

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

**AND IN THE MATTER OF
THE ONTARIO PROVINCIAL POLICE**

AND

PROVINCIAL CONSTABLE J. (Jason) CHENIER, #9520

CHARGE:

DISCREDITABLE CONDUCT (2 counts)

DISPOSITION WITH REASONS

Before: Superintendent Lisa TAYLOR

Appearances:

**Counsel for the Prosecution: Inspector Lori DOONAN
Ontario Provincial Police**

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

Hearing Date: July 25, 2019

This decision is parsed into the following parts:
PART I: OVERVIEW;
PART II: THE HEARING;
PART III: SUBMISSIONS, ANALYSIS and FINDINGS; and,
PART IV: DISPOSITION

PART I: OVERVIEW

Allegations of Misconduct

Count 1

Provincial Constable (P/C) Jason Chenier stands charged with discreditable conduct in that he did act in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the Ontario Provincial Police, contrary to Section 2(1)(a)(xi) of the Code of Conduct contained in the Schedule to Ontario Reg. 268/10, as amended.

The amended particulars of the allegations state:

On or about March 3 and March 7, 2018 P/C Chenier commenced querying the complainant, X.X¹. on the OPP Records Management System, viewing all aspects of the occurrences in which she was involved.

P/C Chenier accessed and viewed personal and sensitive information regarding X.X. for his own personal interest.

Count 2

P/C Chenier stands charged with discreditable conduct in that he did act in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the Ontario Provincial Police, contrary to Section 2(1)(a)(xi) of the Code of Conduct contained in the Schedule to Ontario Reg. 268/10, as amended.

The amended particulars of the allegations state:

During the timeframe of November 23 – December 4, 2015 (date on November 28, 2015), December 26-January 2, 2016 (date on January 9, 2016) and April 2016 (date on April 30, 2016), P/C Chenier communicated with and obtained sexual services from a sex-trade worker/escort.

¹ Initials used to protect the identity and privacy of the public complainant.

P/C Chenier participated in these acts with a person with whom he was in a long-term relationship and another person with whom he had a relationship.

P/C Chenier engaged in both e-mail exchanges and text massaging with Y.Y²., an escort, to arrange for intimate dates.

P/C Chenier provided Y.Y. with \$1,000.00 in an envelope during each date (x3), as payment, in exchange for her services.

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

Representation

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

Plea

On July 25, 2019 P/C Chenier, accompanied by his counsel Mr. Girvin pleaded guilty and was found guilty of two counts of discreditable conduct.

Positions on Penalty / Submissions

Mr. Girvin and Inspector Doonan submitted a joint penalty proposal of a two year demotion to second class constable be imposed against P/C Chenier. The prosecution and defence counsel supported this proposal with submissions which are detailed in Part III of this decision.

Decision

I order P/C Chenier demoted to second class constable for a period of two years, followed by reinstatement to first class constable.

My reasons for the decision are as follows:

² Initials used to protect the identity and privacy of the witness.

Part II: THE HEARING

Exhibits

The exhibits for this matter are listed in Appendix A.

Agreed Statement of Facts

At the commencement of the hearing, the prosecution and defence counsel submitted an Agreed Statement of Facts which mirrored the Notice of Hearing.

Issue

Based on P/C Chenier's guilty plea and considering the Agreed Statement of Facts, I find there is clear and convincing evidence to support a finding of guilt on two counts of discreditable conduct. What remains at issue in this matter is my acceptance of the joint penalty proposal of a two year demotion from first class to second class constable.

My duty as the trier-of-fact is to ensure the proposed penalty strikes a balance between the expectations of the community, the needs of the organization and fairness to the respondent officer. I must be satisfied the proposed sanction supports the goals of the discipline process including to: correct errant officer behavior, deter others from similar misconduct, and to reassure the public.

Part III: SUBMISSIONS, ANALYSIS AND FINDINGS

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

Public Interest

Inspector Doonan submitted that the public interest arises when the misconduct has offended or will undermine the public confidence; the misconduct has generated a demonstrable risk or there is a need to demonstrate confidence in the police discipline process. I agree with Inspector Doonan that the public would be highly disappointed to learn that P/C Chenier sought the services of an escort for a sexual purpose being fully aware he was engaging in and supporting criminal activity.

