



OFFICE OF THE INDEPENDENT
POLICE REVIEW DIRECTOR

APR 11 2014

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**HEARING DECISION
SENTENCE**

Name: Richard WHITE

Rank: Police Constable

Badge Number: 9597

Case Number: 2013.15

Hearing Date: 2013.11.07

Hearing Officer: Superintendent D. MCLEOD

Prosecutor: Inspector S. THOMAS

**Defence Counsel:
Or Representative** MR. G. CLEWLEY

SENTENCE

Constable Richard White #9597

Date: 2013.11.07
Reference: 15/2013

SUPERINTENDENT MCLEOD: Before commencing sentencing in this matter, I wish to thank Mr Gary Clewley, defence counsel, and Inspector Sonia Thomas, the Service prosecutor, for their arguments and exhibits tendered, all of which have assisted me in reaching my decision.

On November 7, 2013, Constable Richard White #9597, pled guilty and was found guilty of two charges of Insubordination, contrary to the Police Services Act.

The prosecution advised the tribunal that agreement had been reached with defence counsel, with respect to a joint submission on the Statement of Facts as well as to a disposition of a forfeiture of 18 days (144 hours) on charge #1 and a forfeiture of 8 days (64 hours) on charge # 2, to run consecutive to the penalty in charge # 1

Summary

The facts are summarized from the Notice of Hearing and the agreed Statement of Facts (Exhibit 3), as follows:

Charge # 1: Insubordination

Police Constable Richard White # 9957 has been a member of the Toronto Police Service since August 2006. At the time of this occurrence he performed his duties in uniform and was assigned to 12 Division Community Response Unit.

In October 2012, the Office of the Independent Police Review Director (OIPRD) commenced an investigation in response to an external complaint initiated by Ms. Tanya Gonzales.

Ms. Gonzales was involved in a family court matter with one Derek Massey. Derek Massey is related to Constable White.

It was Ms. Gonzales' belief that Const. White was accessing police computer systems to obtain personal information and further relaying information obtained, relating to her and family members to his cousin, Derek Massey. This information was subsequently disclosed and used in the family court matter.

The OIPRD investigation revealed that between Wednesday, January 20, 2010 and Wednesday, September 12, 2012 Const. White conducted a number of queries, including CPIC, Unified Search, Person and Vehicles searches relating to Ms. Gonzales and persons associated to her, using police systems.

While on duty, Const. White conducted approximately 100 queries, using both 12 Division vehicles mobile work stations and work terminals. The police vehicles and 12 Division are equipped with work station computers for the use of police officers conducting official police business.

On January 24, 2013, Const. White was interviewed by OIPRD investigators. At that time, Const. White acknowledged the queries and admitted that they were not for police related business. He further admitted to relaying the information to his cousin, Derek Massey, and that the information was used in the family court proceedings. The information was personal in nature, with contents pertaining to

a third party who is closely related to the complainant Ms. Gonzales and caused damage to her reputation.

Investigation has revealed that these queries were not for official police business and were therefore contrary to Toronto Police Service Governance, Part 11, Section 1.19: Use of Computers and Telecommunications.

Charge # 2: Insubordination

In January 2013, The Office of the Independent Police Review Director (OIPRD) commenced an investigation in response to an external complaint by Mr. Jody Squires.

Mr. Squires is the ex-husband of Constables White's wife. It was Mr. Squires' belief that Const. White was accessing police computer systems to obtain his (Mr. Squires's) personal information and relaying that information to his (Const. White's) wife and other family members.

The OIPRD investigation revealed that between Monday, January 10, 2011 and Monday, September 10, 2012, Const. White, while on duty, conducted eleven CPIC and Persons queries on Mr. Jody Squires using police systems.

Const. White conducted these queries using both 12 Division police vehicles mobile work stations and the Division's work terminals. The police vehicles and Division are equipped with work station computers for the use of police officers conducting official police business.

On January 24, 2013 Const. White was interviewed by OIPRD investigators. At that time Const. White acknowledged the queries and admitted that they were not for official police business. He further admitted to relaying the information to

his wife and to the complainant's daughter and son. The information was personal in nature, with contents pertaining to Mr. Squires. This caused Mr. Squires emotional stress and strain and caused damage to his relationship with his daughter and son.

