

In the matter of the Police Act, R.S.A. 2000, c. P-17 and
In the matter of the Police Service Regulation, Alta. Reg. 356/1990

And in the matter of Complaints and Disciplinary Proceedings against
[REDACTED]
Of the Calgary Police Service

Penalty Decision

On February 11, 2020, [REDACTED], was charged with two counts of disciplinary misconduct. On June 9th, 2020, [REDACTED] entered an “admit” plea to the following count:

Count 2:

Discreditable Conduct under section 5(2)(e)(i)(A) of the *Police Service Regulation*, contravening an Act of the Parliament of Canada where the contravention is of such a character that it would be prejudicial to discipline or likely to bring discredit on the reputation of the police service in that on or about 21st day of July 2017, in the City of Calgary, Province of Alberta, you plead guilty to contravening section 72(1) of the *Criminal Code* for forcible entry in the residence of [REDACTED], on or about the 13th day of April, 2016.

FACTS (as per the Agreed Statement of Facts)

1. [REDACTED] and [REDACTED] were previously married. [REDACTED] they separated resulting in ongoing matters before the courts relating to their divorce and property division.
2. Following their separation, two court orders were put into effect in relation to the domestic situation. A *Court of Queen’s Bench* order [REDACTED] and a *Court of Queen’s Bench* order [REDACTED]. The *Court of Queen’s Bench* Order [REDACTED] granted [REDACTED] exclusive occupancy and possession of the matrimonial home, [REDACTED].
3. Having exclusive occupancy and possession of the Matrimonial Home, [REDACTED] changed the front and rear locks of the home and changed the key-pad code to the garage.
4. The Court Order [REDACTED] permitted [REDACTED] to attend the matrimonial home to inspect the property and to pick up his personal belongings if accompanied by a CPS Member. On September 9, 2015, [REDACTED] executed his right under the Civil Order and attended the Matrimonial Home.

5. Throughout the relevant time period, a number of [REDACTED] personal items remained in the matrimonial home and formed the basis for family court proceedings when he discovered that they were being removed or disposed of by [REDACTED]
6. On April 12, 2016, [REDACTED] while off-duty and knowing that [REDACTED] was vacationing [REDACTED] with their children, attended the Matrimonial Home and attempted to gain access to the garage and the front and rear doors. [REDACTED] was unable to gain entry to the Matrimonial Home and the attempt was witnessed by a neighbour who contacted [REDACTED] and advised her of the attempt to gain access.
7. On April 13, 2016, [REDACTED] returned to the residence and gained entry by utilizing a locksmith who had drilled through the front door lock. Metal shavings were scattered over the front porch. A neighbour reported the situation to the CPS and prior to the arrival of CPS members, [REDACTED] had removed property from the home into a vehicle. Upon arrival of CPS members, [REDACTED] was detained at the scene and subsequently transported to Westwinds East.
8. On 2016 April 15, [REDACTED] re-attended the Westwinds building, was arrested by A/Detective Wilkinson and taken to the Court Services Section. [REDACTED] was later released after being charged with one count of Break and Enter with Intent to Commit an Indictable Offence; two counts of Breach of Court Order, and one of Mischief to Property over \$5000.00.
9. On July 21, 2017, [REDACTED] attended Provincial Court of Alberta and plead guilty to Forcible Entry under section 71(1) of the *Criminal Code of Canada* and received a suspended sentence and one-year probation. All other counts were withdrawn.

10.



Summary of Proceedings

[REDACTED] made his first appearance on March 16, 2020 at which time he reserved his plea on the two counts contained in the Notice and Record of Disciplinary Proceedings.

On June 9, 2020, [REDACTED] entered an "Admit" plea on count two. An Agreed Statement of Facts was read into the record, and the document was entered as Exhibit #4 in the proceedings. [REDACTED] admitted to the facts contained in Exhibit #4. With the admit plea of [REDACTED], coupled with the admission of the facts, count two was found to be proven on a balance of probabilities. [REDACTED] was found guilty on count 2. The Presenting Officer made application to withdraw count one, which was supported by the cited officer. Accordingly, count one was withdrawn.

The parties made submissions with regards to penalty and the matter was set over to June 18th, 2020 for the penalty decision.

