

**DURHAM REGIONAL POLICE SERVICE DISCIPLINE HEARING
IN THE MATTER OF ONTARIO REGULATION 268/10**

**MADE UNDER THE *POLICE SERVICES ACT*, RSO 1990,
AND AMENDMENTS THERETO;**

IN THE MATTER OF

DURHAM REGIONAL POLICE SERVICE

AND

CONSTABLE ERIN HOWARD #3824

DISCREDITABLE CONDUCT

DISPOSITION

Before: Superintendent (Ret.) Greg Walton
Ontario Provincial Police

Counsel for the Prosecution: Mr. Alex Sinclair

Counsel for the Defence: Mr. Andrew McKay

Hearing Date: December 4, 2022

Background

The Notice of Hearing alleged Constable Erin Howard, #3824 of the Durham Regional Police Service committed three counts of discreditable conduct, two counts of breach of confidence, and one count of insubordination. The matter was scheduled to be heard December 4, 5, and 6, 2022. Constable Howard entered a plea of guilty to one count of discreditable conduct on December 4, 2022. The remaining hearing dates were vacated, and the remaining counts of misconduct, withdrawn.

This hearing was held in-person and broadcast via Zoom to allow members of the public to view the proceedings as seating was limited in the hearing room.

Allegation of Misconduct (amended)

Count #1: Discreditable Conduct

Constable Howard is alleged to have committed misconduct in that on or between November 7, 2021, and January 24, 2022, she acted in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the police force, thereby committing the offence of discreditable conduct, contrary to Part V, clause 80(1)(a) of the *Police Services Act*, as amended, and section 30, clause 2(1)(a)(xi) of the Schedule “Code of Conduct,” Ontario Regulation 268/10, as amended.

The edited particulars of allegations state:

On or between November 7, 2021, and November 10, 2021, Constable Howard attended a rally in Toronto, Ontario, identified herself as an off-duty serving officer, and spoke about how the COVID-19 mandates put into place violates the oath she swore to. Constable Howard made disparaging comments about her colleagues and leadership team, stating:

Our colleagues, a lot of them appear to be brainwashed. Our services appear to be so influenced by politics and the fear of economic reprisal that they have completely backed down. They have capitulated. For some reason they are not supporting us. And it's wrong, and I am ashamed, and I feel that my badge, my brand-new badge that I was so proud to receive, has been tarnished.

In addition, Constable Howard disclosed to the crowd and media, without proper authority, a private confidential police matter she had discussed with her supervisor regarding a potential call for service. The speech Constable Howard made was captured on video and published in several media outlets which led to

members of the public contacting the Durham Regional Police Service about the unprofessional comments and the platform used by Constable Howard. The content of Constable Howard's speech jeopardized the integrity and reputation of the police service and could bring discredit upon it, thereby committing discreditable conduct.

On January 24, 2022, Constable Howard posted a video to social media, Facebook, expressing her support for the 2022 Freedom Convoy while in uniform, in a police vehicle, and during police time. Constable Howard's social media post contravened the Durham Regional Police Service social media policy.

The Durham Regional Police Service received thousands of media calls, social media comments, and questions. Divisional units received numerous phone calls, and Chief Rollauer received over 500 emails regarding the unprofessional comments and platform Constable Howard made while wearing a police uniform on Durham Regional Police Service time. Furthermore, to date, three members of the public have made complaints to the Office of the Independent Police Review Director regarding Constable Howard's unprofessional actions, one requesting that she immediately be removed from her position. Constable Howard's social media post jeopardized the integrity and reputation of the police service and could bring discredit upon the service, thereby committing discreditable conduct.

Plea / Joint Penalty Position

Mr. Alex Sinclair represented the Durham Regional Police Service as prosecutor. Constable Howard was represented by Mr. Andrew McKay. Constable Howard entered a guilty plea to one count of discreditable conduct.

Counsel made a joint penalty submission of a demotion in rank from first-class constable to second-class constable for a term of three months.

Agreed Statement of Facts

Constable Howard has been employed by the Durham Regional Police Service for over 4 years. Constable Howard's record of employment is largely positive. Her recent performance reviews are favourable. As of today's date, Constable Howard has no formal disciplinary history.

On March 25, 2022, Constable Howard was charged with two counts of discreditable conduct, two counts of breach of trust and one count of insubordination pursuant to Part V of the *Police Services Act*. Pursuant to the

within agreement, the prosecution and defence agree that one count of discreditable conduct, two counts of breach of trust and one count of insubordination will be withdrawn.

For the purposes of a plea of guilty to a single count of discreditable conduct and joint submission on penalty, the prosecution and defence agree to the following facts:

On or between November, 7, 2021 and November 10, 2021, Constable Howard, attended a rally in Toronto, Ontario, identified herself as an off-duty serving police officer, and spoke about how the COVID-19 mandates put into place violated the oath she swore to.