Investigation revealed that these queries were not for official police business and were therefore contrary to Toronto Police Service Governance, Part 11, Section 1.19: Use of Computers and Telecommunications.

The Service prosecutor advised the Tribunal that Ms. Tanya Gonzales and Mr. Jody Squires were in attendance at the proceedings and that as the complainants, they had standing in the process. She further advised that the complainants were not represented by counsel but had provided impact statements and requested that they be read into the record on their behalf.

The prosecutor then tendered Ms. Tanya Gonzales' impact statement (Exhibit 4) and read its contents into the record.

Summary of Ms. Tanya Gonzales' impact statement

Ms. Gonzales described Const. White's actions as a violation of her family's privacy and indicated that it negatively impacted their faith in the Toronto Police Service. She further advised that Const. White's actions had resulted in public embarrassment to her and her family and caused damage to her credibility and reputation.

Ms. Gonzales indicated that as a result of Const. White's actions, she had been forced to endure invasive questioning and labelling in her family court matter and had suffered estrangement from family members. She expressed the opinion that

by his actions, Const. White had demonstrated a lack of respect for his duties as a public servant.

Ms. Gonzales advised that based on the impact on her and her family, she did not feel that any sanction imposed on Const. White would be adequate, but that she understood that the tribunal would be guided by previous decisions in similar matters.

The prosecutor then tendered Mr. Jody Squires' impact statement (Exhibit 5) and read its contents into the record.

Summary of Mr. Jody Squires' impact statement

Mr. Squires advised the tribunal that Const. White's actions caused him humiliation and tarnished his reputation with his children, his siblings and his parents

Mr. Squires further advised that after he filed his complaint, Const. White contacted him directly and caused further estrangement between him and his children.

He advised the tribunal that his life and his relationship with members of his family have been seriously and damaged.

Prosecution submission

The prosecution tendered a Book of Records (Exhibit 6) and a Book of Authorities (Exhibit 6) advising the tribunal that she would be referring to both during her submission

The prosecutor commenced submissions by outlining the objectives of discipline, which includes the Service's ability to correct unacceptable behaviour, deter others from similar behaviour and assure the public that the police are under control. She added that, based on these objectives, the general public, the employer, the employee and affected citizens all have a direct interest in the process.

The prosecutor then submitted that a variety of considerations apply to the process of arriving at an appropriate disposition when misconduct has been established and proceeded to address those that she considered relevant and applicable to the matter before the tribunal.

Public Interest

The prosecutor reminded the tribunal that one of the overall objectives of the discipline process is to protect the public. She drew attention to the matter of Bright v Konkle, Ontario Board of Inquiry, March 14, 1997, quoting directly that *"good character in a police officer is essential to both the public's trust and to the police service's ability to utilize that officer"* (Exhibit 7, Tab A)

The prosecutor then commented on the hiring criteria for police officers as articulated in the Police Services Act, section 43 (1), drawing particular attention to clause (d) which speaks to *"good moral character and habits"* (Exhibit 6, Tab 1). She submitted that the public had a right to expect police officers to conduct themselves in accordance with their Oath of Office and drew attention to a copy of Const. White's oath bearing his signature (Exhibit 6, Tab 2) in which he undertook to perform the duties set out in the Police Services Act. (Exhibit 6, Tab 3)

The Prosecutor asserted that the conduct which brought Const. White before the tribunal violated his oath of Office and his sworn duties as a police officer. She elaborated on the conduct by reminding the tribunal that the queries conducted by Const. White and his subsequent disclosure of personal information obtained , had a substantial negative impact on two members of the public and their families and that these queries were not related to official police business.