Evidence

Exhibits:

- Exhibit 1 Notice and Record of Disciplinary Hearing;
- Exhibit 2 Presiding Officer Appointment Memo;
- Exhibit 3 Presenting Officer Appointment Memo;
- Exhibit 4 Agreed Statement of Facts.

Submissions of the Presenting Officer

Ms. Campbell advises that [REDACTED] has been a member of the Calgary Police Service since [REDACTED]. He is presently a Senior Constable Level I.

His work history includes assignments to [REDACTED]. He is currently assigned to the "[REDACTED]"

Ms. Campbell stated [REDACTED] was the recipient of a "Chief's Award" for life saving [REDACTED]. His PEAKS Assessments contains positive feedback, indicates he is an officer who willingly accepts criticism and adapts to change. He is considered an informal leader on his team.

She also stated [REDACTED] does not have any prior disciplinary matters on his record.

In mitigation Ms. Campbell states [REDACTED] entered a guilty plea to the charge. He has a good service record and he has long service. She added that this was an isolated incident. She further stated that there was some provocation with [REDACTED] property being removed and disposed of by his former spouse.

She advised that [REDACTED] has experienced financial hardship leading up to and as a result of the incident.

She stated: *“there are life stressors in policing and there is a pattern in the Calgary Police Service. I can say that obviously we know that police are held to a higher standard, and it is recognized that the loss of a significant relationship can be a difficult challenge and a severe life stressor. This is a pattern that we're seeing time and again in police discipline. Officers with exemplary records experience a lapse in judgment in engaging behaviours they otherwise would have never even contemplated, just as we see here.”*

She added, [REDACTED] exhibited a lapse of judgment which will not likely be repeated.

Ms. Campbell stated that throughout the process, [REDACTED] was cooperative and frank. He also pleaded guilty to the criminal charges he faced.

In aggravation, she stated, police officers are held to a higher standard.

She stated the actions of [REDACTED] were premeditated. He used the services of a locksmith. There was a criminal conviction and he breached the trust of the public by failing to comply with a court order.

Ms. Campbell then provided four decisions from other agencies to be used as “like instances.” She stated the range of penalties in these matters was 24 to 30 hours of suspension without pay or forfeiture of hours. She described the misconduct of [REDACTED] as more serious and the penalty should be higher.

Submissions of the Cited Officer

At the outset, Mr. Wilson advised that his submissions were not meant to diminish the actions of [REDACTED], but to put context to them. His submissions were also not meant to attack or impugn the “other actors” involved in the [REDACTED] [REDACTED] leading to the incident.

[REDACTED]

[REDACTED]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]



[REDACTED]

Mr. Wilson stated that [REDACTED] takes full responsibility however the foregoing information is significantly mitigating.

The misconduct did not involve any violence and there was not an abuse of authority. Instead, it was the result of clouded judgement. He was not thinking clearly; his thinking was diminished.

Also, in mitigation, Mr. Wilson advised that [REDACTED] has a good work record. He has taken full responsibility, and this was an isolated incident.

It was his submission that a penalty in the range of 25 to 30 hours forfeiture would be appropriate.

[REDACTED]

[REDACTED] requested the opportunity to address the hearing. He stated he wanted to thank the parties for their time. He takes full responsibility for his actions and does not dispute the allegations.

He stated his actions were out of character, and he has taken significant steps to improve who he is. [REDACTED]

[REDACTED]

He advised that he was excited to move on from this incident.

Analysis

[REDACTED] has been found guilty of one count of misconduct under the *Police Service Regulation*. It is now required that a penalty be imposed upon him.

The task of determining an appropriate penalty involves the assessment of many factors. To aid in that assessment, in 1993 the Law Enforcement Review Board (LERB) provided a statement of principles regarding disciplinary sanctions. These statements of principles, given in *Amery v. Young*,¹ are to this day the guidelines assisting Presiding Officers in crafting appropriate penalties in police disciplinary proceedings.

¹ Amery v. Young ALERB #007-093

1. *The principle purpose of police discipline is to advance the organizational objective of effective and efficient police services to the community.*

When a police officer is convicted of a criminal offence it strikes to the core of the community's expectations. There can be and often is a loss of trust and confidence. This is a fact in all such cases, but the degree is also predicated on the type of criminal conviction and the surrounding circumstances. [REDACTED] was convicted of "Forcible Entry." He unlawfully entered the home in contravention of a court order.

