

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

Summary of Proceedings

On July 6th, 2020 [REDACTED] was charged with eleven (11) counts of disciplinary misconduct. He made his first appearance on August 27th, 2020 at which time he reserved his plea on all counts.

On October 6th, 2020, [REDACTED] entered “admit” pleas to count #'s 3, 5, 8 and 9. The remaining seven counts were withdrawn.

The remaining counts as amended and contained in the Agreed Statement of Facts are as follows:

COUNT #3

Insubordination, s. 5(2)(g)(ii) of the Police Service Regulation, omitting or neglecting, without adequate reason, to carry out a lawful order, directive, rule or policy of the commission, the Chief of Police or other person who has the authority to issue or make that order, directive, rule or policy in that on or about 2019 April 25, [REDACTED] did not comply with Calgary Police Service “Conduct and Discipline” policy. While on-duty and in uniform in the City of Calgary, Province of Alberta, he attended Provincial Court and approached the Duty Crown Prosecutor. He obtained information in relation to a case which involved his ex-wife as the accused and his present girlfriend as the victim. [REDACTED] had no police related duties associated to the case but discussed with the Crown their intention and the scope of the matters being dealt with. Specifically:

- He did not comply with section 1(2)(c) as it relates to “Code of Conduct”, which directs that officers will avoid situations which could present a conflict of interest, or the appearance of a conflict of interest, and situations which could affect his ability to act objectively.
- He did not comply with section 1(2)(j) as it relates to “Code of Conduct”, which directs that when making a statement or when involved in public activities, officers will clarify whether one is speaking as a private citizen, a member of a specific group or organization or as an officer of the CPS.

COUNT #5

Discreditable Conduct, s. 5(2)(e)(viii) of the *Police Service Regulation*, doing anything prejudicial to discipline or likely to bring discredit on the reputation of the police service, in that on or about 2018 November 19, ██████████ contacted a department of the Canada Border Services Agency and obtained personal information about ██████████ the boyfriend of his estranged wife. The information obtained was for personal reasons not relating to his duties as a police officer in the City of Calgary, Province of Alberta.

COUNT #8

Insubordination, s. 5(2)(g)(ii) of the *Police Service Regulation*, omitting or neglecting, without adequate reason, to carry out a lawful order, directive, rule or policy of the commission, the Chief of Police or other person who has the authority to issue or make that order, directive, rule or policy in the City of Calgary, Province of Alberta, in that ██████████ did not comply with Calgary Police Service Canadian Police Information Centre (CPIC) policy when he made queries through CPIC not related to law enforcement duties for personal or private reasons. Specifically:

- a. On or about 2018 November 19 he conducted queries relating to ██████████ ██████████ CPIC contrary to section 2(3) as it relates to “Confidentiality” and direction that access to CPIC is permitted only for law enforcement duties.
- b. On or about 2018 November 19 he conducted queries relating to ██████████ ██████████ through CPIC contrary to section 5(1)(d) as it relates to “CPIC Users” and direction that CPIC users are not to access or use CPIC for personal or private reasons.
- c. On or about 2018 November 30 he conducted queries relating to ██████████ ██████████ through CPIC contrary to section 2(3) as it relates to “Confidentiality” and direction that access to CPIC is permitted only for law enforcement duties.
- d. On or about 2018 November 30 he conducted queries relating to ██████████ ██████████ through CPIC contrary to section 5(1)(d) as it relates to “CPIC Users” and direction that CPIC users are not to access or use CPIC for personal or private reasons.
- e. On or about 2018 November 30 he conducted queries relating to ██████████ ██████████ through CPIC contrary to section 2(3) as it relates to “Confidentiality” and direction that access to CPIC is permitted only for law enforcement duties.
- f. On or about 2018 November 30 he conducted queries relating to ██████████ ██████████ through CPIC contrary to section 5(1)(d) as it relates to “CPIC Users” and direction that CPIC users are not to access or use CPIC for personal or private reasons.
- g. On or about 2018 December 10 he conducted queries relating to ██████████ ██████████ through CPIC contrary to section 2(3) as it relates to “Confidentiality” and direction that access to CPIC is permitted only for law enforcement duties.
- h. On or about 2018 December 10 he conducted queries relating to ██████████ ██████████ through CPIC contrary to section 5(1)(d) as it relates to “CPIC Users”

and direction that CPIC users are not to access or use CPIC for personal or private reasons.

COUNT #9

Insubordination, s. 5(2)(g)(ii) of the *Police Service Regulation*, omitting or neglecting, without adequate reason, to carry out a lawful order, directive, rule or policy of the commission, the Chief of Police or other person who has the authority to issue or make that order, directive, rule or policy in the City of Calgary, Province of Alberta, in that [REDACTED] did not comply with Calgary Police Service Information Technology (IT) policy when he made queries through Calgary Police Service IT resources for reasons not related to law enforcement duties but for personal or private reasons. Specifically:

- a. On or about 2018 November 29 he conducted queries relating to [REDACTED] through Calgary Police Service IT resources contrary to sections 16(1) and 16(4) as they relate to “Databases” and direction that all database use must be for law enforcement purposes only and access to databases for personal, private and illegal reasons is not allowed.