The prosecutor drew the tribunal's attention to the matter of Sergeant Noseworthy and the Toronto Police Service, November 23, 2005 (Exhibit 7, Tab B) in which the Hearing Officer stated that “ *CPIC violations are viewed as serious misconduct, a violation of public privacy rights and a breach of contract with the RCMP. It is a critical law enforcement tool and it is in the public's interest that CPIC violation be policed with an intolerant and unequivocal approach. Those who violate the rules will be held accountable, public interest demands it*”

The prosecutor then referenced the matter of Constable Grbich and Aylmer Police Service, August 9, 2002 (Exhibit 7, Tab C) quoting directly that “*the misuse of the CPIC system for personal or any other unauthorized reason can be a serious violation of a person's right to privacy*” . The prosecutor quoted further from his case that “*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's trust, they must be held accountable*”

The prosecutor drew attention to the Ontario Commission on Police Services (OCCPS) decision in the matter of Sergeant Andrews and the Midland Police Service, May 1, 2003, (Exhibit 7, Tab D) which articulated the position that police misconduct must attract appropriate sanctions to reassure the public and maintain its confidence.

The prosecutor submitted that Const. White's behaviour did not demonstrate professionalism and fell short of the expectations of the Toronto Police Service and of the high standards expected of police officers, by the public.

Seriousness of the Misconduct

The prosecutor submitted that the seriousness of the misconduct is a fundamental consideration in determining the appropriate disposition.

She then referenced the OCCPS decision in the matter of Const. Thompson and Metropolitan Toronto Police Force, October 14, 1977 (Exhibit 7, Tab E) in which the Commission offers the opinion that acts of deliberate disobedience of orders properly authorized by statute and by authorities given under statute are to be viewed as serious and that the proper management of policing is dependent on compliance with such orders.

The prosecutor reminded the tribunal that the behaviour that brought Const. White before the tribunal occurred over a period of almost two years and submitted that this negated the possibility of this behaviour being viewed as an unintended or momentary deviation. She offered the opinion that his should be viewed as an aggravating factor.

The prosecutor proceeded by drawing attention to the hearing decision in the matter of Constable Coulis and the Toronto Police Service, January 13, 2005 (Exhibit 7, Tab F) in which the Hearing Officer reinforces the seriousness of breaches of CPIC and the infringement on personal and individual rights.

The prosecutor then drew attention to Toronto Police Service Governance 1.19 relating to the use of Computers and Telecommunication equipment which directs that the use of such systems shall be for police business and Service

Governance 1.12 which further directs all members of the Service to treat official police business as confidential (Exhibit 6, Tab 4). Additionally, the prosecutor referenced two Routine Orders issued by the Service, one dated February 2008 and the other June 2011 (Exhibit 6, Tab 5) reinforcing that the use of its computerized data bases and telecommunication equipment are intended for official police business and informing members that breaches of this provision will be subject to the discipline process.

The prosecutor submitted that at the time of the breaches Const. White had been a police officer for three years and as such, had knowledge of the direction governing the use of computerised data bases and his obligation as a sworn police officer.

The prosecutor drew attention to an extensive list of queries conducted by Const. White (Exhibit 6, Tab 7), commenting that a review of the list would provide an understanding of and appreciation for the magnitude of the misconduct.

The tribunal's attention was then directed to the hearing decision relating to the matter of Constable Boucher and the Toronto Police Service, December 19, 2000 (Exhibit 7, Tab G) in which the Hearing Officer referenced the Service's Mission Statement and Core Values. In asserting the significance of the Service's Core Values, the Hearing Officer stated "*These Core Values are not merely good suggestions; they are at the very heart of our existence*"

The prosecutor referenced and reviewed the definitions of the Service's Core Values of Honesty, Integrity and Reliability (Exhibit 6, Tab 6) submitting that these Core Values clearly demonstrated the expected standard of conduct for police officers and further that Const. White should have been well aware of the expectation.

Recognition of the Seriousness of the Misconduct

The prosecutor reminded the tribunal that Const. White acknowledge his misuse of the Service's data base when he was interviewed by investigators and further that he pled guilty to the matters before the tribunal. She proceeded to explain that the use of an electronic token and password to access data bases make it relatively easy to identify and determine activities conducted by members on the systems.

The prosecutor advised the tribunal that during one of the interviews relating to CPIC checks, Const. White admitted to the investigators that he had conducted the queries and that they were not related to official police business. However, when asked by the investigator if he would "*do anything differently*" in relation to these queries, Const. White responded "*I'd rather not answer*".

