



HEARING DECISION *SENTENCE*

Name: Dionne KENT

Rank: Police Constable

Badge Number: 7673

Case Number: 2013.16 and 2013.27

Hearing Date: 2013.03.26

Hearing Officer: Superintendent F. BERGEN

Prosecutor: Inspector S. THOMAS

Defence Counsel: Ms. M. SALAMA
Or Representative

SENTENCE

CONSTABLE Dionne KENT (7673)

Date: 2014.03.26

Reference: 16 and 27/2013

SUPERINTENDENT BERGEN: Before commencing sentencing in this matter, I wish to thank Ms. Maureen Salama, defence counsel and Inspector Sonia Thomas, the Service prosecutor, and the Public Complainant for their submissions and exhibits tendered - all of which have assisted me in reaching my decision.

Constable Dionne Kent, badge number 7673, pled guilty and was found guilty of two charges of Insubordination, and one charge of Discreditable Conduct, contrary to the *Police Services Act*.

Summary

The facts relating to the charges are summarized from the Notices of Hearing and the Agreed Statement of Facts (Exhibit 3) as follows:

Police Constable Dionne Kent # 7673 has been a member of the Toronto Police Service, since July 1999. At the time of this occurrence she performed uniform duties in 33 Division Primary Response Unit.

In October of 2012, the Office of the Independent Police Review Director (OIPRD) commenced an investigation in response to an external complaint initiated by a Public Complainant. The Public Complainant reported that Constable Kent, who is the former girlfriend of her current spouse, had been sending her messages via Facebook between December 2011 and October 2012. These messages were annoying in content and continued despite the complainant's continuous requests for her to stop.

A number of messages were also sent under alias names created by Constable Kent. Constable Kent also contacted Public Complainant friends and family via Facebook relaying information of a harassing nature regarding her and her spouse. This information was brought to the attention of management at 33 Division.

On Monday October 29, 2012 Constable Kent was given a direct order by Detective Ng; not to have any direct or indirect contact with either the Public Complainant or her spouse. Constable Kent advised that she understood the order and would cease all contact with them.

On Monday October 29, 2012, Constable Kent contacted the spouse of the Public Complainant by phone and had a heated conversation with him. Further investigation revealed that between October 2011 and July 2012, while on duty, Constable Kent conducted numerous queries using the police systems on the Public Complainant and her family, and other people associated to them including her daughter. These queries were conducted using both the divisional vehicles mobile work stations and station work terminals. The police vehicles and Division were equipped with work station computers for the use of police officers conducting official police business.

The investigation revealed that these queries were not for official police business, and were therefore, contrary to Toronto Police Service Governance, Part II, and Section 1.19: Use of Computers and Telecommunications.

On January 7, 2013, Constable Kent was interviewed by Professional Standards Unit investigators. Constable Kent acknowledged the queries and admitted they were conducted by her for personal reasons and were not for police related business.

During the interview, Constable Kent also admitted that she contacted the spouse of the Public Complainant despite the order from Detective Ng directing her to have no contact with him. Constable Kent also admitted to authoring and sending all of the Facebook messages including the ones sent under alias names.

The conduct of Constable Kent caused the Public Complainant and her family great distress. Constable Kent was not able to provide a reasonable explanation for her conduct.

Prosecution Submissions

The Service prosecutor began by referring to the charge associated with case 27 – OIPRD ordered hearing with the public complainant, and read and submitted an impact statement on her behalf (Exhibit 4).

In addition, the Service prosecutor introduced a Book of Records (Exhibit 5) and a Book of Authorities (Exhibit 6) which would be used to support her submissions.

The prosecutor reminded the Tribunal that the objectives of discipline are to correct unacceptable behaviour, deter others from engaging in similar behaviour and to assure the public that the police will be held accountable. In addition, she explained that the involved officer, the Service, the public and other affected parties all have an interest in the outcome of these proceedings. The prosecutor stated she would be addressing the applicable Police Services Act standard disposition considerations in her submissions to penalty.

