

RECEIVED

By galloch at 9:34 am, Mar 17, 2021

WINDSOR POLICE SERVICE DISCIPLINE HEARING

**IN THE MATTER OF ONTARIO REGULATION 268/10
MADE UNDER THE *POLICE SERVICES ACT*, RSO 1990,
AND AMENDMENTS THERETO;**

IN THE MATTER OF

WINDSOR POLICE SERVICE

AND

POLICE CONSTABLE KIMBERLEY CADY #8735

**NEGLECT OF DUTY
BREACH OF CONFIDENCE**

DISPOSITION WITH REASONS

Before: **Inspector Andrew Randall
Windsor Police Service**

Appearances:

For the Prosecution: **Mr David Amyot
For Windsor Police Service**

Counsel for the Defence: **Mr Brian Dube**

Complainant: **E.H.**

Hearing Date: **January 20, 2021**

Allegation of Misconduct

Police Constable (PC) Kimberley Cady committed **Neglect of Duty** in that she failed to work in accordance with orders by failing to document and report the details of a sexual assault allegation as was her duty to do so, contrary to section 2(1)(c)(i) of the Police Services Act of Ontario Code of Conduct, Ontario Regulation 268/10, Section 80(1)(a) of the Police Services Act, R.S.O. 1990, c. P.15.

-AND FURTHER THAT-

Police Constable (PC) Kimberley Cady committed **Breach of Confidence** in that she divulged a matter, which it was her duty to keep secret, by disclosing confidential and sensitive information about E.H. to the College of Registered Psychotherapists of Ontario without the consent of E.H., or the Windsor Police Service, contrary to section 2(1)(e)(i) of the Police Services Act of Ontario Code of Conduct Ontario Regulation 268/10, Section 80(1)(a) of the Police Services Act, R.S.O. 1990, c. P.15.

As this matter stems from the failure to document and report the details of a sexual assault allegation, to protect the identity of the complainant (victim), they will be known as E.H.

Pursuant to the *Statutory Powers Procedure Act, RSO 1990, c S.22*, this Tribunal was held by way of a combination of *oral hearing* (a hearing at which the parties or their representatives attend before the tribunal in person), *written hearing* (a hearing held by means of the exchange of documents, whether in written form or by electronic means), and *electronic hearing* (a hearing held by conference telephone or some other form of electronic technology allowing persons to hear one another).

All written documents were confirmed by the Tribunal to have been exchanged between the Complainant (E.H.), the Prosecution (Mr David Amyot), and the Defence (Mr Brian Dube), prior to January 20, 2021.

Plea / Penalty Submission

On January 20, 2021, PC Cady appeared before the Tribunal, via ZOOM Teleconference, represented by counsel Mr. Brian Dube, entered a plea of guilty, and then acknowledged that the subsequent Agreed Statement of Facts were accurate.

PC Cady was found guilty of **Neglect of Duty**, and **Breach of Confidence**, on clear and convincing evidence.

The Prosecution, Mr. David Amyot, and Mr. Brian Dube submitted a joint penalty position of **the forfeiture of forty (40) hours** of furlough (vacation), pursuant to section 85(1)(f) of the Police Services Act.

In support of their joint penalty position, the Prosecution and Defence made submissions, written and orally, with respect to both mitigating and aggravating factors, which were accepted by the Tribunal.

The Police Services Act charges against PC Cady stem from an OIPRD Complaint. The complainant, E.H., had standing in the Tribunal, and provided a written submission in the form of a ***Victim Impact Statement***, which was considered by the Tribunal.

Penalty Decision

Consistent with the joint penalty position, **Constable Kimberley Cady shall forfeit forty (40) hours of vacation, pursuant to section 85(1)(f) of the Police Services Act, R.S.O 1990.**

Agreed Statement of Facts

1. The Windsor Police Service (“WPS”) has employed Police Constable Kimberley Cady (“PC Cady”) since April 18, 1995.
2. PC Cady, Badge #8735, currently holds the rank of Senior Constable, 1st Class.
3. On April 18, 1995, PC Cady signed an Oath of Secrecy, which stated that, except in the course of judicial proceedings or pursuant to the order of her superior officers or the WPS Board, Constable Cady will not disclose, communicate, or convey or allow to be disclosed, communicated, or conveyed directly to any person any private or confidential information whatsoever obtained by her or about the performance of her duties as a member of the WPS.
4. On April 6, 2019, E.H. (the “Complainant”) attended the WPS Headquarters to report that she was the victim of a sexual assault that had occurred in November of 2018.
5. PC Cady was on duty on April 6, 2019 and interviewed the Complainant at WPS Headquarters. During the interview, the Complainant provided specific details of the sexual assault including the date of the occurrence, the location, the offender’s identity and a description of the sexual

