

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

Disposition

On November 18, 2020 at the Professional Conduct Proceedings of

[REDACTED] pleas of guilty were entered by him to Counts 1 and 2.

Count 1 reads:

Count #1

Discreditable Conduct, contrary to section 5(1)(e) of the *Police Service Regulation*, as further defined by 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.

Details of the Allegation

On or about the 13th day of February 2020, at or near the City of Calgary, Province of Alberta, you, [REDACTED], while talking on a Calgary Police Service radio to your subordinates used profanity, mocked tactics of District patrol members, mocked tactics of the Tactical Unit, singled out a CPS member for the purpose of having him targeted/bullied and you encouraged unprofessional behaviour of your subordinates by laughing at their jokes regarding Indigenous people.

Count 2 reads:

Count #2

Insubordination, contrary to section 5(1)(g) of the *Police Service Regulation*, as further defined by section 5(2)(g)(ii) of the *Police Service Regulation* 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.

Details of the Allegation

On or about the 13th day of February 2020, at or near the City of Calgary, Province of Alberta, you, [REDACTED] while talking on a Calgary Police Service radio to your subordinates used profanity, mocked tactics of District patrol members, mocked tactics of the Tactical Unit, singled out a CPS member for the purpose of having him targeted/bullied and you encouraged unprofessional behaviour of your subordinates by laughing at their jokes regarding Indigenous people. You did not challenge or attempt to stop behaviour that did not support a culture of respect. Specifically:

- (a) you did not comply with section 12(2)(a)(i) of the CPS Respectful Workplace policy, which directs that all CPS employees and volunteers are responsible to encourage respectful behaviour in the workplace and challenge any behaviour that does not support a culture of respect. This may include taking appropriate steps to stop the behaviour and/or reporting the Respect Concern to a Supervisor or the Respectful Workplace Manager.

An Agreed Statement of Facts was entered as Exhibit 4.

The Presenting Officer, Ms. Campbell provided submissions on sentence and similar Police Service Sentencing Disposition cases heard and determined in Canada.

After hearing the admitted facts I found the facts supported the entering of the guilty pleas to Counts 1 and 2 and I found those Counts have been proved as to the guilty pleas to Counts 1 and 2. I found those Counts have been proved as to the required burden of proof. Those facts constituted reliable and cogent evidence which convinced me the civil burden of proof of a balance of probabilities has been satisfied. I find [REDACTED] guilty on Counts 1 and 2.

The Agreed Statement of Facts contained 2 exhibits being:

- a) Calgary Police Service Respectful Workplace Policy

- b) PEAKS Assessments of the Calgary Police Service respecting [REDACTED]
[REDACTED]

The Agreed Statement of Facts revealed the following facts:

FACTS:

1. On February 12, 2020 the Professional Standards Section (PSS) served Preliminary Notice of a pending PSS investigation on members of the [REDACTED] Unit, and at the same time, seized their CPS issued cell phones.
2. A briefing Note was sent out later that day to all the CPS Commanders, as it was anticipated that news of the phone seizures would spread around the Service rapidly.
3. On February 13, 2020 while listening to the CPS radio, which was on scan, two members of the [REDACTED] Unit overheard a conversation on Channel 1B that included swearing, derogatory comments towards other CPS members, followed by comments about who the participants felt was the "rat" leading to the cell phone seizures of the [REDACTED] Unit members.
4. [REDACTED]
[REDACTED]
[REDACTED]
5. The radio recordings were pulled, and it was determined that one of the members making the comments was [REDACTED].
6. [REDACTED] is heard stating that another CPS team did not know what they were doing and using the words "fuck", "fuckin" or "fucking shit show" seven times.
7. Another member is heard stating the words "f'uckin", "fuck-up" or "fuckin shit show" 15 separate times and making reference to another CPS member as being a "real zulu".
8. Another member is heard stating the words "fuck", "fuckin" or "fucking" three times and making a negative comment about another member of CPS being a "rat goof".
9. Another member is heard stating the word "fucking" once and "I'm going to throw cheese at him and say have some cheese you rat", in reference to another CPS member.

