contents with 3 individuals and attracting a public complaint from a fourth individual. She invited me to refer to the cases she had provided. She concluded that, in light particularly of the nature and seriousness of the misconduct, ability to reform the officer and damage to YRP's reputation, I should impose 80 hour's forfeiture of time off.

Public Complainant's Submissions

[19] Mr. C ██████████ gave prepared submissions from his seat at the counsel table in a personal and emotional manner that was by no means inappropriate. He said he was not seeking revenge but doing what he believed was right. From his perspective as a fellow teacher of a deceased colleague, he felt the officer had spread information about it like high school gossip. In so doing she had damaged the police reputation within the school community. He didn't feel she had learned from her mistake, but was merely sorry she was caught.

[20] Mr. C ██████████ said he found out in the workplace through informal means that his now deceased friend had left him a note. He should have found this out from the deceased's family, not through gossip. He hoped the officer would change and not put social status ahead of integrity and duty. He said we deserve to have police officers we can respect. His friend's family's privacy should have been better respected.

[21] Mr. C [REDACTED] noted that PC Wood had “somewhat” apologized to him for this; he went on to say he was the wrong person, and that PC Wood should talk to his friend’s surviving family.

Defence Submissions

[22] Mr. MacKenzie reflected on the Prosecutor’s submissions, which he took no issues with, and his appreciation of the impact PC Wood’s actions had on the school colleagues and family of the deceased teacher. He noted that the family and other teachers did not complain, but conceded that Mr. C [REDACTED] was affected as a friend of the deceased.

[23] He reminded me that PC Wood has pleaded guilty, a mitigating factor, and has accepted responsibility for her actions, including during her OIPRD interview. It was not defensible that she received confidential information and then disclosed it.

[24] He noted this was not a bad faith execution of duties; the first breach occurred over Saturday lunch with a teacher, also a personal friend, the second in the course of a phone call with another teacher friend, and the third disclosure occurred at school while working, to a third teacher. PC Wood was aware that the first two teachers were particularly upset over the loss of their colleague. PC Wood’s explanation was that she was helping affected persons to deal with the death.

[25] Counsel noted that, during a meeting at the school the following week, PC Wood had apologized to Mr. C [REDACTED].

[26] Mr. MacKenzie tendered a position description for Youth Education Officer (Exhibit 6), the post which PC Wood has occupied since May 2011. He noted that it entailed acting “as primary liaison and point of contact between police, school administrators, teachers, students and the community regarding school issues.” In contrast to patrol duties, he noted this job meant developing rapport and relationships that extended beyond school hours and were ongoing. This rapport, he submitted, was

the basis for the disclosure: PC Wood believed the disclosures would assist these teachers to deal with their loss of a colleague. They did not complain.

[27] Counsel sought to distinguish the *Bates* and *Clough* cases on the basis that there was here no attempt to adversely affect a business interest or any protracted CPIC breach. He suggested there were no cases directly on point.

[28] Mr. MacKenzie tendered (Exhibit 7) a series of unsolicited e-mails from school officials regarding PC Wood's work in her current position which were commendatory. He noted as well that YRP management had not removed her from the Youth Education Officer position in the wake of this unfortunate event, but only specifically from St. [REDACTED]. This, he submits, bodes well for her rehabilitative potential.

[29] Counsel submitted that, in principle, the three repeated disclosures do not imply that PC Wood does not recognize the seriousness of what she has done. His concern is for consistency of penalty and appropriate progressive discipline. He recounted a number of mitigating factors: her guilty plea, her apology to Mr. C [REDACTED] at the school meeting, absence of bad faith, *bona fides* intentions, that disclosure was limited to three colleagues/friends of the deceased, she is a community police officer in a liaison function, that she accepts responsibility for her actions. Even given the prior discipline record, he submitted that I should impose a penalty in the range of 24-40 hours' forfeited time off.

[30] PC Wood took the opportunity to speak briefly from the counsel table on the Record. She apologized to the family of the deceased and said she had only the best intentions. Her actions did help some persons, she felt, but were misinterpreted by others. She said she was truly sorry for her actions.