The prosecutor offered the opinion that despite the guilty pleas Const. White had not to date, offered an apology to the complainants in this matter

In assessing the real value of a guilty plea, the prosecutor referenced the OCCPS decision in the matter of Constable Seamons and Durham Regional Police Services, September 28, 2006 (Exhibit 7, Tab H) and quoted from the decision as follows "*In his reasons the Hearing officer acknowledged that guilty pleas must normally be treated as a mitigating factor. However, given the explanation offered by Constable Seamons for his actions, the Hearing Officer expressed reservations that these guilty pleas could be viewed as an expression of true remorse. In other words, Constable Seamons' guilty plea only reflected regret that he had not followed procedures, but did not in any way acknowledge the highly questionable nature of his conduct. Given the above finding, the Hearing Officer was entitled to question the real value of the pleas*"

The prosecutor submitted that the guilty plea may be considered as a mitigating factor relating to Const. White's recognition of the seriousness of the misconduct. However she offered the opinion that any weight given should be balanced against other mitigating and aggravating factors in this matter.

Employment History

The prosecutor submitted that employment history is a standard consideration in arriving at an appropriate disposition. She elaborated by adding that a significant period of unblemished history would constitute a mitigating factor, while a pattern of misconduct would serve as an aggravating factor. In addition, she offered the view that an isolated instance of misconduct in an officer's employment history would be a mitigating factor.

The tribunal's attentions was drawn to Const. White's employment history as captured by his resume (Exhibit 6, Tab 9) and to information from his Personnel File (Exhibit 6, Tab 10)

The prosecutor advised that Const. White's file contained nine complimentary entries, including awards granted by his Unit Commander for "*diligent and keen police work*" involving investigations into break and enter, drugs, firearms and resolving community problem.

The prosecutor indicated that Const. White's file contained one Disciplinary Report dated in 2013, relating to a public complaint. Const. White was reprimanded in that matter. There are no other detractors in the records.

The Prosecutors drew attention to Const. White's annual evaluations (Exhibit 6, Tab 11) and noted that in his 2013 evaluation, Const. White is described as meeting or exceeding the standards in the areas of Personal Qualities and Core

Competencies. His supervisors described him as being "*a hard worker who has been a mentor for new officers*" and whose "*dedication to solve problems in the community is acknowledged by his supervisors*". She further advised that Senior Officer at 12 Division concurred with these comments.

The prosecutor submitted that Const. White's clear employment history, coupled with several complimentary entries and the absence of conduct issues, prior to the matter before the tribunal, should be considered as a mitigating factor.

Ability to Reform or Rehabilitate the Police Officer

The prosecutor submitted that rehabilitation is a key factor to be considered when determining the appropriate disposition in matters of substantiated misconduct. She added that rehabilitation begins with an acknowledgement of wrongdoing and acceptance of responsibility.

The prosecutor then drew the tribunal's attention to the OCCPS decision in the matter of Constable Parent and Hawkesbury Police Service, May 22, 1988 (Exhibit 7, Tab J) where the Commission stated "*Constable Parent never showed remorse or accepted responsibility for his actions. Rehabilitation is a personal decision and can only be successful if undertaken by the officer first, to be assisted by others and the Service*"

The prosecutor submitted that through his guilty pleas, Const. White has taken the first steps towards rehabilitation by accepting responsibility for his misconduct. She further supported this position by drawing attention to the OCCPS decision in the matter of Constable Carson and Pembroke Police Service, July 27, 2001 (Exhibit 7, Tab I) in which the Commission reinforces the importance of rehabilitation as a consideration especially when the officer has a

prior unblemished record. The prosecutor offered the opinion that, based on these circumstances, she did not believe that Const. White would re-offend

Handicap and other Relevant Personal Circumstances.

The prosecutor advised the tribunal that she was not aware of any issues relating to this consideration in the matter.

