

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 21st, 2020 Constable [REDACTED] was charged with three (3) counts of disciplinary misconduct. She made her first appearance on September 10th, 2020 at which time she reserved her plea on all counts.

On November 10th, 2020, Constable [REDACTED] entered "admit" pleas to count #'s 1 and 3.

Count #2 was withdrawn.

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

Count #1

Discreditable Conduct, contrary to section 5(2)(e)(viii) of the *Police Service Regulation* as doing anything prejudicial to discipline or likely to bring discredit on the reputation of the police service in that on or between the 20th day of January, 2015 and the 10th day of February, 2015, at or near the City of Calgary, in the Province of Alberta, Constable [REDACTED] communicated with [REDACTED] in a disturbing manner through email, text messaging and a fictitious account on a dating website, unrelated to her duties as a police officer.

Count #3

Insubordination, contrary to section 5(2)(g)(ii) of the *Police Service Regulations* as 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 between the 6th day of November, 2014 and the 10th day of February, 2015, at or near the City of Calgary, in the Province of Alberta, Constable [REDACTED] conducted PIMS inquiries on [REDACTED] [REDACTED] contrary to sections 5(5), 13(1) and 13(5) of the Information Technology policy and section 1(3) of the External Database policy.

The full Agreed Statement of Facts was read into the record and entered as Exhibit #4. The facts contained in Exhibit #4 were admitted to by Constable [REDACTED]

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

The parties made submissions on penalty and the matter was set over to November 30, 2020 for the decision.

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.
- Exhibit 5 Victim Impact Statement

Facts as per the “Agreed Statement of Facts”

1. Constable [REDACTED] and [REDACTED] have been in an on-again, off-again intimate relationship for approximately seven years. They share [REDACTED] children together [REDACTED].
2. On November 6, 2014, [REDACTED] began a romantic relationship with [REDACTED]. At the time, [REDACTED] was also romantically involved with [REDACTED] would resume his relationship with [REDACTED] during the intervals where he and [REDACTED] would break up until such time as he chose to get back together with [REDACTED].
3. On January 19, 2015, [REDACTED] received a text message from [REDACTED] personal cell phone number. Approximately 5 or 6 text messages were exchanged where [REDACTED] advised [REDACTED] that [REDACTED] had been lying to her about his relationship with [REDACTED] and asking her personal details about her relationship with [REDACTED] [REDACTED] proceeded to call [REDACTED] and they spoke for approximately 30-45 minutes. [REDACTED] and [REDACTED] continued to exchange text messages throughout the evening.
4. On January 20, 2015, [REDACTED] contacted [REDACTED] via text message and [REDACTED] confirmed that she was going to resume her relationship with [REDACTED]. [REDACTED] told [REDACTED] that she did not want to continue their 'friendship'. [REDACTED] replied that she had told [REDACTED] that he could resume his relationship

with [REDACTED] and that [REDACTED] would take him back. She then enquired if [REDACTED] wanted to know [REDACTED]' response to that suggestion, and when [REDACTED] indicated that she did, she was given an unfavourable reply. [REDACTED] sent a text message to both [REDACTED] and [REDACTED] asking them both to leave her alone. [REDACTED] also blocked [REDACTED] phone number so that she would not receive any text messages or phone calls from her.

5. On January 25, 2015, [REDACTED] resumed contact with [REDACTED]. At that time, [REDACTED] unblocked [REDACTED] phone number; thereby, enabling her to receive any text or voice communications from her.
6. On January 26, 2015, [REDACTED] sent [REDACTED] three text messages. The first enquired as to whether her number was blocked; the second was advising [REDACTED] that she was "stupid" for taking [REDACTED] back; and, the third was informing [REDACTED] that [REDACTED] was still dating [REDACTED]. [REDACTED] did not respond to these text messages and she once again blocked [REDACTED] phone number.
7. On January 28, 2015, [REDACTED] again unblocked [REDACTED] phone number after [REDACTED] advised her that he was going to work on his relationship with [REDACTED]. [REDACTED] received one text message from [REDACTED] telling her to respect [REDACTED] wishes and to not contact him anymore. [REDACTED] sent a text message to both [REDACTED] and [REDACTED] telling them both to stop sending her messages and to leave her out of their drama. [REDACTED] again blocked [REDACTED] phone number.
8. Between January 20, 2015, when [REDACTED] first asked [REDACTED] to stop contacting her and January 28, 2015, when she reiterated that same request, [REDACTED] sent [REDACTED] four text messages.
9. On February 4, 2015, [REDACTED] began receiving messages through her [REDACTED] dating profile from a user named [REDACTED]. This user purported to be a male lawyer who was expressing an interest in [REDACTED]. [REDACTED] sent one message on both February 4, 2015 and February 5, 2015 and two messages on February 6, 2015. [REDACTED] replied on February 7, 2015 after several photos of a male with a dog were uploaded to the profile. [REDACTED] and [REDACTED] had conversations using the [REDACTED] messaging interface, which focused mostly on [REDACTED]'s prior dating history with other [REDACTED] suitors. [REDACTED] indicates that the similarities between the biographical data of [REDACTED] and [REDACTED] and the focused line of conversation relating to her past relationship with [REDACTED] (although not referred to by name) led her to suspect that [REDACTED] may, in fact, be [REDACTED].
10. On February 8, 2015, [REDACTED] and [REDACTED] arranged to meet at a coffee house. [REDACTED] insisted on obtaining [REDACTED] cell phone number before meeting. Once it was provided, she sent a text message to [REDACTED] cell

