

ONTARIO PROVINCIAL POLICE DISCIPLINE HEARING

IN THE MATTER OF ONTARIO REGULATION 268/10

**MADE UNDER THE *POLICE SERVICES ACT*, RSO 1990,
AND AMENDMENTS THERETO;**

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

AND

DETECTIVE CONSTABLE Michael MILLIGAN, #13309

CHARGE:

DISCREDITABLE CONDUCT

DISPOSITION

Before:	Superintendent Melissa Barron
Counsel for the Prosecution:	Inspector Lori Doonan Ontario Provincial Police
Counsel for the Defence:	Mr. James Girvin Ontario Provincial Police Association
Public Complainant:	Ms. A.A.
Hearing Date:	January 11, 2023

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

PART I: OVERVIEW

Allegations of Misconduct (Amended)

Detective Constable (D/C) Michael Milligan, #13309 is alleged to have committed discreditable conduct in that he did act in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the Ontario Provincial Police (OPP), contrary to Section 2(1)(a)(xi) of the Code of Conduct contained in the Schedule to Ontario Reg. 268/10, as amended.

Particulars of Allegations:

It is alleged that A.A.¹, his former partner, initiated a public complaint, in part indicating that during the course of his relationship with her, he disclosed to her on numerous occasions sensitive police material and information that was his duty to keep secret.

On November 1 and 2, 2021, Professional Standards interviewed A.A. In support of her allegations, A.A. provided photographs from her cell phone that she had received from D/C Milligan. Some of these photographs were also accompanied by texts/comments from him to her, in relation to the photographs.

On December 15, 2021, during his interview with Professional Standards, he admitted forwarding confidential images to A.A. During the course of his interview he was shown the photographs received from A.A. and he was asked, individually, why he had shared the photograph with A.A. He provided a response to each of the inquiries.

The Professional Standards investigation established that some of the photographs forwarded were contained on NICHE Records Management System (RMS) and

¹ Name anonymized to protect privacy

constituted evidence in an ongoing police investigation at the time of them being forwarded to A.A.

The following itemizes the description of the photograph, his comments that accompanied the photograph to A.A., if any, and his response during his interview with Professional Standards as an explanation for forwarding the image and comments.

- Personal cheque and drugs: text like – haha
Response: He was new to the unit and assisting with exhibits, he was excited about it and sent the pictures to A.A.
- Firearm: no text
Response: He was involved in a physical arrest with a guy who had the loaded firearm on him. He shared what he was involved in and told A.A. he was safe
- Firearm: text like – I got another gun
Response: Conducting an investigation similar to last one – seized a handgun
- Cash seizure: no text
Response: Cash seizure from the above investigation
- Person and vehicle on street: text like – ON marker number
Response: Conducting project and saw the vehicle on the street. Unable to write down plate, therefore, texted it to A.A. for future reference
- Firearm and mugshot: no text
Response: Robbery
- Mugshots: no text
Response: Pursuit and arrest – error in judgement, clearly
- Drivers licence seizure: no text
Response: Investigation
- Mugshot: no text
Response: Person arrested in the above investigation

- Firearm: no text
Response: located a loaded firearm
- Grow op photos: text like – I’m exhausted
Response: Showed pictures to illustrate how some people live
- Residence: text like – We’re going to crush the red brick one
Response: Residence prior to conducting a warrant
- Photo of him with a kitchen appliance: no text
Response: Someone took a picture of him with an appliance – thought it was funny due to contrast of actual evidence seized (gun/drugs). The appliance was not evidence
- Firearm: no text
Response: Same warrant as above

D/C Milligan knew or reasonably ought to have known his actions were discreditable.

Representation

In this matter, D/C Milligan was represented by Mr. Girvin while Inspector Doonan represented the OPP. The public complainant, A.A., was notified of the hearing by the prosecution and did not attend.

Plea / Penalty Position

On January 11, 2023, D/C Milligan, represented by his counsel Mr. Girvin, entered a plea of guilty and was found guilty of discreditable conduct, based on clear and convincing evidence. The hearing was held at OPP General Headquarters.

Mr. Girvin and Inspector Doonan submitted a joint penalty proposal of a forfeiture of 90 hours. This proposal was supported with submissions which are included in Part III of this decision.

Decision

Having considered the submissions of counsel, I find the proposed penalty is reasonable and meets the goals of discipline including to correct specific behaviour, to deter others from similar misconduct, and to reassure the community.

