

Peel Regional Police Discipline Hearing

In the Matter of

Ontario Regulation 268/10

Made under the *Police Services Act*, R.S.O. 1990, as amended

And

In the Matter of

Peel Regional Police

And

Constable Christy CLOUGH #3352

Charge: Discreditable Conduct

**Before: Superintendent David Downer
Peel Regional Police**

Appearances:

**Counsel for the Prosecution: Mr. Joël Dubois
Inspector Kim Whyte
Peel Regional Police**

Counsel for the Defence: Mr. Lawrence Gridin

Hearing Dates: January 8, 9, 10, and 11, 2013

Allegation of Misconduct

It is alleged that Constable Christy Clough #3352 committed discreditable conduct in that between February 26, 2010 and February 13, 2011, she acted in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the Peel Regional Police constituting an offence against discipline, discreditable conduct as prescribed in section 2(1)(a)(xi) of the Code of Conduct, Regulation 268/10, as amended.

Plea

Cst. CLOUGH pleaded not guilty to the allegation of misconduct.

Exhibits

The following exhibits were tendered:

- Exhibit #1 - 1st Appearance Hearing Officer's Delegation (Roselli)
- Exhibit #2 – Prosecutor's Designation (Bordeleau)
- Exhibit #3 – Co-Prosecutor's Designation (Whyte)
- Exhibit #4 – Hearing Officer's Delegation (Downer)
- Exhibit #5 – PRP Directive I-A-401(F) Canadian Police Information Centre (C.P.I.C.)
- Exhibit #6 – PRP Directive I-A-506(O) Security of Police Computer Systems and Information
- Exhibit #7 – Copy of Internal Affairs Interview with Cst. CLOUGH (08June2011)
- Exhibit #8 – Off Line CPIC/CNI/CFRO Queries Reports (17March2011)
- Exhibit #9 – CPIC System Responses (27February2012)
- Exhibit #10 – Driver Licence Query and Information from Ministry of Transportation (16March 2011)
- Exhibit #11 – Police Information Portal Search Results
- Exhibit #12 – Copy of OIRPD Public Complaint with Attachments (14February2011) and Letter to Chief (10March2011)
- Exhibit #13 – Decision of PSA Hearing of Discreditable Conduct on Cst. Adam CATE (19April2012)
- Exhibit #14 – Copy of Internal Affairs Interview with Ms. Cathy MATTHEWS (03May2011)
- Exhibit #15 – Letter from Cst. Derek CADIEUX from YRP (18March2012)
- Exhibit #16 – Agreed Statements of Fact in regard to Family Court Matters concerning Cst. CLOUGH and Mr. Craig SAGE (10January2013)
- Exhibit #17 – Affidavit of Mr. David THWAITES (11January2013)
- Exhibit #18 – Book of Authorities
 - Tab 1: *Girard v. Delaney*, Board of Inquiry (June 13, 1995) Ontario Police Services Act
 - Tab 2: *Mancini v. Courage*, (August 12, 2004) OCCPS #04-09
 - Tab 3: *Coon v. Toronto Police Service*, (April 10, 2003) OCCPS
 - Tab 4: *Hampel v. Toronto Police Service*, (August 14, 2008) OCCPS #08-06
 - : *Hampel v. The Toronto Police Service*, (April 3, 2009) 2009 CarswellOnt 1915, 248 O.A.C. 241, 94 Admin. L.R. (4th) 143
 - Tab 5: *Christian v. Grbich and Aylmer Police Service*, (August 9, 2002) OCCPS
 - Tab 6: *Mamak v. Ottawa Police Service*, (April 13, 2011) OCPC #11-05
- Exhibit #19 – *Krug v. Ottawa Police*, (January 21, 2003) OCCPS

Decision

In this matter, Mr. Lawrence Gridin represented Cst. CLOUGH and Mr. Dubois and Inspector Whyte represented Peel Regional Police.

It is the Peel Regional Police's position that on February 26, 2010 Cst. CLOUGH received confidential CPIC information and Durham Regional Police occurrences in regard to Mrs. Michelle Burch (Molloy-Sage) from Cst. Adam Cate. She then read and used that information outside of official police business for family court purposes. She also disclosed confidential medical information on Mrs. Burch (Molloy-Sage) to co-workers and her lawyer.

Further, it is Peel Regional Police's position that on February 13, 2011 Cst. CLOUGH used this CPIC information to request a York Regional Police employee to check on the status of Mrs. Burch's (Molloy-Sage) driver's licence during a child exchange at a York Regional Police station.

The focus of this Hearing is to determine whether clear and convincing evidence exists to find Cst. CLOUGH utilized CPIC and Durham Regional Police information in an unauthorized manner for unofficial law enforcement purposes. To do so, it must be found that she obtained this information and disclosed it to other unauthorized persons outside of her official law enforcement capacity.

Based on the totality of evidence and upon review of the essential elements of the Code of Conduct offence, I found weighty, cogent and reliable evidence which supported Prosecution's position that Cst. CLOUGH disclosed confidential information that she had obtained from CPIC and Durham Regional Police occurrences to a York Regional Police employee, at least three Peel Regional Police employees, and her lawyer. Therefore, I find the applicable burden of proof – clear and convincing evidence – has been met in that confidential information was obtained by Cst. CLOUGH and released in an unofficial and unauthorized capacity.

Reasons for Decision

Prosecution's Case

Mrs. Michelle Molloy-Sage (Burch) testified that she is 36 years old and employed as a day care provider. She is married to Craig Sage who she met in the summer of 2009 and married in October 2010. Mrs. Molloy-Sage has two children from a previous marriage and two step-children from Craig's relationship with Cst. CLOUGH.

When they first met, Craig Sage was residing in Barrie and there was a mutual agreement between him and Cst. CLOUGH in regard to child care. In May 2010 Craig moved to Courtice to live with Mrs. Molloy-Sage. In June 2010 Cst. CLOUGH was off from work on maternity leave and during that summer the children were exchanged on a weekly basis. In September 2010 a court order directed that Craig Sage have the children Monday to Friday and Cst. CLOUGH have them on the weekends. In December 2011 a new court order allowed Cst. CLOUGH custody every other weekend and some weeknights.

Mrs. Molloy changed her surname to Molloy-Sage after she married Craig Sage. Before Craig, she was married to David Burch and they had two children. The Burch marriage dissolved in 2008 and in July 2010 she legally reverted from Burch to her maiden name, Molloy. She has lived in Bramalea, Burlington, Oshawa, and Courtice.

Mrs. Molloy-Sage referred to the complaint¹ she filed with the Office of the Independent Police Review Director (OIPRD) on February 14, 2011 where she wrote that Cst. CLOUGH improperly got information on her through her position. She stated Cst. CLOUGH used this information in the 2010 family law proceedings and in February 2011 during a child exchange at a York Regional Police station.

She testified that in August 2010 a witness list for an upcoming civil proceeding was supplied to Craig Sage's lawyer which indicated Cst. CLOUGH's lawyer would be calling witnesses from Durham Regional Police. Mrs. Molloy-Sage admitted she had seen the witness list, but did not have a copy of it. She also testified that a letter from Cst. CLOUGH's lawyer dated August 17, 2010 requested information from Craig Sage's lawyer in regard to his fiancée's involvement with the criminal justice system and police.

She referred to the affidavit² of Cst. CLOUGH dated September 1, 2010 whereby Cst. CLOUGH sought information about Mrs. Molloy-Sage concerning her health and her involvement with police occurrences and the CAS. Mrs. Molloy-Sage believed this request was prompted as a result of information that Cst. CLOUGH knew and only could have been obtained through her position as a police officer. Mr. Sage's lawyer had the same concern and raised it with Cst. CLOUGH's lawyer verbally and then laid it out in a letter dated September 8, 2010³ whereby she stated:

"As I outlined to you orally, it is extremely concerning that your client has used her position of authority as a police officer to obtain confidential information relating to my client's fiancée. My client and his fiancée have taken independent steps in order to deal with this issue. It appears from those initial steps that your client has indeed improperly used her position."

Mrs. Molloy-Sage testified that a letter⁴ from Cst. CLOUGH's lawyer dated September 1, 2010 denied that Cst. CLOUGH improperly used her position and in a second letter dated the same day, stated that Cst. CLOUGH's lawyer did not anticipate calling some of the witnesses on the original witness list, including those from Barrie Police, Simcoe Police, Durham CAS, and the Durham Police Service.

Mrs. Molloy-Sage testified in regard to her meeting with Cst. CLOUGH at the York Regional Police station on February 13, 2011. She stated she had corresponded via email with Cst. CLOUGH in regard to the upcoming child exchange due to her husband being admitted into the hospital. The child exchange was arranged for 7:00 p.m. on February 13, 2011. Mrs. Molloy-Sage attended the station before 7:00 p.m. and waited on a bench. Cst. CLOUGH entered at approximately 7:05 p.m. with both children and ushered them to her. Mrs. Molloy-Sage then stayed at the bench until Cst. CLOUGH left as per their protocol.

Cst. CLOUGH approached the front desk and spoke to an officer. Mrs. Molloy-Sage heard the officer talk about not dealing with custody matters and that she would have to leave. Cst. CLOUGH then left the station and the officer waved Mrs. Molloy-Sage over. The officer informed her that Cst. CLOUGH had raised a concern about her driver's licence and asked to see it. The officer went to the computer and returned stating she had no concerns. Mrs. Molloy-Sage advised the officer that her driver's licence had been suspended when she had the surname Burch. Mrs. Molloy-Sage then wondered how Cst. CLOUGH

¹ Exhibit #12

² Exhibit #12, pages 22-29

³ Exhibit #12, pages 35 & 36, para 6

⁴ Exhibit #12, pages 30-32

would have known she had been a suspended driver. Upon arriving home she called the police station and obtained the officer's name and badge number that she had spoken to.

Mrs. Molloy-Sage testified that her licence had been suspended under the name of Burch because she had not paid a fine. She rectified the suspension at the same time she changed her name in 2010.

In cross-examination, Mrs. Molloy-Sage testified in regard to an allegation made by Cst. CLOUGH to the Durham CAS about her and Craig Sage. She agreed that the CAS knew her name as Burch from previous incidents as both names were on file.