phone advising of the coffee house's location and they proceeded to exchange more than 50 text messages while en- route to meet. [REDACTED] went to the coffee house but at the last minute [REDACTED] was unable to attend. [REDACTED] sent [REDACTED] follow-up text messages on the morning of February 9, 2015 and then phoned the number that evening. [REDACTED] believes that the person who answered the phone call was [REDACTED]

11. It was later confirmed that the telephone number associated to [REDACTED] is, in fact, [REDACTED] Calgary Police service cell phone number. Therefore, all the text messages purportedly sent by [REDACTED] were actually sent by [REDACTED] after having been asked by [REDACTED] on both January 20, 2015 and January 28, 2015 to not contact her.
12. Between January 20, 2015 and February 27, 2015, [REDACTED] attended [REDACTED] place of residence and took photos of [REDACTED] vehicle in the parking lot of the apartment complex. [REDACTED] proceeded to send these photos to [REDACTED] after he told her that he was not seeing [REDACTED] to demonstrate to him that she knew he was lying to her. On February 8, 2015, [REDACTED] sat in her vehicle outside the coffee house where [REDACTED] was meeting [REDACTED] and observed [REDACTED] arrive at and enter the coffee house.
13. Between the 6th day of November 2014 and the 10th day of February 2015, Constable [REDACTED] conducted PIMS inquiries on [REDACTED] contrary to sections 5(5), 13(1) and 13(5) of the Information Technology policy and section 1(3) of the External Database policy. A total of 13 searches were conducted by Constable [REDACTED] that were unrelated to her duties as a police officer.
14. On 2015 February 9, [REDACTED] called the Public Safety Communications Centre (PSC) to report she had received harassing email and text messages from a sworn CPS member [REDACTED]. Constables [REDACTED] and [REDACTED] were dispatched to the call.
15. The matter was assigned to the CPS Domestic Conflict Unit (DCU) for further investigation. The investigation was completed by DCU and forwarded to the Edmonton Crown Prosecutors' Office for an opinion. No charges against Constable [REDACTED] were recommended.
16. The following exhibits form part of this Agreed Statement of Facts:
 - 1) PEAKS Behavioural Events, Calgary Police Service;
 - 2) PEAKS 2014 Annual Assessment, Calgary Police Service;
 - 3) PEAKS 2013 Annual Assessment, Calgary Police Service; and
 - 4) PEAKS 2011 Annual Assessment, Calgary Police Service;
 - 5) CPS External Database Access policy; and CPS Information Technology policy.

Submissions of the Presenting Officer

Ms. Campbell advised the hearing, that Constable [REDACTED] has been a police officer with the Calgary Police Service for [REDACTED] years. She currently is a Senior Constable Level I [REDACTED]

Constable [REDACTED] is a recipient of the CPS 10-year Service Award (Medal). During the time period of 2009 to 2014, Constable [REDACTED] has received eighteen positive "Behavioral Events." She does not have any discipline on file. She advises that Constable [REDACTED] has a history of behavior similar to the misconduct that has been dealt with by police service supervisors over the years.

Ms. Campbell then provided several disciplinary matters as like cases of "harassing type behavior." These are as follows:

Blood Tribe Police Service and [REDACTED]	2019
EPS and [REDACTED]	2019
Toronto Police Service and KENT,	2013
CPS v [REDACTED]	2019

In mitigation, Ms. Campbell stated Constable [REDACTED] has been dealing with stressors in her life that include [REDACTED]

As aggravating factors, she listed the following:

1. Seriousness of the misconduct
2. Extensive history/reports of similar behaviour
3. Abuse of special position to facilitate offence
4. Member of the public/civilian involved
5. Deliberate action (planned, premeditation involved)
6. Conduct over an extended period of time (repetitive)
7. Lost the trust of the community/Damaged the (Community) relationship
8. Impact on the victim [REDACTED] (physical and emotional)
9. Warned in the past about the inappropriateness of the action

Ms. Campbell advised that Constable [REDACTED] does not have any banked overtime. She stated that penalty range in the like cases is suspension of hours and reduction in rank.

The police service is seeking a suspension without pay to be served upon her return to duty.