- assault. In particular, the Complainant advised PC Cady that the offender was her client, and she was meeting with him in his vehicle in the parking lot of a Tim Horton's store in Central Windsor when the sexual assault occurred.
6. During their meeting, the Complainant indicated that she was concerned the offender would file a complaint against her with the College of Registered Psychotherapists of Ontario ("CRPO").
 7. PC Cady told the Complainant that she could provide a written statement of her allegations of sexual assault to lay a criminal charge against the offender or, in the alternative, PC Cady could speak with the offender to inform him to stay away from the Complainant and cease all communications with her.
 8. The Complainant decided not to provide a written statement of her allegation of sexual assault at that time, but indicated that she would think about it.
 9. PC Cady did not provide the Complainant with any information, resources, or contacts for victims of sexual assault or crisis assistance.
 10. PC Cady spoke with the offender on April 7, 2019 to warn him to cease contact with the Complainant. During their conversation, the offender noted that he already filed a complaint against the Complainant with the CRPO.
 11. On April 15, 2019, PC Cady spoke with the Director of Professional Conduct and Deputy Registrar (the "Director") of the CRPO to ask about the Complainant, including whether the offender filed a complaint against her with the CRPO. During their conversation, PC Cady provided the Director with background information about the Complainant and her relationship with the offender. PC Cady also divulged sensitive and otherwise confidential information about the Complainant's sexual assault report.
 12. Windsor Policy Directive 780-07 Sexual Assault Investigations (the "Directive") (***Joint Document Brief Submitted by the Prosecution (Exhibit #5 - Tab 3)***) sets out various requirements for WPS officers in relation to sexual assault complaints. The Directive provides, *inter alia*, as follows:

I. Rationale:

Sexual assault is extremely traumatic to the victim, and these investigations can be complicated from the outset. Therefore, the WPS must adhere to prescribed methods when investigating sexual assaults and assessing victims. It is for these reasons that this Directive has been developed.

II. Policy Statement

E. Sexual assault investigations shall be referred to a qualified sexual assault investigator as soon as is practicable.

F. A report must be submitted on all complaints of sexual assault.

III. Procedures:

E. The first officer on the scene of a sexual assault that has occurred in excess of 72 hours from the time that it is reported:

- 1. obtain statements from the victim or witnesses and further information sufficient to commence an investigation and file a report. This should be accomplished in a sensitive manner. Consideration may be given for the victim or witnesses to write their own statements;*
- 2. recommend to the victim that medical treatment should be sought at the Sexual Assault Treatment Centre as soon as possible for the purpose of treatment, detection and documentation of injuries;*
- 3. advise the victim that the Major Crime Branch will contact them for further information;*

4. *ensure preservation of the scene if it is anticipated that evidence may still be gained as a result of forensic examination;*
5. *make the victim aware of the community service agencies that are available to assist such as the Sexual Assault Crisis Centre.*

13. It is acknowledged that PC Cady failed to comply with the Directive in that she:

- a. Failed to file a report and gather further information sufficient to commence an investigation in regard to the Complainant's sexual assault complaint.
- b. Failed to take reasonable steps to preserve evidence, or at least make a determination if such evidence still existed, such as any surveillance video from the parking lot where the sexual assault occurred.
- c. Failed to inform the Complainant of the community services available to victims of sexual assault.

14. PC Cady's actions in regard to the Complainant's sexual assault complaint, as noted above, constitute **Neglect of Duty** in that PC Cady neglected, without lawful excuse, to carry out a lawful order by failing to document and report the details of the Complainant's sexual assault complaint, as was her duty pursuant to the Directive.

15. It is acknowledged that PC Cady's unauthorized disclosure of sensitive and confidential information to the CRPO on April 15, 2019 was contrary to her Oath of Secrecy and constituted **Breach of Confidence** in that PC Cady divulged a matter, which it was her duty to keep secret, by disclosing confidential and sensitive information about the Complainant to an outside third party without the consent of the Complainant or the WPS.

16. PC Cady accepts responsibility for her actions and is remorseful for her conduct.

17. Based on these facts, PC Cady pleads guilty to the count of **Neglect of Duty** contrary to section 2(1)(c)(i) of the Code of Conduct of Ontario Regulation 268/10 and section 80(1)(a) of the Police Services Act, R.S.O. 1990, c. P. 15.

18. Based on these facts, PC Cady pleads guilty to the count of **Breach of Confidence** contrary to section 2(1)(e)(i) of the Code of Conduct of Ontario Regulation 268/10 and section 80(1)(a) of the Police Services Act, R.S.O. 1990, c. P. 15.

Exhibits – Prosecution

In support of the joint penalty position, the Prosecution submitted a ***Joint Document Brief Submitted by the Prosecution (Exhibit #5), Submissions of the Prosecution (Exhibit #6), and Brief of Authorities Submitted by the Prosecution (Exhibit # 7).***

Exhibits – Complainant

A ***Victim Impact Statement (Exhibit #8)*** was submitted to the Tribunal by E.H..

Exhibits – Defence

In support of the joint penalty position, the Defence submitted a document entitled, ***Submissions of the Defence (Exhibit #9)***, which included a ***Letter*** from Retired WPS Inspector Tammy Fryer (***Exhibit #10***).

All Exhibits in this matter are listed in Appendix ‘A’.

Submissions on Penalty / Analysis and Findings:

The Prosecution did not call any witnesses.