There is a rightful expectation that police officers entrusted to enforce the law, will uphold the law. Acting in violation of a court order is not only an offence, it is an affront to the judiciary and the justice system at large.

When the public loses confidence in its police service as a result of the actions of one of its officers, that adversely affects an agency's ability to provide effective and efficient policing services to the community.

Accordingly, the police agency must effectively use the disciplinary process to appropriately deal with police officers who have committed misconduct. This is part of regaining the public trust and support.

2. *A fair and just sanction in the circumstances is the goal. The public interest must be considered in those cases where it is engaged.*

The primary goal of discipline is to correct the behavior that led to the misconduct. We want our members to learn from the process to ensure they and others do not repeat such actions that led to the misconduct.

A penalty that is excessively harsh without sufficient justification can have the opposite effect of the desired outcome. It can cause the cited officer to have animosity and an "us against them" attitude. In that scenario, the desired goal cannot be achieved. Any penalty imposed must be fair to all parties. This includes the cited officer and any other vested party and the public at large.

The public interest in this matter was engaged in that the arrest, conviction and sentencing of [REDACTED] was reported in the media. This is a factor that must be considered. The public must see that the disciplinary process is meaningful and that police officers are held accountable for their actions.

The interests of [REDACTED] former spouse, [REDACTED], must also be considered. The courts granted [REDACTED] sole possession of the matrimonial home. The Court ordered that [REDACTED] could only attend the home under certain conditions. [REDACTED] had a reasonable expectation that a court order would be obeyed by her former spouse.

- In cases where organizational or administrative factors have played a significant roles in contributing to the misconduct that contribution must be considered. In those instances, organizational policy or procedure should take priority for correction. Any individual discipline imposed in such circumstances must consider the overall context.*

The breakdown of the marriage between [REDACTED] and [REDACTED] led to several court proceedings and a number of court orders being issued.

[REDACTED] violated one of the court orders and unlawfully entered the matrimonial home. A criminal conviction resulted.

In the cited officer's counsel's submissions, information was provided indicating that [REDACTED] utilized the services of Calgary Police Service members to serve documents upon [REDACTED]. There is no information on whether this was done as a result of a personal request to a co-worker(s) or if it was a dispatched call. In either case, it is improper. Calgary Police Service members should not serve civil court summonses, papers, or orders on behalf of other members of the police service. A perception of bias could easily result.

[REDACTED] was the subject of a court order not to attend or enter the matrimonial home to retrieve property unless he was escorted by a member of the Calgary Police Service. His counsel advised in one instance when [REDACTED] requested the assistance of a CPS member, it was refused. In another instance, the officer who attended breached confidentiality spreading gossip about the court order to other CPS members. [REDACTED] experienced embarrassment as a result.

Currently, there is no policy within the Calgary Police Service that speaks to the matter of the service of civil documents on the behalf of CPS members on other CPS members. Additionally, policy does not exist regarding service to members subject to conditions of a civil court order.

Requiring a CPS member to place a call for service so that they could have police attendance to retrieve property from the matrimonial home in accordance with a court order puts both that police officer and the officers attending in an uncomfortable position. Without policy or process, it can also be open to accusations of bias or other improprieties.

This is also the case with the service of civil documents on behalf of CPS members. The officers who served the documents on behalf of [REDACTED] apparently exhibited such bias.

It is my recommendation that policies and processes be developed addressing these identified issues.

I also recommend that any member who is the subject of a civil court order, be required to provide the Calgary Police Service with a copy of that order to be retained in a confidential manner, and accessible on a 24/7 basis by a work area such as the RTOC.

Any member requiring the attendance of the CPS, as was the case of [REDACTED], would contact a work area such as the RTOC to make those arrangements. The Duty Inspector or appropriate designate could then review the specifics of the order and assign a police officer of the appropriate supervisory status (i.e.: senior in rank to the member making the request) to attend.