Bill C36 is known as the *Protection of Communities and Exploited Persons Act* and has been enforced since December 6, 2014. This Bill treats prostitution as a form of sexual exploitation that disproportionately affects women and girls. The Bill reflects that prostitution is a transaction involving both the purchase and sale of sexual services; every time a prostitution transaction takes place, an offence is committed by the purchaser. Purchasing sexual services and communicating for that purpose is a criminal offence. Obtaining a sexual service involves an agreement for a sexual service being performed in exchange for payment or another consideration including drugs or alcohol.

Section 286.1 (1) of the Criminal Code of Canada outlines that anyone who communicates for the purposes of sexual services is guilty of an indictable offence or an offence punishable on summary conviction. P/C Chenier was not subject of criminal charges related to this misconduct, given other factors were considered. I concur with Inspector Doonan, that regardless of the absence of criminal charges, it is still a very serious matter when a police officer engages in criminal activity. I find the absence of criminal charges does not minimize the behaviour of P/C Chenier in this matter.

I also agree with the prosecution that P/C Chenier's misconduct reflects poorly on the OPP whose role is to combat criminal activity such as this. I find P/C Chenier's misconduct represents a serious breach of the public's confidence and trust. For a police officer to be engaged in criminal activities is counter to the role of a police officer and to the Oath of Office he swore to uphold.

I find *Public Interest* is an aggravating factor for consideration.

Nature and Seriousness of Misconduct

I find this is very serious misconduct. As outlined by the prosecutor, P/C Chenier committed a criminal act on more than one occasion, with more than one partner. Inspector Doonan provide an excerpt from Bill C36³. This document clearly explained the connection between prostitution and the exploitation of the most vulnerable members of our communities, including the increased risk of human trafficking.

I concur with Inspector Doonan who noted that the public sees police officers as protectors of the community, persons who uphold the law and are representative of good morale standing. P/C Chenier, in committing this misconduct, was a far cry from that image. The prosecution submitted that P/C Chenier, being a police officer involved in this activity, seemingly without regard for his actions, renders this more problematic and serious.

I find P/C Chenier's off-duty misconduct involving criminal offences in relation to the

³ Exhibit 14 – Overview of Bill C36

purchase of sexual services is serious on its own, however his additional on-duty misconduct involving the personal use of police databases compounds the totality of the seriousness of this misconduct. The community expects that police officers access police databases exclusively for police business. It is clear that the public trusts that police officers will not access police databases when they have a personal interest in a matter. I find P/C Chenier's misconduct had significant potential to undermine the public confidence.

Considering the totality of the circumstances of this matter, I find *Seriousness of Misconduct* a very aggravating factor.

Recognition of Seriousness of Misconduct/ Ability to Rehabilitate

Having considered the information before the tribunal, I have addressed these two penalty factors together given I find there is a direct and positive correlation between the two factors. P/C Chenier pled guilty to this misconduct at the earliest opportunity. He also provided a heartfelt apology to the tribunal that was read in through his counsel. I understand these are stressful circumstances involving information in respect to very personal matters, and that it would have been difficult for the officer to speak directly to the tribunal. I appreciate that P/C Chenier addressed the tribunal in relation to the full circumstances he was facing at the time, not as a means of minimizing his behaviour, but to provide the tribunal a fulsome understanding.

I will not reiterate the details of the personal challenges faced by P/C Chenier through an extended period from 2002 to 2017. I will only comment to say that he faced significant and serious life-altering events and was clearly not in a good place. He shared that, with the support of his Detachment Commander and the Workplace Safety Insurance Board (WSIB), he was able to get his life back on track and is now in a stable and supportive relationship. I commend P/C Chenier for taking accountability for his misconduct; this bodes extremely well for his ability to rehabilitate. I agree with Mr. Girvin, given P/C Chenier's 20-plus year policing career and the positive comments within his evaluations, there is a significant potential to reform. I am impressed with P/C Chenier's resilience and positive approach to getting his life and career back on track. I sincerely wish him well in this respect.

I find *Recognition of Seriousness of Misconduct* and *Ability to Rehabilitate*, both mitigating factors.

Specific and General Deterrence

I agree with Inspector Doonan's submission that P/C Chenier is an experienced officer, well aware of the expectations of the OPP in relation to his conduct and the image that he bears as an OPP officer. I also agree with Mr. Girvin who noted that

the penalty is significant and involves a financial implication of approximately \$20,000. This, in itself should send a message to P/C Chenier and other officers that such misconduct is not acceptable. The significant penalty also sends a message to the public that the OPP takes these transgressions seriously. I find the significant penalty imposed in this matter would remind all officers, particularly P/C Chenier that misconduct of this nature is considered serious and will not be tolerated by the OPP.