In lieu of calling any witnesses, the Prosecution relied on excerpts from ***Joint Document Brief Submitted by the Prosecution (Exhibit #5), Submissions of the Prosecution (Exhibit #6), and Brief of Authorities Submitted by the Prosecution (Exhibit # 7).***

The Prosecution submitted that PC Cady plead guilty to **Neglect of Duty**, and **Breach of Confidence**, and that the following was jointly agreed:

- PC Cady's actions in regard to her handling of the Complainant's complaint of April 6, 2019 constituted **Neglect of Duty** in that PC Cady neglected, without lawful excuse, to carry out a lawful order. Specifically, PC Cady

failed to comply with **Windsor Police Directive 780-07 Sexual Assault Investigations** (the "Directive") in that she:

- Failed to file a report and gather further information sufficient to commence an investigation in regard to the Complainant's sexual assault complaint.
- Failed to take reasonable steps to preserve evidence, or at least make a determination if such evidence still existed, such as any surveillance video from the parking lot where the sexual assault occurred.
- Failed to inform the Complainant of the community services available to victims of sexual assault.
- PC Cady's unauthorized disclosure of sensitive and confidential information pertaining to the Complainant's report of sexual assault to the College of Registered Psychotherapists of Ontario (CRPO) on April 15, 2019 constituted **Breach of Confidence** in that PC Cady divulged a matter, which it was her duty to keep secret, by disclosing confidential and sensitive information about the Complainant to an outside third party without the consent of the Complainant or the Windsor Police Service ("WPS").

The Prosecution submitted that the jointly proposed penalty was fair and reasonable in consideration of the facts of the case, and properly takes into consideration the appropriate factors to be considered by the Tribunal when assessing a penalty for misconduct.

The Prosecutor further submitted that PC Cady does not have any prior disciplinary action on her record, and her Personal Conduct sheet contains various positive entries and Commendations. (**Joint Document Brief Submitted by the Prosecution – Exhibit 5 - TAB 4**)

The Prosecution submitted that the principles to be considered with respect to assessing an appropriate penalty for police misconduct are well established. Such factors include the following:

- Penalties should accord with the purposes of the police discipline process. These purposes include:
 - The employer's interest in maintaining discipline in the police workplace;

- The Respondent officer's right to be treated fairly; and
 - Public Interest - ensuring a high standard of conduct and public confidence in police
- Corrective Dispositions should prevail, where possible, with an emphasis on a more remedial philosophy over a punitive philosophy in assessing penalty;
 - The presumption that the lowest penalty should be imposed, where possible.
 - There should be proportionality of the penalty to the offence.
 - Higher standards of conduct apply to police officers.

The Prosecution further submitted that, through numerous police disciplinary decisions, including the seminal decision of *Williams and Ontario Provincial Police* (1995), 2 O.P.R. 1047 (OCCPS) and *Krug and the Ottawa Police Service* (2003)(OCCPS), a number of mitigating and aggravating considerations have emerged that are to be considered by a Tribunal when assessing an appropriate penalty for misconduct. These decisions are found in **TAB 1** and **TAB 2**, respectfully, in the ***Brief of Authorities Submitted by the Prosecution (Exhibit #7)***. Such considerations include the following:

- Public interest.
- Seriousness of misconduct.
- Recognition of the seriousness of the misconduct.
- Handicap or other relevant personal circumstances.
- Provocation.
- Procedural fairness considerations.
- Employment history.
- Potential to reform or rehabilitate the police officer.
- Effect on police officer and police officer's family.
- Consistency of disposition.
- Specific and general deterrence.
- Employer approach to misconduct in question.
- Damage to the reputation of the police force.

It was submitted that not all of the factors are relevant in this matter.

E.H. submitted a **Victim Impact Statement (Exhibit #8)**, for consideration by the Tribunal, and described that PC Cady betrayed their trust, violated their confidentiality, and failed to provide them with protection by exposing them to the dangers of being stalked by their assailant.

E.H. did not provide any further submissions, in addition to the **Victim Impact Statement**, when afforded the opportunity to do so.

E.H. had been apprised of the Joint Penalty Submission, through their review of the **Joint Document Brief Submitted by the Prosecution**, the **Submissions of the Prosecution**, the **Brief of Authorities Submitted by the Prosecution**, and the **Submissions of the Defence**, and submitted that they were of the opinion that the loss of 5 days' pay "is not a reprimand (a learning experience) for an Officer who did not do her essential job of protecting the public, for an Officer who left a member of the public, her children and patients in harm's way, unprotected." This concern was noted by the Tribunal, and is addressed in the **Decision** section.

[REDACTED]

[REDACTED]

[REDACTED]

The focus of the Tribunal was the misconduct of PC Cady for her failure to document and properly report the details of E.H.'s sexual assault complaint, in conjunction with her unauthorized disclosure of the confidential information to the College of Registered Psychotherapists of Ontario. PC Cady entered a plea of guilt, and was found guilty, on clear and convincing evidence. PC Cady should have followed **Windsor Police Directive 780-07 Sexual Assault Investigations**, by completing a report, taking reasonable steps to preserve evidence, and by ensuring that the investigation was referred to a qualified Sexual Assault Investigator, as soon as practicable. PC Cady failed to do so, and took responsibility for such inactions.

In lieu of calling witnesses, and in addition to their adoption of the ***Submissions of the Prosecution (Exhibit #6)***, the Defence further submitted a document entitled, ***Submissions of the Defence (Exhibit #9)***, and a Letter from retired Windsor Police Service Inspector Tammy Fryer (***Exhibit #10***).