The prosecutor observed that to be appointed under the Police Services Act all police officers, including Constable Kent, must be of good moral character and habits and swear an Oath of Office in order to carry out his or her duties as a police officer (Exhibit 5, Tab 2). The public expects that police officers will abide by their Oath of Office and honour the level of trust the community places in the police, as noted in Bright v. Konkle, Ontario Board of Inquiry, March 14, 1997 (Exhibit 6, Tab A).

The prosecutor further highlighted Section 42 (1) of the Police Services Act to illustrate that Constable Kent violated her Oath of Office and her sworn duties as a police officer. Those duties are found in the Police Services Act in which, section 42 (1) states in part;

42 (1) the duties of a police officer include,

- (b) Preventing crimes and other offences and providing assistance and encouragement to other persons in their prevention,
- (g) Performing the lawful duties that the chief of police assigns. (Exhibit 5, Tab 3)

The prosecutor stated that police officers are entrusted to protect the rights and freedoms of the public. The public is aware that police officers have access to confidential information and CPIC access is a privilege that is not to be taken lightly.

The public rightfully expect that police officers will access protected information for official police business only and not for personal interest. It was highlighted that Constable Kent;

- Sent annoying messages to the complainant, her family and friend by way of Facebook,
- Contacted the complainant after she was given a lawful order from a supervisor not to,
- Conducted numerous inquiries on the Toronto Police Service Unified Search Computer program for personal interest,
- Conducted queries utilizing the Canadian Police Information Centre (CPIC) for personal interest.

Speaking to the seriousness of the misconduct, the prosecutor noted that officers are subject to a higher standard of conduct than the average citizen. It was the prosecutor's submission that Constable Kent, having been a member of the Service for over 12 years at the time of the offence, knew and was otherwise aware that her actions were not in keeping with what is expected of her. She had access to and knowledge about the authorized use of the Computerized Data Bases and was well aware of her obligation as a sworn officer. In addition, Constable Kent was well aware that her daily conduct is governed by a series of Governance and Procedures.

The prosecutor acknowledged that Constable Kent has pled guilty to two charges of insubordination as well as a charge of Discreditable Conduct, and referred to the case

of Constable Thompson and the Metropolitan Toronto Police Force, OCCPS, October 14, 1977, OCCPS which clearly articulated their view on the seriousness of an insubordination charge;

"This commission takes a serious view of deliberate disobedience of orders, properly authorized by statute and by authorities given responsibilities under the statute. The commission is of the opinion that if the decision as whether or not a lawful order should be obeyed is a subjective one, then chaos must be the result and the complete breakdown of policing which would undermine the force to a degree as to make it impotent and create anarchy." (Exhibit 6, Tab E)

The prosecutor pointed out that Constable Kent was given a lawful and direct order. Notwithstanding, she defied that order by contacting the spouse of the Public Complainant, on the very day that she was given the order not to have any contact with him. It was the prosecutor's position that Constable Kent showed a wanton disregard and deliberate disobedience of that order.

To that end, the prosecutor referred to the case of Constable Orr and the York Regional Police Service, OCCPS, December 18, 2000, which outlines the elements of Insubordination;

"It is critical that police officers follow legal orders issued to them considering the special status that they have in society."
(Exhibit 6, Tab H)

The prosecution suggested that the essential elements have been made out in this matter, as Constable Kent was given a lawful order and she disobeyed that order without a lawful excuse.

The prosecutor reminded the Tribunal that Constable Kent conducted numerous queries on the Unified Search Computer program and CPIC queries over a one year period for reasons that were not related to official police business.

In addition, Constable Kent sent annoying Facebook messages to the Public Complainant, her family, and friends over a 10 month period. To make matters worse, the prosecutor highlighted that Constable Kent took the time and energy to create alias names in order to continue to send Facebook messages to those people.

The prosecutor submitted that conduct that is careless or unintended or a momentary deviation can be shown to be a mitigating factor, while conduct involving planning is an aggravating factor. To that end, the prosecutor submitted that Constable Kent's behaviour was not within the unintended or momentary deviation categories, but actions that were well thought out and extended over quite a span of time.