An Agreed Statement of Facts was read into the record with the document being entered as an exhibit (Exhibit 4). The Agreed Statement of Facts was admitted to by [REDACTED]

With the admit plea and the admission of the contents of the agreed statement of facts which supported the charges, I found the three charges of Insubordination pursuant to s. 5(2)(g)(ii) and the charge Discreditable Conduct pursuant to s. 5(2)(e)(iii) of the *PSR* to have been proven on a balance of probabilities. [REDACTED] was found guilty of the misconduct.

Each of the parties made submissions including separate submissions on what an appropriate penalty would be in this matter. The matter was set over to October 29th, 2020 for the decision on penalty.

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.

****The documents contained in Exhibit 5 have been placed under seal by order of the Presiding Officer . Do not disclose.***

Facts as per the “Agreed Statement of Facts”

1. [REDACTED] were married in [REDACTED] and share two [REDACTED] ages 16 and 12. The marriage began to break down in 2012 and the couple have been mired in acrimonious separation, divorce and child custody proceedings for the past three years. Their divorce was finalized in August of 2020.
2. Matters precipitating [REDACTED] misconduct include [REDACTED] intimate involvement with [REDACTED] and their high conflict, lengthy and costly separation, and divorce.
3. On or about 2018 March 25, [REDACTED] were involved in a dispute which resulted in [REDACTED] being charged with assault on 2018 May 03. [REDACTED] was released on an Undertaking with conditions to stay away from [REDACTED] as well as his girlfriend, [REDACTED]
4. On 2018 December 14 [REDACTED] was charged with a breach of her Undertaking due to an encounter with [REDACTED] .
5. On 2019 April 25, [REDACTED] was scheduled to appear in Provincial Court regarding the breach charge. While on-duty and in uniform, [REDACTED] also attended Court though he was not subpoenaed and did not have any official status in the proceedings.
6. [REDACTED] was advised by Homefront, that the assault and breach charge would be heard at the same time and possibly be resolved by way of a Peace Bond.
7. Anticipating that the charges might have been resolved, [REDACTED] and [REDACTED] attended Court. They had previously attended all six previous appearances in relation to the assault charge (which kept being adjourned) and it was their intention to keep abreast of the matter and be present in Court should the matter be resolved.
8. As [REDACTED] was running late, he did not have time to return to his district office to change prior to attending court.
9. [REDACTED] approached the duty Crown, [REDACTED] and asked whether the charges would be concluded that day. Though his name-tag was clearly visible on the front of his uniform connecting him to the accused [REDACTED], he

failed to make it clear to [REDACTED] that he was not there in any official capacity, leaving her with the impression that he was.

10. [REDACTED] provided information to [REDACTED], as she assumed that he was the investigating officer. She later learned that [REDACTED] was the estranged husband of the accused and the present boyfriend of the complainant in respect of the breach allegation.
11. [REDACTED] brought her concerns regarding the actions of [REDACTED] to the attention of Assistant Chief Crown Prosecutor, who in turn advised the Calgary Police Service (CPS).
12. On 2018 November 19, [REDACTED] contacted Canada Border Services Agency (CBSA) because he believed that [REDACTED] was operating a motor vehicle owned by [REDACTED], but in the possession of [REDACTED], without having a valid driver's license. [REDACTED] goal was to determine how long [REDACTED] had been in Canada as his entry date would determine whether his international driver's license was still valid.
13. [REDACTED] from the CBSA advised [REDACTED] that [REDACTED] had visitor status [REDACTED]. [REDACTED] asked what the exact date was, and this information was provided to him by [REDACTED]. [REDACTED] also advised that [REDACTED] was visiting his girlfriend, [REDACTED].
14. Recognizing that [REDACTED] and [REDACTED] had the same surname, [REDACTED] asked [REDACTED] if they were related and what his inquiry was regarding. [REDACTED] replied that his inquiry was related to domestic abuse and stated words to the effect that he probably shouldn't have called direct and that he would have the "detective" call instead, making reference to [REDACTED] of the CPS Domestic Conflict Unit involved in [REDACTED] criminal matters. [REDACTED] then provided [REDACTED] with her email address to give to the "detective".
15. [REDACTED] subsequently contacted [REDACTED] to tell him that she had not heard from the "detective". [REDACTED] replied, "Thank you [REDACTED] your contact information has been forwarded." However, no "detective" ever subsequently contacted [REDACTED] or the CBSA.
16. On or about 2019 January 22, an ICTS request was submitted to determine whether [REDACTED] utilized CPS IT resources for personal or private reasons. The results confirmed that [REDACTED] queried [REDACTED] through the Calgary Police Service IT resources (UNIQ) on November 29, 2018 for reasons not pertaining to his law enforcement duties.