Mrs. Molloy-Sage testified that her children and step children have a regular sibling relationship and that her children go by the surname of Burch. Mrs. Molloy-Sage agreed that there was a possibility that Cst. CLOUGH's children may have known her children's surname was Burch.

Mrs. Molloy-Sage testified that Craig Sage does not use cocaine but that Cst. CLOUGH had made that accusation in her statement to Peel Regional Police. She stated she believed Cst. CLOUGH said Craig was a user during family court proceedings. After reviewing Cst. CLOUGH's statement to Peel Regional Police, Mrs. Molloy-Sage admitted that there was no reference to Craig Sage using cocaine.

Mrs. Molloy-Sage agreed with Mr. Gridin the two sources that allege Cst. CLOUGH said Craig Sage used cocaine were Craig's lawyer and Cst. Adam Cate's statement.

Mrs. Molloy-Sage testified she had an ex-boyfriend by the name of Helm. She admitted that he was a cocaine user and that is why she removed him from her home. She confirmed that there was a Durham Regional Police report indicating this.

Mrs. Molloy-Sage testified Mrs. CLOUGH's lawyer denied using any confidential police information. She stated it was her belief that the lawyer would not have requested medical information about her unless there had been some prior knowledge that it existed on police records. She indicated that her bipolar was in the police records because her ex-husband alleged she supplied bipolar disorder medication to her child.

Mrs. Molloy-Sage agreed with Mr. Gridin that she had no personal knowledge of where Cst. CLOUGH's lawyer got the information from, but she had speculation, accusations, and beliefs. She did state that she contacted the Durham Court and learned that none of her files had been pulled or requested by anybody.

Mr. Gridin then went over the OIPRD complaint⁵ and attached documents with Mrs. Molloy-Sage. She confirmed that the essence of her complaint was the suspicious requests made by Cst. CLOUGH's lawyer in the family law proceedings. Mrs. Molloy-Sage stated she had seen a witness list through Craig Sage's lawyer and confirmed that representatives of Durham CAS and Durham Regional Police were on the list. It was after seeing the list that she went to 21 Division Peel Regional Police and spoke with Sgt. Campbell to express her concerns.

⁵ Exhibit #12

Cst. Kourtney Wilson-Atkinson testified that she has been a police officer with Peel Regional Police since 1999 and is currently assigned to 22 Division CIB. She testified that she first met Cst. CLOUGH in 2009 when they were constables on 22 Division-B Platoon and they later worked together in the Records Bureau in January 2010.

Cst. Wilson-Atkinson testified that they spoke openly to each other about personal matters and specifically had conversations about Cst. CLOUGH's ex-boyfriend's girlfriend and her contact with CLOUGH's children. Cst. CLOUGH had concerns about learning the girlfriend had mental health issues. Cst. Wilson-Atkinson believed it involved bipolar and a mental health apprehension. She learned this from Cst. CLOUGH, but did not know how Cst. CLOUGH obtained it.

Cst. Wilson-Atkinson testified that she has known Cst. Adam Cate since 2009 because they were on 21 Division-B Platoon. She worked with Cst. Cate and Cst. CLOUGH in Records Bureau from January to April and observed interactions between them. Cst. Wilson-Atkinson stated she worked next to Cst. Cate and Cst. CLOUGH worked in the front area. Cst. Wilson-Atkinson stated she never saw any inappropriate actions between the two, and Cst. CLOUGH never spoke of Cst. Cate to her.

She testified that she had no knowledge of emails between Cst. Cate and Cst. CLOUGH or knowledge of him visiting her residence. She did recall him volunteering to take a baby gift to her, but does not know if he delivered it or not.

Cst. Adam Cate testified that he has been a Peel Regional Police officer since November 16, 1997. He is presently assigned to the Records Bureau and has been there for three years. He met Cst. CLOUGH when she was assigned to the Records Bureau in early 2010.

Cst. Cate testified that he was recently convicted under the *Police Services Act (PSA)* for discreditable conduct for completing record searches on a Michelle Burch on February 26, 2010. He testified that he was approached by Cst. CLOUGH, who appeared to have a genuine concern in regard to a female who was in a relationship with her ex-husband and the arrangements for this female to transport Cst. CLOUGH's children. She was concerned that the female was not qualified to transport her children. Cst. Cate explained that Cst. CLOUGH was concerned that her ex-husband at that time was a coke addict, and as a result of this female's association with her husband, that she may also be a drug user. He asked Cst. CLOUGH why she could not check CPIC herself as he didn't see a problem with it. Cst. CLOUGH indicated to him that she was being watched.

Cst. Cate realized that Cst. CLOUGH had been involved with another officer from 22 Division, so he asked if he could do the search for her. Cst. CLOUGH advised that she was no longer in a relationship with that officer and that he was spreading false rumors about her. She then provided Cst. Cate with a female name of Michelle Birch with an approximate age of 36. At that point Cst. Cate decided it was an appropriate thing to do as he believed her concern was legitimate. He conducted a search on the female and obtained a potential address. Cst. CLOUGH then confirmed the address and as a result of that information he obtained a date of birth for the female. He also conducted a CPIC and PIP search, printed the material and gave it to Cst. CLOUGH. He reminded her that the information was confidential and it was not to leave the station. She acknowledged that she knew and understood.

Cst. Cate testified that what he meant by the term "qualified to transport her children", was Cst. CLOUGH was concerned the female may be a drug user, and concerned for the safety of her children.

Cst. Cate explained what he thought Cst. CLOUGH meant by "being watched". Cst. CLOUGH had arrived at the Records Bureau under an unusually difficult time, which was evident in her emotional state. She had experienced an unusually difficult situation with another officer at 22 Division and that was why she was transferred to Records Bureau. He stated she was being watched by the department.

Cst. Cate confirmed that the CPIC, CNI, and CFRO name queries⁶ were run by him. He also confirmed that he ran the CPIC system response⁷ on February 26, 2010. Cst. Cate confirmed that the Police Information Portal (PIP) searches and documents⁸ in the name of Michelle BURCH with a date of birth of 1976/09/03 were conducted by him. Cst. Cate testified that the searches identified the driver's licence of Michelle Burch and that she was a suspended driver.

Cst. Cate testified that once he had the information he took it up to the front desk and handed it to Cst. CLOUGH. He could not recall whether he gave them to her in a folder or envelope. He stated he ran the searches at his work station and thinks Cst. CLOUGH was initially with him, but had to return to her work station. He gave her the documents at her work station.

Cst. Cate testified that Cst. CLOUGH did not study the documents in front of him, she did not return them to him, and he never saw them again.

Cst. Cate denied Cst. CLOUGH's position that she never asked him to conduct the searches and she does not know where the information came from. He also denied that he said "read this" and she read the information and put it back on his desk.

Cst. Cate testified that he had no knowledge of Michelle Burch, her address, or who she was. She did not apply for a criminal record search and he had never met her. He stated, "To suggest I had done this search on my own appears to be absurd, certainly illogical and the information was never returned to me."

Cst. Cate denied Cst. CLOUGH's position that he had a crush on her. Rather he ran the searches because she told him she was concerned for the safety of her children.

Cst. Cate testified that he did look at the Durham Police reports briefly, but did not recall any issues of a police concern in relation to the transportation of children. He confirmed that the driver's licence suspension was of no concern to him.

Cst. Cate testified that he attended Cst. CLOUGH's residence on two occasions. He attended once after she called his residence in a distraught state stating she required cash for a lawyer and had no food in the fridge. He purchased some groceries and delivered them to her home. The children were at home and he denied making any sexual advances towards her.

On the second occasion he also brought groceries. He believed it may have been two or three weeks after the first visit. Upon arrival she was painting her basement and he helped briefly. She offered him a beer and afterward he felt he was being taken advantage of because if she had money for beer, she

⁶ Exhibit #8

⁷ Exhibit #9

⁸ Exhibit #11

probably did not need money for groceries. He denied making any sexual advances on that particular visit.

In cross-examination, Cst. Cate testified that Cst. CLOUGH was pregnant when she joined the Records Bureau and that she was stressed and vulnerable. He cared for her as he would any other employee. He stated she cried on a regular basis and liked to talk. Cst. Cate testified that she spoke about her children on a regular basis. Cst. Cate testified that she had no knowledge of Cst. CLOUGH being investigated by Internal Affairs in February 2010. Cst. Cate received a call in May 2011 from Internal Affairs and realized it was in relation to Cst. CLOUGH. Cst. Cate did not have any contact with Cst. CLOUGH for at least a year prior to that call from Internal Affairs. He believed the last time he saw Cst. CLOUGH was when she brought her newborn into the Records Bureau. After referring to his statement to Internal Affairs made on May 24, 2011 he agreed with Mr. Gridin that he may have had some contact with Cst. CLOUGH in early 2011.

Cst. Cate recalled that Cst. CLOUGH was concerned about the transportation of her children, but did not recall her discussing complaints she made to the CAS. Cst. Cate testified that Cst. CLOUGH was concerned that her ex-husband's fiancée had an ex-husband who had a drug issue and because of the drug association, the fiancée may not be the right person to transport Cst. CLOUGH's children.

Cst. Cate agreed with Mr. Gridin's suggestion that Cst. Cate heard no complaints about Cst. CLOUGH's sex other than the fact he was a cocaine user. Cst. Cate had no knowledge of Mrs. Burch being a cocaine user.

Cst. Cate testified that he did not take notes regarding the background checks he conducted on Mrs. Michelle Burch on February 26, 2010. He agreed that his memory between the time of the background checks and the Internal Affairs interviews may be less than perfect. Cst. Cate could not remember if the name Michelle Burch came up in the telephone conversation with Detective Pucci before or during the interview with Internal Affairs, but Cst. Cate knew it was in relation to him running CPIC checks. He also believed it was his conduct being investigated and not Cst. CLOUGH's.

Cst. Cate did not feel he was in jeopardy during the interview as in his heart he felt he was doing the right thing. Cst. Cate was adamant that the reason Cst. CLOUGH approached him about the CPIC checks was because of her concern in regard to the transportation of her children.

Cst. Cate testified that Cst. CLOUGH may have been crying on February 26, 2010. He testified that he did not ask for the name of Cst. CLOUGH ex's fiancée but rather he received the name and approximate age from Cst. CLOUGH so he could enter it into CPIC. He recalled Cst. CLOUGH standing over his shoulder as he entered the CPIC query. She was then called to the front desk and so Cst. Cate completed the checks and delivered them to her.