Provocation

The prosecutor took the position that there is no circumstance in this matter that would constitute provocation for an officer to conduct queries unrelated to official business, on the police data base. She drew attention to the OCCPS decision in the matter of Constable Coon and the Toronto Police Service, April 10, 2003 (Exhibit 7, Tab M) in which the Commission stated “ *Constable Coon felt justified in doing the searches for the safety and wellbeing of his children. As a police officer, he should not be in a better position than an ordinary citizen who would not have access to CPIC in similar circumstances*”

The prosecutor submitted that Const. White conducted the queries for personal reasons and that nothing about any of the circumstances constituted provocation.

Procedural Fairness

The prosecutor submitted that throughout this process, Const. White has been afforded consideration and fair treatment.

Management's Approach to the Misconduct

The prosecutor submitted that the Service recognizes that professional and ethical behaviour is at the cornerstone of public confidence in its operations and has gone to great lengths to ensure that these are emphasised and continuously communicated throughout the organization. She drew attention to the screen

saver which appears each time a member logs on to a Service computer (Exhibit 6, Tab 12) and quoted its contents directly stating *"Accessing TPS computer systems acknowledges members 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 information asset may constitute an offence under the Criminal Code of Canada and a violation of Service Rules. All transactions are subject to monitoring and may be recorded"*

Specific and General Deterrence

The prosecutor submitted that the seriousness of Const. White's misconduct must be met with an appropriate disposition that will have the effect of deterring him from repeating the behaviour.

In addressing the principle of general deterrence to other officers, the prosecutor drew attention to the OCCPS decision in the matter of Sergeant Andrews and Midland Police Service, May 1, 2003 (Exhibit 7, Tab D) in which the Commission stated *"With respect to specific deterrence, he (the Hearing Officer) believed that the penalty imposed would send a strong message to other officers as to the consequences of such misconduct"*

Effect on the Police Officer and his Family

The prosecutor acknowledged that the disposition being sought will have an impact on Const. White. She submitted such a disposition is result of Const. White's behaviour and therefore the responsibility and subsequent consequences falls on his shoulders and must be borne by him.

Damage to the Reputation of the Service

The prosecutor submitted that damage to the reputation of the Service is a standard consideration in arriving at an appropriate disposition. She added that this matter had not received media attention. However, she submitted that as a result of the incident, confidence in the Service's image and reputation was damaged in the eyes of the complainants in the matter.

The Effect of Publicity

The prosecutor advised that she was not aware of any publicity in the media, surrounding this matter.

Consistency of Disposition

The prosecutor reminded the tribunal that consistency in disposition is often the earmark of fairness and as such is one of the basic considerations in determining an appropriate disposition. She drew attention to the Ontario Police Commission decision in the matter of Constable Schofield and Metropolitan Toronto Police, October 1984 (Exhibit 7, Tab L) in which the Commission stated "*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*"

The prosecutor presented the following cases, which reflected similar circumstances, to assist the tribunal in arriving at an appropriate disposition:

Constable Wildeboer and Toronto Police Service, November 7, 2006 (Exhibit 7, Tab N) Disposition 18 days

Sergeant Meech and Toronto Police Service, June 18, 2013 (Exhibit 7, Tab O)
Disposition 12 days

Constable Grbich and Aylmer Police Service, August 9, 2002 (Exhibit 7, Tab C)

Disposition 5, 15 and 30 days on three counts

Constable Hampel and the Toronto Police Service, May 29, 2007 (Exhibit 7, Tab

P) Disposition 7 days

Constable Santos and the Toronto Police Service, November 8, 2005 (Exhibit 7,

Tab K) Disposition 9 days

Constable Corcoran and the Toronto Police Service, August 14, 2012 (Exhibit 7,

Tab Q) Disposition 12Days

Defence Submissions

Defence counsel began his submissions by advising the tribunal that Const. White had authorized him to apologize to the complainants and to the Service for his inappropriate behaviour and described the prosecutor's submissions as being fair.

Defence counsel then drew the tribunal's attention to Const. White's work history and in particular his performance appraisal covering the period while this matter was "hanging over his head" (Exhibit 6, Tab11). He commented further that Const. White's performance was rated by his supervisors as being "superior" in all categories relating to his personal qualities and as "exceeds" in most categories relating to his core competencies. He added that Const. White was a hardworking, capable and brave officer who had received two commendations while this matter was still pending. Defence submitted that these qualities, assessments and recognition should be viewed as mitigating factors when considering the disposition of the matters before the tribunal.