In addition, the service is seeking an order pursuant to s. 17(1)(a.1) of the *Police Service Regulation* that requires the following conditions:

1. At the conclusion of these proceedings, she will report to the Calgary Police Service Psychological Services Division and Human Resources Services Section for assessment.
2. 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. Continue to undergo any treatment therapies and follow the directions of your treating physician/psychiatrist/psychologist and/or any other authorized practitioners relating to her medical condition and/or treatment. She will continue to participate in these treatment plans until such time as determined by the attending care providers.

Submission of the Cited Officer, Constable [REDACTED]

Constable [REDACTED] stated she has pleaded guilty in this matter and agrees with the submissions of the Presenting Officer on penalty saying she does believe she needs to be sanctioned for her actions.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Analysis

Constable [REDACTED] has been found guilty of two counts of misconduct under the *Police Service Regulation* and it is required that she be sanctioned for the misconduct.

Determining an appropriate penalty involves the assessment of many factors. In 1993 the Law Enforcement Review Board (LERB) provided a statement of principles

regarding disciplinary sanctions in the matter of *Amery v. Young*,¹. Since that time, these principles have been the guidelines used to assist Presiding Officers in imposing disciplinary sanctions.

The Amery principles are as follows and I will speak to those principles that I believe are relevant to the matter before me.

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

For a police service to be able to achieve its organizational objectives and commitments to the public, it must have the trust and confidence of the public and the ability to maintain this trust. The disciplinary process is one of the tools that is used in this context.

Both police services and individual police officers are accountable to the public they serve. A major component to ensure that accountability is the disciplinary process. When a police officer is found guilty of disciplinary misconduct, the public must see that appropriate measures are taken to correct the behaviour and to educate the police officer. Through such means, police officers can learn and grow thus contributing in an effective manner to the overall objective of providing effective and efficient policing 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.*

Any penalty apart from dismissal must consider the rehabilitation of the police officer. One of the primary goals of the disciplinary process is to educate and correct behavior as a means of ensuring the behavior that led to the misconduct is not repeated. This does not mean that a penalty should not have a punitive aspect, however this is only one component. The use of education or various specific training courses sometimes coupled with counselling or therapy can all be appropriate tools used in crafting penalties.

In determining a just and fair penalty, many factors must be considered. An appropriate balance must be struck and the sanction that is imposed must meet the overall goals of police discipline. A disciplinary penalty must be reflective of the individual circumstances of the officer and the proven disciplinary misconduct. A police officer sanctioned for misconduct must understand the penalty assessed with clearly articulated reasons. This is also important for a complainant. In a public complaint, the public interest is automatically engaged and is a primary consideration.

In this matter, 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. It should be noted that unauthorized access to CPIC and

¹ Amery v. Young ALERB #007-093

Records Management System (Sentry/PIMS) information by police officers constitutes a FOIPP violation which affects the public reputation of both the CPS and the involved officer. If the accessing of information in an unauthorized manner is not effectively managed by the organization and becomes widespread, there is a risk the CPS could face sanctions under FOIPP itself.

In the matter before me, the complainant was subjected to harassing behavior at the hands of the cited officer who used the information she obtained to facilitate the harassment. The complainant has a vested interest in the outcome of this matter and the penalty assessed as does the public at large.

3. *In cases where organizational or administrative factors have played a significant role 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.*

Not applicable

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.*

The behavior exhibited by [REDACTED] is disturbing. She embarked on a course of harassment against a person she saw as a romantic rival and in doing so used the IT resources of the Calgary Police Service to obtain private information as an aide in this harassment. These types of actions are unacceptable.

[REDACTED]

The police service has requested Constable [REDACTED] be subject to an order to undergo assessment and treatment as determined appropriate by the CPS Psychological Therapies Section and compliance with this requirement being monitored by the Human Resources Section. This is a matter where this is quite appropriate and such an order will form part of the penalty imposed.

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

(a) *Previous good record of the officer*

I have reviewed the PEAKS Assessments and Behavioral Events that formed part of the Agreed Statement of Facts. From this review, I have learned a great deal about Constable [REDACTED] abilities and work ethic as a police officer.

Simply stated, she was exceptional. I rarely see such a complete and well-rounded patrol officer who not only takes calls but goes above and beyond to investigate these complaints. The compliments and accolades bestowed upon Constable [REDACTED] for her work were substantiated with example after example of stellar police work.

Her work on patrol led to a coveted position on the [REDACTED]. Her work on the [REDACTED] and her commitment to achieving further professional goals led to her successfully competing for a position in the [REDACTED]. These positions are not easily attained and are a testament to her abilities as a police officer. From a policing skills and ability perspective, Constable [REDACTED] is the type of police officer that any area Commander would seek out to work under their command.

(b) Long service of the officer

Constable [REDACTED] of service with the Calgary Police Service. She is currently a Senior Constable Level I and is a senior member of the service.

(c) Whether or not the misconduct was an isolated incident in the employment history of the officer.

The presenting officer stated that Constable [REDACTED] has a past history of related behavior that has been addressed at the supervisory level. No further information was provided.

