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**THE MATTER OF DETECTIVE CONSTABLE ADAM FORD #1333
OF YORK REGIONAL POLICE**

APPEARANCES:

Mr. John Miskiw for Detective Constable Adam Ford #1333

Ms. Kathleen MacDonald #8255 for York Regional Police

HEARING OFFICER:

Superintendent Thomas Carrique #822, York Regional Police

HEARING DATE:

October 21, 2010

PENALTY DECISION WITH REASONS

OVERVIEW

On April 20, 2010, without judicial authorization and while on-duty as a member of York Regional Police, Detective Constable Adam Ford #1333 attended the residence of the Public Complainant (Mr. Ryan Whitehead), for personal reasons, and attached an electronic tracking device to Mr. Whitehead's vehicle.

Detective Constable Ford's above-mentioned misconduct was captured by the Public Complainant on video surveillance and subsequently reported to, and investigated by, the York Regional Police Professional Standards Bureau.

THE HEARING

Count #1:

On October 21, 2010, Detective Constable Adam Ford pled guilty, and was found guilty on clear and convincing evidence, of Discreditable Conduct, in that on or about the 20th day of April in the year 2010, he acted in a manner likely to bring discredit upon the reputation of the police force by attaching a tracking device to the personal vehicle of Ryan Whitehead without proper authorization to do so, contrary to the *Code of Conduct of Ontario Regulation 123/98*, Section 2(1)(a)(xl) and amendments thereto.

Count #2:

On October 21, 2010, Detective Constable Adam Ford pled guilty, and was found guilty on clear and convincing evidence, of Neglect of Duty, in that on or about the 20th day of April in the year 2010, he failed to work in accordance with orders by attending to a personal matter while on duty, contrary to the *Code of Conduct of Ontario Regulation 123/98*, Section 2(1)(c)(ii) and amendments thereto.

Count #3:

On October 21, 2010, the Prosecutor, Ms. Kathleen MacDonald, withdrew the allegation that, on or about the 20th day of April in the year 2010, Detective Constable Adam Ford, without lawful excuse, disobeyed, omitted or neglected to carry out a lawful order by failing to satisfactorily account for his daily activities in his memorandum book notes for that date, contrary to the *Code of Conduct of Ontario Regulation 123/98*, Section 2(1)(b)(ii) and amendments thereto.

Count #4:

On October 21, 2010, the Prosecutor, Ms. Kathleen MacDonald, withdrew the allegation that, on or about the 12th day of May in the year 2010, Detective Constable Adam Ford willfully or negligently made a false, misleading or inaccurate statement to Inspector Richard Crabtree #674 and Detective Sergeant Henry de Ruiter #668 pertaining to official duties, contrary to the *Code of*

Conduct of Ontario Regulation 123/98, Section 2(1)(d)(ii) and amendments thereto.

Count #5:

On October 21, 2010, the Prosecutor, Ms. Kathleen MacDonald, withdrew the allegation that, on or about the 12th day of August in the year 2010, without lawful excuse, Detective Constable Adam Ford disobeyed, omitted or neglected to carry out a lawful order by refusing to provide a direct answer to a question he was asked when interviewed by Detective Todd Mathews #372 of the Professional Standards Bureau, contrary to the *Code of Conduct of Ontario Regulation 123/98, Section 2(1)(b)(ii) and amendments thereto.*

AGREED STATEMENT OF FACTS

The Prosecution and the Defence agreed to the following facts:

The complainant, Ryan Whitehead and Detective Constable Adam Ford #1333 have known each other since high school and are former business partners. Mr. Whitehead married PC Ford's sister Renee in August, 2001. The couple subsequently divorced in August, 2005. They have a seven year-old daughter, who is the focus of an on-going, heated, custody dispute currently before the Family Court in Newmarket.

The relationship between the Mr. Whitehead and PC Ford has deteriorated over the past few years. PC Ford has expressed concern over the well-being of his niece and has communicated this concern to the complainant [Mr. Whitehead].

On April 17, 2010, Mr. Whitehead and his current wife departed Canada for a week-long vacation in the Dominican Republic. On April 20, 2010 at approximately 12:10 p.m. PC Ford attended Mr. Whitehead's residence located at 235 Montell Road in the Town of Richmond Hill. At the time, PC Ford was on duty and was operating an unmarked York Regional Police vehicle. PC Ford was aware that Mr. Whitehead and his wife were out of the country.

PC Ford proceeded to affix a "Trim Trac" electronic tracking device to the underside of Mr. Whitehead's vehicle. This device is equipped with global positioning technology. PC Ford did not obtain prior judicial authorization to install this device and did so for personal reasons.

Upon his return from the Dominican Republic, Mr. Whitehead reviewed footage from video surveillance he had installed at the front of his home. The actions of PC Ford were captured on video. Mr. Whitehead reported his findings to York Regional Police Professional Standards Bureau and subsequently turned over the video surveillance and the tracking device. Investigation determined that the tracking device is not the property of York Regional Police.