10. Although [REDACTED] was the team's supervisor, at no time is he heard suggesting or ordering the participants of the conversations in question to stop.
11. All four [REDACTED] members genuinely believed that the radio channel they were using was only accessible to [REDACTED] members. They believed that they were conversing only with one another and did not intend to bully, harass or insult anyone.
12. [REDACTED] has taken responsibility for his comments and expressed remorse. He claims that the group were simply joking around and were not expressing biased views or targeting anyone for bullying. [REDACTED] stated that it was not the group's intention to harm or disparage anyone. Nevertheless, the conversation was overheard by others who were in fact, negatively impacted.

Ms. Campbell noted [REDACTED], as the team supervisor, never suggested to the team members or ordered the team members to stop the conversations in question.

Ms. Campbell fairly advised, all the team members, including [REDACTED] [REDACTED] genuinely believed the radio channel being used was only accessible to [REDACTED] members. They believed they were conversing only amongst themselves.

There was no intention to bully or to expressed biased views.

Ms. Campbell advised [REDACTED] stated it was not the team's intention to harm or disparage anyone. However she submitted the conversation was overheard by other persons who were negatively impacted.

She indicated [REDACTED] took responsibility for his comments early in the investigative procedure and has continued to express remorse throughout this disciplinary hearing as exemplified with his guilty pleas.

It was pointed out by Ms. Campbell that [REDACTED] last 3 performance reviews all contain positive reviews with no concerns mentioned. Since 2009 he has received 26 positive behavioral events. As a Sergeant Level 2 with 17 years of police service he is regarded as an enthusiastic and respectful police officer.

One similar disciplinary case cited by Ms. Campbell involved a police officer issuing a traffic violation ticket. After allowing the offending driver to drive away following the issuance of the violation ticket, the police officer immediately stopped the offending driver again due to the offending driver employing profanity and insulting language towards the police officer in the initial traffic stop. During the subsequent stop the offending driver was given a second violation ticket and was arrested under an arrest warrant which the police officer had ignored during the initial stop. Ironically the police officer used profanity and insulting language towards the offending driver during the course of the subsequent stop. For the subsequent disciplinary charge of discreditable conduct against the police officer a penalty of a suspension without pay for 20 hours was imposed.

In a second case cited by Ms. Campbell a Calgary Police Service Officer was assessed a penalty of forfeiture of 24 hours overtime for a disciplinary conduct charge involving use of profane, abusive and insulting language towards a civilian vehicle driver with whom the officer was involved in a traffic incident when off-duty.

A third case involving a Calgary Service Officer saw him received a global penalty of 80 hours suspension without pay for 2 counts of discreditable conduct, involving providing a police course candidate with inappropriate material on his cellular telephone. He failed to maintain a deportment of professionalism while on duty and acted in a manner that, in relation to others present, removed their right to dignity and deprived them of their dignity in contravention of the "Conduct and Discipline (Sworn)" policy as it relates to "Code of Conduct". In addition the police officer did not conduct himself by word, deed or gesture in a manner reflective of a Respectful Workplace" policy as it relates to the "Statement of Principle".

Finally, an Ontario case was provided wherein the disciplined officer received a forfeiture of 45 hours time off for a misconduct offence. In the presence of other police officers he made a profane, abusive and insulting statement towards a female police colleague.

The 4 cited cases laid a foundation for Ms. Campbell's submission of a penalty to be imposed against [REDACTED] of between 40 to 50 hours of

overtime forfeiture and a requirement to take a workplace training course through human resources.

In her submission Ms. Campbell advised she, as the Presenting Officer, recognized the mental and emotional stress which accompanies every police service member facing police disciplinary hearings. She noted that recognition should be regarded as a mitigating factor in the sentence to be imposed.

However, she stressed the aggravating factors must be considered in the final penalty disposition. Those aggravating factors in her submission included:

- a) the failure of leadership by [REDACTED] by not stopping his team from engaging in the inappropriate conversations.
- b) The seriousness of the misconduct and which misconduct breached at least 2 priorities stressed by Chief Constable Mark Neufeld. The misconduct runs contrary to the Calgary Police Service Policy to deter and eliminate harassment and bullying.

Ms. Campbell noted the disciplinary penalty imposed must include and recognize the principle of deterrence to other police officers and the principle of maintenance of public respect for the police discipline process.

Mr. Wilson, Counsel for [REDACTED], drew my attention to the career path blazed by [REDACTED] in his nearly 18 year tenure as a police officer with the Calgary Police Service. To focus on that career path entails an examination of his outstanding PEAKS assessments provided by his superior officers.