The prosecutor submitted three cases, for consideration, in framing the seriousness of CPIC misconduct; the case of Sergeant Nosworthy and the Toronto Police Service, November 23, 2005; the case of Constable Coulis and the Toronto Police Service, January 13, 2005, and the case of GRBICH and the Aylmer Police Service, OCCPS, May 6, 2002;

"A police officer is a professional who is looked upon by the public as a person they can rely upon and trust. When a police officer breaks the rules and violates the public trust, they must be held accountable." (Exhibit 6, Tab B, C and F)

The prosecutor submitted the Toronto Police Service, Service Governance; Use of Computers and Telecommunications, referring to Governance 1.19, Computers and Telecommunications for Official Business; Members shall:

(a) Use Service telecommunications systems and equipment only for police business.

And, Service Governance, referring to Governance 1.12, Confidential Information which states; Members shall:

(a) Treat as confidential the official business of the Toronto Police Service.

(Exhibit 5, Tab 4)

The prosecutor further submitted that every member of the Service has to acknowledge, every time they log on to the Toronto Police Service computer system, a screen saver message, which states:

- *Accessing TPS computer systems acknowledges member compliance with Service Rules and Procedures.*
- *TPS computer equipment and information within TPS systems shall not at any time be used for personal reasons.*
- *Any unauthorized use of an information asset may constitute an offence under Criminal Code of Canada and a violation of Service Rules.*
- *All transactions are subject to monitoring and may be recorded."*

(Exhibit 5, Tab 14)

The prosecutor contends that management has sent the message and continues to send the message that misuse of the police computer information system and CPIC is serious misconduct and that officers are to be held accountable for any misuse.

The prosecutor suggested that in her acceptance of responsibility, and her guilty plea in this Tribunal, Constable Kent demonstrated recognition of the seriousness of her misconduct, and that Constable Kent has no known handicap, nor any personal circumstances that would have contributed to her actions.

Further, it was the prosecutor's position that there was no known provocation and that every consideration of procedural fairness had been afforded to the officer.

The prosecutor offered that Constable Kent was hired by the Service in July 1999, and has spent most of her career at 11 Division; her personnel file contains 11 complimentary entries, she has been granted 3 Unit Commander Awards for diligent and keen police work around; break and enter, stolen vehicle and robbery investigations as well as assisting in saving the life of a break and enter suspect. Constable Kent has also been commended on 5 occasions for similar *break and enter* arrests, collection of DNA at a crime scene, and preventing a male from jumping off an 18th floor balcony. She also has 3 positive documentations in her file.

In addition, the prosecutor submitted that there is one entry on the conduct side - a Unit Disciplinary Report that appears in her personnel file of a recent 2012 incident of misconduct. Constable Kent neglected her duties in that she attended a call for service and made no notation of the call in her memorandum book. She was assessed a unit level disposition. (Exhibit 5, Tab 12)

The prosecutor also highlighted Constable Kent's Annual Evaluations; when referring to her most recent evaluation of January 2012 to May 2013, she is depicted as an officer who only meets the standards. In some areas, ratings include *does not meet* and *unsatisfactory*. This recent evaluation is not a favourable one; her direct supervisor writes:

"PC Kent's last year has not passed without material changes in her performance and position on the platoon. PC Kent has shown a lack of respect for her fellow officers affecting the members of the platoon in a negative way. This is observed by officers' reluctance to work with her on a daily basis.

Officers Kent's commitment to investigate and deliver effective services to the public has also been brought into question. This commitment is observed by the expectations from members of the public, and the action taken by Officer Kent during investigations."
(Exhibit 5, Tab 13)

The prosecutor concluded that Constable Kent's Information from her Personnel File, 'Complimentary Activity' does have a number of positive entries while she has only one conduct issue, and the recent evaluation poses some concern in terms of the officers' current performance.

There have been no complementary entries since the early part of 2011 and as such the mitigating and aggravating factors must be weighed in the area of employment history. However, the prosecutor felt it only fair to say that Constable Kent has had a favourable employment record from 1999 until at least 2011.