The Defence provided further background information on PC Cady for consideration by the Tribunal as follows:



She has been a member of the Windsor Police Service (WPS) since April 18, 1995, having previously being employed with Canada Customs and Revenue Agency (now the Canada Border Security Agency).

In over 25 years, PC Cady has incurred no prior misconducts with WPS and has 37 positive service reports and/or commendations.

PC Cady has an extensive history of volunteer work both as a civilian and a police officer. She was a member of the Windsor Police Honour Guard from 1998 until 2012 and often worked with Hiatus House and the House of Sophrosyne raising supplies for those in need. Over the years, she has been involved in numerous local charitable events including Christmas toy drives and pasta, sports, and memorial fundraising events – some of these being recorded on her WPS “Personal Conduct Sheet”. She is currently a member of the Royal Canadian Legion Branch No. 201 located in Essex, Ontario.”

The Defence submitted that PC Cady’s guilty pleas bring finality to what could have been “protracted proceedings”, and have resulted in considerable savings of “scarce public resources”. Further, the Defence believes that the guilty pleas provide E.H. with certainty in terms of the outcome and spares them from the anxiety of testifying and being cross-examined, at the Tribunal.

E.H. did not provide any further submissions, in reply to the Defence’s submissions, when afforded the opportunity to do so.

The Prosecution and Defence made submissions to address necessary considerations in an effort to guide the Tribunal to an appropriate decision; specifically the acceptance of the joint submission penalty. Again, information contained in E.H.'s ***Victim Impact Statement (Exhibit #8)***, was also taken into consideration.

In line with the responsibility of the Tribunal to impose a penalty that balances the expectations of the community, the needs of the Windsor Police Service, and fairness to PC Cady, the Tribunal analyzed the joint penalty position.

These considerations, and analyses, are outlined, as follows:

Public Interest

The Prosecution submitted that Public Interest is a consideration for the Tribunal as it deals with ensuring that the penalty reflects the public interest of ensuring a high standard of conduct for police officers, while also ensuring that the public remains confident in police services.

The Prosecution referred to page 4 of *Scofield v. Metro Toronto Police* (1984), in **TAB 3** of the ***Brief of Authorities Submitted by the Prosecution (Exhibit #7)***, and indicated that the Commission reflected the Public Interest consideration in determining penalty by stating:

"There is no doubt that the matters giving rise to the charge against the Appellant are serious and require a sufficient degree of punishment to be remedial to both the Appellant and fellow officers. The punishment also must impress the public that such conduct on an officer's part attracts appropriate sanctions."

The Prosecutor's respectful position was that the jointly requested penalty satisfies the Public Interest factor as PC Cady is being held responsible for his actions, and it represents a loss of salary of over **\$2,070.00**.

The Tribunal believes that Public Interest is of paramount importance in that it is a fundamental requirement for policing, and is crucial to maintaining public trust. The public places their trust in officers to uphold the oath they take, and perform their duties, as required. It is the community's expectation that members of the Windsor Police Service are not negligent in performing their duties, and will not disclose confidential information that they are sworn to protect. PC Cady broke the trust placed upon her by the public; specifically E.H..

The Tribunal is confident that the public, if made aware of PC Cady's misconduct, would have great concerns. Any penalty imposed must reinforce that the Windsor Police Service

does not condone such negligent duty and breach of confidentiality, and it must demonstrate to the public that the Service holds its members accountable for their actions, accordingly.

The Tribunal finds Public Interest to be a significant aggravating factor in this case.

Seriousness of the Misconduct

With respect to Seriousness of Misconduct, the Prosecution submitted that PC Cady's misconduct is a fundamental consideration, as being found guilty of the disciplinary offences of **Neglect of Duty** and **Breach of Confidence** should be considered serious misconduct.

The Prosecution referenced paragraph 89, in *Turgeon v. Ontario Provincial Police* (2012), in **TAB #4** of the ***Brief of Authorities Submitted by the Prosecution (Exhibit #7)***, and indicated that Turgeon was charged with **Neglect of Duty** for failing to properly investigate a report of Domestic Violence by a public complainant. Turgeon filed a report, but failed to complete all of the required paperwork, under the OPP's Domestic Violence Occurrence Policy. On appeal, the Commission confirmed that a finding of **Neglect of Duty**, in the context of failing to properly investigate a report of domestic violence, is considered very serious.

The Commission stated, in paragraph 89, as follows:

"... the Appellant asserts that the Hearing Officer erred by placing undue emphasis on the principle of general deterrence. We Disagree. The Hearing Officer found that this was a "very serious incident" and concluded that "[w]e must signal to all members that this is clearly an unacceptable response to a domestic violence complaint..."

The Prosecution referenced page 335, in *Kemp v. Bates* (1993), in **TAB #5** of the ***Brief of Authorities Submitted by the Prosecution (Exhibit #7)***, and indicated that the Commission recognized that **Breach of Confidence** is considered serious misconduct when it stated the following:

"We note in this particular case such did not occur but the Board wishes to emphasize the seriousness of misconduct and that this behaviour cannot be condoned."

The Prosecution believes that PC Cady's actions, taken as a whole, constitute serious misconduct; however notes that her actions involved discreet isolated acts and were not part of a series of actions over a long period of time.

The Tribunal believes that breaching the confidence of the community can have a detrimental effect on the Windsor Police Service's overall reputation. Any member who places the reputation of the Service into question should be dealt with accordingly. The Service expects its members to act in accordance to its policies, procedures, and the Police Services Act, at all times.