4. *A remedial approach which seeks to correct and educate, rather than to punish, should be considered as a priority in those circumstances where it is appropriate. In the Alberta context Regulation 17 (3) promotes the use of special training or professional counseling. The constructive use of this option, in some circumstances, may work to achieve this goal.*

Not applicable

5. *Both aggravating and mitigating factors should be considered in determining a just sanction or punishment.*

A. Previous good record of the officer.

[REDACTED] has a documented record of good service. His personnel file contains eight noteworthy events. Six of these noteworthy events speak to his work in the Districts and two speak to his contributions as part of the Unified CAD team. These documents speak to [REDACTED] diverse skill set. His PEAKS assessments, which unfortunately are sporadic, are positive and tell of a police officer who is willing to learn and to work collaboratively with others.

[REDACTED] also does not have any prior discipline on his personnel record.

B. Long Service of the officer.

[REDACTED] has over [REDACTED] of policing experience with the Calgary Police Service. He has worked in several districts and is currently working in an important project area of the Service.

C. Whether or not the misconduct was an isolated incident in the employment history of the Officer.

[REDACTED] does not have a prior history of disciplinary misconduct. This is an isolated incident in his employment history.

D. The existence or absence of provocation.

The marriage breakdown between [REDACTED] and [REDACTED] led to a bitter, disputed divorce. The uncontested information provided in the submissions of his

Counsel is that much of [REDACTED] personal property that was in the matrimonial home was being disposed of or being destroyed by his former spouse.

[REDACTED] attempted to obtain the assistance of the Calgary Police Service to attend the home in accordance with the court order but on one occasion did not obtain that assistance. On the next occasion, while the police did attend, his counsel advises the attending officer(s) breached confidentiality advising other police officers of the call.

Based on the evidence before me, it could be reasonably argued that the alleged actions of [REDACTED] disposing of and or destroying the property of [REDACTED] made him think he had to retrieve his property at all costs.

E. Whether or not the misconduct was premeditated or was done on the spur of the moment being aberrational in nature.

I was not provided information on the total number of times [REDACTED] attended the residence to retrieve property, but one would think he would have taken as much as he could on the occasions that he did have the police attend.

When [REDACTED] attended the matrimonial home on April 12th, 2016 there is no indication it was premeditated. At that time, he was not able to gain entry due to the locks being changed and the garage key-pad code being re-coded. His attendance at the residence the following day was planned and therefore premeditated. He acquired the services of a locksmith. The lock was drilled, and access was gained.

I was not advised why he felt it necessary to go back another time and while [REDACTED] was out of the country or what if any efforts were made to have the police attend in accordance with the court order. It would be more than likely he did not request the attendance of the police as he would be aware, they likely would not have permitted him to drill the locks. This would also have meant the residence would have been left insecure after he left.

[REDACTED] was well aware of the requirements of the court order. He exercised the requirements when he requested police attendance on prior occasions.

I have no doubt in my mind that [REDACTED] planned to enter the residence while his ex-spouse was not present and in violation of the court order. This would give him unfettered access throughout the house. His attendance on April 13th, 2016, was premediated.

Despite the issues he had in the past regarding access to the residence or the disposal or destruction of his property, he knew it was wrong. He put aside being a police officer and what it stands for, and purposely violated the court order.

*F. Whether the imposition of a particular penalty will create a **special** economic hardship for an officer in light of his/her particular circumstances.*

The Presenting Officer and Counsel for Constable ██████ advised that his financial situation is tenuous and any penalty with financial implications will create a special economic hardship.



Neither party has suggested a penalty that would have a significant financial impact on ██████. Any forfeiture of hours or suspension without pay would be more of a short-term inconvenience than a hardship.

G. Evidence that the rules or internal policies of the police service (written or unwritten) have not been uniformly enforced or applied, thus constituting a form of discrimination.

The uncontested information provided by the cited officer indicates members of the Calgary Police Service had an unfavourable bias in their dealings with ██████. The actions that constitute these biases are documented in this decision. It is clear that ██████ former spouse, ██████ was afforded favourable consideration by Calgary Police Service members over that of ██████.

While specific internal rules or policies may not have been in play, the lack of specific rules or policies contributed to members not treating ██████ fairly and without bias, thus constituting a form of discrimination.

H. Evidence indicating that a police officer misunderstood the nature or intent of a given order or directive and as a result disobeyed it.

By the nature of his role as a police officer, ██████ was well aware of the requirements of the court order and the limitations it placed upon him. I have no doubt that ██████ has arrested and charged people for violating court orders.