17. It was also confirmed that [REDACTED] queried [REDACTED] on CPIC on November 19th, November 30th and December 10th, 2018 for reasons not pertaining to his law enforcement duties.
18. It was further confirmed that [REDACTED] conducted CPIC checks on [REDACTED] on November 29, 2018 for reasons not pertaining to his law enforcement duties. Rather, [REDACTED] purpose was to obtain [REDACTED] Alberta Driver's License for a bill of sale transferring the vehicle that she and [REDACTED] were driving out of his name to hers.
19. The following exhibits form part of this Agreed Statement of Facts:
 - 1) PEAKS Behavioural Events, Calgary Police Service;
 - 2) PEAKS 2008 Annual Assessment, Calgary Police Service;
 - 3) PEAKS 2009 Annual Assessment, Calgary Police Service;
 - 4) PEAKS 2010 Annual Assessment, Calgary Police Service;
 - 5) PEAKS 2011 Annual Assessment, Calgary Police Service;
 - 6) PEAKS 2013 Annual Assessment, Calgary Police Service;
 - 7) PEAKS 2016 Annual Assessment, Calgary Police Service;
 - 8) PEAKS 2017 Annual Assessment, Calgary Police Service; and
 - 9) PEAKS 2018 Annual Assessment, Calgary Police Service;
 - 10) Reference letter from [REDACTED];
 - 11) Reference letter from [REDACTED];
 - 12) Reference letter from [REDACTED];
 - 13) Copy of letter from [REDACTED] regarding [REDACTED] motor vehicle transfer;
 - 14) Copy of Bill of Sale for vehicle transfer to [REDACTED];
 - 15) Copy of Court Order of [REDACTED];
 - 16) Copy of Court Order of [REDACTED];
 - 17) Monthly Income & Expenses of [REDACTED];
 - 18) 2020 Annual Statutory Holiday Pay for [REDACTED].

Submissions of the Presenting Officer

Ms. Campbell advised that [REDACTED] has been a member of the Calgary Police Service for [REDACTED] and holds the rank of Senior Constable Level II. He is currently working at [REDACTED]. His PEAKS assessments contain positive information, and there are no mentions of concerns. Between 2009 and 2019, he has received twenty-one (21) positive behavioral events citing his relationship skills, investigative skills, service orientation, self-confidence, teamwork and building, problem solving, conflict management, development, and leadership.

In mitigation Ms. Campbell referred to [REDACTED] years of service and positive reviews. She spoke of the acrimonious separation, divorce, child custody proceedings that caused stress.

She further spoke about [REDACTED] physical and mental health including a [REDACTED]. She stated that psychological issues all added to the stressful time associated with the misconduct.

Ms. Campbell stated the Service does not concede in any way that his health problems caused the misconduct but does acknowledge that it contributed to the stress [REDACTED] experiencing at the time of the misconduct.

The aggravating factors include that the misconduct was not an isolated incident but a series of misconducts relating to [REDACTED] former wife and her boyfriend.

She stated the misconduct does not appear to be spur of the moment or aberrational in nature and it is particularly serious when a sworn member uses privileged and restricted access to systems designed for police purposes only, but more so when the motive for doing so is a former spouse.

Additionally, she stated [REDACTED] used false pretenses to extract information from CBSA, a federal agency, in order to glean private information.

Ms. Campbell then provided three matters she referred to as "like cases." These included [REDACTED], *Coon v Toronto Police Service 2003 CanLII 85797 (ON CPC)* and [REDACTED].

She stated it was the position of the Police Service that [REDACTED] used his position of authority to extract private information regarding his former wife's new partner from CPS databases, CPIC, Crown Counsel and CBSA.

She stated further that although forfeiture of hours and suspension of hours have been imposed in similar cases, [REDACTED] misleading of Crown counsel and officers of Canadian Border Services for personal gain, warrants more serious consequences.

Ms. Campbell advised the Police Service was seeking a reduction within the rank from Senior Constable Level II to either First Class Constable or Senior Constable Level I for a period of two years. In addition, they seek that direction be given to seek treatment and/or counselling, and expectations set out by Human Resources.

Submissions of the Cited Officer

[REDACTED] commenced his submissions stating how sorry he was for the actions he took that resulted from poor choices he made while on-duty. He stated he takes full responsibility for the actions. He stated the poor choices were uncharacteristic of him and were not typical of the morals and ethics that he values in his personal and professional life.

[REDACTED] spoke of his marriage, its breakdown, and the impacts it has had on his life. He described his divorce as high conflict, prolonged and complex. He stated it was a lengthy process that only concluded in August 2020.