On May 25, 2010, PC Ford attended the Professional Standards Bureau and provided a compelled statement for the purposes of the investigation under the Police Services Act. PC Ford readily admitted that he placed the tracking device on Mr. Whitehead's vehicle and expressed remorse for his actions. PC Ford also agreed to provide investigators with e-mail correspondence he had previously sent to Mr. Whitehead regarding the on-going custody dispute relating to his niece (Exhibit #2).

SUBMISSIONS BY THE PROSECUTION

Ms. Kathleen MacDonald:

Ms. MacDonald read in the Agreed Statement of Facts (Exhibit #2) and provided the Hearing Officer with the following mitigating and aggravating information.

Ms. MacDonald suggested that the following mitigating information should be considered by the Hearing Officer:

- There are no similar fact cases that can be relied upon as a precedent in relation to this matter;
- Detective Constable Ford has no prior discipline;
- Detective Constable Ford has expressed remorse and apologized for his actions;
- Detective Constable Ford's motive was misplaced and misguided but protective; although, the Hearing Officer was not informed as to how it was protective or whom it was intended to protect; and
- Detective Constable Ford did not threaten the Public Complainant, nor did he damage his vehicle in the course of attaching the electronic tracking device.

In addition, Ms. MacDonald suggested that the following aggravating information should also be considered by the Hearing Officer:

- Detective Constable Ford was on-duty and operating a York Regional Police vehicle when he committed the misconduct; and
- Detective Constable Ford used "skills acquired in the course of his employment to obtain and plant" the electronic tracking device on the Public Complainant's vehicle.

Ms. MacDonald informed the Hearing Officer that the Prosecution and Defence were jointly proposing a penalty of a forfeiture of 70 hours for Discreditable Conduct (Count #1) and a forfeiture of 18 hours for Neglect of Duty (Count #2).

SUBMISSIONS BY THE DEFENCE

Mr. John Miskiw:

Mr. Miskiw confirmed that he concurred with the Agreed Statement of Facts and the joint submission on penalty presented by the Prosecution. In relation to penalty, Mr. Miskiw provided the Hearing Officer with a "list of recognitions" (Exhibit #3) and asked the Hearing Officer to consider the following mitigating information:

- Detective Constable Ford installed the electronic tracking device on the Public Complainant's vehicle over concern for the "personal well-being of his niece";
- Detective Constable Ford has an excellent reputation within the Service; and
- Detective Constable Ford has worked hard on his career, and "he is well recognized by his peers and supervisors".

At the conclusion of Mr. Miskiw's submission, Detective Constable Ford addressed the Hearing Officer and stated that he "wants to apologize to the Organization for the very poor decision [he] made on April 20th". He further stated that he has "learned a great deal from this experience and you can expect very much better judgment from me in the future".

FACTORS FOR CONSIDERATION

Public Interest

Being mindful that "one of the objectives of the police discipline process is the protection of the public" (*Ontario Police Services Act*, Fully Annotated 2008-2009 Edition by Paul Ceysens and Scott Childs), public interest is a significant factor considered by the Hearing Officer in this particular case. Section 492.1(1) of the *Criminal Code* enables a justice to issue a warrant authorizing a peace officer to install a tracking device to monitor a person. In the opinion of the Hearing Officer, in the absence of proper judicial authorization, the installation of a tracking device by a police officer constitutes an unreasonable search, and thereby violates Section 8 of the *Canadian Charter of Rights and Freedoms*. While on-duty and without proper judicial authorization to do so, it is clear that Detective Constable Ford attended the Public Complainant's residence and used knowledge that he acquired as a police officer to install a tracking device on the Public Complainant's vehicle. The public needs to be assured that they will not be subjected to police misconduct that results in the use of investigative techniques that constitute an unreasonable search or seizure of a person or a person's property and that any such action is unacceptable and will not be tolerated by York Regional Police.

Seriousness of the Misconduct

Section 8 of the *Canadian Charter of Rights and Freedoms* states that "everyone has the right to be secure against unreasonable search or seizure". As stated in the above-mentioned Public Interest Section of the Factors for Consideration, in the opinion of the Hearing Officer, Detective Constable Ford's conduct violated the rights of the Public Complainant and it was inconsistent with York Regional Police's *Code of Professional Ethics* that communicates the need for its members to "preserve the rights and freedoms of all individuals in accordance with the *Canadian Charter of Rights*". The above-mentioned concerns and the fact that Detective Constable Ford installed the tracking device on the Public

Complainant's vehicle while on-duty are aggravating factor in this case. Detective Constable Ford's conduct was in every respect unacceptable and, in the opinion of the Hearing Officer, amounts to serious misconduct.

Recognition of the Seriousness of the Misconduct

Detective Constable Ford's plea of guilty is a mitigating factor in this case. He addressed the Hearing Officer and stated that he "wants to apologize to the Organization for the very poor decision [he] made on April 20th". He further stated that he has "learned a great deal from this experience and you can expect very much better judgment from me in the future".