The prosecutor reminded the Tribunal that the ability to reform or rehabilitate an officer has to start with the officer, and a generally accepted principle for sentencing is that a guilty plea indicates an admission of responsibility and is generally mitigating towards penalty. The prosecutor submitted the case of Constable Carson and the Pembroke Police Service, OCCPS, March 26, 2001,

"We believe that rehabilitation is a very significant factor and should be taken into consideration when imposing a penalty, especially, when the offender has a prior unblemished record." (Exhibit 6, Tab I)

The prosecutor underscored the value of Constable Kent's acknowledgement of wrongdoing, the acceptance of responsibility, and her employment history, and offered that she does not believe that Constable Kent will find herself before this Tribunal again.

It is the prosecution's position that Constable Kent has been afforded every consideration and fair treatment during the Police Services Act proceedings.

The prosecutor spoke to the importance of specific and general deterrence as legitimate considerations with respect to disposition. The prosecutor underscored that there is no doubt that all officers within this organization are aware of the Services position in relation to the misuse of CPIC and the Toronto Police Service Computer Data Bases, other acts of insubordination and discreditable conduct.

As such, the prosecutor stated that the penalty must deliver the message to Constable Kent; that her conduct, and behaviour was unacceptable, and that any re-occurrence will not be tolerated.

To that end, the prosecutor referred to the case of Constable Andrews and the Midland Police Service, OCCPS, November 12, 2002, and specific to CPIC breach, the case of Constable Santos and the Toronto Police Service, November 8, 2005, Superintendent Tweedy stated;

"The value of C.P.I.C. as a law enforcement and critical public safety tool cannot be overstated and as such, it must be policed and protected with an intolerant and unequivocal approach. General deterrence considerations must be paramount in arriving at proper penalty to dissuade those who would use C.P.I.C. as their private and personal resource centre."

(Exhibit 6, Tab D and L)

The prosecutor submitted that the seriousness of this misconduct must be met with serious consequences; as Constable Kent's behaviour fell far below the expectations of this Service, the Public Complainant and the community's expectations, as a whole.

With that said, the prosecutor proposed that a significant penalty is warranted and acknowledged that said penalty will obviously have an impact on Constable Kent. However, the prosecutor suggested that the penalty is the result of the direct behaviour of Constable Kent and she must bear the consequences of that behaviour. .

Speaking to the potential damage to the reputation of the Service, the prosecutor asserted that a member of the public filed a public complaint with the OIPRD; and she was interviewed in relation to Constable Kent's conduct, and submitted an impact statement to the Tribunal. The prosecutor submitted that as such, there was damage to the image and reputation of the Service.

The prosecutor addressed the issue of sentencing principles and referred to the case of Constable Schofield and Metropolitan Toronto Police, OPC, October 29, 1994,

"Each case must be judged on the facts peculiar to it. Consistency in the discipline process is often the earmark of fairness. The penalty must be consistent with the facts, and consistent with similar cases that have been dealt with on earlier occasions."

(Exhibit 6, Tab M)

To assist the Tribunal, the prosecutor submitted seven cases that had similarities, as well as differences, to the matter at hand; Constable Sylvester and the Toronto Police Service, July 17, 1997, Constable Senyk and the Toronto Police Service, April 5, 2011, Constable Correa and the Toronto Police Service, OCCPS, February 19, 2009, Constable Wildeboer and the Toronto Police Service, OCCPS, October 16, 2006, Constable Grbich and the Aylmer Police Service, OCCPS, May 6, 2002, Constable Bowes and the Ontario Provincial Police, December 10, 2008 and Constable Merritt and the Toronto Police Service, February 1, 2012. (Exhibit 6, Tab N, O, P, Q, C, R, and S)

The prosecutor compared and contrasted the aggravating and mitigating factors of each case to the circumstances in Constable Kent's misconduct and conceded none of the tendered cases exactly mirrored the charge, but bore similarities relevant for consideration.