Mr. Wilson advised this is the first disciplinary complaint lodged against the Sergeant. Indeed Mr. Wilson emphasized the nature of this complaint classifies it as a minor complaint. He arrived at that submission by noting this index complaint does not involve discreditable conduct directed at members of the public. Such conduct should draw a higher punishment in the submission of Mr. Wilson.

On behalf of [REDACTED] it was emphasized the Sergeant was a member of a group of police officers who genuinely believed no third party was listening to their conversation. That included no members of the public. The group was unaware that any members of the Calgary Police Service, officer or civilian employee, were listening to their conversation. Mr. Wilson attributed it as

an event of happenstance in that the listener, who clicked onto the particular radio channel, was related to one of the people being discredited by the officers.

Mr. Wilson noted the Agreed Statement of Facts summarized that the demeaning statements were intended as "jokes" directed at the people who were the objects of the statements. He further noted those persons were friends of [REDACTED]. It was a situation where the statements were uttered in a collegial atmosphere. The demeaning statements, although delivered behind the backs of these demeaned officers, could equally have been delivered to the "faces" of these officers in a joking manner. In the submission of Mr. Wilson the whole essence of the demeaning comments was founded on private conversations which were intended to be jocular in nature.

Having stated that, it was noted [REDACTED] took full responsibility for the offending behavior. He was the officer in charge and he took no steps to curtail the offending conversation.

Having made the aforesaid distinction, Mr. Wilson was able to credibly argue the nature of these offences could be placed at the minor end of the scale of serious offences. He emphasized these were conversations between police service members who believed the conversations were private and playful jabs at fellow police officers, albeit made not to their faces but made behind their backs.

It was noted that [REDACTED] will not only undergo the punishment about to be meted out in this disciplinary hearing, he has already experienced a form of punishment. This punishment has seen him removed from active duty on the streets as a police officer to his current position on desk duty. To [REDACTED] this transfer to desk duty has proven to be a demoralizing and stressful experience which could hang like an albatross around his neck for some time in the future. In turn being assigned to desk duty can have a financial impact as he is not eligible for overtime which can be garnered by an officer who is on duty in the streets of Calgary. Finally, Mr. Wilson noted many fellow police officers have become aware of his client's predicament which for all intents and purposes can be regarded as a demotion from being a Sergeant on the [REDACTED] [REDACTED] to holding a desk job.

Those factors coupled with the guilty plea and the absolute remorse should result in a rather minimal punishment for a minor contravention of the *Police Act* in the final submission of Mr. Wilson.

Before I consider the submissions of Ms. Campbell and Mr. Wilson on the disciplinary sanctions to be imposed upon [REDACTED] I turn to the

seminal Law Enforcement Review Board decision in ***Amery v Young***. It established guidelines for imposing disciplinary sanctions or penalties.

In discussing the nature of disciplinary proceedings the Review Board noted such proceedings are not criminal or quasi-criminal in nature. Rather they are essentially civil in nature in the context of an administrative process. The intention of such proceedings is to maintain discipline, integrity and professional standards or to regulate conduct.

The Review Board recognized that a police officer occupies a special status as a public office holder. An officer has unique and extraordinary powers with an attendant obligation to exercise those powers within the law. The Review Board pointed out an abuse of those powers invites a loss of public trust and possible damage to the reputation of police forces.

The Review Board considered the following principles to be observed and followed regarding disciplinary sanctions:

- 1) The principal 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 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 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.
- 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 Alberta, section 17(3) of the *Police Service Regulation* promotes the use of special training or professional counselling. The constructive use of this option, in some circumstances, may work to achieve this goal.
- 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 for 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.

In addition to the principles enumerated in the **Amery** decision there are some additional foundational principles which are applicable.

The first principle in this context requires compliance with the purposes of the police discipline process. These purposes are:

- 1) The police service's dual interest in maintaining discipline in the police workplace and as a public body responsible for the security of the public.
- 2) The requirement to treat [REDACTED] fairly.
- 3) The public interest in ensuring a high standard of conduct in the police service.

The second principle dictates that the corrective disposition should prevail while correcting [REDACTED] behavior and educating him.

The third principle articulates the least onerous disposition should be imposed. It should only be displaced if the public interest or other specified considerations should prevail.

In imposing penalty upon [REDACTED] it must be recognized that the penalty should act as a deterrent to not only [REDACTED] but to other members of the Calgary Police Service and indeed to other police officers serving the public in all communities across Canada. Public respect for the police is founded on a foundational base that police officers must be aware their proper and correct conduct and comportment is under continuous scrutiny.