The fact that a police officer was to attend is a clear indication that they would be there to keep the peace and ensure no laws were broken. The premeditation and ██████

██████████ forced entry into the residence are indicative to me that he was fully aware of his actions, and they were illegal.

I. The seriousness of the misconduct. In circumstances involving a member of the public, the impact or consequence to that person or persons.

When a police officer is charged and convicted of a criminal offence, it casts a pallor upon the entire profession. Policing as a whole is often judged on the actions of one person. When hardworking honest police officers hear of another police officer being arrested, they take it personally. They are often the ones who bear the brunt of the public's outrage and subsequent distrust.

██████████ actions are particularly egregious. He was convicted of "Forcible Entry" which he did in violation of a court order issued by the Court of Queen's Bench.

Such an act flies in the face of policing and the judicial system itself.

A police officer should know better and should act better. He put his self-interests ahead of his oath and responsibilities. Even taking the significant mitigating circumstances into consideration, his actions cannot be excused.

I am also bound to consider the impact ██████████ actions had on his former spouse ██████████. She had the reasonable expectation that her residence would be secure from ██████████. Aside from his entry into the residence, I find there was no consequence of significance to ██████████. There was no loss of property to her. Her vacation was interrupted by phone calls about ██████████ ██████████ attempt to enter the residence but that is the extent that I have been made aware of.

Members of the public are expected to uphold the law and those members of society charged with enforcing the law are not above it. Police officers should be and are held to higher expectations and standards than other members of the public. We expect our police officers to set the right example.

J. Officer cooperation, frankness and overall attitude

██████████ has accepted responsibility for his actions. He entered an "admit" plea to one count contained in the Notice and Record of Disciplinary Proceedings. The remaining count was withdrawn. His plea came at an early stage in the hearing process.

He addressed the hearing apologizing for his actions.

K. Circumstances of mental or emotional stress or a context of substance addiction or drug dependence. In considering such circumstances the likelihood of future misconduct arising from the same cause or causes is an important factor.

Counsel for the cited officer went into detail about how [REDACTED] adversely affected [REDACTED] mental health.

He sought out and received treatment from mental health professionals [REDACTED]

At the time of this incident, he was in the midst of the circumstances that led to his mental health condition. It clouded his judgement and contributed to him making poor decisions. His decision to unlawfully enter his former matrimonial home being one.

[REDACTED]

This is all to the credit of Constable [REDACTED]. Although his legal issues have concluded and his disciplinary matter is nearing conclusion, he continues his treatment. He advises he is now equipped with the tools he needs to manage anxiety and to move forward in his career and personal life.

[REDACTED] misconduct was judgement related. He made poor decisions. With his new tools, I believe he is better equipped therefore the likelihood of future misconduct in similar circumstances is greatly reduced.

L. Other mitigating or aggravating factors unique to the personal circumstances of the officer or the misconduct involved.

The incident that led to the misconduct charges occurred over four years ago. It took the matter approximately fifteen months for the criminal charges to be resolved, that being in July 2017.

The disciplinary process then took over and took almost three years to complete the investigation, be reviewed and to be sent to Hearing. [REDACTED] of [REDACTED]

[REDACTED] This delayed the investigation for approximately seven months being the time from when he was convicted, [REDACTED]

The investigation into misconduct of this nature is not complicated. To have disciplinary misconduct hang over the head of a member for almost three years is in itself a punishment. The uncertainty it causes for the member can take a toll; especially members who have been experiencing mental health issues. It can have an adverse effect on their treatment and recovery.

The record of [REDACTED] discipline will remain on his file for a minimum of five years, until June 2025, over nine years after the incident.

6. *Deterrence of other police officers and maintenance of public respect of the police are legitimate goals in the context of police discipline.*

Police officers should be aware that they are accountable to the courts and its orders like everyone else. More so, as public office holders who have sworn an oath to office. Police officers are not above the law and cannot be seen to think they are.

A police officer being convicted of a criminal offence is the epitome of hypocrisy.

Members of the CPS and other police agencies need to be aware that such misconduct can attract serious penal consequences. In addition, they must also be reminded of the negative impacts of the public perception on their coworkers and the profession.

7. *Consistency in disciplinary sanctions should be strived for. Like instances of misconduct should attract like sanctions.*

A quote from the ABCA in *Constable A. v. Edmonton Police Service*² speaks to this principle.