The prosecutor concluded that after consultation with defence counsel, they are proposing a joint penalty disposition of;

Case 16/2013

Charge 1 – Insubordination for Disobeying a Lawful Order – 6 days

Charge 2 – Insubordination for CPIC abuse – 18 days

Case 27/2013

Charge 1 – Discreditable Conduct (Facebook messages) – 12 days

To be served consecutively

Defence Submissions

Defence counsel began her submission by reiterating that they are joining in on the prosecution sentencing position; six days for Disobey Lawful Order, eighteen days for the CPIC abuse and twelve days for the charge involving the activity on Facebook. It was the defence position that that is in keeping with the principle of consistency in sentencing and properly addressing both specific and general deterrence.

Counsel reminded the Tribunal, that Constable Kent moved quickly to resolve the matter by way of a guilty plea. Counsel stressed that it was important for Constable Kent, both professionally and personally, to accept responsibility for her actions as soon as possible. And further to this point, counsel suggested that Constable Kent's plea of guilt demonstrates her remorse and her acknowledgement of wrongdoing.

Counsel submitted a letter to the Tribunal, and offered that it clearly and meaningfully, expresses her remorse regarding her actions, and also provides insight into what Constable Kent was going through personally at the time of the events. Counsel suggested that the letter will assist the Tribunal in understanding the behaviour, not excusing it. (Exhibit 7)

Counsel compared and contrasted the aggravating and mitigating factors in the several cases that had been provided by the prosecution. She further submitted that they assist in establishing a range of potential penalties that can be applied to Constable Kent's situation.

With respect to the CPIC matter, counsel referred to four cases to establish a range of penalties appropriate to Constable Kent; the case of Sergeant Nosworthy and the Toronto Police Service, November 23, 2005; two days, the case of Coulis and the Toronto Police Service, January 13, 2005; six days, the case of Constable Santos and the Toronto Police Service, November 8, 2005; nine days, and the case of Constable Wildeboer and the Toronto Police Service, OCCPS, October 16, 2006; eighteen days and that decision was appealed. During that appeal, the Commission confirmed that a penalty of eighteen days forfeiture was appropriate. (Exhibit 6, Tab B, F, L, and Q)

Therefore counsel suggested that in situations where a single count reflected numerous unauthorized CPIC checks performed overtime, the case of Constable Wildeboer and the Toronto Police Service, OCCPS, October 16, 2006, is in keeping with the defence proposed forfeiture of eighteen days in relation to Constable Kent.

Counsel compared and contrasted the aggravating and mitigating factors with respect to the charge of Disobey Lawful Order; in the case of Constable Sylvester and the Toronto Police Service, July 17, 1997; six days, and the case of Constable Correia and the Toronto Police Service, OCCPS, February 19, 2009; seven days, to also establish an appropriate penalty range. (Exhibit 6, Tab N and P)

In addition, counsel discussed the difficulty in finding cases on point given the relative dearth of information on Facebook, specifically relating to misconduct in reported case law. To that end, she compared and contrasted the aggravating and mitigating factors in the case of Constable Bowes and the Ontario Provincial Police, December 10, 2008; twenty days, and the case of Constable Merritt and the Toronto Police Service, February 1, 2012; 14 days. (Exhibit 6, Tab R and S)

Counsel spoke to the employment history of Constable Kent and highlighted that since 1999; she has received 11 complimentary entries in her personnel file and most notably, saving the life of a man who tried to kill himself in 2004 and again in 2008. She further spoke to the positive entries that commend Constable Kent on her teamwork and positive attitude. Counsel asserted that these entries illustrate that Constable Kent is a valuable member of the Service and an asset to our community. (Exhibit 5, Tab 12)

Counsel submitted that Constable Kent's annual evaluations indicate that she has shown herself to be a dependable and hardworking officer who shows professionalism when dealing with members of the public and empathy when interacting with victims of crime. In contrast, counsel spoke to the less than favourable 2013 appraisal as she has had in performing below her abilities within the last year. Specifically, counsel highlighted the comments of the Staff Sergeant;

"Having monitored her closely at work, I have noticed a change in her demeanour and disposition, to the positive, since the issues came to light. It was as if a weight had been lifted from her." And further, "I have faith in her abilities I sincerely hope she is able to get back on track this upcoming year." (Exhibit 5, Tab 13)

Counsel suggested that Constable Kent has demonstrated a commitment to get at the root of her misconduct by attending therapy for over a year, and further highlighted that, she has been truly embarrassed and humbled by this experience and has learnt from it.