In this matter, the actions of Constable [REDACTED] occurred over an extended period of time; from November 2014 to February 2015. I do not view the misconduct as an isolated incident in Constable [REDACTED] employment history.

(d) The existence or absence of provocation.

The actions of Constable [REDACTED] were not the result of any form of provocation. Her actions stemmed from learning that her romantic partner was involved with another woman. She then embarked on a chosen and calculated course of action.

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

The actions of Constable [REDACTED] were planned, and calculated, and therefore fully premeditated. The courses of action she took involved careful thought with this being borne out with her use of CPS IT Resources to obtain personal information, the use of

that information for her personal purposes, both in texting the complainant, stalking the complainants residence, and setting up a phony [REDACTED] profile.

(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 term “special economic hardship” in the context of being a factor to consider in mitigation is quite strict and should not be confused with financial loss, or financial inconvenience. Any penalty that includes a forfeiture of hours, a suspension without pay or a reduction in seniority in rank or demotion, carries a financial loss. If a penalty involving a loss of income is such that it forces a person into mortgage foreclosure, defaulting on financial obligations, or the inability to afford the basics, then that would meet the definition of “special financial hardship.” If a penalty means that a cited officer has to re-budget and forego the purchase of certain items, vacations, or lifestyle adjustments, then I would not consider that “special economic hardship” as referred to in s. 5(f) of *Amery*.

I have not been provided any detailed information on Constable [REDACTED] financial situation that would allow me to accurately assess the impacts of a penalty that involves a financial consequence or to make a finding of “special economic 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.

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.

Police officers have the responsibility to be familiar with the policies and procedures of the police service. Ignorance is not a defence or even a reasonable excuse. While it would be virtually impossible to know all of the policies and procedures verbatim, general knowledge and common sense allows one to be sufficiently aware of what may or may not constitute a breach of policy. For example, the handling of drug exhibits; common sense would dictate that there is policy on how to properly handle drug exhibits.

Police Service IT resources such as SENTRY (PIMS), CPIC or any other information systems have strict policies. These systems contain the private information of thousands of individuals. Warnings about the use of the information are prominent when accessing the systems. It is my experience as a police officer, from the point of time as a recruit and throughout a career, it is instilled that the use of such information for anything other than official police purposes is not only prohibited, it is an ethical breach of the services core values.

Constable [REDACTED] would be well aware that accessing the information of [REDACTED] was a contravention of CPS policy. She would also be well aware that using the information obtained for a personal purpose would be unlawful.

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

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

Constable [REDACTED] used Calgary Police Service IT Resources to obtain information on [REDACTED], a person involved in a relationship with Constable [REDACTED] romantic interest, [REDACTED]. The personal information of [REDACTED] was used by Constable [REDACTED] for non-police business and was for her own personal advantage.

Using the information she obtained for personal purposes and in the way that she did raises the moral culpability of Constable [REDACTED] actions and increases the seriousness of the misconduct to a significantly higher degree.

Constable [REDACTED] embarked on a campaign of harassment that lasted several months. The impact of this harassment on [REDACTED] has been profound. The victim impact statement she read into the record provided a glimpse of how Constable [REDACTED] actions affected [REDACTED] personal and professional life. The written statement which was entered as exhibit 5 speaks for itself. [REDACTED] re-located [REDACTED], losing her friends and family support systems, her local volunteerism as well as her employment. Her life has been literally turned upside down. She has removed herself from all social media except for [REDACTED]. She lives a life of anonymity.

Constable [REDACTED] may not believe her actions were of a nature to warrant such a reaction from [REDACTED] but that is of little significance. The fact remains, her actions did have this result.

[REDACTED] was not known to Constable [REDACTED] prior to her starting a relationship with [REDACTED]. She innocently entered into this relationship thus becoming the target of Constable [REDACTED] scorn.

The actions of Constable [REDACTED] are disturbing. A person entrusted through her position as a police officer with upholding the law and protecting the public, used that position to target another person with animus intentions. Her actions were those of a person intent on ruining the life of another person to which she has succeeded.

The course of action she took is that of a domestic stalker. She in fact did stalk [REDACTED], both at her residence where she took pictures of [REDACTED] vehicle, and again when she lured her to coffee shops on the pretext of meeting an online date.

The victim impact statement of [REDACTED] is a statement of immeasurable psychological trauma. [REDACTED] spoke of how her experience at the hands of Constable [REDACTED] has impacted her trust of the police in general. She spoke of how she previously trusted and defended the police and at one time considered becoming a police officer. This trust has been lost as a result of Constable [REDACTED]. In her quest for vengeance against [REDACTED], she cost the profession of policing an ally and negatively impacted the reputation of the police service.

(j) Officer cooperation, frankness, and overall attitude.

Constable [REDACTED] has pleaded guilty to two of the three counts listed in the Notice and Record of Disciplinary Proceedings. The third count was withdrawn. In doing so she has saved the time and cost of a hearing. She agrees that her actions warrant sanction. I accept this as a mitigating factor.