Discussion

[31] The Commission has enumerated a list of factors to be considered in determining a penalty in discipline cases which has become well established: Krug and Ottawa Police Service, (January 21, 2003, OCCPS).

[32] In *Krug* these were set out as follows at pp.12-13:

This Commission in previous cases has identified various matters that must take [sic] into consideration when determining penalty. Paul Ceyskens, at page 5-129 of “Legal Aspects of Policing” (Salt Spring Island: Earls Court Legal Press, 1994) summarized the factors which may be either mitigating or aggravating as follows:

1. Public interest;
2. Seriousness of the misconduct;
3. Recognition of the seriousness of the misconduct;
4. Employment history;
5. Need for deterrence;
6. Ability to reform or rehabilitate the police officer;
7. Damage to the reputation of the police force;
8. Handicap and other relevant personal circumstances;
9. Effect on police officer and police officer’s family;
10. Management approach to misconduct in questions;
11. Consistency of disposition;
12. Financial loss resulting from unpaid interim administrative suspension;
13. Effect of publicity.

There is no requirement that any one factor be given more weight than another. The seriousness of the offence alone may justify dismissal. Aggravating factors can serve to diminish the weight of any mitigating factors.

[33] Public interest and the reputation of the police force are impacted in this case. PC Wood’s unique liaison relationship with the school administration and staff, teachers and students cuts both ways. When there is a faculty suicide at an assigned school, an officer in PC Wood’s position must be taken to know that the Principal and the Board of Education may have certain statutory and institutional obligations and protocols to follow related to ensuring the wellness of their staff, teachers and students, as well as contingencies for school operations and communications management.

[34] In addition, such a sudden death would be investigated by police – here the York Regional Police – on behalf of the coroner under the *Coroners Act*, R.S.O. 1990, c. C.37. Such an investigation might well involve not only the seizure and temporary retention of any suicide notes but the possibility of interviewing colleagues of the deceased, in order that the investigating coroner can objectively determine “by what

means” the deceased came to his death. According to Mr. Chomiak, the suicide notes were only released to the deceased’s family seven days after his death.

[35] In very early accessing the Versadex reports of the pending investigation and viewing the imaged suicide notes without knowledge of or authorization by the police service, and then sharing the information she saw with some of the deceased’s colleagues in the hours and days immediately following without consulting the Principal and School Board, PC Wood ran the risk of negatively affecting both of these official processes. These are aggravating factors.

[36] It follows that this is serious misconduct, in part because there was a risk of unintentionally exacerbating emotional reaction among the teachers, which the Principal and Board were responsible for managing. There was no evidence of any special expertise held by PC Wood in grief counselling. While I accept her intentions were perhaps benevolent, her choices in pursuing them were somewhat reckless and ill-conceived having regard to her position and experience. While I may agree that no one else actually complained, the impact on the person who did complain was viscerally evident. This again is an aggravating factor.

[37] While she may not have shown it clearly in the week following the events, I am satisfied by her comments at the hearing and her acceptance of responsibility through a guilty plea that PC Wood does now recognize that her misconduct was serious. This is a mitigating factor.

[38] I agree with the Prosecutor that a need for specific and general deterrence arises in this matter. Many specialist police postings will involve special relationships with shared service providers, not only with schools but also with child welfare agencies, community service providers, health care providers and so forth. Maintaining professionalism and acting ethically in spite of the temptation to stretch or morph the rules in certain stressful situations is a fair public expectation of all police officers. One the purposes of Part V discipline is to deter future transgressions by the same or other

police officers. Where, as here, the misconduct amounts to a basic failure to follow simple, well known rules which resonate with the public trust and impact the reputation of the police force, deterrence is an operating factor in sentencing. There was nothing obscure or nuanced about what PC Wood did here. This is an aggravating factor.