Specific and General Deterrence are aggravating factors for consideration.

Employment History

I have carefully reviewed the Career Profile⁴ and the Performance Learning, Development Plans⁵ (PLDPs) provided for consideration of the tribunal. P/C Chenier has been an OPP officer since 1998. Throughout his career he has been the recipient of a number of commendations in respect to his investigations. P/C Chenier has not been subject of previous findings of misconduct.

Throughout P/C Chenier's PLDPs, he not only met the standards but frequently was rated in the 'exceeds' category. Some positive comments include:

[he] is a valuable member of ...detachment. He does an excellent job ...very proficient in performing his tasks. ...engaged in his work and always professional and pleasant towards members and the community. It is a pleasure to work with [him]. He should be recognized for the hard work and dedication he displays within the OPP and within the community.

These comments are representative of other comments throughout his evaluations and are indicative of a positive, contributing and valued member of the OPP. P/C Chenier should be proud of his contributions to date. I wish him well on his road to recovery towards a positive path, both professionally and personally.

Upon reviewing the totality of P/C Chenier's employment records, I find this a strong mitigating factor.

Damage to Reputation of Police Service

I agree with the prosecution who noted that if the public found out about the details of this misconduct, it would result in damage to the reputation of P/C Chenier and the OPP in general. His misconduct erodes the trust and confidence of the very people that P/C Chenier swore an oath to protect.

⁴ Exhibit 15 – Career Profile

⁵ Exhibit 16, 17, 18 – Performance Learning, Development Plans – 2015-2016, 2016-2017, 2017-2018 respectively

I also concur with Mr. Girvin who noted that, while recognizing this misconduct would potentially cause some damage to the reputation of the OPP, a reasonable member of the public would realize this misconduct is not demonstrative of OPP officers in general and that the OPP takes such matters seriously.

Overall, I find *Damage to Reputation of Police Service* an aggravating circumstance.

Consistency

Inspector Doonan assured the tribunal this matter was subject of an impartial and comprehensive investigation from the outset. It is crucial to ensure dispositions enhance the interests of justice and restore public confidence. Although I was not provided with jurisprudence on this matter, I am satisfied that the prosecution and defence counsel worked together to come to a reasonable and consistent penalty within the range of penalties for similar misconduct.

Conclusion

I agree that the joint penalty proposal is reasonable and strikes a balance, considering the interests of all parties involved. The sanction imposed supports all the goals of discipline as previously outlined.


PART IV: DISPOSITION

Disposition

I order P/C Chenier demoted to second class constable for a period of two years followed by an automatic restatement to the rank of first class constable.

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

2020-01-10

X 

Signed by: Lisa Taylor LS (M)

Lisa Taylor
Superintendent
OPP Adjudicator

Date: January 10, 2020

Appendix A

The following exhibits were tendered during the hearing:

- Exhibit 1: Delegation – Adjudicator, Superintendent Taylor (I/Comm. Couture)
- Exhibit 2: Delegation – Adjudicator, Superintendent Bickerton
- Exhibit 3: Designation - Prosecutor, Inspector Doonan
- Exhibit 4: Designation – Prosecutor, Inspector Young
- Exhibit 5: Designation - Prosecutor, A/Inspector Lepage
- Exhibit 6: Delegation – All Officers
- Exhibit 7: Delegation – Adjudicator, Superintendent Taylor (Comm. Carrique)
- Exhibit 8: Delegation – Adjudicator, Superintendent Bickerton
- Exhibit 9: Designation - Prosecutor, Inspector Young
- Exhibit 10: Designation - Prosecutor, Inspector Doonan
- Exhibit 11: Designation - Prosecutor, A/Inspector Lepage
- Exhibit 12: Delegation – All Officers
- Exhibit 13: Agreed Statement of Facts
- Exhibit 14: Overview of Bill C36
- Exhibit 15: Career Profile
- Exhibit 16: P/C Chenier – PCS66 dated 2015 - 2016
- Exhibit 17: P/C Chenier – PCS66 dated 2016 – 2017
- Exhibit 18: P/C Chenier – PCS66 dated 2017 – 2018
- Exhibit 19: Commissioner Hawkes Commendation, dated November 9, 2017