Cst. Cate testified that while running the checks, Cst. CLOUGH confirmed the address of Michelle Burch. Cst. Cate then ran the checks again with the correct name and date of birth. Cst. CLOUGH got called away to the front sometime between the CPIC check and the PIP check. Cst. Cate was not sure if Cst. CLOUGH was with him when he conducted the second CPIC check.

Cst. Cate testified that after he printed off the documents and reviewed them, he placed them in a folder or envelope, and personally handed them to Cst. CLOUGH. He told Cst. CLOUGH that he looked at

them and printed them off for her. He told her it was confidential information and should not leave the station and that there was no concern about the transportation of the children by Mrs. Burch. Cst. Cate then returned to his desk.

Cst. Cate disagreed with Mr. Gridin's suggestion that Cst. CLOUGH stated, "I don't know her age, all I know is that she's older than me." Cst. Cate denied that running Michelle Burch on CPIC was his idea. Cst. Cate agreed that the folder or envelope had no mention of Michelle Burch on the outside. He denied delivering it to Cst. CLOUGH's desk the following day and denied telling Cst. CLOUGH "Here, you need to read these, get rid of them afterwards." He also denied having the materials returned to him.

Cst. Cate testified that he felt he had a bona fide reason to search Mrs. Burch because he received information she might be a danger to the children.

Cst. Cate testified he had a second interview with Internal Affairs on August 25, 2011. Cst. Cate could not remember if Cst. CLOUGH wrote the information she provided to Cst. Cate down or just gave it to him verbally, but does remember her standing over his shoulder. Cst. Cate finally agreed with Mr. Gridin that Cst. CLOUGH gave him the information verbally.

Cst. Cate admitted that he pled guilty in regard to conducting a CPIC check for personal reasons and received a penalty of three days' pay.

Cst. Cate admitted he had a previous conviction for misconduct under the PSA for inappropriate sexual contact with members of the public and one in relation to note taking. The inappropriate sexual contact misconduct occurred over 20 years ago.

In re-examination Cst. Cate testified that he used the term "unfortunately" in answering some of the questions because he was under compulsion to attend the Hearing. He had no ill feelings towards Cst. CLOUGH and hoped things work out for her.

Cst. Cate apologized to Mrs. Burch for the difficulties he had caused her and explained he was just trying to protect the children.

Cst. Tracy Cleland testified that she was in her fourteenth year of policing with Peel Regional Police and met Cst. CLOUGH when she was at the Ontario Police College. Cst. Cleland was selling police equipment to Cst. CLOUGH's class and they struck up a conversation. At that point Cst. CLOUGH was looking for a place to live and Cst. Cleland had a house coming available in Barrie for rent. Cst. CLOUGH started living there in May 2008 and signed a one year lease with her common-law, Craig Sage, and two children.

Cst. Cleland described her initial relationship with Cst. CLOUGH as a landlord-tenant relationship, but they eventually became friendly because they were on the same job.

Cst. Cleland testified that Cst. CLOUGH spoke of a girlfriend that her ex common-law had, but never referred to her name. Cst. CLOUGH told Cst. Cleland about the checks on this female. Cst. CLOUGH mentioned that she had some concerns because the girlfriend had some issues with Durham Police involving mental health. Cst. CLOUGH told Cst. Cleland that she didn't know who did the checks and that they were just left on her desk. The reports were from Durham and possibly that the girlfriend had been apprehended for mental health reasons.

Cst. Cleland testified that she did not really go into the information with her as it is against policy to have checks done on people in personal matters. Cst. Cleland stated that through conversations over a course of months she learned from Cst. CLOUGH that this information had come up in family court and her lawyer was aware of it. The family court matter involved a custody dispute over Craig Sage and Cst. CLOUGH's children.

Cst. Cleland testified that Cst. CLOUGH described Cst. Adam Cate as being a friend in the summer of 2010 while she was on maternity leave:

In cross-examination Cst. Cleland testified that Cst. CLOUGH was an open person and talked a lot about her personal life, including Craig Sage and her children. Cst. Cleland testified that she did not stay in contact with Craig Sage once she was no longer his landlord. Cst. Cleland testified that she did have conversations with Cst. CLOUGH about the CAS, but could not recall what aspects of that came up.

Cst. Cleland stated Cst. CLOUGH complained to her about some personal stuff in relation to people on her shift and at some point she felt she was under a microscope. Cst. Cleland testified that she was not really in touch with Cst. CLOUGH while she was in the Records Bureau.

Cst. Cleland testified that Cst. CLOUGH mentioned to her that she had an issue with Cst. Cate while Cst. CLOUGH was on maternity leave. Cst. CLOUGH had mentioned to Cst. Cleland that Cst. Cate had visited her home once and brought groceries while she was painting the house.

Cst. Cleland testified that Cst. CLOUGH had mentioned to her that Cst. Cate had sent her emails or texts about his feeling towards her, about him loving her. Cst. Cleland stated that she told Cst. CLOUGH that Cst. Cate is not someone she wanted her to hang out with. Cst. Cleland testified that she knew of no specific complaints about Cst. Cate, other than from Cst. CLOUGH and believed he was not the best fit for her.

Cst. Cleland viewed Cst. CLOUGH and Cst. Cate's relationship as strictly platonic and she did not believe Cst. CLOUGH was working towards a relationship with him.

Cst. Cleland stated that she had no knowledge of the information that came up in family court, but in conversation, Cst. Cleland believed that Cst. CLOUGH's lawyer was aware and that at some point it was going to come up. Cst. Cleland did not know who made the lawyer aware or why, but was sure the lawyer was aware of the issues of not just Craig Sage, but also his girlfriend.

Cst. Cleland testified that she had the conversation with Cst. CLOUGH in early 2010 in regard to this information left on her desk and had not had any further conversation with her prior to the Internal Affairs interview of June 2011. Cst. Cleland made no notes in relation to this conversation.

Cst. Cleland testified that the home she rented to Cst. CLOUGH and Craig Sage was left in rough shape when they moved out. In January 2010 Cst. Cleland could not find Craig Sage to have him pay some outstanding rent and that is when she contacted Cst. CLOUGH and these conversations took place concerning the family court matters. About a month later the CPIC conversation took place.

In re-examination Cst. Cleland testified that she had never seen any texts or emails that Cst. Cate had allegedly sent to Cst. CLOUGH. Cst. Cleland has never seen Cst. Cate or Cst. CLOUGH together.

Cst. Krista Noakes testified that she has been a Peel Regional Police officer for ten years. Cst. Noakes met Cst. CLOUGH at 22 Division, but really got to know her when they worked together in the Records Bureau. Cst. Noakes stated they became friends in 2009 and while this is no longer the case, she had no ill feelings towards Cst. CLOUGH. Cst. Noakes said she was extremely upset at being dragged into something like this.

Cst. Noakes testified that she had a conversation with Cst. CLOUGH when Cst. CLOUGH returned to work after her maternity leave. Cst. CLOUGH told Cst. Noakes that she was called in by her supervisor and asked about running somebody. Cst. CLOUGH told Cst. Noakes that it was about her ex's girlfriend at the time and that Cst. CLOUGH had given this information to the lawyer because it was good information and she was worried about it. Cst. CLOUGH stated it had to do with her children and a custody dispute and that the ex's girlfriend had some mental issues. Cst. CLOUGH told Cst. Noakes that the girlfriend was crazy and Cst. CLOUGH was concerned and that's why she gave the information to her lawyer.

Cst. Noakes testified that Cst. CLOUGH told her that the guy she worked with in Records ran the searches. Cst. Noakes was not sure when she learned that his name was Adam, but eventually Cst. Noakes learned who it was because she eventually worked in the Records Bureau. Cst. CLOUGH did insinuate to Cst. Noakes that Adam liked her and he would have done it because he liked her.

In cross-examination Cst. Noakes testified that Cst. CLOUGH never told her that she handed over the records to the lawyer. Rather, it was more a matter that Cst. CLOUGH had advised the lawyer of the information. Cst. Noakes denied Mr. Gridin's suggestion that Cst. CLOUGH simply told her lawyer about all the crazy things that Craig Sage's new partner was doing with respect to the kids. Cst. Noakes stated it was definitely in regard to information that she had found out about her, like actually having a record. Cst. Noakes stated it was something that Cst. CLOUGH found out during the records check.

Cst. Noakes testified that Cst. CLOUGH never told her what she provided to the lawyer, just that she was concerned because of the things she found out in the records check.

Cst. Noakes testified that she was not aware Cst. CLOUGH had made reports to the CAS. Rather their conversations stemmed around the information she had gotten from the police records in regard to the girlfriend's mental stability and that Cst. CLOUGH voiced these concerns to the lawyer.

Cst. Noakes was adamant that Cst. CLOUGH told her that she got information from CPIC or from reading some police reports and she told her lawyer about what she read in the police reports. Cst. Noakes testified that this information came out through several conversations with Cst. CLOUGH.

Cst. Noakes testified that Cst. CLOUGH told her that Cst. Cate was a flirty guy. Cst. Noakes stated he seemed like a regular guy and was not aware of any reputation.

Cst. Amarinder Bhullar testified that he is in his fourth year of policing and he met Cst. CLOUGH on 22-C platoon. Cst. CLOUGH was on his platoon from September 2010 until the time she was suspended.

Cst. Bhullar testified that he had a conversation with Cst. CLOUGH after they completed a domestic call while they were parked at Steeles and McLaughlin. He did not know the date but it was in the evening between 7:00 and 11:00 p.m. At that time Cst. CLOUGH indicated she was being investigated by Internal Affairs because someone ran someone and placed the information on her desk and that information got

to the family court. Cst. Bhullar asked her if she did it and she stated no. Cst. Bhullar then asked her what type of information and she indicated it was a long story and did not expand.

In cross-examination Cst. Bhullar testified that Cst. CLOUGH never indicated to him that she provided this information to the family court. She never stated she provided the information to her lawyer. She stated she was being investigated and she was in trouble because of the allegations against her.

Cst. Christopher Wighton testified he was entering his ninth year of policing and he met Cst. CLOUGH when they worked together on 22-C platoon. Cst. CLOUGH came on the platoon on her return from maternity leave.