I order D/C Milligan forfeit 90 hours to be worked at the discretion of his supervisor. This order is being made pursuant to section 85(1)(f) of the *Police Services Act*.

My reasons for the decision are as follows:

Part II: THE HEARING

Exhibits

The exhibits for this matter are listed in Appendix A.

Agreed Statement of Facts

At the commencement of the hearing the parties requested the Notice of Hearing be adopted as the Agreed Statement of Facts.

Part III: SUBMISSIONS, ANALYSIS AND FINDINGS

The following analysis is based on submissions of the prosecution and defence counsel. To assist me in my determination of an appropriate disposition, I will rely upon commonly held proportionality considerations, and mitigating and aggravating factors will be balanced and weighed.

Public Interest

The prosecution submitted an excerpt² from Police Orders which states:

6.10.3: ACCOUNTABILITY (Excerpt)

Employee *Each employee should regard the discharge of duties as a public trust and recognize their responsibilities as a public servant (refer to the OPS Accountability Directive for more information). In carrying out duties, an employee is accountable for:*

- Professional Ethics** • *promoting a positive professional image;*
- *serving with honesty and integrity, in a manner that places public interest above personal interests;*
 - *behaving above reproach both on and off duty and not bringing discredit upon the reputation of the OPP;*

² Exhibit 7 – excerpt from Police Orders 6.10.3

It was submitted that D/C Milligan breached his duty of confidentiality; and by disclosing images with evidentiary material in ongoing police investigations, he undermined the public confidence.

I agree that the public interest is an aggravating factor. It is expected that police officers will maintain the highest level of confidence regarding investigations, and act responsibly and with integrity in the course of their duties. Police officers, by virtue of their position, can come into possession of sensitive and personal details that must be safeguarded. There must be a legitimate policing reason why officers access or obtain police information, and it is obviously paramount that they do not share it outside of that scope. These were photos of evidence and personal identifiers such as a driver's licence, vehicle licence plate, and mugshots which A.A. was clearly not entitled to view. D/C Milligan's actions have undermined the expectations the public – and the OPP – hold of our officers. The moment D/C Milligan sent the photos, he lost control of them (although there was no information to suggest that A.A. distributed them more widely). Naturally the public would not expect or appreciate that a police officer was sharing evidence or details of investigations with another member of the public, and it hardly needs to be stated that the community trusts that such things would be kept confidential.

It was submitted by the prosecution that D/C Milligan had no legitimate police purpose for sharing such images, but rather that it was for his own interest and enjoyment. This misconduct directly contradicts the Professional Ethics noted in Police Orders and compromises his integrity as a public servant. The public ought to be able to trust that officers will act ethically and honestly to protect information they learn through the course of their employment. D/C Milligan's actions were a clear breach of the public interest.

The public interest is an aggravating factor in this matter and the penalty must be sufficient to reassure the community that the OPP takes such misconduct seriously.

Nature and Seriousness of the Misconduct

Both the prosecution and defence counsel acknowledged that this misconduct was serious. In submitting a copy of D/C Milligan's Oath of Secrecy³, Inspector Doonan noted that he was entrusted by both the OPP and the public to maintain confidentiality in his work. She submitted that through the course of their duties, officers become aware of sensitive and personal details about public citizens and are expected to guard these confidences to the best of their ability, only accessing and using such information when absolutely necessary.

³ Exhibit 8 – copy of D/C Milligan's Oaths

D/C Milligan shared investigative images outside of the workplace on multiple occasions. There was clearly no permissible reason for doing so, rather it was done presumably for his personal interest or entertainment. The comments that accompanied the images were inappropriate and unprofessional, and do not reflect well on D/C Milligan's judgement. The sharing of personal identifiers breached the privacy rights of those involved, and as noted above, once shared, D/C Milligan effectively lost control of the images. His actions were intentional and deliberate, and fell well below the standard expected of him.

The seriousness of the misconduct is considered aggravating.

Recognition of the Seriousness of Misconduct

I agree with both Inspector Doonan and Mr. Girvin that D/C Milligan's plea, Agreed Statement of Facts and position on joint penalty is an indicator that he recognises the seriousness of his misconduct and has accepted responsibility for his behaviour. Additionally, D/C Milligan addressed the Tribunal and offered an apology which further demonstrates accountability and insight into his actions. This is considered mitigating and bodes well for reform.

