

Ontario Provincial Police Discipline Hearing

In the Matter of

Ontario Regulation 123/98

Made Under the Police Services Act, RSO 1990

And Amendments Thereto

AND

In the Matter of the

The Ontario Provincial Police

And

Provincial Constable T. W. (Timothy) HEALEY, #7709

Charge:	Discreditable Conduct
Before:	Superintendent Robin D. McElary-Downer Ontario Provincial Police
Appearances:	
Counsel for the Prosecution:	Mr. Norm Feaver, Legal Services Branch, Ministry of Community Safety and Correctional Services
Counsel for the Defence:	Mr. James Girvin Ontario Provincial Police Association
Hearing Date:	July 28, 2011

REASONS FOR DECISION

Provincial Constable T. W. (Timothy) HEALEY (PC HEALEY) has been charged with Discreditable Conduct in that he did act in a disorderly manner prejudicial to discipline or likely to bring discredit upon the reputation of the Ontario Provincial Police, contrary to ss. 2(1)(a)(xi) of the Code of Conduct contained in the Schedule to Ontario Reg. 268/10, as amended.

Plea

PC HEALEY pled guilty to the allegation of misconduct.

Agreed Statement of Facts

A statement of facts was agreed to by Mr. Girvin, Counsel for PC HEALEY, and Mr. Feaver, OPP Prosecutor. The agreed statement of facts outlines the following:

Jennifer Healey is the estranged wife of PC Timothy Healey.

Jennifer dated a man named "RP" for a period. They stopped dating in early August 2010, but her daughter began dating one of RP's sons.

PC Healey found RP's name on his daughter's Facebook page, and heard that Jennifer was dating RP. He advises that his daughter said she and other children witnessed a "conflict" between their mother (Jennifer) and RP, and that the matter had been reported to police.

PC Healey was concerned and on August 18, 2010 he checked RP on Niche, the OPP records management system. PC Healey said he only checked to confirm that it had been reported "and what actually transpired". It was then he discovered that RP had flags for domestic and firearm offences.

On August 18, 2010, PC Healey contacted Jennifer and advised her that he did not want someone with an extensive violent past around his children and grandchild.

Professional Standards conducted a search of the OPP Niche RMS system and a CPIC audit.

- The CPIC audit confirmed that PC Healey did not run RP on CPIC.
- The RMS Niche audit showed that PC Healey queried RP on 3 occasions: twice on August 18, 2010 at 10:40 am and 10:44 am and once on August 20, 2010 at 12:21 pm. PC Healey did not run checks on any of RP's sons or Jennifer Healey.

Finding

As a result of the plea and the facts as agreed, PC HEALEY was found guilty of Discreditable Conduct on April 18, 2011, contrary to ss. 2(1)(a)(xi) of the Code of Conduct contained in the Schedule to Ontario Regulation 268/10, as amended.

Submissions

Both Mr. Feaver and Mr. Girvin agreed the appropriate penalty in this case would be a forfeiture of thirty hours pay, pursuant to ss. 85(1)(e) of the Police Services Act.

Mr. Feaver submitted the complainant, Ms. Jennifer Healey, has been consulted in regard to the penalty. Although she did not wish to attend the hearing, she informed Professional Standards Bureau she believed the penalty was appropriate.

Mr. Feaver tendered PC HEALEY's Career Profile as Exhibit #7 and submitted Mr. Girvin would like to speak to it.

Mr. Girvin submitted the penalty of thirty hours was within the penalty range for similar misconduct. He asked I take into consideration the background and situation of the matter. While the conduct of PC HEALEY was certainly a concern of the organization, the incident stemmed from a breakdown in a relationship and PC HEALEY's legitimate concern for his children.

Mr. Girvin submitted PC HEALEY recognizes the seriousness of his actions.

Mr. Girvin spoke of PC HEALEY's Career Profile. He advised PC HEALEY has been employed since 2002. In 2002, he received a letter of appreciation for his attendance at an event as part of the Golden Helmets. And in September 2006, PC HEALEY received a Commissioner's Citation for his role in saving the lives of two youths.

Mr. Girvin advised that PC HEALEY's marriage has broken down and divorce proceedings were currently underway. He asked that consideration be given to the penalty and the financial stress PC HEALEY is under with respect to the divorce.

PC HEALEY was provided an opportunity to speak and he apologized for his misconduct.

Findings on Penalty

I wish to thank Mr. Feaver and Mr. Girvin for their submissions in this matter.