[39] Management's approach to this misconduct was to maintain PC Wood in the same specialized posting, where she remains, but to reassign her away from the specific school involved. This school was attended by her own son for the time she worked in it, which I am sure contributed to her familiarity with his teacher, one of those to whom she disclosed information. I take from this that management is otherwise happy with her work as a Youth Education Officer, and that whatever relationship boundary issues she suffered from herein were able to be managed without the need to reassign her and train a replacement. This bodes to her credit and is a mitigating factor in my view.

[40] In terms of consistency in disposition I was referred only to two cases, *Bates* and *Clough*. I accept Mr. MacKenzie's submission that *Clough* is distinguishable. Albeit a very new officer with no discipline record, *Clough* took CPIC and other personal information about her ex-partner's new girlfriend by co-opting other police members, then shared it around repeatedly during a custody dispute over a period of a year. The penalty of 80 hours' suspension without pay was quite significant, even in the context where demotion and dismissal were put on the table by the prosecution.

[41] I do find *Bates* to be a valid comparator case. *Bates* disclosed information from his own legitimate investigation in an illegitimate way to uninvolved but peripherally related persons. While apparently meaning no harm, he nonetheless clearly disclosed personal information not authorized to be disclosed, which got back to the person investigated who then complained. *Bates* had "several" incidents of misconduct on his record, though none in the previous two years, during which he had "accumulated several tributes and an incentive reward."

[42] I find it immaterial that the prosecution in *Bates* filed separate allegations for disclosures one day apart, or that *Clough* conversely faced only one allegation in relation to several related incidents over a year. *Bates* forfeited two 12-hour days off on each count for a total of 48 hours. It could just as easily have been a global penalty of 48 hours fashioned for a single allegation covering the entire matter.

[43] PC Wood has one prior incident of dissimilar misconduct on her record from about four years prior to these events, for which she lost 60 hours. She has two intervening informal entries as well. PC Wood took deliberate action in order to access an investigation that was not hers, in order to inform herself regarding an event at a school she was assigned to. She shared details from the investigation with others impacted by it at the school in an attempt to do something she thought was positive, but without authorization from the police service or notice to the school authorities. She disclosed the information within working/personal relationships with teachers at the school. Not surprisingly this resulted in radiating discussions of the information which reached another teacher, who was upset by it and complained.

[44] In another case, *Walker and Belleville* (March 15, 1990)(OPC), the facts and disposition were not really germane to this matter, but the Commission briefly referred near the end of its reasons to another, unreported matter as follows:

It is interesting to note that charges of breach of confidence were brought against one Constable Oscar M. Horth, a member of the Belleville Police Force and in respect of those charges, Deputy Chief H.W. Tremble as presiding officer imposed a penalty of five days forfeiture of leave or days off on March 9th, 1989. That situation involved the turning over by Constable Horth of a series of documents including criminal records by fingerprint verification to a private citizen who was not authorized to receive such documents. The documents were clearly marked "Restricted" and required "distribution to authorized agencies only." The reasons record however that Constable Horth was remorseful and were it not for the remorse shown, a reduction in rank would have been the appropriate penalty.

There was no employment record or other information regarding PC Horth beyond that set out above.

Application to the Facts

[45] As stated, this was serious misconduct which impacted on the public interest and could significantly affect the reputation of the police force. Mr. O [REDACTED]'s poignant comments bore this out. PC Wood recognized this and showed remorse through her own comments and her guilty plea. There is a need to deter PC Wood and other police officers from succumbing to the temptation to breach basic privacy and security rules even under pressure of extreme circumstances where there is a professional relationship to be maintained. PC Wood enjoys the confidence of her employer in her present role and has received recent, unsolicited testimonials to the quality of her work from her school partners. This is her second formal finding of misconduct within a roughly five-year window.

[46] In all of the circumstances I order that PC Wood will forfeit fifty-six (56) hours' time off pursuant to s.85(1)(f) of the Act.

Dated at Markham this 28th day of April, 2014.

A handwritten signature in black ink, appearing to read 'B. Fazackerley', with a large, sweeping flourish at the end.

Brian Fazackerley, S/Insp. (Ret)