In her submissions, she provided little to no insight into why she undertook the course of action she took. Her submissions spoke more to her recent issues with her domestic partner, and her current family life.

Noticeably absent was any form of remorse for her actions towards [REDACTED]. She offered no apology to [REDACTED]. Whether this is a case of Constable [REDACTED] not appreciating the impact her actions have had, or whether she just does not care is immaterial. She had the opportunity, and she chose not to take advantage of it. I view this as an extremely aggravating factor. If Constable [REDACTED] cannot accept that her actions had this type of effect on [REDACTED] and does not find it appropriate to apologize, what type of person and police officer are we dealing with.

[REDACTED] was open and forthright in describing how Constable [REDACTED] harassment has affected her life. This has had no impact on Constable [REDACTED]. This is a serious indicator of deeper problems with Constable [REDACTED].

The core values of the police service are honesty, integrity, respect, fairness, compassion, courage, and accountability. Constable [REDACTED] is not demonstrating these values, in particular, respect and compassion.

(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.

Constable [REDACTED] indicates there are a number of stressors present in her life [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

There is no information that these stressors were in play at the time of the misconduct that commenced in November 2014. Her children were not born at that time. She was involved romantically with [REDACTED], who also became involved with [REDACTED]. All indications are that Constable [REDACTED] actions were motivated by jealousy directed at Constable [REDACTED] new love interest. Constable [REDACTED] embarked on a course of harassment targeting a person she viewed as a rival.

There is little in the evidence to suggest that this type of behavior would not be repeated given a similar set of circumstances. Her lack of remorse is a strong indicator that the cause or causes of the misconduct has not been remedied.

(l) Other mitigating or aggravating factors unique to the personal circumstances of the officer or the misconduct involved.

Not applicable

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

The type of stalking, harassing behavior of Constable [REDACTED] is not a common type of misconduct but when it does occur, it must be dealt with swiftly and harshly. The public's respect must be maintained and if a police agency is seen not to address such behavior in a definitive manner, then that respect is easily lost. It is also the case the public must see that police agencies take the protection of their privacy seriously.

Addressing general deterrence, unauthorized use of police IT resources is common. Police officers are not being sufficiently deterred from such actions. A penalty must be sufficiently punitive that any police officer will have that forefront in their thoughts before accessing IT resources for anything other than legitimate policing purposes. In this matter as has been the case in others, the information obtained was also used for a personal purpose. This elevates the seriousness of the type of misconduct to a much higher degree.

Police officers and all employees of a police agency who have access to such information must be aware, actions such as those exhibited by ██████████, can attract serious penal consequences.

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

The courts in Alberta have addressed the principle of consistency on several occasions. Most recently in *Constable A. v. Edmonton Police Service*² and in *MacDonald*³ they have spoken to how a marked departure without adequate reason or explanation can be an indicator that a sanctioning decision is unreasonable.

Crafting a penalty for police misconduct involves the consideration of many factors. The discussions on principles in *Amery*, including both mitigating and aggravating factors, as well as the submissions of all parties form the basis for any sanction.

Penalties from other matters where there may be similar facts do assist greatly as to what may or may not be reasonable. For example, if similar matters have primarily attracted a reprimand, dismissal would most likely be unreasonable.

The Presenting Officer provided four matters from four different police services as like cases. Each involved harassing behavior with two also involving the use of police IT resources for a personal purpose.

These matters will be discussed in the next portion of this decision.

Discussion re Penalty

In this decision where I addressed the principles stated in *Amery and Young*, I detailed at length my observations of Constable ██████████ and I apply those observations to this discussion.

The Police Service suggests the penalty range for like misconduct is suspension of hours to reduction in rank. In this matter the service is seeking a suspension of hours to be served upon Constable ██████████ return to duty. They request the length of the suspension to be determined by me. The service also requests a continued course of treatment for Constable ██████████

Constable ██████████ concurs with the penalty sought by the Presenting Officer.

To support her penalty recommendation, Ms. Campbell offered four matters as like cases. These matters, from four different police agencies involve harassing behavior towards a former spouse, intimate partner, or partner of a former spouse/partner. Two of these matters also include the unauthorized use of police IT resources.

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

³ *Camrose (Chief of Police) v MacDonald*, 2013 ABCA 422

The cases are as follows:

Blood Tribe Police Service and ██████████, 2019. Constable ██████████ pleaded guilty to two counts of misconduct, being Discreditable Conduct S.5(2)(e)(iii) and Discreditable Conduct S.5(2)(e)(viii). Over a one month period, the member harassed a fellow officer, Cst. JN, for whom he had been in an intimate relationship with. The member sent Cst. JN numerous text messages, left voicemail messages of a harassing, aggressive and threatening manner that were unwelcome. Penalty: Reduction of seniority within a rank from 1st Class Constable to 3rd Class Constable for a period of one (1) year. After a period of one (1) year, Constable ██████████ will revert to the rank of 1st Class Constable.