“In Amery v Young, LERB Dec No 007-93, the LERB stated that one of the objectives in selecting a disciplinary sanction is consistency; “like instances of misconduct should attract like sanctions”: Amery at p 8. This Court in MacDonald supported the policy of treating like case alike and noted the need for a “fair and predictable consistency of approach”, while acknowledging that all the relevant factors in each individual case must be assessed. A marked departure from these considerations, without adequate reason or explanation, can be an indicator that a sanctioning decision is unreasonable.”

The Presenting Officer provided five matters as like cases.

The first matter involved [REDACTED] from the Edmonton Police Service. The Presenting Officer provided the LERB Decision dated 2016 June 16 where the penalty of a combined thirty-hour suspension without pay was upheld on appeal. In reading the penalty decision of Superintendent Logar issued on March 27, 2015, the facts of the [REDACTED] matter are very analogous to the facts from the [REDACTED] matter. Both officers were going through a contentious divorce where their spouse was given sole possession of the matrimonial home and the cited officers were restrained from attending the home. The spouses in both matters were allegedly disposing of personal property of the cited officers. One difference between [REDACTED] and [REDACTED] is, [REDACTED] was not charged and convicted of a criminal offence.

The next two matters offered were also Edmonton Police Service cases. [REDACTED] allegedly assaulted his spouse and was charged with assault. He entered into a Peace Bond in lieu of the criminal charge proceeding. At his disciplinary hearing he was assessed a penalty of a thirty-hour suspension without pay. [REDACTED] of the

² Constable A v Edmonton (Police Service), 2017 ABCA 38 para: 53 (CanLII)

EPS was convicted of assaulting his ex-spouse receiving a conditional discharge with probation. He also was assessed a penalty of a suspension without pay for thirty-hours.

I find the [REDACTED] matters quite different on the facts and therefore of little guidance. The only similarity is that all three officers were charged with criminal offences involving ex-spouses, with [REDACTED] matter being dealt with by means of a Peace Bond and [REDACTED] matter resulting in a conditional discharge and probation. [REDACTED] did not assault his spouse. He unlawfully entered the residence in violation of a court order.

The next matter presented was another Edmonton Police Service case involving [REDACTED] [REDACTED] was charged with two counts of assault and two counts of criminal harassment involving his former spouse. In court he pleaded guilty to one count of criminal harassment and was given a conditional discharge and a period of probation. The remaining charges were withdrawn. At his disciplinary hearing, he was assessed a penalty of a suspension without pay for twenty-hours.

As was the case with the [REDACTED] matters, the [REDACTED] matter is dissimilar on the basic facts. The comparison is only that a criminal conviction resulted from a domestic situation.

The last matter offered by the Presenting Officer was that of the Ontario Provincial Police and [REDACTED]. [REDACTED] had been found guilty of Discreditable Conduct for watching the home of his former spouse while on-duty, and then unlawfully entering the residence on three separate occasions, shortly after he had moved out. He was assessed a penalty of a forfeiture of twenty-four hours.

This matter has some similarities to the [REDACTED] matter. Both officers entered the residence of their former spouse.

A Calgary Police Service matter that bears some similarities to the [REDACTED] matter involved Sergeant [REDACTED]. Sergeant [REDACTED] was involved in an acrimonious marital breakdown where he had been convicted of a criminal offence for assaulting his spouse and placed on probation.

He later breached his probation order and also made threats against a male friend of his former spouse. He was charged and convicted of these offences and received a suspended sentence, an additional probation period and community service hours.

Similar to [REDACTED] matter, there was provocation by his former spouse and Sergeant [REDACTED] had significant mitigating circumstances [REDACTED]. Sergeant [REDACTED] was assessed a penalty of a reduction in rank from Sergeant Level II to Senior Constable Level II plus was subject to a number of conditions for a period of two years.

Both Sergeant [REDACTED] and [REDACTED] violated court orders. With Sergeant [REDACTED], he emailed his former spouse against the conditions of his probation order. The emails were not threatening in any way. The threat charge was a result of an in-direct threat for a male friend of his former spouse to stay away from Sergeant [REDACTED] children. [REDACTED] on the other hand, forcibly entered the former matrimonial home in violation of a civil court order.