Cst. Wighton testified that on St. Paddy's Day he met with Cst. CLOUGH at a pub at Hanson and Queen St. area. She showed Cst. Wighton a Notice of Intent with Internal Investigations. The allegation was in regard to a CPIC search and Cst. Wighton asked her if she did it. Cst. CLOUGH said she did not. She told Cst. Wighton that there was a light skinned guy in Records that had a crush on her and she thought he did it. Cst. Wighton told her to approach the Association.

Cst. Wighton testified that Cst. CLOUGH told him the subject of the records search was her ex's girlfriend. Cst. Wighton testified that they did not discuss the specifics of the information she received. Cst. CLOUGH told Cst. Wighton that the girl was run on CPIC and her background was dropped on her desk. Cst. CLOUGH told Cst. Wighton that when she came back to her desk it was there.

Cst. Wighton stated that he believed Cst. CLOUGH told him she either gave it to her lawyer or got rid of it. His gut feeling was she gave it to her lawyer, but he couldn't recall one hundred percent.

In cross-examination Cst. Wighton testified that he remembered reading the Notice Cst. CLOUGH showed him, but didn't remember the contents. All he remembered was that it was in relation to misconduct of CPIC usage. Cst. Wighton could not remember the specific words of their conversation nor could he recall for sure whether Cst. CLOUGH told him she was at her desk when the information was placed on the desk.

Cst. Wighton stated he had no conversations with Cst. CLOUGH between the time of the St. Paddy's Day meet and his interview with Internal Affairs.

Agreed Statement of Fact in regard to the Family Court Matters concerning Cst. CLOUGH and Mr. Craig Sage

Mr. Dubois submitted an agreed statement of fact (ASoF)⁹, facts which Mr. Gridin agreed were substantially correct. The ASoF is reproduced herein.

1. In the family law case of *Sage v. Clough*, there was only one case conference held in the month of August, 2010.

⁹ Exhibit #16

2. Attached at Appendix A is the witness list that was filed at the August 10, 2010 trial conference. This document was obtained from the family law court on January 10, 2013. It is agreed that the Document is a complete and accurate copy of the proposed witness list.
3. Constable Clough was unrepresented in the family law matter until August, 2010.
4. In March 2010, a new family court rule/regulation was established which required the furnishing of information relating to the involvement of third parties in "care or parenting roles". A form was established for this purpose. It is Form 35.1 of the *Family Law Rules* and a blank copy is attached as Appendix B. The form requires disclosure of information to the Court about a third person involved with the children addressing issues such as CAS and criminal history.
5. David Thwaites, Constable Clough's lawyer in the family matter, has always maintained the position that he did not use any confidential police information in the course of the family law matter.

Defence's Case

Mr. David Melrovic testified that he is an articling student with Mr. Gridin's law office. On January 11, 2013 he received a fax of Mr. David Thwaites' affidavit¹⁰.

Summary of Mr. David Thwaites' Affidavit:

He was the former family lawyer for Constable Christy CLOUGH in the matter of *Sage v. Clough* and as such he had personal knowledge of the matters herein deposed to. He has been a member of the bar since April, 1981 and been practicing family law his entire career.

Mr. Thwaites was consulted by Cst. CLOUGH in late July 2010 and retained in early August 2010. On March 1, 2010, a new family court rule/regulation was established which required the furnishing of information relating to the involvement of third parties in "care or parenting roles". Form 35.1 requires disclosure of information to the Court about a third person involved with the children addressing such issues as CAS and criminal history. The Form 35.1, particularly section 10, requires information relating to third party's CAS and criminal history.

As the CLOUGH matter had bridged the period before and after March 1, 2010 without the filing of the Form 35.1, information relating to Mr. Sage or his new spouse with whom he was residing (Ms. Molloy-Sage), Mr. Thwaites made a request for the Form 35.1 information to legal counsel for Mr. Sage.

On August 11, 2010 a pretrial was conducted in the *Sage v. Clough* matter. On August 11, 2010 Mr. Sage's counsel made an allegation that Cst. CLOUGH had acted improperly regarding the acquisition of documents/information. Mr. Thwaites responded by explaining to the Court that his request was simply for the Form 35.1 information and he expected it would be forthcoming. At the pretrial, counsel for Mr. Sage advised Mr. Thwaites that she would not be providing him

¹⁰ Exhibit #17

with the Form 35.1 information in relation to Ms. Molloy-Sage. A witness list was prepared at the pre-trial conference. A copy of that list is attached to exhibit #17.

The only witnesses on Mr. Thwaites' list relating to Ms. Molloy-Sage were a representative from Durham Regional CAS and a representative from Durham Regional Police. These witnesses were added in response to the comment from Mr. Sage's counsel that she would not be providing the Form 35.1 information in relation to Ms. Molloy-Sage. Subsequently on September 8, 2010, Mr. Sage's counsel provided Mr. Thwaites with certain documents and information related to Ms. Molloy-Sage. The only information provided related to Ms. Molloy-Sage's own custody matter and was quite limited.

Mr. Sage's counsel further advised that Mrs. Molloy-Sage had no criminal charges outstanding and no criminal record. There was no provision of information regarding CAS involvement.

Mr. Thwaites could not provide any information about what may or may have not been communicated to him by Cst. CLOUGH, or advice that he provided her, as such communications are covered by solicitor-client privilege. At no time did Mr. Thwaites disclose any confidential police information or file any such information with the Court.

Submissions

By the Defence

Mr. Gridin began by stating that he wanted to go over a couple of themes that he thought were important for the Hearing Officer to keep in mind when assessing and weighing the evidence in this case. The first thing that the Hearing Officer needed to be mindful of was exactly what Cst. CLOUGH was charged with. He stated she was charged with discreditable conduct, and the definition of that offence is conduct that is likely to bring discredit on the police service. If facts were publically known, would people have their view of the Peel Regional Police soured? Mr. Gridin suggested that not every act of misconduct by a police officer will constitute discreditable conduct.

The next theme was in regard to standard of proof and the degree the Hearing Officer needed to be satisfied before making a finding of guilt.

Cst. CLOUGH did not testify and could not respond to cross-examination and that is something the Hearing Officer would have to consider when considering the weight of that evidence. The compelled statement is taken by experienced detectives asking probing questions aimed at having the officer inculpate herself. Mr. Gridin reminded the Hearing Officer that this was something he should consider when weighing the evidence. He did not dispute that it has less weight than if she had testified orally before him.

Mr. Gridin suggested that in virtually every instance the witnesses who testified were talking about minor incidents, fleeting interactions, trivial points about things that were going on in another person's life. Many of these officers were not even friends with Cst. CLOUGH. In every instance officers were not reminded of these trivial points, until more than one year later after the fact when they were interviewed by Internal Affairs. None of the officers took notes and they were just trying to do their best to remember conversations that really didn't matter to them.

Mr. Gridin then discussed what was admitted in the case:

1. Cst. CLOUGH and Cst. Cate were working in the Records Bureau together on February 26, 2010.
2. They had a conversation that day.
3. Cst. CLOUGH advised Cst. Cate about concerns she had for her children's well-being.
4. Whatever those specifics were, it was upsetting enough to cause Cst. CLOUGH to cry.
5. Cst. Cate was the one that initially raised the subject of running Mrs. Molloy-Sage on CPIC.
6. Cst. CLOUGH was aware of certain information about Michelle Burch at the time, specifically she had a phonetic name, B-I-R-C-H, like the tree, an approximate age, and what city she lived in.
7. In some fashion that information was transmitted to Cst. Cate at some point.
8. Subsequently Cst. CLOUGH received Durham Regional Police occurrence reports and CPIC information in some container, whether it was an envelope or a file folder, and that it was Cst. Cate who delivered this file folder or envelope to her.
9. Cst. CLOUGH read those reports.
10. Cst. CLOUGH learned from reading those reports that Mrs. Molloy-Sage was bipolar, that she was involved with the police numerous times, and that she had a suspended driver's licence at one point.
11. On February 13, 2011 a child exchange took place in York Region between Cst. CLOUGH and Mrs. Molloy-Sage.
12. This was the first time that the two of them had conducted an exchange.
13. On that date Cst. CLOUGH did raise the issue of Mrs. Molloy-Sage's driver's license with the York Region Police.

Mr. Gridin addressed the issue of Cst. CLOUGH knowing Mrs. Molloy-Sage's previous married name. Mr. Gridin stated there was not a speck of evidence that Cst. CLOUGH obtained this name improperly. Cst. CLOUGH states in her compelled interview that she got this name from her daughters and there is no evidence to the contrary.

Mr. Gridin then addressed what happened on February 26, 2010. He stated there is an issue of whether or not Cst. CLOUGH solicited Cst. Cate into running the query, or whether he did it himself because he had concerns for the children's safety. This is where the Hearing Officer has to have a hard look at Cst. Cate's evidence. The evidence differs from that of Cst. Cate and Cst. CLOUGH and there are different explanations for what happened. In order to be able to make a finding of fact that Cst. CLOUGH actually made this request, you have to accept Cst. Cate's evidence and reject Cst. CLOUGH's evidence. The Hearing Officer would have to accept that Cst. Cate's evidence is reliable enough to meet the clear and convincing standard.

Mr. Gridin stated that it was strange that Cst. Cate's memory seems to have become more crystallized over time. The example Mr. Gridin spoke to was Cst. Cate's testimony regarding the sequence of events on February 26, 2010. Cst. Cate testified he was certain Cst. CLOUGH was standing over his shoulder while he was running the queries and that Cst. CLOUGH was telling Cst. Cate what to enter into the fields on the computer screen. In Cst. Cate's Internal Affairs interview a year and a half ago on August 25, 2011 Cst. Cate did not remember whether or not he received the information verbally or Cst. CLOUGH wrote it down and gave it to him. At the Hearing, Cst. Cate stated it may have been dictated or read out, he couldn't remember. Mr. Gridin stated that this should raise alarm bells for the Hearing Officer.

A second example Mr. Gridin spoke to was the sequence of the CPIC queries. Cst. Cate was adamant he ran the checks in the sequence of CPIC, CPIC, PIP, but the actual timing of the checks were CPIC, PIP, CPIC.

A third example Mr. Gridin spoke to was Cst. Cate's reasons why he ran the checks. Cst. Cate testified that Cst. CLOUGH was concerned that her children were being driven by a person who may be a cocaine user. Mr. Gridin stated this made no sense because Mrs. Molloy-Sage driving the children as part of any kind of access arrangement arose a full year later.