EPS and ██████████ 2019. Constable ██████████ pleaded guilty to Discreditable Conduct under s. 5(2)(e)(i)(A). Over the period of the incident, the officer sent more than 17 emails, 31 texts and left over 100 voice messages to his estranged spouse. (The Officer was criminally charged and pleaded guilty to one count of criminal harassment pursuant to 264(2)(b) of the *Criminal Code* and received a condition discharge and a probation period of 9 months). The penalty imposed was a forfeiture of 20 hours of accumulated overtime and a suspension without out pay of an additional 20 hours.

Toronto Police Service and KENT, 2013. Constable Kent was charged with two counts of Insubordination and Discreditable Conduct. The Member was sending harassing messages to the complainant, the spouse of the member's ex-boyfriend, through Facebook. The member was given a direct order from her superior officer to stop contacting the complainant or her spouse which she failed to comply by contacting the Complainant's spouse by phone. Further investigation revealed that the member conducted numerous queries using the police systems on the complainant and her family, and other people associated to them including her daughter. Penalty: first count of Insubordination (failure to follow a direct order) forfeiture of 6 days' pay; second count (IT breaches) forfeiture of 18 days' pay; Discreditable Conduct (FB messages) a reduction in gradation in rank from First to Second Class Constable for a period of one year.

CPS v ██████████ – Over a three year period, Constable ██████████ accessed private information regarding his then current partner, a former intimate partner, and their previous partners and/or associates. He did so 14 times over a period of 3 years. In May 2019, Cst. ██████████ pleaded 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. Cst. ██████████ was given 40 hours forfeiture of overtime for Insubordination x 3, and 40 hours suspension without pay for the Breach of Confidence.

Of the four matters presented, the most similar in facts is the Toronto Police Service (TPS) matter of Kent. The target of Constable Kent's harassment was the spouse of her former boyfriend. Constable Kent used a social media platform to harass the victim. The penalty decision on the Kent matter stated the cited officer "sent annoying messages to the complainant, her family, and a friend by way of Facebook." She also used TPS IT

resources and CPIC to obtain personal information on the victim and people associated to her.

The complainant in Kent stated the communications from the cited officer caused her “distress” and she was afraid for her safety. The complainant was quoted from her victim impact statement saying: *“I was never threatened through the messages but when they had just gotten hostile – swearing and name calling I felt that afraid that someone with a gun was acting so irrationally.”* *“How she found my name, my daughter’s name, my licence number and my home number, this is the kind of stuff that creeps me out.”* These messages continued for a period of about ten months.

In the Kent matter, the Hearing Officer stated: *“The prosecutor underscored the value of Constable Kent’s acknowledgement of wrongdoing, the acceptance of responsibility, and her employment history, and offered that she does not believe that Constable Kent will find herself before this Tribunal again?”*

In the Kent matter, the parties submitted a joint penalty recommendation of a forfeiture totalling 36 days pay. The Hearing Officer rejected this recommendation and sanctioned the officer a total of 24-days and reduced her from 1st Class Constable to 2nd Class Constable for a period of one-year.

Addressing the EPS matter of [REDACTED], I find the penalty assessed an anomaly and not comparable to the other matters provided by Ms. Campbell. It also did not involve the unauthorized access and use of private information. Constable [REDACTED] pleaded guilty to one count of Discreditable Conduct after being convicted of the criminal harassment of his former spouse. The Presiding Officer gave mitigation to Constable [REDACTED] personal circumstances that included his successful completion of his probation conditions, his successful treatment, and the fact he was the sole earner for his former spouse.

Examining the BTPS case of [REDACTED] the officer was reduced in seniority within the rank by two levels for a period of one year. The victim of his harassment was a co-worker who was a former intimate partner. After the termination of the relationship, Constable [REDACTED] embarked on a campaign of harassment that involved profane, abusive, and harassing text messages. The victim of his harassment had a fear for her safety. The matter was resolved with a guilty plea, acceptance of responsibility including an apology, and a joint submission on penalty. Workplace harassment was a factor considered in the penalty.

The penalty imposed on Constable [REDACTED] was significant. In comparing the misconduct to that of Constable [REDACTED], the harassing behavior is similar but absent the physical stalking. As well, Constable [REDACTED] did not access BTPS IT resources.

Comparing the CPS matter of [REDACTED], this officer accessed CPS IT resources over a three year period querying several individuals. He shared some of this information with other people. Other than the sharing, which is a serious matter, it was not alleged that he used the information for any other purpose. This is quite different that how Constable

██████ used the information she obtained. The subjects of Constable ██████ queries where not subjected to the harassment that ██████ endured or the life-altering consequences she has suffered.

The focus of the like cases offered by Ms. Campbell is the aspect of harassment albeit two of the matters did involve unauthorized use of police IT Resources. Her submission on penalty appears to be based primarily on the harassing behavior of the officers in the like cases.

The count of insubordination relating to the unauthorized queries of CPS Database Systems is serious and one that requires discussion.