Employment History

Detective Constable Ford's seven year employment history is a mitigating factor in this case. Prior to this matter, Detective Constable Ford has not been the subject of any formal discipline. According to the Personal History Summary and the attachments provided by Defence, he has been the recipient of three awards and 10 recognitions for exceptional police work (Exhibit #3). Below is a summary of the attachments supplied to and considered to be mitigating factors by the Hearing Officer:

- September 29, 2003 – GO#03-199608: Recognition from Detective Sergeant Cam Walter #121 and a November 26, 2003 Chief of Police Award for apprehending a suspect who had violently assaulted his wife with a knife and planned on killing her and for attending to the medical needs of the victim.
- July 13, 2005 – GO#05-112296: Recognized by Detective Sergeant Karen Noakes #440 and Detective Brian Bigras #799 and recommended for a Chief of Police Award for an exceptional drug investigation and superior quality service.

- January 6, 2006: Recognized by Staff Sergeant Gary Miner #221 for his professionalism and taking ownership of a drug investigation and the execution of two search warrants.
- January 10, 2006 – GO#06-3600/06-3743: Recommended by Sergeant Vern Ward #681 for a Chief of Police Award for his contribution, commitment and professionalism in leading a multi-unit drug investigation that led to the seizure of illegal drugs, a large quantity of cash, a firearm and ammunition.
- December 1, 2006: Recognized by Zareinu Education Centre for his part in the “Third Annual Fashion and Song-Miracles”.
- July 13, 2007: Recognized by an investigator from a law firm for being “extremely courteous and professional” in relation to a motor vehicle collision he investigated.
- July 16, 2008: Recognized by Detective Ronda Corsi #782 for his contribution to a homicide investigation and his enthusiasm, professionalism, work ethic, and acceptance of constructive criticism with a positive attitude while seconded to the Homicide Bureau.
- March 23, 2009 – Letter #09-1561: Acknowledged by Vancouver Police Department’s Chief Constable Jim Chu for “astute observations...that led to the arrest of...a very dangerous member of the United Nations gang who is suspected of committing other murders in addition to the ROZEN killing.” This incident also led to the seizure of a large quantity of illegal drugs and the receipt of a May 17, 2007 Chief of Police Award for professionalism, keen observations and teamwork, as well as the April 24, 2008 Excellence in Policing Award.

Ability to Reform or Rehabilitate

Detective Constable Ford's previous employment record, the remorse expressed in his apology to the Organization for his conduct, his statement to the Hearing Officer that he has learned from this experience and that better judgment can be expected from him in the future, and in the absence of any evidence of formal allegations of misconduct since the incident in question, it appears that Detective Constable Ford has the ability to reform and rehabilitate his behaviour and conduct as a member of York Regional Police.

Consistency of Disposition

The Prosecution and the Defence have proposed a joint submission on penalty and the Prosecutor has stated that the Public Complainant is also in agreement with the proposed penalty. The Prosecutor informed the Hearing Officer that there are no similar fact cases that can be relied upon as a precedent in relation to this matter. Consequently, the Hearing Officer was not presented with any similar cases or precedents for his consideration.

Specific and General Deterrence

The Hearing Officer recognizes that deterrence is a legitimate objective of discipline and is satisfied that the forfeiture of hours is an effective means to communicate that conduct which is inconsistent with the *Canadian Charter of Rights and Freedoms* and the York Regional Police *Code of Professional Ethics* will not be tolerated and any such conduct will be corrected by the appropriate means.

Damage to the Reputation of the Police Force

The fact that Detective Constable Ford's misconduct was perpetrated while on-duty, it involved using skills that he acquired as a police officer and his actions were inconsistent with the *Canadian Charter of Rights and Freedoms* and the York Regional Police *Code of Professional Ethics*, is potentially very damaging to the reputation of the York Regional Police and an aggravating factor in this case.

CONCLUSION

On clear and convincing evidence, I accepted the guilty plea of Detective Constable Adam Ford #1333, and on October 21, 2010, found him guilty of Discreditable Conduct contrary to the *Code of Conduct of Ontario Regulation 123/98*, Section 2(1)(a)(xi) and amendments thereto.

Furthermore, on clear and convincing evidence, I accepted the guilty plea of Detective Constable Adam Ford #1333, and on October 21, 2010, found him guilty of Neglect of Duty contrary to the *Code of Conduct of Ontario Regulation 123/98*, Section 2(1)(c)(ii) and amendments thereto.

DISPOSITION

In determining an appropriate penalty in this matter, I carefully considered the Agreed Statement of Facts, the mitigating and aggravating factors presented by both the Prosecutor and the Defence and the Factors for Consideration outlined in the *Ontario Police Services Act*, Fully Annotated 2008-2009 Edition by Paul Ceyskens and Scott Childs. Consequently, I hereby order Detective Constable Ford #13330 to forfeit 70 hours, from any time bank other than his sick bank, for his Discreditable Conduct and 18 hours, from any time bank other than his sick bank, for Neglect of Duty, for a total forfeiture of 88 hours.

Dated this 6th day of December 2010.

Hearing Officer:


Superintendent Thomas Carrique #822
York Regional Police