The Tribunal finds the Seriousness of the Misconduct to be a significant aggravating factor.

Recognition of the Seriousness of Misconduct

The Prosecution submitted that pleading guilty to disciplinary allegations constitutes a recognition of the seriousness of the misconduct, which is a mitigating factor that a Tribunal must consider in assessing penalty.

The Prosecution submitted that PC Cady's guilty plea to **Neglect of Duty** and **Breach of Confidence**, along with her cooperation in the preparation of the **Agreed Statement of Facts**, and early resolution demonstrates her recognition of the seriousness of her misconduct and are significant mitigating factors in consideration of an appropriate penalty.

It is noted that PC Cady resolved this matter, in its early stages, thereby avoiding further pain, upset and distress to the complainant, E.H., through a contested disciplinary hearing.

The Defence concurs with the Prosecution that PC Cady accepted responsibility for her actions and plead guilty to **Neglect of Duty** and **Breach of Confidence**, at a relatively early stage, and before a disciplinary hearing was scheduled. They too believe that the early guilty pleas demonstrate remorse, and are significant mitigating factors.

With respect to Recognition of the Seriousness of Misconduct, the Tribunal believes that PC Cady has formally accepted responsibility for her actions, and has acknowledged its seriousness, by pleading guilty, and acknowledging the **Agreed Statement of Facts**. The Tribunal concurs that by doing so, PC Cady avoided further angst, upset and distress to E.H.; thus resulted in her not being required to testify, in the Tribunal, about her sexual assault allegation.

The Tribunal finds the recognition of the Seriousness of Misconduct to be a mitigating factor.

Employment History

The Prosecution referenced PC Cady's ***Personal Conduct Record***, in **Tab #4** in the **Joint Document Brief Submitted by the Prosecution**, and submitted that consideration of an officer's employment history, can serve as both a mitigating and aggravating factor, is a standard factor for the Tribunal to consider.

At the time of the Tribunal, PC Cady held the rank of Senior First Class Constable, and had been a member of the Windsor PS for approximately 25 years. In her tenure with the Windsor Police Service, PC Cady's ***Personal Conduct Record*** did not contain any prior misconduct. It contains thirty-seven (37) positive service reports and/or commendations.

Upon reviewing PC Cady's ***Personal Conduct Record***, the following entries resonated with the Tribunal as they relate to her ability to provide assistance to victims:

January 2002 – A victim *“sent a thank-you card to Constable Ferriss (nee: Cady) for the care and concern displayed when attending a domestic situation at (their) residence.”*

June 2004 – *“A female involved in a difficult domestic situation sent a letter of thanks to Constable Cady-Ferriss for her assistance and encouragement she provided during the course of this incident. Cst. Cady-Ferriss' understanding and patience was appreciated and helped the complainant to get through some very emotional times.”*

March 2006 – *“Sergeant Wilson sent a memo commending Constable Cady for the compassion and kindness she recently displayed at a sudden death call.”*

July 2014 – *“Card received from (a citizen) thanking (PC Cady) for noticing an injustice and taking steps to right the wrong. This was in regard to a harassment and neighbour trouble call.”*

The Prosecution submitted that PC Cady's lack of any previous discipline, in conjunction with positive work performance and commendations serve as significant mitigating factors. The Tribunal does not dispute this.

The Defence submitted that the Police Services Act offences constituted behaviour that was isolated, out of character and otherwise inconsistent with PC Cady's excellent employment history. They respectfully submitted that the seriousness of the misconduct is mitigated considerably by PC Cady's lengthy and honourable service in the community as a police officer. The Tribunal does not dispute this.

The Defence also submitted a **Letter**, dated December 14, 2020, authored by Inspector Tammy Fryer (ret.), which was reviewed by the Tribunal. Although positive in nature, the contents of the letter does not speak specifically to PC Cady's misconduct.

The Tribunal believes that PC Cady's positive Employment History, in the form of no previous misconduct, and positive Personal Conduct Record is a mitigating factor for consideration.

Potential To Reform or Rehabilitate the Police Officer

The Prosecution submitted that an officer's potential to rehabilitate, or put another way the likelihood of recurrence, is an important consideration for a Tribunal when assessing penalty. Further, as previously indicated, corrective dispositions should prevail, where possible.

The Prosecution believes that there is a general emphasis on a more remedial philosophy, over a punitive philosophy, in assessing disciplinary penalties. Further, the Prosecution submitted that by pleading guilty, PC Cady must be viewed as accepting responsibility for her actions, and as such, the Windsor Police Service acknowledges that the potential to rehabilitate exists, and that she should be given the opportunity to reform.

The Tribunal takes guidance from previous decisions by the Commission, which has consistently emphasized the importance of rehabilitation, even in cases of serious misconduct, as referenced in an excerpt in the case of *Andrews and Midland Police, OCCPS, 1 May 2003*, which states:

“Rehabilitation is a key factor to be taken into consideration when a penalty is imposed, especially, when the officer has a prior unblemished employment record. Unless the officer is beyond rehabilitation (in which he would be a candidate for dismissal), the door should be kept open for the officer to be rehabilitated. The penalty should be tailored to provide him with the opportunity to do so.”