Police agencies are in a unique position in society. We have wide ranging authority to gather and store personal information. We have wide ranging access to information gathered and stored by other agencies and organizations.

It is the rightful expectation of the public, and those individuals who entrust that information to us, that information will only be accessed and/or used for lawful purposes. A commitment to the protection of privacy and personal information is not only a responsibility of a police agency, its police officers, and employees, it is a duty. Any time there is a breach of privacy, unintentional or intentional, it is a serious matter and will be dealt with as such. The fact the system Constable ██████ accessed was a CPS system and not that of another agency is not mitigating but does not attract the aggravating aspect of accessing an external system such as CPIC.

Each time personal information is accessed for an inappropriate purpose, it chips away at the trust bestowed upon us by the public. Any time there is a breach of privacy, unintentional or intentional, it is a serious matter and will be dealt with as such. This type of misconduct is becoming commonplace and it is apparent that penalties issued in the past have been of little deterrence. As these matters now come before a disciplinary tribunal, the resulting penalties will become more harsh as a means to change the perception that accessing confidential information contained in police data systems, is “not a major concern” in the minds of officer’s making such queries.

As an example of this, a recent CPS matter where the named officer accessed police IT resources for personal use is **CPS v ██████, 2020/10/29**. In this matter the cited officer was involved in divorce and custody matters with his spouse. He accessed CPIC and conducted queries on his estranged spouse as well as her boyfriend. He provided this information to his Counsel, for personal purposes. In addition, he made inquiries and received information from the Canadian Border Services Agency, and a Crown Prosecutor that he used for his personal purposes. He pleaded guilty to two counts of “Insubordination” and one count of “Discreditable Conduct.” He was ordered reduced in seniority within the rank from Senior Constable Level II to First Class Constable for 6 months, then elevated to Senior Constable Level I for a period of 18 months, after which time he would return to Senior Constable Level II. In addition, he

was ordered to report to the Human Resources Division for assessment and any treatment deemed necessary.

The [REDACTED] penalty incorporated a two-year reduction in seniority within the rank. This was specifically formatted given the fact the member held the pay grade of Senior Constable Level II. A two-year reduction of one pay level to Senior Constable Level I was not deemed sufficient and a two-year reduction from Senior Constable Level II to First Class Constable deemed overly punitive.

In the [REDACTED] matter, the cited officer used police IT resources and information from partner agencies to assist him in his legal dispute with his estranged spouse. An aggravating factor was the fact the information obtained was used for personal purposes. Additionally, the factor of general deterrence was a factor applied to the sanction.

Constable [REDACTED] used the information he obtained providing it to his lawyer. Constable [REDACTED] used the information she received to aid her in her harassment of [REDACTED]. This harassment has had a long-lasting adverse affect on [REDACTED]. The outcomes of Constable [REDACTED] misconduct are far less than those of Constable [REDACTED]. His penalty was significant and in my view, the misconduct less serious than that of Constable [REDACTED].

In comparing the misconduct of Constable [REDACTED] to all the above noted cases, while there may be some comparable facts, some significant and extremely aggravating differences exist with the [REDACTED] matter. Through her actions, Constable [REDACTED] devastated [REDACTED] life. The toll taken on [REDACTED] has been described in her testimony as well as in her Victim Impact Statement, but what is captured can only touch on the likely impacts.

[REDACTED] describes how her perception of police has changed, this from being a person who trusted the police, and a person who stood up for the police, to a person who was victimized by a police officer. I quote: *"When a member of the organization that's sole responsibility it is to protect the public decides to target you, it shakes you to your core. What also shook me is that she was allowed to stay in her position for 5 years after this happened, while I had to always be on the lookout, living in fear and hiding my online presence."*

Another quote from [REDACTED] states: *"I left behind my whole support network which I built over 13 years, many of them are people that are closer to me than family...To this day I still have to hide everything I do online, [REDACTED]...I have a name and I can't use it online and showcase the things that I am proud of myself for doing. Cst. [REDACTED] robbed me from using my own name."*

The last quote I will use from [REDACTED] sums up the overall impact the actions that Constable [REDACTED] have caused.

“5 years later I’m sitting here writing this sick to my stomach and shaking not sure if its fear or anger or both. It affects me every single day, that I don’t trust people like I used to, I can’t just go for a walk in my neighborhood and relax, I watch every car and every person that go by. She robbed me from feeling secure, [REDACTED]

The quotes above touch on the devastation Constable [REDACTED] actions had on the victim of her harassment. An extremely aggravating factor is, despite hearing all of this directly from [REDACTED], it had no apparent effect on Constable [REDACTED]. There is absolutely no indication of remorse for what her actions have caused. She did not apologize for her actions and the devastation that resulted in [REDACTED] life

The impact on [REDACTED] is somewhat comparable to the impact on the victim of Constable Kent in the Toronto Police matter. A marked difference in Kent is Constable Kent expressed remorse while accepting responsibility. She submitted a detailed letter of apology to the tribunal.