Counsel concluded that it is Constable Kent's hope that she can put this behind her and move on to lead a successful career with the Service.

Analysis and Decision

The public places their trust in its police officers to uphold their Oath of Office and to efficiently perform their duties as mandated under the Police Services Act. To that end, the Service has a consistent approach in communicating to its members the appropriate course of action expected while performing their duties.

It is the public's expectation that Constable Kent would have acted to prevent crimes, assist victims of crime, and follow Procedural requirements even while off duty.

The prosecutor stressed that sworn members have tremendous power and authority. They are entrusted by the public to carry out those sworn duties, and as such, officers must honour that trust and not allow it to be compromised.

Because of this tremendous power and authority, there exists; a legislative regime, a strict code of conduct and a mechanism to hold officers accountable. Society has the right to expect that police officers will carry out lawful orders, and if an officer steps outside that strict code of conduct, society properly expects appropriate sanctions.

To assist the Tribunal, the prosecutor referred to the case of Constable Andres and the Midland Police Service, OCCPS, November 12, 2002, which articulated that a Tribunal penalty must impress and reassure the public that the misconduct of an officer attracts appropriate sanctions and that public confidence is maintained. (Exhibit 6, Tab D)

The pattern of conduct demonstrated by Constable Kent in this regard, between the identified span of October 2011 – October 2012, must be considered as it is reasonable to believe that Constable Kent knew what was expected of her in the performance of her duty. However, Constable Kent:

- accessed CPIC 28 times generating 107 system queries
- generated 52 Facebook entries to 5 people from herself and 7 alias names

The evidence to prove the offence of Insubordination in relation to Computer Systems and CPIC abuse is very direct. The Service computer systems require members to log on to the computer; utilizing their Service issue token and chosen password, and acknowledge an agreement to comply with Service Governance.

To her credit, during the Professional Standards interview, Constable Kent admitted to the CPIC checks conducted and she also admitted that the checks were not police related. She also admitted to sending the Facebook messages; *"Yes, I sent all of those messages."* And, when questioned about contacting the spouse of the Public Complainant, after having been given a direct order from Detective NG, and disobeying the lawful order, Constable Kent stated; *I was angry, I know I was told not to, I called him."* (Exhibit 5, Tab 9 and 10)

For rehabilitation to begin there must first be an acknowledgement of wrongdoing and the acceptance of responsibility.

Constable Kent has come before the Tribunal and pled guilty to two counts of Insubordination and a Discreditable Conduct. In addition, Constable Kent submitted a letter of apology to the Tribunal. I would suggest that she has taken the first steps towards rehabilitation, by accepting responsibility for her misconduct. I have highlighted the following excerpts;

- *I started to doubt myself in my professional capacity.*
- *These feelings have had an impact on my recent work performance.*

- *I continue with that therapy to this day and feel that it has a genuinely positive impact on my life and me as a person.*
- *I have made great strides to understand my emotions and develop strategies for managing them so they no longer have a negative impact on my life or my work.*
- *In addition I am using this experience to not only better myself personally and improve my life generally but also, so that I can become a better officer.*
- *Policing means the world to me and I am committed and passionate about my career with the Toronto Police Service.*
- *I remain hopeful that I can turn this negative experience into one that will make me a far better police officer.*
- *I am confident that I have learned from this incident and you will not see me before this tribunal again.*
- *I am committed to continuing on the path that I have been on to deal with my personal issues so that I can remain the kind of officer that I can be proud of.*
- *I hope that everyone involved, including Detective Ng and the Toronto Police Service generally, can accept my most heartfelt apology in relation to my behaviour and I am prepared to accept the penalty that you choose to impose on me. (Exhibit 7)*

Constable Kent's Performance Appraisals make observations regarding her attitude and productivity. She has demonstrated for many years that she has the capacity to be a productive, contributing member of the Service. To that end, I have considered the weight given to the appraisal comments; February 14, 2013, of Staff Sergeant Cole, 33 Division;

"Having monitored her closely at work I have noticed a change in her demeanour and disposition, to the positive, since the issues came to light. It was if a weight has been lifted from her. PC Kent has always put in above average enforcement numbers and participates in Divisional and Service enforcement initiatives. I have faith in her abilities I sincerely hope she is able to get back on track this upcoming year." (Exhibit 5, Tab 13)

While Constable Kent's present misconduct is serious, there are a number of mitigating factors to consider. Constable Kent's personnel file contains several complimentary entries, including three Unit Commander Awards recognizing her investigative and policing skills.