With respect to Potential to Reform or Rehabilitate the Police Officer, the Tribunal believes that by admitting to her misconduct through her guilty plea, and her acceptance of the Agreed Statement of Facts, PC Cady has taken steps to rehabilitate and should be given an opportunity to reform.

The Tribunal finds that the Potential to Reform or Rehabilitate the Police Officer is a mitigating factor.

Effect on Police Officer and Police Officer's Family

The Prosecution submitted that, although the proposed penalty will result in a substantial loss of salary for PC Cady, it is their submission that the proposed penalty will not create an undue or special hardship on her or her family. The Tribunal does not believe that the proposed penalty will have an effect on PC Cady from a financial perspective. The forfeiture of forty (40) hours of vacation does not have a financial impact on an officer.

With respect to the Effect on Police Officer and Police Officer's Family, the Tribunal believes that PC Cady's misconduct will not create any undue hardship to her financially; however, it will impact her professionally.

Since PC Cady is a 26 year veteran of the Windsor Police Service, it resonates with the Tribunal that her convictions, under the Police Services Act, could hinder her ability to be awarded the Thirty (30) year Police Exemplary Service Medal, as during the period of service, "no serious disciplinary action can be taken or is pending in respect of the nominee."

Not only will PC Cady be in a position to potentially not receive the Police Exemplary Service Medal, moving forward, she may have difficulty testifying in Court, as she will have to disclose her Police Services Act **Neglect of Duty** and **Breach of Confidence** convictions, through the McNeil Process. Depending on the case, her credibility may be called into question each time she is called upon to testify.

The Tribunal finds that the Effect on Police Officer and Police Officer's Family is a mitigating factor for consideration.

Specific and General Deterrence:

The Prosecution submitted that deterrence of the respondent officer, and other officers, is a legitimate objective of police discipline. In this matter, the proposed penalty serves as a specific deterrence to PC Cady, but also as a general deterrence to other officers; specifically, that it is unacceptable to fail to follow Windsor Police Service Directives relating to complaints of Sexual Assault.

The Prosecution again referenced paragraph 89, in *Turgeon v. Ontario Provincial Police* (2012), in **TAB #4** of the ***Brief of Authorities Submitted by the Prosecution (Exhibit #7)***, and indicated that the Commission recognized the need for general deterrence in regard to a finding of **Neglect of Duty** where the subject officer failed to properly investigate a report of domestic violence.

With respect to Specific and General Deterrence, the Tribunal believes that PC Cady's

Neglect of Duty and **Breach of Confidence** cannot be overlooked, and appropriate sanctions must be instituted that demonstrate to the public, and to other officers, that the Windsor Police Service holds its members accountable for misconduct. This also serves as a reminder to other members of the Windsor Police Service that misconduct of this nature will result in consequences.

Specifically, the sanctions must deter PC Cady from committing further misconduct. She must be aware that should she commit other misconduct resulting in a Police Services Act Tribunal, she may face an increased penalty.

The Tribunal takes further guidance from previous decisions by the Commission, as referenced in another excerpt in the case of *Andrews and the Midland Police Service, 2002 OCCPS*, which states:

“He was also correct that the penalties imposed for misconduct must be strong enough to send a clear message to other officers that such conduct or any conduct of this nature will not be tolerated.”

And further, the penalty imposed must be:

“sufficient to punish and deter while not causing undo excessive hardship while demonstrating reoccurrence will not be tolerated.”

The Tribunal finds that Specific and General Deterrence is a necessary consideration.

Damage to the Reputation of the Police Service

The Prosecution submitted that this matter has not been the subject of any media reports in the Windsor area; however, the Tribunal should assess whether the misconduct in question caused damage to the police service's reputation in the broader community.

The Prosecution referred to *Hassan and Peel Regional Police Service* (2006), in **TAB 10** of the ***Brief of Authorities Submitted by the Prosecution (Exhibit #7)***, and indicated that the Commission confirmed that a Hearing Officer may, even in the absence of direct evidence, place himself or herself in the position of a reasonable person in the community for the purpose of assessing the degree to which the misconduct has brought harm to the reputation of the police service.

The Prosecution respectfully submitted that PC Cady's misconduct, when considered from the perspective of a reasonable person in the community, damaged the reputation of the Windsor Police Service.

With respect to Damage to the Reputation of the Police Service, the Tribunal believes that there is no doubt that PC Cady's actions possess a propensity to compromise the level of trust that the public has placed on the Service. This is particularly damaging to the remaining members of the Service, who act in accordance with Directives, Policies and Procedures, on a daily basis.

The credibility and reputation of the Windsor Police Service is of paramount importance, and cannot be tarnished.

The Ontario Civilian Commission on Police Services has articulated the following approach regarding the meaning of "likely" to bring discredit upon the reputation of the police force:

"The measure used to determine whether conduct has been discreditable is the extent of the potential damage to the reputation and image of the service should the action become public knowledge."

The tribunal finds that the Damage to the Reputation of the Police Service is an aggravating factor in this matter.

Consistency of Penalty

The Prosecution submitted cases for consideration and review, by the Tribunal, in the ***Brief of Authorities Submitted by the Prosecution (Exhibit #7)***, and submitted that consistency in penalty has been a hallmark dispositional factor for many years, and has been widely recognized as a critical dispositional consideration.