Mr. Gridin also stated that Cst. Cate originally testified that he did not recall Cst. CLOUGH crying on the date of the CPIC checks being run, but he ultimately agreed that she was crying at the time.

Mr. Gridin states that Cst. Cate testified that he conducted the checks because Cst. CLOUGH asked him to do it and Cst. Cate was motivated by a genuine desire to ensure the children were okay and thought he was doing the proper thing. Mr. Gridin stated there was some speculation in Cst. CLOUGH's interview transcript that Cst. Cate may have been motivated to conduct the checks because he had a crush on Cst. CLOUGH.

In summarizing Cst. Cate's evidence Mr. Gridin stated that Cst. Cate did not have a clear and distinct memory of what happened on February 26, 2010 when he was interviewed by Internal Affairs. Cst. Cate's memory was coloured by rumours and information he had seen in the reports he printed off for Cst. CLOUGH.

Mr. Gridin stated that Cst. Cate's evidence suffers from a number of serious problems and it is unsafe to rely on. Where the evidence differs from Cst. CLOUGH's, the Hearing Officer should prefer Cst. CLOUGH's evidence which is logically insistent and not contradicted by any independent evidence. Mr. Gridin stated even if the Hearing Officer does not accept Cst. CLOUGH's evidence, he should not rely on Cst. Cate's because Cst. Cate's memory is not reliable enough to meet the standard of clear and convincing evidence.

Mr. Gridin stated that even if the Hearing Officer concludes that Cst. CLOUGH solicited the checks, she was acting in good faith if she made that request because she had the safety of her children in mind. Cst. CLOUGH's actions amount to inducing insubordination, not discreditable conduct.

Mr. Gridin addressed the allegation of Cst. CLOUGH providing information to her lawyer which she gained from the CPIC checks. First, Mr. Gridin dealt with the evidence of Cst. Bhullar. Mr. Gridin stated that Cst. Bhullar's memory was the clearest because he was able to remember where the conversation took place and what he was doing. His evidence was that Cst. CLOUGH told him about the allegations against her and she did not actually say she disclosed information to her lawyer. Cst. Bhullar's evidence assists the defence, not the prosecutor.

Mr. Gridin stated that Cst. Noakes was insistent that Cst. CLOUGH told her that she had disclosed records to her lawyer. This was despite the fact that the conversation between Cst. Noakes and Cst. CLOUGH took place in early 2010. Cst. Noakes had no notes of the conversation and never spoke of the incident again until Cst. Noakes' Internal Affairs interview on June 22, 2011. Mr. Gridin stated that Cst. Noakes had difficulty telling Internal Affairs about the specifics of the conversation and was all over the place in respect to her memory, but during the testimony at the Hearing she was certain.

Mr. Gridin stated that Cst. Wighton had the most uncompromising attitude when it came to his own memory. Cst. Wighton had a brief conversation with Cst. CLOUGH whereby he took no notes and was of no particular importance to him and had no further conversations on the matter until his Internal Affairs interview. Cst. Wighton's evidence lacked the reliability to rise to a clear and convincing evidence threshold.

Mr. Gridin spoke to the issue of the Hearing Officer making a finding that Cst. CLOUGH did disclose the information to her lawyer. Mr. Gridin proposed that there was nothing wrong in a client telling their lawyer anything, even if confidential. Mr. Gridin stated that our entire system of justice is premised on the idea that a person is free to tell their lawyer anything.

Mr. Gridin stated that the only evidence that this information was used in family court comes from Mrs. Molloy-Sage in the documents she filed. He stated that this is nothing more than suspicion and innuendo unsupported by any proof or evidence rising to the standard of clear and convincing.

Mr. Gridin stated that Mrs. Molloy-Sage's evidence was not the hallmark of a fair and honest witness. Mr. Gridin stated that Mrs. Molloy-Sage was combative, refused to make reasonable concessions, and repeatedly presented beliefs as though they were facts. Mr. Gridin stated that the manner that Mrs. Molloy-Sage gave her evidence demonstrated a willingness to volunteer anything she could to damage Cst. CLOUGH.

Mr. Gridin stated that Mrs. Molloy-Sage lied. Mrs. Molloy-Sage testified that there was a witness list generated around August 11, 2010 whereby it contained detailed information about Mrs. Molloy-Sage and there were summaries of evidence that witnesses were going to give. Mrs. Molloy-Sage testified that the summaries could only have been known from files that Cst. CLOUGH must have obtained. Mr. Gridin states that the actual witness list¹¹ had no specifics, no detailed information, nothing private about Mrs. Molloy-Sage, and nothing about her health.

Mr. Gridin asked the Hearing Officer to totally reject the evidence of Mrs. Molloy-Sage. Mr. Gridin stated that Cst. CLOUGH would have known there were occurrences on file with Barrie Police, Simcoe County and Durham Regional CAS because she filed the complaints herself on Mrs. Molloy-Sage and Mr. Sage. None of the accessed CPIC reports were from Barrie Police.

Mr. Gridin submitted that because of a bitter custody dispute between Cst. CLOUGH and Craig Sage, Mrs. Molloy-Sage decided to level a complaint about this information being used in family court in order to gain some advantage in that proceeding.

Mr. Gridin did not dispute that Cst. CLOUGH raised the issue of Mrs. Molloy-Sage's driver's licence at the child exchange on February 13, 2011. Mr. Gridin stated that there was also no dispute that the source of that concern would have first arisen because Cst. CLOUGH had some awareness that Mrs. Molloy-Sage, at least at one point, was unlicensed.

Mr. Gridin stated that Cst. CLOUGH had some confidential information she shouldn't have and as far as she knew this was the first time Mrs. Molloy-Sage was going to drive her children. Mr. Gridin stated that Cst. CLOUGH had a duty as a police officer and a parent to address the issue and prevent offences and ensure the well-being of her children. Mr. Gridin suggested that if Cst. CLOUGH did nothing and

¹¹ Exhibit #16

something happened she would be neglecting her duty and that would have been discreditable conduct. Mr. Gridin stated that telling another police employee for a legitimate purpose related to law enforcement is certainly not discreditable conduct.

Mr. Gridin suggested that Cst. CLOUGH never did anything improper with the information that she received. She acted in good faith, motivated by an honest and genuine concern for the well-being of her young children and no more. He stated she did not tarnish the reputation of the police service and stated she acted in accordance with those values that most people would view as a credit to the police service. He stated there was no discreditable conduct and asked the Hearing Officer to find Cst. CLOUGH not guilty.

By the Prosecution

Mr. Dubois gave a brief overview of the law in relation to this matter and submitted a brief of authorities¹². Mr. Dubois spoke to the *Girard v. Delaney* case which dealt with discreditable conduct and the test that is applied. Mr. Dubois presented the *Mancini v. Courage* case which is more recent and again provided the test for discreditable conduct. Mr. Dubois submitted that the conduct of Cst. CLOUGH met the test.

Mr. Dubois presented the *Coon v. Toronto Police Service* case and the parallels between that case and the matter at hand. Cst. Coon felt justified in doing CPIC searches for the safety and well-being of his children, but the Commission found that improper use of CPIC was a serious misconduct and one cannot use CPIC for personal use. Mr. Dubois stated that the evidence in this case showed that Cst. CLOUGH did not directly access the information, but she requested the searches be made by Cst. Cate. Mr. Dubois stated that the fact of running a search yourself for personal use or having a colleague do it for personal use is discreditable.

Mr. Dubois referred to *Hampel v. Toronto Police Service*, another case where CPIC was used for personal use involving family matters. The Commission in this case further explained why it is improper and inappropriate to do so. Mr. Dubois stated that the case before this Hearing is exactly what we have. He stated that authorities are clear; an officer cannot use confidential police information accessed either directly or indirectly for personal use.

Mr. Dubois presented the *Christian v. Grbich and Alymer Police Service* case and advised it was an example of when breaches of CPIC use is discreditable conduct and not insubordination.

Mr. Dubois spoke to the *Mamak v. Ottawa Police Service* case as to the seriousness of CPIC violations and pointed to the Commission's statement; "The Hearing Officer properly concluded that abuse of CPIC is a serious offence."

The last case presented by Mr. Dubois was *Krug v. Ottawa Police Service*. Mr. Dubois stated he included this case because of credibility issues in regard to the witnesses. The Commission explained Justice O'Halloran's test in regard to properly assessing credibility and Mr. Dubois reminded the Hearing Officer that he would have to apply this test. Mr. Dubois stated that the fact the Hearing Officer did not hear Cst. CLOUGH testify and that she was not cross-examined is a factor the Hearing Officer will need to take into consideration.

¹² Exhibits #18 & 19

Mr. Dubois addressed the matter of Mr. Gridin calling Mrs. Molloy-Sage a liar. Mr. Dubois stated that Mrs. Molloy-Sage's evidence surrounding the witness list was not entirely inconsistent. Mr. Dubois stated she recalled that prior to the August 17, 2010 letter, there had been an appearance and there had been a discussion that there was a list. This list described witnesses and what they were going to testify about. Mr. Dubois stated the list attached to the ASoF¹³ does have a witness name and a topic which they will testify about. Mr. Dubois stated it would be a stretch to call her a liar on that point.

Mr. Dubois addressed the matter of Mr. Gridin attacking the credibility of Cst. Cate in relation to the sequence and times he ran the CPIC and PIP checks. Mr. Dubois described the process and times that Cst. Cate went through to conduct the checks. Mr. Dubois explained that the CPIC system and PIP system are two different systems and it is not inconsistent or inconceivable that there would be a three minute difference between the two systems. The information Cst. Cate received was consistent with his evidence and the three minute difference is a non-issue.

Mr. Dubois submitted that Cst. Cate pled guilty to the charge of discreditable conduct for having run the searches and he had no reason to lie. Mr. Dubois stated that Cst. Cate had no reason to fabricate or to change his story and it would not be logical to plead guilty and then lie about it. Mr. Dubois submitted that Cst. Cate never changed his story of what occurred, he was forthright, and answered questions fully in chief and cross-examination. Mr. Dubois asked the Hearing Officer to look at the compelled interview transcript of Cst. CLOUGH and he will distinguish between an officer ready to admit his faults and one who is not.