In Constable Kent's favour, she accepted responsibility for her actions, has sought out Counselling support since November 2012, pled guilty at the earliest opportunity, and expressed her regret personally and through counsel before the Tribunal. In her career she has been recognized for commendable work as a police officer.

The impact of any proposed disciplinary and corrective measures on a police officer and on the police officer's family is a factor that is to be considered. Notwithstanding due process, any consequence as a result of the behaviour of Constable Kent must fall squarely on her shoulders and not that of the Service.

The Service has sent the message and continues to send the message that misuse of the police computer information system and CPIC is serious misconduct and that officers will be held accountable for any misuse. This has been communicated to Service members, in a clear and precise manner that they must not engage in this activity unless it falls within the lawful execution of their duties.

There is no doubt that management is committed to protecting the integrity of the police information and CPIC systems. This is also consistent with member's Disobeying Lawful Orders and incidents of Discreditable Conduct.

Penalty Consideration

Insubordination for Disobeying a Lawful Order

I have considered; the case of Constable Sylvester and the Toronto Police Service, July, 17, 1997, the case of Constable Senyk and the Toronto Police Service, April 5, 2011, and the case of Constable Correa and the Toronto Police Service, OCCPS,

February 19, 2009; in these matters, the officers were given a direct order from their supervisors. (Exhibit 6, Tab N, O, and P)

Insubordination for CPIC Abuse

I have considered; the case of Constable Wildeboer and the Toronto Police Service, OCCPS, October 16, 2006, and the case of Constable GRBICH and the Aylmer Police Service, OCCPS, May 6, 2002; in both of these matters, the officers conducted a number of queries for personal reasons over an extended period of time. (Exhibit 6, Tab Q and C)

Discreditable Conduct (Facebook messages)

I have considered; the case of Constable Bowes and the Ontario Provincial Police, December 10, 2008, and the case of Constable Merritt and the Toronto Police Service, February 1, 2012; in both of these matters, the officers used social media inappropriately bringing discredit to the reputation of their police services. (Exhibit 6, Tab R and S)

I acknowledge that defence counsel and the prosecution presented a joint submission on a penalty threshold. Notwithstanding, I am troubled by the magnitude of the CPIC and Facebook obsession, spanning over a period of a year and the impact it has had on her platoon, the Division and our Service.

I see it as a lost year, specifically, as reflected in the comments from her immediate supervisor on February 14, 2013;

"Officer Kent's last year has not passed without material changes in her performance and position on the platoon. PC Kent has recently shown a lack of respect for her fellow officers affecting the members of the platoon in a negative way. This is observed by officer's reluctance to work with her on a daily basis. Officer Kent's commitment to investigate and deliver services to the public has also been brought into question."

(Exhibit 5, Tab 13)

Professional behaviour is at the cornerstone of the public's confidence in the Service. Incidents of misconduct cannot only affect those directly involved, but may radiate into the community to undermine such confidence.

I am cognizant of the significant weight accorded to the fact that both the prosecutor and defence counsel made representations in support of the joint penalty submission; establishing sentencing factors and the need for consistency in penalty decisions. I also acknowledge particularly that the recommended joint penalty proposed falls clearly within the acceptable range of penalties for the relevant misconduct.

During the Tribunal, I specifically reserved my willingness to accept the joint penalty submission, and stated that I would appreciate the opportunity to absorb the fulsome context of; the Facebook correspondence, Constable Kent's letter of apology, and in the absence of her voice, the impact statement of the Public Complainant. Subsequently, I provided rebuttal opportunity for the prosecutor and defence counsel in keeping with the rule of *Audi Alteram Partem*.