He spoke of the physical and psychological issues he faced and the steps he has taken to address these issues. He also spoke of the financial impacts the divorce has had on him and his family.

He stated that over the [REDACTED] he has been a constable with the Calgary Police Service, he was continuously complimented on his professionalism and positive attitude and interactions with the public and his co-workers. He is proud of what he has accomplished in his career and he knows that he has made a difference in countless people's lives and situations.

Speaking to penalty, [REDACTED] requested "the least financial impact as possible." [REDACTED]

He added he is looking forward to putting this collection of incidents behind him and to continue on with his life.

Analysis

[REDACTED] has been found guilty of four counts of misconduct under the *Police Service Regulation* and it is now required that a penalty be imposed upon him.

The task of determining an appropriate penalty involves the assessment of a variety of 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 guidelines to assist in imposing discipline in these matters.

1. *The principle purpose of police discipline is to advance the organizational objective of effective and efficient police services to the community.*
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.*
3. *In cases where organizational or administrative factors have played 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.*
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.*

¹ Amery v. Young ALERB #007-093

5. *Both aggravating and mitigating factors should be considered in determining a just sanction or punishment.*
6. *Deterrence of other police officers and maintenance of public respect of the police are legitimate goals in the context of police discipline.*
7. *Consistency in disciplinary sanctions should be strived for. Like instances of misconduct should attract like sanctions.*

Not all the listed principles are applicable to the matter at hand but each of these principles should be considered before they are determined to be not applicable. I will speak to those principles that I believe are relevant to the matter before me.

Discussion

The first Amery principle speaks to the principle purpose of police discipline and its use as a means to advance the objective of the efficiency and effectiveness of the organization to the community.

For a policing agency to be effective, it must have the support and trust of the general public as well as our community and professional partners. In this instance, [REDACTED] misconduct engaged multiple stakeholders. This included the Crown, Canadian Border Services Agency, the RCMP (CPIC), as well as private citizens.

The trust placed in the Calgary Police Service by these partners was harmed by [REDACTED] actions and now, these agencies and members of the public must see that the police service acknowledges and effectively deals with a police officer who commits misconduct.

Building and retaining trust outside of the police service is extremely important and is a particularly important aspect of the disciplinary process.

The next Amery principle speaks about a fair and just sanction in the circumstances as well as the engagement of the public interest where appropriate.

There are many factors to consider when crafting and imposing a disciplinary sanction. The interests of all parties must be considered, and the purpose of discipline must be achieved. Applying the principle of “education and correcting behavior” is extremely important.

A penalty that is too lax can be seen as a slap on the wrist and as effectively downplaying the misconduct. Conversely a penalty that is extreme can be viewed as solely punitive and one that fails the purpose of discipline.

In this matter the public interest is engaged. The matter was brought to the attention of the police service by the Crown Prosecutor’s Office. Investigations revealed that

██████████ also engaged an officer with the CBSA to obtain information not related to his policing duties. Furthermore, he used police information systems to make queries, again not in relation to his policing duties.

In cases where the public interest is engaged, particularly when the public's privacy interests are at stake, the public has the rightful expectation that records retained by, or accessible by policing agencies, will only be used for legitimate purposes. When a member of the police service breaches those privacy interests for personal purposes, the public must see there are meaningful consequences.

Our partner agencies also have an expectation that any inquiries made by a police officer are for legitimate purposes. An erosion of that trust can be extremely problematic.

As a policing organization charged with the responsibility of enforcing discipline, we must ensure that the public is aware that we do not turn a blind eye when such matters come to our attention.

The public and our partner agencies must have trust and confidence in its police service and its police officers. The public should expect their police officers to be grounded in the values of the organization.

Another noteworthy Amery principle is the aspect of deterrence; both individually and generally.

██████████ is remorseful for his actions. He addressed the hearing and spoke of the problems that were occurring in his personal life leading up to and around the time of his misconduct. He is not and cannot use these problems as an excuse for his actions. He is acutely aware that his actions were improper and that he will be sanctioned for them. He has a positive outlook for the future in both his personal and professional life.

While deterrence of future misconduct by the cited officer is important, general deterrence is equally important.

It is an unfortunate fact that the unauthorized queries of police databases are common amongst police officers. Using the information obtained for personal purposes is less common and adds an additional level of seriousness to the misconduct. As well, obtaining information from an employee of a partner agency through misleading means is behaviour that must be curtailed. All police officers must be made aware that such actions can lead to serious consequences.

There are numerous disciplinary decisions both within the Calgary Police Service as well as in policing across Alberta and the country relating to unauthorized use of police databases. There are fewer decisions relating to a police officer misleading an

employee from a partner agency to provide them with information to be used for personal purposes.

It is clear that these past disciplinary penalties have had little impact in deterring such behavior as the problem persists, and in fact continues to grow.

██████████ clearly paid little regard to past related disciplinary matters when he committed his misconduct.