Mr. Dubois stated that it was uncontested that Cst. CLOUGH received the information from Cst. Cate. Mr. Dubois submitted that Cst. CLOUGH reviewed the records and she recalled reading specific Durham Regional Police records and CPIC printouts. From those records, Mr. Dubois submitted that Cst. CLOUGH found out that Mrs. Molloy-Sage was a suspended driver. Cst. CLOUGH found that Mrs. Molloy-Sage was bipolar and had involvement with Durham Regional Police. Cst. CLOUGH found Mrs. Molloy-Sage had been involved in domestic issues involving Mrs. Molloy-Sage's ex, and all of which led to the involvement of the Durham CAS.

Mr. Dubois stated that Cst. CLOUGH admitted that when she got the records she immediately knew that the information contained CPIC information and that it was about Mrs. Molloy-Sage. Cst. CLOUGH admitted to reading the records and was pleased that she found out something about the person who was with her children.

Mr. Dubois stated that there were two Peel Regional Police directives that were in force at the time of this incident which were relative to this matter. He asked the Hearing Officer to take into consideration the directives when making a determination.

Mr. Dubois stated that Cst. CLOUGH was subject to these directives at the time of receiving and reviewing the unauthorized record searches. Mr. Dubois stated that Cst. CLOUGH was well aware that unauthorized use of CPIC information may lead to disciplinary proceedings and there is no evidence before the Hearing that Cst. CLOUGH was undertaking a criminal investigation on Mrs. Molloy-Sage or that she was authorized to review these records at the time of this incident.

¹³ Exhibit #16

Mr. Dubois submitted that Cst. CLOUGH's reviewing of the confidential records for non-police business, for personal use, as was demonstrated in the case law provided, and being in a conflict of interest, is in itself discreditable conduct. Mr. Dubois stated that based on the fact that Cst. CLOUGH read the records, was pleased to have information on Mrs. Malloy-Sage, and misused her privileges is discreditable conduct in itself.

Mr. Dubois stated that the Hearing heard evidence that sometime after reviewing the records, Cst. CLOUGH told Cst. Noakes, Cst. Cleland, and Cst. Wilson-Atkinson that Mrs. Molloy-Sage had mental health issues. Cst. CLOUGH specifically told Cst. Cleland that the information came from Durham records. Cst. Noakes testified Cst. CLOUGH told her she received it from records and Cst. Wilson-Atkinson was not sure of the source.

Mr. Dubois addressed the matter of Mr. Gridin trying to discredit Cst. Noakes. This was in regard to Cst. Noakes testifying that she thought she received information from Cst. CLOUGH in early 2010 or at least within the first six months. Mr. Dubois stated that Mr. Gridin was discrediting this testimony because Cst. CLOUGH did not retain a lawyer until August 2010. Mr. Dubois submitted that David Thwaites' affidavit states that he was consulted in late July 2010 and retained in early August 2010. Mr. Dubois submitted that Cst. Noakes timing of being off a month is a non-issue.

Mr. Dubois submitted that in her compelled interview, Cst. CLOUGH admitted to telling her lawyer about Mrs. Molloy-Sage's suspended driver's licence. Mr. Dubois stated this is entirely consistent with the evidence that was heard regarding Cst. CLOUGH disclosing confidential information to her lawyer.

Mr. Dubois stated that the Hearing heard evidence from Cst. Cleland, Cst. Noakes, and Cst. Wighton that Cst. CLOUGH told her lawyer about information contained in the records. One additional fact heard from Cst. Cleland was that Cst. CLOUGH told her that the information had come out in family court. Mr. Dubois submitted that this fact was also testified to by Mrs. Molloy-Sage and all the prosecution witnesses other than Cst. Bhullar. Mr. Dubois stated that all the witnesses' evidence was clear as they recalled and they had no reason to be dishonest.

Mr. Dubois stated that in David Thwaites' affidavit it was stated he did not use confidential police information, but he never stated Cst. CLOUGH did not give him confidential information. Mr. Dubois submitted that in reviewing the chronology of the letters between the lawyers, the information being sought is of a personal nature involving the Durham CAS records and medical information. Cst. CLOUGH's lawyer changed his position when he was questioned about his source of information. Mr. Dubois stated that in Cst. CLOUGH's compelled statement it is quite clear that she learned that Mrs. Molloy-Sage had a suspended driver's licence for unpaid fines and is bipolar through the records search and that information was disclosed to her lawyer, other police officers, and Kathy Matthews of the York Regional Police.

Mr. Dubois pointed out that it is uncontested that Cst. CLOUGH asked Kathy Matthews to check Mrs. Molloy-Sage's driver's licence on February 13, 2011. Mr. Dubois submitted that Ms. Matthews' transcript shows that she does not remember too much from that night other than she conducted a search on Mrs. Molloy-Sage's driver's licence¹⁴.

¹⁴ Exhibit #8

Mr. Dubois stated that Cst. CLOUGH knew on Thursday, February 10, 2011 that the child exchange was going to take place on Sunday and could have spoken to a supervisor as to what could have been possibly done prior to the exchange.

Mr. Dubois submitted that the fact Cst. CLOUGH told fellow officers about Mrs. Molloy-Sage's mental health issues, disclosed confidential information to a family law lawyer, and requested a driver's licence check on Mrs. Molloy-Sage because of information she obtained from the records checks constitutes discreditable conduct.

Mr. Dubois submitted that there was sufficient clear and convincing evidence to make a finding of fact that Cst. CLOUGH asked Cst. Cate to run the searches. Mr. Dubois stated that the Hearing Officer should favour Cst. Cate's evidence over Cst. CLOUGH's. Cst. CLOUGH's request to Cst. Cate to run the searches for non-police business constitutes discreditable conduct.

Mr. Dubois stated that the actions of Cst. CLOUGH have brought discredit upon herself and the Service and a reasonable person properly apprised, although may be sympathetic, but based on the directives and specific rules around CPIC and police information, would find that these actions have brought discredit upon the Service.

Defence's Response to Prosecution Submissions

In response to the Prosecution submissions, Mr. Gridin made the following points:

- Mr. Dubois did not ask the Hearing Officer to make a finding of fact that this information was used in family court.
- The request by Cst. CLOUGH's lawyer in regard to health issues of Mrs. Molloy-Sage was a general request, just as he asked about employment information.
- There was no specific proof in Cst. CLOUGH's compelled statement that she spoke to her lawyer about Mrs. Molloy-Sage's driver's licence suspension.
- At the York Regional Police child exchange all Cst. CLOUGH asked Kathy Matthews was to check the driver's licence status of Mrs. Molloy-Sage.
- Cst. Cate pieced bits and pieces of the CPIC/PIP printouts presented to him during his Internal Affairs interview to state what he believed had happened.

Analysis

Before moving into my analysis, I wish to extend my appreciation to Counsel and the Public Complainant for the manner in which they presented their cases. All evidence presented has been considered and has assisted me in making findings of fact.

In brief, Cst. CLOUGH faces one allegation of misconduct, discreditable conduct. The allegation stems from Cst. CLOUGH obtaining confidential police information without authorization in an unofficial capacity and disclosing that information to other persons unauthorized. The primary issues in this case are, in my view, the manner in which Cst. CLOUGH obtained the confidential information on Mrs. Molloy-Sage and whether her use of that information in an unauthorized and unofficial capacity amounted to discreditable conduct.

For ease, I have broken my findings into three parts:

1. Review of Burden of Proof
2. Credibility / Reliability of Witnesses Assessment
3. Did Cst. CLOUGH's actions give rise to discreditable conduct?

1. Burden of Proof

Different from criminal law and its burden of proof, beyond a reasonable doubt, the applicable burden of proof in PSA hearings is clear and convincing. This means that there must be weighty, cogent and reliable evidence upon which a trier of fact acting with care and caution can come to a reasonable conclusion that the officer is guilty of misconduct. I will not lose sight of this rigorous degree of burden of proof required, as I determine my findings.

2. Credibility / Reliability of Witnesses Assessment

It has been well established that the credibility of witnesses cannot be measured solely on whether the demeanour of the witness carried "conviction of the truth" [Faryna v. Chorny, {1952} 2 D.L.R. 354 at 356-57 (B.C.C.C.)]. The Hearing must examine the consistency of the testimony with the preponderance of probabilities which a practical and informed person would readily recognize as reasonable in the given situation.

In general, I found all the witnesses in this matter very creditable. They appeared to present their evidence as fairly and factually as possible. I noted some inconsistencies and discrepancies in most witness testimony, but nothing so much that led me to conclude I should dismiss all evidence of any one witness. In fact, the inconsistencies and discrepancies made by some of the witnesses, made their evidence all that more believable.

The allegation of misconduct against Cst. CLOUGH flowed from the Public Complainant, Mrs. Molloy-Sage, so I will address her credibility and reliability first. I found Mrs. Molloy-Sage testified to the best of her ability in regard to what she knew, what she saw, and what she had been told. Some of the information that she believed to be true at the time, proved not to be factual, however this did not lead me to believe that she purposely misled anyone. Mrs. Molloy-Sage maintained copies of letters, court documents, and emails relevant to this matter. Mrs. Molloy-Sage provided a written statement to the OIPRD and her testimony did not waver to any significant degree from what she had written.

Mrs. Molloy-Sage testified her husband, Craig Sage, and Cst. CLOUGH were embroiled in a custody dispute over children and that it was during this time she came to believe Cst. CLOUGH's lawyer was in possession of information that only could have come from police records. Mrs. Molloy-Sage made specific reference to a witness list that Cst. CLOUGH's lawyer had prepared and then immediately withdrew when he was challenged in regard to the source of the information.

Mrs. Molloy-Sage's suspicion that Cst. CLOUGH had obtained personal information about her from police records and passed it along to her lawyer was confirmed through the evidence of Cst. Cleland and Cst. Noakes. They testified that Cst. CLOUGH had told them she had passed along information contained in the records to her lawyer. Cst. Cleland testified further that she learned from Cst. CLOUGH that the confidential information came out in family court.

Mrs. Molloy-Sage believed Cst. CLOUGH was behind a driver's licence check she endured during a child exchange. On February 13, 2011 Mrs. Molloy-Sage and Cst. CLOUGH met at the York Regional Police to exchange children. Before leaving, a York Regional Police employee checked to ensure Mrs. Molloy-Sage had a valid driver's licence. An off line CPIC search¹⁵ in fact confirmed that York Regional Police ran a status check on her licence and Cst. CLOUGH admitted she asked the lady (York Regional Police) to make sure that the person picking up her children had her driver's licence.