Employment History

There were several documents provided to the Tribunal which speak to D/C Milligan's employment history. There were three Performance, Learning and Development Plans (PLDP) submitted⁴ in which D/C Milligan consistently exceeded the required standard in a number of assessment categories (including 8 in his most recent evaluation). He has been in a specialty unit during these evaluation periods and was responsible for, or assisted with, the investigation of various serious crimes including robbery, aggravated assault and large-scale drug trafficking. Comments from his supervisors included:

D/C Milligan has a high level of integrity and demonstrates such when assuming the leadership role within the unit, he is a strong and competent team member... D/C Milligan continues to mentor current team members as well as uniform officers through drug, firearm and property investigations. D/C Milligan leads by example by actively volunteering to take on any role necessary for the betterment of the team or the investigation and performs those duties with accountability and professionalism. D/C Milligan is an excellent leader, who is inclusive and treats everyone with fairness and respect... Mike continues to evolve into a strong leader and mentor for new members. Mike has shown his dedication to the unit and the OPP by always being available to the team, adjusting his schedule to assist with investigative needs and

⁴ Exhibit 9 – D/C Milligan's Career Profile and PLDPs (3)

is able to maintain a high level of professionalism in his work. Mike's positive demeanor and personality makes the workplace more enjoyable. (2020-21)

D/C Milligan is a dedicated and vital member... Mike has shown his dedication to the unit and the OPP as he has many demands in his personal life but is always available to the team and is able to maintain a high level of professionalism in his work... It is a pleasure to be Mike's supervisor... D/C Milligan is a dedicated member and an asset... He has performed extremely well in this evaluation period and is an asset to the Detachment. Great job Mike! (2019-20)

D/C Milligan has a great sense of initiative and actively seeks out the next project for the team to work on. His attitude is highly contagious and team members enjoy the motivation... D/C Milligan is very skilled when communicating with people. He has a natural ability to make those he is speaking with feel at ease and is easy to relate to. It is very rare that a person tells D/C Milligan they do not wish to speak with him. He has a great talent that should be utilized by the organization... D/C Milligan is a dedicated member... He possesses a strong work ethic and can be relied upon to take on any task he is assigned. (2018-19)

D/C Milligan has been the recipient of two consecutive Accolade Awards for team enforcement, which is a remarkable achievement considering the size and scope of the OPP. He received a Commissioner's Commendation for Exemplary Performance following an off-duty incident in which he observed and apprehended a dangerous offender that had escaped from jail. A letter of recognition written by a local Detective Sergeant in 2022 commended D/C Milligan's unit for a complex drug trafficking investigation, stating:

I want to recognize their outstanding efforts in the workplace / significant achievements... I appreciate their dedication, hard work, commitment to teamwork and passion to disrupt criminality and protect the community. Due to their commitment, teamwork and enforcement, there is no doubt they prevented both fatal and non-fatal overdoses as a result of the fentanyl seizure.

It was also noted that D/C Milligan has been involved in high-level, multi-jurisdictional drug projects which have resulted in the arrest of several persons and the seizure of significant quantities of illegal drugs⁵.

I would describe D/C Milligan's employment history as exceptional. As a 12-year member, the comments from his supervisors clearly show that he is an asset to the OPP and his community. Mr. Girvin submitted that sometimes there can be a blur

⁵ Awards and acknowledgments found in Exhibit 10, Defence Book of Documents

between an officer's professional and personal life. Certainly D/C Milligan has shown himself to be very knowledgeable, highly motivated, a strong team player and he excels in his field. While his misconduct cannot be condoned, I can accept that his passion for his work may have led him to want to share his achievements with his then-significant other, and I trust that he has now learned the importance of boundaries and confidentiality. He is a good officer; a skilled investigator, and I have no doubt he has a bright future ahead of him.

D/C Milligan's employment history is a significantly mitigating factor

Potential to Reform

Similar to his recognition of the seriousness of the misconduct, defence counsel submitted that D/C Milligan's guilty plea also demonstrates his ability to reform, since he has accepted responsibility and wishes to move forward from this matter (this was also echoed by D/C Milligan himself in his address to the Tribunal). Inspector Doonan twice observed in her submissions that this must have been a "hard lesson to learn". Additionally, I concur with the prosecution who submitted that D/C Milligan has no previous misconduct on file, his employment record is excellent, and that these all bode well for D/C Milligan's ability to move past this misconduct and continue to succeed in his career.

This is considered a mitigating factor.