Constable [REDACTED] has pleaded guilty to a count of Discreditable Conduct and a count of Insubordination. Her guilty pleas while technically an acceptance of responsibility in my view are more a means to mitigate a sanction, as opposed to accepting full responsibility for the damage she has caused to [REDACTED] and to the reputation of the Calgary Police Service.

As stated by the Hearing Officer, Superintendent Bergen, in the Kent matter: *“For rehabilitation to begin there must first be an acknowledgement of wrongdoing and the acceptance of responsibility.”*

[REDACTED] This is to her credit and is a step towards rehabilitation, however it can be meaningless if a person cannot or will not accept the fact their actions caused significant and possibly irreparable harm to their victim and demonstrate that through an apology. By virtue of the submission on penalty, the police service is of the opinion that Constable [REDACTED] can be rehabilitated and return to work as the exceptional police officer she has demonstrated she can be.

I would like to share in their optimism but for that optimism to become a reality, there is a significant amount of work to be done by Constable [REDACTED]

As part of the sanction for this matter. Constable [REDACTED] will be subject to an order pursuant to section 17(1)(a.1) of the *Police Service Regulation*. The purpose behind this order is to assist Constable [REDACTED] in her rehabilitation.

As previously mentioned, the Presenting Officer has submitted a suspension without pay would be an appropriate penalty with the number of hours to be determined by me. The cited officer stated she agrees. The maximum number of hours that a member can be suspended for without pay is eighty hours on a single count. For two counts a suspension of one-hundred and sixty hours could be imposed.

It is my position such a penalty does not adequately reflect the seriousness of the misconduct. Constable [REDACTED] actions warrant a significant penalty and when compared to the penalties involved in the like cases, it is clear a reduction in seniority within the rank is required. In my consideration of this, my first inclination was that a multi-year reduction would be an appropriate penalty. The public interest and particularly the interests of the complainant also necessitates such a penalty.

Previously in this decision, I spoke of the exceptional work Constable [REDACTED] has done during her career. While these positive behaviours exist and have been observed, the conduct itself in this case is so serious that it significantly outweighs the positive behaviours of the officer and must be dealt with firmly.

For general deterrence purposes, assessing anything less than a significant penalty would send the wrong 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. A penalty such as this, is the range of penalty that other officers should expect for similar misconduct.

I also must consider the possibility of re-habilitation and to make a penalty harshly punitive would detract from this goal.

I have spoken about the uniqueness of Constable [REDACTED] misconduct, which included the harassment of [REDACTED] and the IT breach. I believe it is best to separate the two charges for the purposes of a penalty. The count Insubordination is most appropriately dealt with a period of suspension without pay. This is in line with matters similar in nature. The count of Discreditable Conduct which relates to the use of the information obtained to embark on a campaign of harassment is properly sanctioned with a reduction in seniority within the rank for a specified period of time.

The conduct of Constable [REDACTED] also warrants orders pursuant to s. 17(1)(a.1) of the *Police Service Regulation*.

ORDER

On count one, Discreditable Conduct, as articulated in the "Agreed Statement of Facts," I order pursuant to section 17(1)(d) of the *Police Service Regulation*, Constable [REDACTED], be reduced in seniority in rank, from Senior Constable Level I, to First Class Constable for a period of one year. At the conclusion of the one year, Constable [REDACTED] will return to Senior Constable Level I.

On count three, Insubordination, as articulated in the "Agreed Statement of Facts," I order pursuant to section 17(1)(c) of the *Police Service Regulation*, Constable [REDACTED] be suspended from duty without pay for forty (40) hours of work. [REDACTED]

Anytime a suspension from duty without pay is imposed, this can create staffing issues for the cited officer's work area.

The forty (40) hour suspension of Constable [REDACTED] will be administered by her work area Commander taking into consideration the needs of the work area. [REDACTED]
[REDACTED]

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

1. At the conclusion of these proceedings, Constable [REDACTED] will report to the Calgary Police Service, Wellness & Resiliency Division for assessment.
2. Constable [REDACTED] is required to attend all treatment programs, seminars and/or counselling required by her physician/psychiatrist/psychologist/counsellor(s) or any other providers, relating to her condition.
3. Constable [REDACTED] will continue to undergo any treatment therapies and follow the directions of her treating physician/psychiatrist/psychologist and/or any other authorized practitioners relating to her medical condition and/or treatment. Constable [REDACTED] will continue to participate in these treatment plans until such time as determined by the attending care providers.
4. [REDACTED], Constable [REDACTED] will participate in and be subject to a "Fitness for Duty" Assessment to be completed by the Calgary Police Service Wellness & Resiliency Division and or Human Resources Division.

Original Signed

Superintendent Paul Manuel (Ret'd)
Presiding Officer

Presenting Officer:
Cited Officer (Self Represented)

Ms. Valerie Campbell
Constable [REDACTED]

Issued at the City of Calgary, in the Province of Alberta, November 30th, 2020