As such, I found Mrs. Molloy-Sage's evidence, albeit generally based on suspicions, was in fact confirmed factual through other evidentiary sources. I found her a reliable and credible witness.

Cst. Wilson-Atkinson delivered her evidence in a fair and impartial manner. She testified that Cst. CLOUGH had told her she was concerned about her ex-boyfriend's girlfriend because she had mental health issues. Cst. Wilson-Atkinson testified that she believed Cst. CLOUGH told her that the girlfriend was bipolar and had a mental health apprehension. Cst. Wilson-Atkinson did not know how Cst. CLOUGH obtained this information. No evidence was brought forward that disputed Cst. Wilson-Atkinson's testimony. I accept Cst. Wilson-Atkinson's testimony and will weigh it accordingly.

I found Cst. Cate delivered his evidence fairly and it was consistent with his earlier statements to Internal Affairs. I agree with Mr. Gridin that Cst. Cate had difficulty remembering some aspects, like whether Mrs. Molloy-Sage's information was written or communicated verbally by Cst. CLOUGH and whether she cried. I find his lack of recall on these points consistent with the passage of time. To the detriment of Cst. CLOUGH's defence, however, Cst. Cate's testimony was unshakeable on other points and did not waver under the scrutiny of cross-examination. The examples are:

- Cst. CLOUGH gave Mrs. Molloy-Sage's information for the purpose of running the CPIC/PIP queries – he did not ask for it.
- Cst. CLOUGH stood over his shoulder as he began the CPIC search.
- Cst. CLOUGH confirmed Michele Burch's address which then enabled Cst. Cate to run further queries.
- Cst. CLOUGH left for the front desk in the midst of Cst. Cate running the checks and he personally delivered the results to her when he finished.

Overall, I found Cst. Cate's version of events very believable. I think of no other logical way how he came about Mrs. Molloy-Sage's name, approximate date of birth and address other than it coming from Cst. CLOUGH.

Defence suggested that Cst. Cate was motivated by a crush and acted entirely on his own without knowledge or input from Cst. CLOUGH. I find this to be not within the preponderance of possibilities. Cst. CLOUGH admitted that she spoke to Cst. Cate about her ex's girlfriend. I find it difficult to believe that in this same conversation, Cst. Cate would have arbitrarily asked the person's name, approximate date of birth and address unless it was pre-empted with discussion in regard to CPIC queries. Further, had personal feelings been the motivating factor, I am left to wonder why Cst. Cate did not shoulder full responsibility for the misconduct.

I agree with Mr. Dubois' submission and found that Cst. Cate had no personal motivation to mislead anyone at the Hearing. He already pled guilty to a charge of discreditable conduct for his role in the

¹⁵ Exhibit #8

CPIC checks and had nothing to lose by telling the truth. He testified that he had no personal vendetta against Cst. CLOUGH and was only testifying because he was compelled to do so. I found Cst. Cate to be both credible and reliable and will weigh his evidence accordingly.

I found Cst. Cleland's testimony fair and balanced. She testified that she was Cst. CLOUGH's landlord and had developed a friendship with her at work. She testified that Cst. CLOUGH told her in early 2010 that she had concerns about her ex-boyfriend's girlfriend's mental health issues, information she had gleaned from the Durham records. Cst. CLOUGH said that someone had left the information on her desk in Records. Cst. Cleland testified that she believed through these conversations that Cst. CLOUGH's lawyer knew about it and it was going to come up in family court. Cst. Cleland's evidence was undisputed and I will weigh it accordingly.

Specific to Cst. Noakes, I found her evidence fair and candid. She was very clear on the fact that Cst. CLOUGH told her she provided her lawyer confidential information about Mrs. Molloy-Sage's mental state because she was worried about her children. I accept Cst. Noakes' evidence and will weigh it accordingly.

Cst. Bhullar's evidence was very limited. He and Cst. CLOUGH spoke after she became aware that she was under investigation. Cst. CLOUGH told him the allegations against her and that she didn't do it. While Cst. Bhullar's evidence was of little assistance, I have no reason to suggest he misled the Hearing.

Cst. Wighton's evidence was also very limited. He testified Cst. CLOUGH showed him a Notice of Intent with Internal Investigations that she had been served. Under cross-examination, Cst. Wighton admitted he could not be sure of the specifics of their conversation. I found Cst. Wighton credible, but his evidence cannot be relied upon.

Over and above the witnesses I heard from viva voce, I reviewed the Mr. David Thwaites affidavit and Cst. CLOUGH's compelled statement. I am cautious to render findings of creditability given in each case the witness was not subjected to cross-examination. That being, my assessment of these exhibits is as follows:

Mr. Thwaites was Cst. CLOUGH's lawyer for the custody dispute matter. In his affidavit¹⁶ and the ASoF¹⁷, Mr. Thwaites maintained that he did not use any confidential police information in the course of the family law matter. He also stated that any communication he had with Cst. CLOUGH was protected under the solicitor-client privilege. Mr. Thwaites has been a member of the bar since 1981 and practicing family law for his entire career.

Accompanied by Counsel, Cst. CLOUGH provided a compelled statement¹⁸ to Internal Affairs in June 2011. Overall, I found Cst. CLOUGH's responses evasive and self-serving. She denied she asked Cst. Cate to run checks on Mrs. Molloy-Sage although admitted that she accepted the information from him and read it. She admitted she asked the York Regional Police employee to ensure Mrs. Molloy-Sage had a driver's licence. She stated she didn't know if Cst. Cate ran the checks himself or someone else did and suggested he may have even had a previous file on Mrs. Molloy-Sage. Unfortunately, Cst. CLOUGH's statement lacked concise responses to what I considered fairly simple questions.

¹⁶ Exhibit #17

¹⁷ Exhibit #16

¹⁸ Exhibit #7

3. Did Cst. CLOUGH's actions give rise to discreditable conduct?

I have heard and considered witness testimony, assessed their credibility and reliability, and closely examined all exhibits tendered. My next step is to determine whether Cst. CLOUGH's actions gave rise to discreditable conduct. In doing so, I asked myself a number of questions, applied the pertinent evidence and from that was able to reach several findings of fact. The questions and findings of fact are as follows:

a) Question and discussion:

Did Cst. CLOUGH orchestrate and receive confidential CPIC information and Durham Regional Police occurrence reports concerning Michelle Burch (Malloy-Sage) from Cst. Cate on or about February 26, 2010?

On February 26, 2010 Cst. Cate and Cst. CLOUGH were both working a dayshift in the Records Bureau and had a conversation about Cst. CLOUGH's concern with her ex's girlfriend caring for and driving her children. Cst. Cate testified that he suggested to Cst. CLOUGH that she should check the female by running her on the records system, but Cst. CLOUGH did not wish to because she feared she was being watched by the Service. Cst. Cate testified that Cst. CLOUGH then supplied him with the female's name, Michelle Birch and approximate age, 36, in order for him to run the checks on her behalf. When the first check was completed, Cst. CLOUGH confirmed with Cst. Cate that the female lived in Courtice. This confirmation enabled Cst. Cate to pinpoint the correct individual and run further queries using CPIC and PIP.

Cst. CLOUGH admitted she learned Mrs. Molloy-Sage's former married name, Burch (Birch), from her daughters¹⁹. The off line CPIC search²⁰ confirmed Cst. Cate queried a female, Michelle Birch, age 36 on February 26, 2010. Eight minutes later, Cst. Cate queried the same female, this time using the date of birth 1976/09/03.

I have accepted Cst. Cate's evidence that Cst. CLOUGH provided him Mrs. Molloy-Sage's particulars in order that he could run the police records searches, and found it to be truthful. He pled guilty to one count of discreditable conduct in relation to running the unauthorized searches on Mrs. Molloy-Sage and was sanctioned three days for his role in the misconduct.

Cst. CLOUGH admitted to receiving and reading the police information generated by Cst. Cate's searches in her compelled interview²¹. When asked by Det. Pacheco, "What was the purpose for reading it?" Cst. CLOUGH responded, "Because my children are involved in this pushy person's life, these are my children."²²

In cross-examination it was suggested to Cst. Cate that Cst. CLOUGH had no idea where Mrs. Molloy-Sage lived, yet in her compelled interview²³, she stated, "I don't know her date of birth, I don't know anything other than her name was Michelle Birch. He just started dating her, I knew nothing other than

¹⁹ Exhibit #7, page 5

²⁰ Exhibit #8, page 2

²¹ Exhibit #7, pages 9 & 10

²² Exhibit #7, pages 49 & 50

²³ Exhibit #7, pages 16 & 17

she lived in Oshawa/Curtis area and her name was Michelle Birch." Cst. CLOUGH's own words contradict what was suggested to Cst. Cate and assists in corroborating Cst. Cate's testimony. I accepted Cst. Cate's evidence over Cst. CLOUGH's.

Based on the above, I find as a fact, that clear and convincing evidence exists to satisfy the allegation that on February 26, 2010 Cst. CLOUGH received and read confidential CPIC information and Durham Regional Police reports concerning Michelle Burch (Malloy-Sage). I am further satisfied based on clear and convincing evidence that Cst. CLOUGH provided Cst. Cate the necessary descriptors of Mrs. Molloy-Sage in order that he could run the queries on her behalf.

To reach this finding, I considered the structure of the records systems and drew on my own personal knowledge on records searches and that of the witnesses' testimony. Record searches begin using the best available information and then are narrowed as more specific information comes available. Cst. Cate had no knowledge of this female until Cst. CLOUGH supplied the information. The name, age and address are specifics, and to suggest the information came about in a general conversation without some other purpose such as running a CPIC check is a stretch. Further evidence that Cst. CLOUGH had a hand in the CPIC checks, as attested to by Cst. Cate, came when the CPIC search was narrowed to Mrs. Molloy-Sage's correct address, something only Cst. CLOUGH would have known, and only determined once the queries commenced.