While it may seem unfair that any particular member is made an example of, general deterrence is a legitimate goal in police discipline. All police officers must be aware that there are consequences for when they commit misconduct and that those consequences can be significant.

The next *Amery* principle speaks to consistency in disciplinary sanctions. A quote from the ABCA in *Constable A. v. Edmonton Police Service*² speaks to this.

“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.”

As alluded to previously, the type of misconduct committed by ██████████ is not unique. There are numerous examples of members accessing police IT resources for non-police purposes within the Calgary Police Service alone that can be compared.

Consistency with like sanctions is an important objective, but it is the facts of a matter that should determine what an appropriate penalty should be, and no two matters are truly alike. Penalties from other matters are valuable guidelines for a Presiding Officer on what an acceptable range of the available penalties are but imposing a penalty is a subjective process. The process involves assessing all factors including but not limited to the circumstances of the matter, the impact on the public and the service as well as the personal and professional circumstances of the cited officer.

A review of similar matters including the three matters offered by the Presenting Officer will be discussed in the penalty discussion.

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

Aggravating and Mitigating Circumstances

A. Previous good record of the officer.

██████████ has a good reputation as a police officer. A comprehensive review of his PEAKS Assessments and Behavioral Events confirm this in detail. He has twenty-one positive behavioral events in his package over an eight-year period. These behavioral events portray a police officer who has a wide-ranging skill set. These skills include investigative ability, relationship building, team building and teamwork, and an empathy for victims of crime. His keenness to provide a level of service to the public is exhibited on more than one occasion and is not limited to working as a patrol officer. While working at the ██████████ he has solved reported crime and successfully returned stolen property to the victims.

Of note, many of ██████████ behavioral events were authored by other constables; his peers. This in itself speaks volumes.

██████████ PEAKS assessments are also very positive speaking to his abilities as an investigator, a first responder and a problem-solver. As one supervisor quoted: "██████████ is a problem solver and possesses the skills to not only come up with ideas on how to solve the problem but also participates in the implementation of the ideas."

I also have been provided with letters of reference from a peer, his immediate supervising sergeant and an Acting Inspector who is his District Commander. They all speak highly of ██████████ and his abilities as a police officer and how they view him as a person. Neither the constable nor sergeant are aware of the circumstances of ██████████ misconduct.

B. Long Service of the officer.

██████████ joined the Calgary Police Service in ████████ and has ██████ years of service. He is an experienced police officer.

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

This misconduct spanned a timeframe from November 2018 through to April 2019 however it is all rooted in the acrimonious divorce proceedings with his now ex-wife. The majority of ██████████ actions took place in the period of time in November and December of 2018. The incident with the Crown occurred several months later. Given the misconduct was in relation to a specific set of circumstances, I am willing to view this as an isolated incident in ██████████ career. He does not have any prior disciplinary matters on file.

D. The existence or absence of provocation.

The breakdown of [REDACTED] marriage was protracted and bitter lasting seven years. It appears nothing was amicable and went as far as his ex-wife being charged criminally with assault, and later with breaching release conditions. The last three years prior to the divorce being finalized in August 2020 have been described as particularly acrimonious. This was also the timeframe of when [REDACTED] misconduct occurred. While I would not characterize [REDACTED] marital situation as “provoking,” the misconduct would not have occurred otherwise.

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

I find the actions of [REDACTED] well thought out and for the specific purpose of obtaining information he thought would be useful to him.

While it could be stated his inquiries with the Crown Prosecutor were “innocent enough” he failed to ensure the Crown knew he was personally, not professionally involved in the matter.

His repeated CPIC inquiries on different dates allows me to find that [REDACTED] was keeping himself apprised of the status of [REDACTED]. Otherwise, one query would be sufficient albeit still improper.

As well, he did not just by chance make an inquiry with [REDACTED] of the Canada Border Services Agency. [REDACTED] had a specific personal purpose for his inquiry.

[REDACTED] actions were premeditated with the purpose of obtaining information for his personal purposes.

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 cited officer provided information relating to his current financial situation. This included a breakdown of his monthly revenues and expenses which show he is in a monthly deficit. This is primarily due to court ordered spousal, child support and Section 7 expenses. The court ordered support was recently lowered to the current amount.



Special economic hardship is a mitigating factor that is sometimes argued but rarely applied. Anytime a penalty that has a financial consequence is imposed, it will have a financial impact as it is intended to do. However, the financial impact must be reasonable given the nature of the misconduct.

In assessing a penalty for proven misconduct, it is not the objective to penalize a member to the point of hardship. A member's job performance can be adversely affected when preoccupied by personal hardship. Poor decisions while on the job can result.

It is important to ensure cited officers and the general membership are deterred from future misconduct, but an overly punitive penalty can also have an adverse effect.

██████████ financial situation and his argument of financial hardship will be given consideration as a mitigating factor.