While I am satisfied that [REDACTED] believed the offending comments were made in a jocular manner to other police officers, and were not intended to offend or harass any fellow police officer or officers, it must be recognized he was the officer in charge and he had a duty to ensure the principles enunciated in the Calgary Police Service Respectful Workplace policy were respected and carried out by him and his subordinate police officers.

The first 5 principle statements set out in the Respectful Workplace policy are as follows:

1. The CPS is firmly committed to fostering a healthy and professional working environment in which all employees and volunteers are treated with respect, honesty and dignity.
2. The CPS recognizes that a workplace culture of respect is directly linked to both employee health and wellness and operational excellence.
3. Everyone is responsible and accountable for ensuring an organizational culture of respect. This means that everyone will conduct themselves by word, deed and gesture in a manner that is reflective of a Respectful Workplace.
4. The CPS believes in taking a proactive, restorative approach toward maintaining a Respectful Workplace through education, prevention, early intervention and prompt resolution of Respect Concerns (see s. 13).
5. The CPS expects its employees and volunteers to engage with others in a professional manner. Interactions should be respectful and absent of intimidation, sarcasm, harassment or discrimination. Behaviours that constitute violations of this policy will not be tolerated (see s. 13 for additional information.)

Under the direction of Chief Constable Neufeld the Calgary Police Service treats the breach of the Respectful Workplace Policy and the corresponding charges faced by [REDACTED] under the provisions of the *Police Service Regulation* as most serious.

While stating that, I do agree with Mr. Wilson's submission that these changes are at the least serious end of the scale. Here I accept that the offending words were spoken in a jestful manner to other police officers. It was not [REDACTED] intention to harass, bully or intimidate the police officers who were the objects of the statements. However, while it might not have been taken as offensive by those police officers, the fact remains the person who heard those statements was seriously offended.

Further from a review of his excellent police service record, his long service, his co-operation in resolving these charges, his guilty pleas, his emotional stress resulting from facing this investigation and these proceedings, his removal from his role as a supervising police officer in charge of an important policing team and

his genuine remorse, as accepted by me, it is plain and obvious that offences were an aberration in an otherwise excellent police officer's public service record.

Nevertheless, sanctions must be imposed. On Count 1, being Discreditable Conduct contrary to Section 5(2)(e)(viii) of the *Police Service Regulation*, I order that [REDACTED] under section 17(1)(b) of the *Police Service Regulation* forfeit 20 hours of work accumulated through overtime.

On Count 2, being Insubordination contrary to section 5(2)(g)(ii) of the *Police Service Regulation*, I order that [REDACTED] under section 17(1)(b) of the *Police Service Regulation* forfeit a further 20 hours of work accumulated through overtime. This order of forfeiture of work accumulated through overtime shall be a consecutive 20 hours of work accumulated through overtime to the 20 hours of work accumulated through overtime as imposed on Count 1.

In summary [REDACTED] shall forfeit a total of 40 hours of work accumulated through overtime.

Ms. Campbell submitted [REDACTED] additionally should be directed to undertake respectful workplace training under section 17(3) of the *Police Service Regulation*.

However, I decline to impose such an educational course. [REDACTED] [REDACTED] advised he has completed such a course. In addition, I note his offensive conduct was not directed to the public at large. Rather he is a conscientious officer who has expressed remorse from the commencement of this investigation. He has lived and worked with these charges hanging over his head since February of 2020. He has realized his conduct was unacceptable. I am satisfied the trauma, shame and guilt he has experienced will result as an ongoing reminder that he is not to conduct himself or allow other to conduct themselves in this manner in the future. This process and the lessons he learned will be indelibly stamped on his mind and will serve as a very effective educational process.

Finally, as Mr. Wilson, has no doubt informed you, section 22 of the *Police Service Regulation* allows, after the elapse of 5 years, if no other contraventions of the *Police Service Regulation* are made on your record of discipline, any record of this punishment, this contravention, or the action taken shall be removed from

your record of discipline and destroyed. It will not be used after the elapsed 5 years in any future proceedings respecting you.

This disciplinary hearing is concluded.



The Honourable Alexander G. Park, Q.C.

Presenting Officer, Ms. Valerie Campbell
Cory Wilson, Counsel for [REDACTED]
[REDACTED]