Consistency of Disposition

No specific cases were tendered with respect to consistency of disposition; however it was submitted by both the prosecution and defence counsel that the proposed penalty was fair, consistent and appropriate. Based on my experience as a Hearing Officer I am satisfied that the joint penalty submission is within the range that I would have expected given the factors considered herein.

Specific and General Deterrence

It was submitted by defence counsel that the proposed penalty will send a message to D/C Milligan that professionalism is always of utmost importance to the OPP, and that information should not be released in any circumstances outside of relevant work activities. I agree that the penalty is significant enough to serve as a deterrent for D/C Milligan against similar misconduct. But for the dissolution of their relationship, it is possible that D/C Milligan's misconduct would not have been disclosed and may have continued. It is therefore important for him to understand that sharing police information such as this is considered serious misconduct and cannot be tolerated under any circumstances.

General deterrence is also required. As noted by Inspector Doonan, it is reasonable to expect that our members might discuss their daily routine with a partner or significant other. However, this can be done without sharing specific details or breaching an oath of confidentiality. Those that blithely believe that others can be trusted with such confidence may wish to learn from D/C Milligan's experience, that information obtained through police activities must not be shared. I concur with both the prosecution and defence counsel that the proposed penalty will send a message to the broader OPP community that the organization takes this type of misconduct seriously, and it will be met with consequences and accountability.

Damage to the Reputation of the Police Service

It was noted by the prosecution that this matter was brought forward by a public complainant who was aware of all the sensitive and personal details that her then common-law partner – a police officer – was sharing with her. Additionally, Inspector Doonan pointed out that the OPP often receives requests from media outlets to provide information pertaining to misconduct. I would also note that as this matter arose from a public complaint, I expect that this decision will be posted on the OIPRD⁶ website. Consequently, it is inevitable that this decision will become public. As Mr. Girvin submitted, should this occur, the public would be aware that the OPP has taken these allegations seriously and that if officers fail in their obligations, they will be held accountable.

D/C Milligan's sharing of confidential work-related images, on multiple occasions, damages both his and the OPP's reputation. It undermines the trust that the public holds in the OPP and their expectation that our members will act with integrity and professionalism. It could well create a doubt that a citizen's next encounter with an OPP officer might be secretly shared with someone else, someone unentitled to that information. This is entirely unfair to the overwhelmingly vast majority of officers who work hard to gain the trust of their community, and the public must be assured that the OPP will not tolerate such misconduct. I find that the proposed penalty will achieve this goal.

PART IV: DISPOSITION

Mr. Girvin noted the Supreme Court of Canada *R. v Anthony Cooke*⁷ decision, which speaks to the importance of joint penalty submissions, specifically that "*a trial judge should not depart from a joint submission on sentence unless the proposed sentence*

⁶ Office of the Independent Police Director

⁷ *R. v. Anthony-Cook*, 2016 SCC 43, [2016] 2 S.C.R. 204

would bring the administration of justice into disrepute or would otherwise be contrary to the public interest.”

I am familiar with this decision and having carefully considered and weighed all the disposition factors above, I see no reason to waver from the proposed joint penalty. A penalty of 90 hours' forfeiture to be worked is not insignificant – in essence, it means that D/C Milligan will be required to work for 90 hours without compensation. However, when I consider the public interest, seriousness of the misconduct, the damage to the reputation of the OPP and the need for deterrence, it is clear that a considerable sanction is warranted. This is to be balanced against D/C Milligan's excellent employment record, his recognition of the seriousness of the offence and his ability to reform. I find that the proposed sanction meets the goals of discipline and provides a fair and balanced approach.

I order D/C Milligan forfeit 90 hours to be worked at the discretion of his supervisor. This order is being made pursuant to section 85(1)(f) of the *Police Services Act*.

Melissa Barron

Superintendent Melissa Barron
OPP Adjudicator

Date: January 20, 2023

Appendix A

The following exhibits were tendered during the disposition:

- Exhibit 1: Delegation – Adjudicator Superintendent Barron
- Exhibit 2: Designation – Prosecutor Inspector Young
- Exhibit 3: Delegation All Officers
- Exhibit 4: Delegation – Adjudicator Superintendent Bickerton
- Exhibit 5: Designation – Prosecutor Inspector Doonan
- Exhibit 6: Designation – Prosecutor A/Inspector Vickers
- Exhibit 7: Excerpt from Police Orders section 6.10.3
- Exhibit 8: Copy of D/C Milligan's Oaths
- Exhibit 9: D/C Milligan's Career Profile and PLDPs (3)
- Exhibit 10: Defence Book of Documents (7 documents)