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.

Not applicable.

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

Not applicable.

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

Anytime a police officer uses their position of office to obtain the personal information of another person for a personal purpose it is extremely serious. The public has the right to expect that their information contained on law enforcement databases is secure, and only available for approved law enforcement purposes.

Outside agencies who entrust another agency with access to their databases also have that expectation. Access is granted through negotiated Memorandums of Understanding (MOU's) which detail how and what information can be accessed and for what purpose. It is also within the purview of the agency holding the information to withdraw access permissions if an agency does not appropriately deal with unauthorized use of that information.

Police officers have access to a vast amount of personal information. While some of this information may not be considered overly sensitive, much of it is. The improper use or release of this information can have profoundly adverse effects on a person's ability to be employed, travel or in the case of this matter, court outcomes.

The privacy interests of people have grown significantly over the past two decades. As technology advances, so do the privacy interests. Privacy advocates weigh in on all aspects of personal information and privacy legislation exists federally and within each province. Privacy is taken very seriously.

Speaking to the specific charges, [REDACTED] inquiry with the Crown Prosecutor regarding the status of his ex-wife's court appearance was improper. At the very outset he should have advised the Crown he was personally vested with the matter and was not there in any professional capacity. He did not and his actions were sufficiently concerning to this Crown Prosecutor that she advised the Assistant Chief Crown of the incident. Actions such as demonstrated by [REDACTED] can lead to a level of mistrust between two partner agencies. Such actions are not acceptable, and it is clear that he did not adhere to the Calgary Police Service "Code of Conduct."

The next count addresses the actions of [REDACTED] when he contacted the Canadian Border Services Agency to obtain information about [REDACTED], the boyfriend of his estranged wife. [REDACTED] misrepresented his purpose for inquiring about [REDACTED]. He did not advise that the purpose of his inquiry was for personal reasons. It was when the CBSA officer saw that [REDACTED] was visiting [REDACTED], that she realized that [REDACTED] had the same surname and made further inquiries about why the information was being sought. [REDACTED] lied to the CBSA officer about his purpose attempting to mitigate his actions.

[REDACTED] purpose in soliciting information from CBSA was to obtain details about [REDACTED] status in the country. [REDACTED] had observed [REDACTED] operating [REDACTED] motor vehicle the day before, [REDACTED]. Of note, [REDACTED]'s lawyer sent a letter to [REDACTED] lawyer on [REDACTED] regarding [REDACTED] operating the vehicle. In the letter, it is stated [REDACTED] does not possess an Alberta Driver's Licence or any valid driver's licence on the Province of Alberta as his Alberta drivers licence expired [REDACTED].

The Agreed Statement of Facts state the inquiries by [REDACTED] regarding [REDACTED] were for the purpose of determining his operator's licence status including his entry date to determine the status of his International Driver's Licence.

[REDACTED] was successful in obtaining information from CBSA that he used for his personal purposes. He was deceitful in his communication with the CBSA officer. It would be fair to say that this officer would exercise additional cautions when dealing with other Calgary Police Service members in the future. It is also reasonable to believe that the actions of [REDACTED] are known by other members of the CBSA.

His actions have brought discredit to the reputation of the Calgary Police Service and it is up to the CPS to repair its reputation and working relationship with this partner agency.

The remaining two counts deal with the CPIC queries made by [REDACTED] on [REDACTED]. My earlier comments relating to the privacy expectations are applicable in determining the seriousness of the misconduct. Conducting such queries is a serious breach of the trust placed on a police officer, but the misconduct is exacerbated when the information obtained is used by that police officer for personal advantage.

[REDACTED] actions violated the trust placed upon him by the Calgary Police Service and his oath of office as a police officer.

J. Officer cooperation, frankness, and overall attitude

[REDACTED] has cooperated fully during the investigation. He also entered an early guilty plea and participated with the Presenting Officer on the “agreed statement of fact.” In his submissions during the hearing, he has expressed remorse.

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.

[REDACTED]

There is no evidence to suggest that the above noted factors contributed to [REDACTED] actions and [REDACTED] has not offered the information as an excuse for his behavior. It does however provide context to his physical and emotional state at the time of the misconduct. There is ample information to support the fact that [REDACTED] was under significant stress during this time-period, and stress can impact decision making.

The misconduct was related to the on-going marital dispute with [REDACTED] At this time, that dispute has been resolved with the finalization of the divorce. However, the

parties are subject to court ordered spousal support, child support and a shared custody agreement. These orders are often opened upon application from either party who wish to have the orders varied.

██████████ is to be cautioned that repeated behaviour in trying to obtain information on his former spouse using his position as a police officer could attract extremely serious consequences.

Discussion re Penalty

The Police Service has suggested a penalty of a reduction in seniority in rank from Senior Constable Level II to either First Class Constable or Senior Constable Level I. They recommend the reduction be for a period of two years.