Arguably, the facts are quite similar however the penalty for [REDACTED] suggested by the Service and Counsel for the cited officer is far less than was issued to Sergeant [REDACTED].

Penalty Discussion

The parties have submitted suggestions for penalty in the range of twenty-four to thirty hours, suspension without pay or forfeiture of hours.

I will start by stating that for a penalty in the range of the suggested hours, a suspension without pay would be inappropriate. A suspension without pay is not to exceed eighty (80) hours whereas a forfeiture of hours accumulated through overtime is not to exceed forty (40) hours.

Anytime a penalty of less than forty-hours is being sought, it is my belief this should be done through a forfeiture of hours accumulated through overtime which causes less disruption to the operation of the police service and is easier to administer.

Section 17(1) of the *Police Service Regulation* identifies seven penalties that can be imposed on a member found guilty of contravening section 5. These penalties are listed in order of severity culminating with dismissal.

A suspension without pay is a more serious penalty than a forfeiture of hours and it is my belief this would be properly reserved for when a penalty over forty hours is deemed appropriate, to the maximum of eighty-hours, but deemed less serious than requiring a reduction of seniority in rank.

In my view, the appropriate time to use s. 17(1)(c) *PSR* when the number of hours being sought is less than forty, is when the member's time bank does not have sufficient hours to satisfy the penalty to be imposed and the likelihood of them earning those hours in the short term is limited.

Referring to the like matters previously discussed, of the matters offered by the Presenting Officer, the EPS matter of [REDACTED], and the OPP matter of [REDACTED] are the most similar in facts. In those matters the penalties varied from 24 hours forfeiture to a 30-hour suspension. The Edmonton Police Service has a historical preference to use suspension without pay over a forfeiture of hours no matter what the number of hours are being assessed.

Frankly, I believe the above penalties do not reflect the seriousness of the facts of those matters. Criminal acts committed by police officers must be viewed most seriously. When those criminal acts have roots in domestic situations including the breach of court orders, the level of seriousness is increased.

The seriousness of [REDACTED] misconduct cannot be overstated. Anytime a police officer is found guilty of committing a criminal offence there must be a significant consequence. In this instance, the seriousness is amplified because his actions were in direct violation of a *Court of Queen's Bench* court order and was domestic related. The penalty assessed Sergeant [REDACTED] is an example of how serious the matter can and should be viewed.

Under most circumstances, the actions of [REDACTED] would warrant a reduction in seniority in rank. This would be an appropriate penalty reflective of the seriousness of the matter.

[REDACTED] circumstances have a uniqueness to them that allow for his penalty to be mitigated.

The information provided by [REDACTED] counsel is profoundly disturbing. [REDACTED]



While I believe [REDACTED] was fully aware what he was doing was wrong and in violation of the court order, I believe he had justified his actions to himself and was not fully cognizant of the consequences of his actions.

Another factor I find mitigating is the period of time from when the matter commenced in July 2017 to the present date. This delay is due to a myriad of factors [REDACTED]. For discipline to be effective and to meet its purpose, it must be timely otherwise it becomes solely punishment.

The suggested penalty range of twenty-four to thirty hours would have a financial impact on [REDACTED]. For any penalty to be meaningful, there must be an impact of some kind. It is my finding that the seriousness of the misconduct of [REDACTED] warrants a penalty at the high end of the penalty suggested by the parties.

It is important for those who would believe that such a penalty is insufficient to the charge [REDACTED] has been found guilty of to know, such a penalty would not be

the norm. The penalty is tailored to the individual circumstances of [REDACTED], and the significant mitigation he is being afforded.

ORDER

After assessing the circumstances of the incident, the evidence and hearing of submissions, I make the following order on penalty:

Count #1 – Withdrawn

On count #2 “Discreditable Conduct,” Section 5(2)(e)(i)(A) *PSR*, pursuant to section 17(1)(b) *PSR*, it is my order that [REDACTED] forfeit thirty (30) hours of work accumulated through overtime.

The forfeiture of hours is to be immediate.

Superintendent Paul Manuel (Ret'd)
Presiding Officer

Presenting Officer: Ms. Valerie Campbell

Counsel for the Cited Officer: Mr. Corey Wilson

Issued at the City of Calgary, June 18, 2020