In reference to **TAB 3 - *Brief of Authorities Submitted by the Prosecution (Exhibit #7) - Schofield and Metropolitan Toronto Police (1984)***, the Prosecutor submitted that a Hearing Officer must strive to ensure that the penalty issued is treated in a similar fashion as similar misconduct, while recognizing that no case is exactly the same as another.

The ***Brief of Authorities Submitted by the Prosecution (Exhibit #7)*** contains decisions that dealt with similar instances of **Neglect of Duty** and **Breach of Confidence**.

These cases are summarized as follows:

In **TAB 4 - *Turgeon Y. OPP and GC, 2012 ONCPC 11 (CanLII)***, the officer, *Turgeon* was charged with **Neglect of Duty** after failing to properly investigate a matter reported by G.C.. *Turgeon* filed an Occurrence Report, but failed to complete all of the required reports, pursuant to the OPP's Domestic Violence Occurrence Policy, or investigate the matter any further. *Turgeon* was originally offered an Informal Resolution of a **forfeiture**

of 12 hours; however, the matter went to a Formal Hearing. The penalty, under conviction, was the **forfeiture of 40 hours**.

Upon reviewing this case, there are similarities between the conduct of *Turgeon* and that of PC Cady in that they both failed to properly document an incident for further investigation. The joint submission to penalty is consistent with the **Neglect of Duty** portion of PC Cady's misconduct.

In **TAB 7 - *McDougall v. Brockville Police Service*, 1993 CanLII 14138**, the officer, *McDougall* was charged with one count of **Neglect of Duty**. He received a complaint that an individual's teenage son stole \$200.00, keys, registration and insurance certificates, and a bank card. The charge related to the manner in which *McDougall* conducted the investigation, reported the results of his work, maintained his notebook, and treated the complainant. The penalty, under conviction, was the **forfeiture of 5 days' pay**.

Upon reviewing this case, there are similarities between the conduct of *McDougall* and that of PC Cady in that they both failed to properly document a complaint, as required. The joint submission to penalty is consistent with the **Neglect of Duty** portion of PC Cady's misconduct.

In **TAB 8 - *Allen v. Hamilton- Wentworth Regional Police*, 1995 CanLII 15420 (ONCPC)**, the officer, *Allen*, was charged with 2 counts of **Deceit** and 2 counts of **Neglect of Duty** for failing to submit a report describing shoplifting by two parties, who engaged in a similar offence a week later. *Allen* made a false statement on the arrest report to conceal his previous omission. *Allen* plead guilty to one count each of **Deceit** and **Neglect of Duty**. A joint submission to penalty of the forfeiture of **2 days of pay for Neglect of Duty**, and the forfeiture of **3 days of pay for Deceit** was not accepted by the Hearing Officer. The penalty, upon conviction was the forfeiture of **3 days of pay for Neglect of Duty**, and the forfeiture of **15 days of vacation for Deceit**.

After an appeal by *Allen*, the Commission set aside the penalty imposed, and ordered that *Allen* "lose **2 days' pay** on the charge of **Neglect of Duty** and **3 days' pay** on a charge of **Deceit**." Of note, *Allen* had previous misconduct on his record, three years prior, for "failing to report".

Upon reviewing this case, there are similarities between the conduct of *Allen* and that of PC Cady in that they both failed to properly document an incident; however *Allen* was deceitful by making a false statement in an attempt to cover up his previous neglect of duty. In PC Cady's case, her failure to properly document the sexual assault allegation had a direct impact on a victim; specifically E.H., opposed to *Allen's* case, which was property crime (shoplifting) related. The Tribunal believes that PC Cady's misconduct is slightly more egregious than that of *Allen's* with respect to the **Neglect of Duty**; however,

when taking into consideration the totality of PC Cady's guilty pleas, including **Breach of Confidence**, the Tribunal believes that the joint penalty position is consistent with that of *Allen's* penalty.

In **TAB 5** - *Kemp v. Bates*, (1993) 1 PLR 331 (Board of Inquiry), the officer *Bates*, disclosed information regarding the complainant (*Kemp*) to two other people. The Police Complaints Commissioner ordered a hearing into the complaint before the Board of Inquiry. This resulted in a finding of guilt on two (2) counts of **Breach of Confidence**. The penalty, upon conviction, was "two days off, being **24 hours**, on each of the findings of misconduct, being a total of **48 hours** off..."

Upon reviewing this case, there are similarities between the conduct of *Bates* and that of PC Cady in that they both disclosed information that was their respective duties to keep confidential. When taking into consideration the totality of PC Cady's guilty pleas, including **Neglect of Duty**, the Tribunal believes that the joint penalty position is consistent with that of *Bates's* penalty.

In **TAB 9** - *Wood and York Regional Police Service* (April 28, 2014), the officer, *Wood*, reviewed occurrence reports and a suicide note in regards to the suicide of a teacher whom she had personally interacted with through the school's VIP program. She subsequently disclosed the details of the suicide note to three of the teacher's colleagues. This occurred during three separate interactions, while off duty. *Wood* plead guilty to one count **Breach of Confidence**. The penalty, upon conviction, was the forfeiture of **fifty-six (56) hours' time off**. Of note, this represented *Wood's* second formal finding of misconduct within a five-year window.