In deciding the appropriate penalty in police disciplinary matters, there are key elements to be considered by a tribunal. They include the nature and seriousness of the misconduct, the ability to reform or rehabilitate the officer and the damage to the reputation of the police service. There are other factors that may also be considered by a tribunal in assessing recognition of the seriousness of the misconduct; the officer's employment history and public interest as well as general and specific deterrence.

PC HEALEY has pled guilty and been found guilty of Discreditable Conduct. The particulars of the charge are he did act in a disorderly manner prejudicial to discipline or likely to bring discredit upon the reputation of the Ontario Provincial Police, contrary to Section 2(1)(a)(xi) of the Code of Conduct contained in the Schedule to Ontario Reg. 268/10, as amended.

The matter began when PC HEALEY learned his estranged spouse, Jennifer, had dated RP for a period but then stopped in early August 2010. He learned from his daughter there had been a conflict between RP and Jennifer and it had been reported to police. Concerned, PC HEALEY checked RP on Niche, the OPP records management system. He discovered RP was on the system with flags for domestic and firearms offences.

On August 18, 2010, PC HEALEY contacted Jennifer and advised her that he did not want someone with an extensive violent past around his children and grandchild.

Professional Standards conducted a search of the OPP Niche RMS system and a CPIC audit.

- The CPIC audit confirmed that PC HEALEY did not run RP on CPIC.
- The RMS Niche audit showed that PC HEALEY queried RP on 3 occasions: twice on August 18, 2010 at 10:40 am and 10:44 am and once on August 20, 2010 at 12:21 pm.

Public interest and damage to the reputation of the OPP considerations are necessary in this matter. The public must have confidence the OPP will not access police data banks for personal use. In this case, PC HEALEY searched Niche and located information about an individual Jennifer had dated. He then related his finding to Jennifer by advising her he did not want the subject around his children and grandchild given the individual's extensive violent past. PC HEALEY's position as a police officer blurred when he did this and he undeniably crossed the professional line. He not only utilized a police data system for his own personal interest, but he then divulged to a citizen the information he had gleaned. PC HEALEY's misconduct placed the OPP's reputation at tremendous risk.

Police officers have access to a tremendous amount of data systems for the sole purpose of public safety and law enforcement. The systems are not to be accessed for personal use. I find his actions serious and will consider this as an aggravating circumstance in my decision.

In examining the seriousness of this misconduct, I accept PC HEALEY has recognized the seriousness of his misconduct by his desire to plead guilty with an agreed penalty disposition.

General and specific deterrence considerations are necessary when determining the appropriate penalty disposition in this matter. The penalty disposition must send a clear message to all officers that their performance must always be above reproach and they cannot utilize police data systems for personal use. The standard of conduct for all police officers is by nature higher than what is expected of others. Officers must understand they will be held accountable and face significant sanctions when they fall short of these expectations.

I am satisfied that specific deterrence for PC HEALEY can be limited. Evidenced by his desire to plead guilty coupled with his expression of regret, I believe he fully appreciates his behaviour was unacceptable and has taken full responsibility for the misconduct.

To assist me in determining PC HEALEY's ability to reform, I have reviewed his employment history. PC HEALEY has nine years of OPP service and no prior history of discipline. He has one letter of appreciation on file and one Commissioner's Citation for life saving. His Performance Management and Development Plan covering the period, March 2008 to January 2009, indicates he met the standard in all categories, and exceeded in three areas found in Problem Solving and Personal Impact. I consider PC HEALEY's positive employment record and ability to reform mitigating circumstances which have weighed heavily in my disposition consideration.

During the hearing, I noted the absence of any mention from Mr. Girvin and Mr. Feaver that PC HEALEY had the ability to move past this incident and this concerned me. I spoke direct to PC HEALEY in regard to this issue and, based on his response, I was satisfied that he can indeed move past this matter and once again become a contributing member of his detachment.

Disposition

I have carefully considered the facts presented in this matter and conclude there is clear and convincing evidence to support a finding of Discreditable Conduct against PC HEALEY. In light of the mitigating and aggravating circumstances, the seriousness of this allegation and bearing in mind all the evidence placed before me, PC HEALEY is ordered to forfeit thirty hours. Specifically, he will be required to work an additional thirty hours and this will be completed within the first two months of his return to full active duty pursuant, to ss. 85(1)(e) of the Police Services Act, R.S.O. 1990.



Robin D. McElary-Downer
Superintendent
OPP Adjudicator

Dated: July 29, 2011