The fundamental Tribunal consideration regarding the purpose of discipline, in part, is to correct errant behaviour and to deter others from engaging in similar behaviour. I submit that this has clearly been accomplished within the thoughtful joint penalty submission.

I rely on the case of Constable Schofield and the Metropolitan Toronto Police, September 11, 1984, for direction on an appropriate disposition. Specifically;

"Each case must be judged on the facts peculiar to it. Consistency in the discipline process is often the earmark of fairness." (Exhibit 6, Tab M)

The Tribunal must apply these principles and discipline officers in a fair manner, weighing both aggravating and mitigating factors, and have regard for the particular circumstances of the case at hand.

In addition, discipline must also assure the public that the police will be held accountable for their misconduct.

The public interest must be considered in formulating a disposition as reported in the case of Bright v. Konkle, Ontario Board of Inquiry, February 3, 1997;

"Good character in a police officer is essential to both the public's trust in the officer, and to a police service's ability to utilize that officer." (Exhibit 6, Tab A)

Again, I rely on the case of Constable Schofield and the Metropolitan Toronto Police, September 11, 1984, for direction specific to public interest;

"The punishment also must impress the public that such conduct on an officer's part attracts appropriate sanctions." (Exhibit 6, Tab A)

The value of the impact statement from the Public Complainant is perhaps the biggest consideration in my framing an appropriate penalty. To that end, I highlight her concerns;

- *For over a year I felt harassed with the fake names and the nasty messages.*
- *My daughter suffers from psychosis and is believed to have schizophrenia. The harm which has been done telling my daughter not to trust her new step father has done unrepairable damage.*
- *To think that someone, a police officer would be so full of hate that she would lash out not only on myself an innocent in the situation but to lash out at my family seemed outrageous.*
- *Frustrated I blocked and blocked and blocked and still she was able to find a way through.*
- *I was afraid for my safety, I was never threatened through the messages but when they had just gotten hostile – swearing and name calling I felt that afraid that someone with a gun was acting so irrationally.*

- *Through the investigation it became apparent that the police computers were being used over and over again to search, not for information but in an obsessive manor.*
- *It's unnerving to have someone with the power of a police officer angry with you. Looking over your shoulder, worrying that they know where you live, wondering how crazy they are, how angry they are.*
- *How she found my name, my daughter's name, my licence plate number and my home number, this is the kind of stuff that creeps me out,*
- *What's going to happen after this tribunal is over? (Exhibit 4)*

I have considered the totality of privileged professional access to CPIC being exploited in the manipulation of a number of social media key strokes that ultimately resulted in; intimidation, trepidation and control within a very private domain. This is at the crux of my concern in the joint penalty submission. I feel the joint penalty submission falls short of acknowledging the private impact on the Public Complainant.

It is vitally important that the community be assured that the Service will deal properly with officers who commit misconduct. The Service has gone to great lengths in ensuring that our member are committed to professional and ethical behaviour; both internally and within the communities that we serve, while on and off duty.

Having weighed and balanced the mitigating and aggravating factors and given careful consideration to the submissions of both defence counsel and the Service prosecutor, and the impact on the Public Complainant, I have arrived at a penalty.

Will the officer please stand.

In the Case 16/2013

The penalty for one count of Insubordination for Disobeying a Lawful Order, imposed under Section 85 (1) (f) of the Police Services Act will be:

A forfeiture of 6 days.

The penalty for one count of Insubordination for CPIC abuse, imposed under Section 85 (1) (f) of the Police Services Act will be:

A forfeiture of 18 days

In the Case 27/2013

The penalty for one count of Discreditable Conduct (Facebook messages), imposed under Section 85 (1) (c) of the Police Services Act will be:

A reduction in gradation in rank from First to Second Class Constable for a period of one year.

After one year, Constable Kent may be re-classified upon being deemed suitable per the re-classification process of the Service.

To be served concurrently.

A handwritten signature in dark ink, appearing to read 'Francis Bergen', written over the printed name.

Francis Bergen
Superintendent
Hearing Officer