Upon reviewing this case, there are similarities between the conduct of *Wood*, and that of PC Cady in that they both disclosed information that was their respective duties to keep confidential; however, *Wood* disclosed information to multiple parties, which is slightly more egregious than that of PC Cady's misconduct. *Wood* also had a prior find of misconduct, which is an aggravating factor.

In conclusion, the Prosecution and Defence submitted that the jointly proposed penalty of a **forfeiture of 40 hours furlough** is within the range of penalties for other similar offences occurring under similar circumstances, is reasonable and appropriate in all the circumstances, and is consistent with prior decisions. The Tribunal does not disagree, and is confident that the Prosecutor and the Defence were diligent in their duties, and researched cases for consistency before agreeing on a joint penalty position.

PC Cady was provided with an opportunity to address the Tribunal, however, declined.

Decision

The objectives of discipline are to correct unacceptable behaviour, deter others from committing similar acts of misconduct, and to assure the public that the police are held accountable for acts of misconduct.

The particulars of PC Cady's misconduct are not in dispute, as outlined in the Agreed Statement of Facts, and the joint penalty submission.

It is the responsibility of the Tribunal to impose a penalty that balances the expectations of the community, including E.H., the needs of the Windsor Police Service, and fairness to PC Cady.

The Tribunal must determine whether the joint penalty position is appropriate; specifically, does the joint position of the forfeiture of forty (40) hours of vacation strike a balance between community's expectations, the needs of the organization, and fairness to PC Cady?

In response to E.H.'s opinion that "losing 5 days of pay is not a reprimand (a learning experience) for an Officer", the Tribunal believes that there exist other ramifications for Officers being convicted in Police Services Act Hearings that are further reaching than the imposed penalty. To reiterate, PC Cady's receipt of the 30 Year Police Exemplary Service Medal is jeopardized by her conviction. She may also have difficulty testifying in Court, through the McNeil Process. These are further consequences, above the imposed penalty, that PC Cady will endure that will impact her professionally.

In addition to E.H.'s ***Victim Impact Statement***, submissions on penalty by the Prosecution and Defence have been considered in determining an appropriate disposition with respect to mitigating, aggravating and neutral considerations.

The Tribunal would like to thank E.H., the Prosecution, and the Defence, for making their respective submissions.

PC Cady acknowledged the ***Agreed Statement of Facts***, and entered a guilty plea, at the earliest opportunity, which is indicative of an officer accepting responsibility for their actions. She also possesses thirty-seven (37) positive service reports and/or commendations in her *Personal Conduct Record*, with no prior documented misconduct.

Given this, PC Cady is quite capable of learning from her misconduct, and continuing on the path of having a fulfilling career as a positive, contributing member of the Windsor Police Service.

As such, the Tribunal sees no reason to deviate from the proposed sanction.

After reviewing all of the evidence and considering the submissions, the Tribunal orders that **Constable Kimberley Cady shall forfeit forty (40) hours of vacation, pursuant to section 85(1)(f) of the Police Services Act, R.S.O 1990.**



Inspector Andrew Randall
Adjudicator
Windsor Police Service

Date electronically delivered: **January 25, 2021**

Appendix 'A'

The following exhibits were tendered during the hearing:

- **Exhibit 1:** Delegation - Adjudicator - Inspector Andrew Randall
- **Exhibit 2:** Designation – Prosecutor - Inspector Jason Bellaire
- **Exhibit 3:** Designation – Prosecutor – David Amyot
- **Exhibit 4:** Notice of Hearing – Police Constable Kimberley Cady
- **Exhibit 5: *Joint Document Brief Submitted by the Prosecution*** containing the following:
 - **TAB 1** - Agreed Statement of Facts.
 - **TAB 2** - Oath of Secrecy.
 - **TAB 3** - Directive 780-07 – Sexual Assault Investigation.
 - **TAB 4** - Personal Conduct Sheet.
- **Exhibit 6 – *Submissions of the Prosecution***
- **Exhibit 7 - *Brief of Authorities Submitted by the Prosecution***, containing the following:
 - **TAB 1** - *Williams v. Ontario Provincial Police* (1995), 2 O.P.R. I 047 (OCCPS)
 - **TAB 2** - *Krug v. Ottawa Police Service* (2003) (OCCPS)
 - **TAB 3** - *Scofield v. Metro Toronto Police* (1984)
 - **TAB 4** - *Turgeon v. Ontario Provincial Police* (2012)
 - **TAB 5** - *Kemp v. Bates* (1993), I PLR 331 (Board of Inquiry)
 - **TAB 6** - *Carson v. Pembroke Police Service* (2001) (OCCPS)
 - **TAB 7** - *McDougall v. Brockville Police Service*, 1993 CanLII 14138
 - **TAB 8** - *Allen v. Hamilton-Wentworth Regional Police*, 1995 CanLII 15420 (ONCPC)
 - **TAB 9** - *Wood and York Regional Police Service* (April 28, 2014)
 - **TAB 10** - *Hassan v. Peel Regional Police Service* (2006)
- **Exhibit 8 – *Victim Impact Statement*** – Complainant “EH”
- **Exhibit 9 – *Submissions of the Defence***
- **Exhibit 10 – *Letter*** - Retired WPS Inspector Tammy Fryer