The service also requests a continued course of treatment for ██████████.

██████████ requests a penalty that will have the least financial impact on him.

Ms. Campbell offered three matters as like cases for the purposes of determining a penalty. Each of these matters involved police officers involved in some sort of dispute with intimate partners, current or former spouses.

██████████
██████████
██████████
accessed CPS databases, UNIQ, VREG, and PIMS on multiple occasions. ██████████
██████████ was charged with two counts of insubordination and was penalized a forfeiture of 20 hours of work accumulated through overtime; suspension from duty without pay for 70 hours.

██████████
██████████
██████████
██████████

██████████ plead guilty to 3 counts of Insubordination for accessing CPS IT resources and one Breach of Confidence for disclosing information he learned about the individuals he was searching. He was penalized with a 40-hour forfeiture of overtime for Insubordination x3 and 40 hours suspension without pay for the Breach of Confidence.

Constable Coon v Toronto Police Service 2003 CanLII 85797 (ON CPC). The constable used CPIC numerous times to access information on his ex-spouse and her new common law spouse. He also failed to report his former common-law spouse was violating her bail conditions. He obtained information related to his former common-law spouse's parole information without attempting to indicate that his request was as a citizen and not as a police officer. He showed his badge to an employee of the London

Police Service, informed her that he was with Metro Police and stated he needed a hard copy of an Occurrence Report that was not required for police business, but was for his own personal use. Constable Coon testified that he did not share the details he obtained from the CPIC checks with any one and that he did not use the information for any personal purpose nor did he use it for any family court dispute. This evidence was not contested. He was charged with Insubordination x4, Neglect x1 Discreditable Conduct x1 and Corrupt Practice x1. He was ordered Dismissed within 7 days unless he resigned first. (Officer had prior discipline on file)

Each of the above three matters has some similarities to [REDACTED] misconduct. The most analogous matter is the one involving Constable Coon from the Toronto Police Service. His misconduct also involved obtaining information from the Parole Board as well as another police service; like [REDACTED] obtaining information from the Crown and CBSA.

As is the case with [REDACTED], Constable Coon was a long-time member of the TPS, received positive reviews, had numerous letters of commendation, and had numerous officers, sergeants and senior officers speak on his behalf at his hearing. Unlike Constable Coon, [REDACTED] does not have a prior disciplinary record.

The one significant difference is that in the Coon matter, Constable Coon did not share any information obtained, nor did he use it for any personal purpose or in any court dispute. The evidence is sufficient for me to find that [REDACTED] did share the information with his attorney who crafted the letter to [REDACTED] lawyer with regards to the use of [REDACTED] vehicle by [REDACTED]. In my view, this elevates the seriousness of [REDACTED] misconduct over that of Constable Coon's.

Constable Coon's dismissal from the Toronto Police Service was upheld on appeal to the Ontario Civilian Commission on Police Services.

Some additional cases offer insight into the seriousness on [REDACTED] misconduct.

[REDACTED] The officer accessed CPIC and the OPS Records Management System, for non-police purposes. She disclosed confidential police information contained a police report to a friend. She was charged with Insubordination x 2 and Breach of Confidence. She was penalized with a forfeiture of 160 hours (20 days) and a forfeiture of 24 hours, (3 days).

[REDACTED] The member conducted unauthorized database queries. He received a penalty of a reprimand, plus the forfeiture of five days' pay plus the forfeiture of five days of annual leave. The member shared the results of those queries with an unauthorized individual for a non-duty-related purpose and was penalized with a reprimand plus the forfeiture of five days' pay plus the forfeiture of five days of annual leave.

Constable C. Clough v Peel Regional Police 2013. Constable Clough received confidential CPIC information and other police service occurrence information in regards to another individual. She used that information outside of official police business for family court purposes. She also disclosed the confidential information of an individual to co-workers and her lawyer. Further, Constable Clough used CPIC information to request another police agency check on the status of the individual's driver's licence during a child exchange at the police agency station. The Service sought a twenty-day suspension, the Hearing Officer ordered Constable Clough to forfeit 80 hours pay,

The cases referred to show wide ranging penalties with the most serious penalty imposed being dismissal.

In this decision where I addressed the principles stated in *Amery and Young*, I detailed at length my observations of [REDACTED] and I apply those observations to this discussion. [REDACTED] showed a complete and intentional disregard for the policies of the police service relating to the use of IT resources as well as the police service's Code of Conduct.

He broke the trust conferred by his oath of office as well as the trust earned by the Calgary Police Service with the Crown Prosecutor's Office and the Canadian Border Services Agency.

Accordingly, I view the misconduct of [REDACTED] as extremely serious.