Defence counsel advised the tribunal that Const. White acknowledges the impropriety of his actions and regrets his conduct in this matter, adding that he was confident that Const. White would not find himself before the tribunal in future.

Defence counsel further advised the tribunal that from the outset, Const. White had expressed his desire to acknowledge his misconduct before the tribunal and accept the consequences.

Defence counsel submitted that the joint submission on disposition was appropriate in the circumstances and urged acceptance by the tribunal. He requested that if the submission was accepted, the tribunal render sentence effective on this date to enable Const. White to commence serving the disposition as soon as possible.

Analysis and Decision

The ability of police officers to access CPIC and other police databases is an invaluable tool in policing and it is essential that the integrity of these databases is strictly protected. Consequently, the Service regards any violation of the Rules and Procedures governing the use of its databases and information contained therein, as serious misconduct and a breach of security. The Royal Canadian Mounted Police, as owners of the CPIC system, considers abuse of this system to be nothing less than a breach of contract. Furthermore, the community regards improper access of CPIC and other police databases by Service members as a breach of trust and a violation of their privacy rights.

Both complainants in the matter before the tribunal, through their impact statements read by the prosecutor, described the invasion of their privacy and the distressing impact of the intrusion on their lives and the lives of their families,

resulting from Const. White's actions (Exhibits 4 and 5). The tribunal regards this as a significant aggravating factor.

The Service's position regarding the use of its databases, the information contained therein and the consequences for misuse has been clear, consistent and unequivocal. The direction, as well as the consequences for misuse of these databases and information, is frequently communicated to members through training, publications and the dissemination of related tribunal decisions. Each time members access Service databases, a screen saver warning is displayed reinforcing the applicable restrictions and potential consequences for violations.

According to the Notice of Hearing and the agreed Statement of Facts (Exhibit 3), Const. White conducted several CPIC and other Service database queries, relating to the complainants, during the period between January 2010 and September 2012. He has admitted that these queries were undertaken for reasons unrelated to any official police business. By this action, Const. White took advantage of his position as a police officer. The tribunal views the extensive list of queries conducted by Const. White (Exhibit 6, Tab 7) as a significant aggravating factor.

In determining the appropriate disposition to be rendered in this matter, the tribunal must balance several considerations. These considerations include the public interest, the seriousness of the misconduct, the officer's employment history, the officer's acknowledgement of the seriousness of the misconduct, the officer's potential for rehabilitation, the impact upon the officer and his family, consistency in disposition, the damage to the reputation of the police service and the need for specific and general deterrence.

The prosecutor and the Defence drew attention to the fact that Const. White has accepted responsibility for his actions as evidenced by his cooperation with the investigation and his guilty plea. This coupled with a previously unblemished record (at the time of these misconducts) and the presence of several complimentary entries in his employment file is viewed by the tribunal as a mitigating factor.

The tribunal has carefully considered the submissions of the prosecutor and defence counsel, weighed the aggravating and mitigating factors present in this matter and reviewed previous tribunal decisions tendered. The tribunal is also mindful of the guilty plea accompanied by the joint submission as to disposition.

While the tribunal is not bound by the joint submission as to disposition, it is satisfied that the submission appropriately addresses the relevant considerations specific to this matter.

I am therefore prepared to render my decision on disposition.

Will the officer please stand.

The disposition for both counts of insubordination, imposed under Section 85 (1) (f) of the Police Services Act will be as follows;

The disposition as to Charge # 1 will be a forfeiture of 18 days or 144 hours off.

The disposition as to Charge #2 will be a forfeiture of 8 days or 64 hours off to run consecutive to the disposition in Charge # 1.

Defence counsel, with no objection from the prosecutor, has requested that Canst. White be permitted to commence serving the disposition rendered, effective immediately or as soon as this can be administratively accommodated.

Defence counsel's request is granted.

A handwritten signature in black ink, appearing to read "D. McLeod", with a large, sweeping flourish at the beginning.

David McLeod

Superintendent

Hearing Officer