In addition to the above, I reviewed the queries²⁴ conducted by Cst. Cate. The first set of CPIC queries is at 0738 hrs. and the second set is conducted at 0746 hrs. The first PIP queries are conducted at 0743 hrs. and the second set at 0744 hrs. This sequence of events aligns with Cst. Cate's testimony and gives support of his testimony that Cst. CLOUGH confirmed the address with Cst. Cate after the first query of 0738 hrs. The discrepancy in relation to the order he ran the second checks whether it was the PIP or CPIC checks is an honest mistake by Cst. Cate, but it was what he believed to be true prior to being shown the records.

b) Question and discussion:

Did Cst. CLOUGH obtain and receive police records in an unofficial capacity and unauthorized manner?

Specific to this allegation, Cst. CLOUGH readily admitted in her compelled statement that she received and read police records in regard to Mrs. Molloy-Sage from Cst. Cate.

I refer to Peel Regional Police directive I-A-403(O)²⁵ which states:

...information contained in CPIC is for the use of Law Enforcement Agencies ONLY and the unauthorized use or release of information from CPIC to unauthorized personnel is a criminal offence and any abuse may result in criminal charges being laid.

²⁴ Exhibit #38

²⁵ Exhibit #5

I next turn to Peel Regional Police directive I-A-506(O)²⁶ which states all computerized police files and information are classified as "Confidential – For Official Use Only." It goes on to state:

A member found in violation of this directive with respect to release of information...shall face the possibility of criminal charges, charges under the Police Services Act (PSA) and/or internal disciplinary actions up to and including dismissal...All members shall be responsible for reporting through the chain of command, any observed violation of security policy and procedures contained in this directive.

Section F.1. of the same directive states:

No member of this service shall release a printout, a copy thereof or information contained therein to any persons or agencies without proper authorization and as outlined in PRP Directive I-A-602 (O) or any other directives dealing with "Release of Information from Police Service Files", which shall be interpreted to include information defined under this directive."

I note both of the above referenced directives were in effect on or about February 26, 2010.

Cst. CLOUGH readily admitted that she received the police records in regard to Mrs. Molloy-Sage from Cst. Cate and read them. She knew that Mrs. Molloy-Sage was involved in a relationship with her ex-boyfriend. There was absolutely no official reason why Cst. CLOUGH should have had this information and as per directive²⁷, section E.1.(b). She should have reported this through the chain of command as she knew it was a violation of the security policy and procedures. In her compelled interview, Cst. CLOUGH admitted that she knew it was wrong to conduct these checks and have this information when she said, "He asked me; he goes have you ever run her? I said no, I would never do it I would get in shit if I did something like that. Never ran her."²⁸

No evidence was led to suggest Cst. CLOUGH was conducting a bona fide police investigation in relation to Mrs. Molloy-Sage. I therefore find as a fact, based on clear and convincing evidence, that Cst. CLOUGH obtained the information in an unofficial capacity and in an unauthorized manner. The fact that she obtained the information for personal reasons, in particular during a custody dispute meets the threshold of discreditable conduct.

c) Question and discussion:

Did Cst. CLOUGH tell police co-workers of the confidential information she had received and share it with her lawyer?

I turn first to the Durham Regional Police record²⁹ where the occurrence report states, "Michelle further advised that she has been bipolar since she was eleven years old...." Next, I note that in my creditability/reliability assessment, I accepted the testimony of Cst. Wilson-Atkinson, Cst. Cleland and Cst. Noakes. All three witnesses were consistent in saying their conversations with Cst. CLOUGH included discussion around Mrs. Molloy-Sage's mental state.

²⁶ Exhibit #6

²⁷ Exhibit #6

²⁸ Exhibit #7, page 8

²⁹ Exhibit #11, page 62

Specifically, Cst. Wilson-Atkinson testified that Cst. CLOUGH told her she was concerned about learning that the woman caring for her children had mental health issues. Cst. Wilson-Atkinson believed Cst. CLOUGH said she was bipolar and that she had been apprehended once. Cst. Wilson-Atkinson also testified that she did not know how Cst. CLOUGH obtained this information.

Cst. Cleland testified that Cst. CLOUGH told her that her ex-boyfriend's girlfriend had some mental health issues which she learned from some Durham Police records that had been left on her desk. Cst. Cleland testified that Cst. CLOUGH indicated she didn't know who did the checks, the same story she gave to Cst. Bhullar and Cst. Wighton. Cst. CLOUGH was not truthful with her co-workers because in her compelled statement, she admits she knew it was Cst. Cate who gave her the information³⁰.

Cst. Noakes testified that Cst. CLOUGH told her that she had passed on information that she had obtained in Records to her lawyer. The information was about her ex's girlfriend because she was crazy and was concerned about her children.

Cst. CLOUGH's compelled statement, , "...I just remember reading that she's bipolar and that she said she doesn't take medication because she can handle it."³¹, illustrates she had knowledge of Mrs. Molloy-Sage's mental illness and that the information was gleaned from police reports.

I find as a fact, based on clear and convincing evidence that Cst. CLOUGH gleaned health information about Mrs. Molloy-Sage from a police report and then related the information to her co-workers, Csts. Wilson-Atkinson, Cleland and Noakes. No evidence was led to allow me to believe that Cst. CLOUGH was acting in an official capacity on police business when she shared this information with her co-workers.

The next part of this question deals with whether Cst. CLOUGH passed the information she gleaned from the police records onto her lawyer.

Cst. Cleland testified that Cst. CLOUGH told her the information had come up in family court and her lawyer was aware of it. Cst. Cleland did not have specific detail in regard to what information was discussed in the family court. Cst. Cleland also testified that she did not specifically know what Cst. CLOUGH's lawyer would have been aware of.

Cst. Noakes testified that Cst. CLOUGH had given the information to her lawyer because it was good information and she was worried about it.

In Mr. David Thwaites' affidavit³² and the ASof³³ he stated he did not use any confidential police information in the course of the family law matter. That being, he did not state whether he received 'police records information' from Cst. CLOUGH and pointed to the solicitor-client privileged communication.

³⁰ Exhibit #7, pages 8 & 9

³¹ Exhibit #7, page 15

³² Exhibit #17

³³ Exhibit #16

In her compelled statement, Cst. CLOUGH admitted she spoke with a lawyer in regard to Mrs. Molloy-Sage's driver's licence suspension³⁴, but did not elaborate further claiming client-solicitor privilege information.

Based on Cst. CLOUGH's statement and the testimony of Csts. Cleland and Noakes, I am satisfied that clear and convincing evidence exists to support the allegation that Cst. CLOUGH shared 'police records' information with a lawyer. However, it is not clear what was shared or how much was shared.

d) Question and discussion:

Was the confidential police information obtained by Cst. CLOUGH used for family court purposes?

I find as a fact the evidence led in this regard weak and it did not rise to the standard of clear and convincing.

I turn first to Mr. David Thwaites' affidavit³⁵ and the ASoF³⁶. He maintained the position that he did not use any confidential police information in the course of the family law matter. He explained he requested information on Mrs. Molloy-Sage because she was a third party who provided child care to the children. He acknowledged he requested CAS information and criminal history which is standard based on the court document Form 35.1. The witness list did request family doctor information, but as listed in the attachment to the ASoF it was for the children's health records.

In Mrs. Molloy-Sage's OIPRD complaint³⁷, she made reference to an affidavit filed by Cst. CLOUGH on September 1, 2010 and questioned how the officer would have known her surname and address. I am reminded that Mrs. Molloy-Sage conceded her surname Burch may have passed on to Cst. CLOUGH from the children. I note on Cst. CLOUGH's affidavit that the surname Burch was misspelled which is typically indicative of a legal representative's preparation of a document based on verbal information. I also note that on April 12, 2010 Cst. CLOUGH was notified via a court notice³⁸ that Craig Sage had relocated to Courtice and enrolled their child into the local school.

Excluding the innuendoes and speculation of Mrs. Molly-Sage, which were not supported by other evidence I could find no evidence that the information gleaned by Cst. CLOUGH through police records found its way to the family court matters.

e) Question and discussion:

Did Cst. CLOUGH prompt an employee of York Regional Police to conduct a driver's licence query on Mrs. Molloy-Sage on February 13, 2011 based on her knowledge gleaned from police records of a driver's licence suspension?

³⁴ Exhibit #7, page 41

³⁵ Exhibit #17

³⁶ Exhibit #16

³⁷ Exhibit #12

³⁸ Exhibit #12, page 11

In response to this question, I am satisfied that clear and convincing evidence exists to answer the above question in the affirmative.

In her compelled interview, Cst. CLOUGH is asked by Cst. Pucci to explain what took place during the child exchange on February 13, 2011. Cst. CLOUGH responded, "Yeah. I went to drop my children off and Craig was in the hospital and Michelle was there to pick up the kids. I just asked the front lady if she could make sure that she had her driver's licence because she was driving my children. That's it."³⁹ Cst. Pucci went on to ask, "And why would you ask her that?" Cst. CLOUGH stated, "Because I read months ago that she didn't have her driver's licence. I don't know if she does or if she doesn't and my children are going into a vehicle with her. Any other normal human being would do that."

Cst. CLOUGH's statement confirms Mrs. Molloy-Sage's testimony that she was waved to the front desk after Cst. CLOUGH left the station and questioned in regard to her driver's licence. The off line CPIC search⁴⁰ confirmed that Mrs. Molloy-Sage was subjected to a CPIC check at 1912 hrs. while at the police station. The CPIC query would have revealed a licence suspension, had she been a suspended driver at the time.

I am satisfied that based on this information, there is clear and convincing evidence that Cst. CLOUGH utilized confidential police information in an unofficial and unauthorized capacity and this meets the threshold of discreditable conduct.

Finding

I have carefully and cautiously considered the facts presented in this matter. I have made several findings of fact based on the totality of the evidence. I am fully satisfied that clear and convincing evidence exists to find Cst. CLOUGH guilty of discreditable conduct in that she acted inappropriately toward the public complainant, Mrs. Molloy-Sage, and that her misconduct has likely brought discredit to the reputation of the Peel Regional Police. My finding is pursuant to ss 2(1)(a)(xi) of the Code of Conduct contained in the Schedule to Ontario Regulation 268/10, as amended.



David A. Downer
Superintendent
Hearing Officer

Dated: February 28, 2013

Released Electronically: March 5, 2013

Next Hearing Date: April 2, 2013

³⁹ Exhibit #7, pages 27 & 28

⁴⁰ Exhibit #8, page 4