This is not the typical improper use of police database case which in itself is serious. [REDACTED] used his position as a police officer to obtain the private information of [REDACTED] to create an advantage for himself during his separation and divorce proceedings. Aside from obtaining information from CPIC, he elicited information from a Crown Prosecutor without properly identifying the reason and advising that it was for personal, not professional purposes. He also elicited information from the CBSA without advising that it was for personal purposes, then when challenged on the fact that his last name was the same as the person who [REDACTED] was visiting, he lied to the CBSA officer.

This is a flagrant abuse of his position as a police officer and one that likely brought significant discredit upon the reputation of the Calgary Police Service.

Cases involving breach of privacy and the use of improperly obtained confidential information are attracting more serious penalties as the public's awareness and concerns about privacy increases. Penalties assessed prior may not be reflective of the current public expectations. Police Services are cognizant of this trend as should police officers be aware.

The misconduct of [REDACTED] is extremely serious and warrants a significant penalty. The continuing trend of police officers accessing confidential IT resources for personal use must also be deterred.

A review of the like cases provided by Ms. Campbell as well as the other matters listed would indicate that the service's position that [REDACTED] be reduced in seniority within the rank would be an appropriate penalty. While in the *Coon* matter the member was dismissed from the Toronto Police Service, the prior discipline was a significant aggravating factor. This is not the case with [REDACTED].

[REDACTED] has requested a penalty that has the least impact on him financially. The documentation he provided does indicate he is in a difficult financial position.

The only penalties available under the *Police Service Regulation* that do not have a financial impact is a reprimand or a course of treatment or participation in a rehabilitation program.

The seriousness of this matter would make a reprimand as a penalty in this matter inappropriate and while a course of treatment is an appropriate penalty, for it to address the seriousness of this matter, it must be coupled with an additional sanction which would have a financial consequence.

The appropriate penalty in this matter must consider the seriousness of the misconduct, its impact on the aggrieved parties, the relationship with our partner agencies, general deterrence, and the personal and professional circumstances of the officer.

As a starting point, I agree with the Presenting Officer that a two-year reduction in seniority in rank is appropriate. And it is my belief that taking all the factors excluding the personal circumstances of [REDACTED] into consideration, this reduction should be from Senior Constable Level II to First Class Constable.

A penalty such as this, is the range of penalty that other officers should expect for similar misconduct.

For general deterrence purposes, assessing anything less than a significant penalty would send a harmful message to other police officers concerning the behaviour in question. In this regard, the serious nature of these disciplinary offences requires that general deterrence be properly factored into the sentencing equation.

[REDACTED] is a police officer who is well regarded by his peers and his supervisors. He is in a financial situation that can be aptly described as tenuous.

The goal of the disciplinary process is to hold members who commit misconduct to account but in doing so we also must be cognizant of the member and their families well-being.

A balance must be struck in determining a penalty that addresses the misconduct but does not devastate the member.

[REDACTED]
[REDACTED]
[REDACTED] The current financial situation of the cited officer was discussed previously in the mitigating factors.

Taking this factor into consideration, I will modify the penalty that I would have imposed if not for this mitigating factor. The penalty will still have a significant impact on [REDACTED] and it will require some personal adjustments on his behalf.

In addition, the police service has requested that [REDACTED] be subject to an order to seek treatment and/or counselling, and expectations set out by CPS Human Resources.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Having reviewed exhibit 5 in its entirety it would be appropriate for [REDACTED] to receive additional and on-going treatment. As stated in this report he had been attending counselling on a sporadic basis. An order to continue treatment as prescribed by a clinical psychologist would be beneficial to [REDACTED].

ORDER

On counts three, five, eight and nine, as articulated in the "Agreed Statement of Facts," I order that [REDACTED] pursuant to section 17(1)(d) of the *Police Service Regulation* be reduced in seniority in rank, from Senior Constable Level II, to First Class Constable for a period of six (6) months. At the conclusion of six (6) months, [REDACTED] will be elevated to Senior Constable Level I for a period of eighteen (18) months after which time he will return to Senior Constable Level II.

In addition, pursuant to s. 17(1)(a.1) of the *PSR*, I impose the following conditions on [REDACTED]

1. At the conclusion of these proceedings, you will report to the Calgary Police Service Psychological Services Division and Human Resources Services Section for assessment. You will provide the attending psychologist all medical documentation as provided in Exhibit 5 in the proceedings.
2. You are required to attend all treatment programs, seminars and/or counselling required by your physician/psychiatrist/psychologist/counsellor(s) or any other providers, relating to your condition.
3. You will continue to undergo any treatment therapies and follow the directions of your treating physician/psychiatrist/psychologist and/or any other authorized

practitioners relating to your medical condition and/or treatment. You will continue to participate in these treatment plans until such time as determined by the attending care providers.

Original Signed

Superintendent Paul Manuel (Ret'd)
Presiding Officer

Presenting Officer:
Cited Officer (Self Represented)

Ms. Valerie Campbell

Issued at the City of Calgary, in the Province of Alberta, October 29th, 2020