During her speech, Constable Howard made disparaging comments about her colleagues and leadership team, including:

Our colleagues, a lot of them appear to be brainwashed. Our services appear to be so influenced by politics and the fear of economic reprisal that they have completely backed down. They have capitulated. For some reason they're not supporting us. And it's wrong, and I am ashamed and I feel that my badge, my brand-new badge that I was so proud to receive, has been tarnished.

A video of Constable Howard speaking at the rally, which was published by the Rebel News media network, is attached electronically as Appendix "A."

On January 24, 2022, Constable Howard posted a video to social media expressing her support for the 2022 Freedom Convoy while in her police uniform, in a police vehicle and during police time. Neither the police uniform nor the police vehicle identified the Durham Region Police Service. The video Constable Howard posted to social media is also attached electronically.

The Durham Regional Police Service received thousands of media calls, social media comments and questions. Divisional units received numerous phone calls. Chief Rollauer received over 500 emails regarding the unprofessional comments and platform Constable Howard made while wearing a police uniform on Durham Region Police Service time.

Constable Howard's speech at the rally and social media post jeopardized the integrity and reputation of the service and were likely to bring discredit upon the Durham Region Police Service.

Decision

Constable Howard entered a guilty plea to one count of discreditable conduct. The Agreed Statement of Facts, confirmed by Constable Howard, provided clear and convincing evidence of misconduct; consequently, I found Constable Howard guilty of discreditable conduct. I can see no judicious reason to deviate from the joint penalty position proposed, as such, Constable Howard will be demoted in rank accordingly; from first-class constable to second-class constable for a term of three months.

Reasons

Constable Howard's conduct is no longer in question, what must be determined is whether the proposed sanction is appropriate: does the joint penalty position strike a balance between community expectations, fairness to Constable Howard and the needs of the organization?

Submissions from Counsel in this matter were brief. Exhibit #4 is a document titled Joint Submissions on Penalty which includes the following statement:

The parties acknowledge and agree that this penalty is based on the unique circumstances of this case, not all of which are referenced herein, and this is not to be relied upon as a precedent in other matters.

I was involved in multiple conference calls with Counsel in the days leading up to the hearing date. I was aware that there were ongoing negotiations attempting to resolve the matter, but I was not privy to everything that went into consideration when Counsel agreed on a three-month demotion in rank. The matter of *R. v Anthony-Cook*, 2016 SCC 43, was not provided to me, but I am aware of the guiding principles therein. In the matter of *Anthony-Cook*, the Court addressed the issue of joint penalty submissions by stating:

Hence, the importance of trial judges exhibiting restraint, rejecting joint submissions only where the proposed sentence would be viewed by reasonable and informed persons as a breakdown in the proper functioning of the justice system. A lower threshold than this would cast the efficacy of resolution agreements into too great a degree of uncertainty. The public interest test ensures that these resolution agreements are afforded a high degree of certainty.

I am not bound by the joint penalty submission, however, to reject it, I would have to find that it is outside the reasonable range of available penalties for similar misconduct, and that it conflicts with commonly held proportionality considerations.

Commonly held disposition factors provide guidance to assist with the determination of an appropriate sanction for *Police Services Act* disciplinary matters such as this. I will review those which were relied upon by Counsel in this matter.

Public Interest

Counsel submitted that the public holds the police in a position of high trust and accountability. They noted that it is extremely important that the Durham Regional Police Service demonstrate that its members are held to this high standard. The community has an interest in knowing that its police officers, who are sworn to uphold the law, will do so in an impartial manner.

I agree. The public has an interest in ensuring police officers maintain a high standard of conduct and that behaviour resulting in misconduct, attracts an appropriate sanction from the employer. The public has an interest in knowing that when police officers behave in a manner which contravenes corporate policy, such as in this case, that those officers are held accountable appropriately. Anytime a police officer is found guilty of misconduct, it has the potential to adversely affect the reputation of their employer in the eyes of the public.

Constable Howard's misconduct involved the public; she addressed the public directly in her social media post and at the Toronto rally. In both instances she identified herself as a police officer, and on one of those occasions, she was on-duty, in uniform, in a police cruiser; factors which increase the public's interest in this behaviour.

I find public interest to be a significant aggravating factor.

Nature and Seriousness of the misconduct

Counsel submitted that Constable Howard's misconduct is a serious matter. Counsel agreed that members of the Durham Regional Police Service are expected to conduct themselves professionally, impartially, and in accordance with policies at all times. Constable Howard's conduct fell below this standard when she engaged in a highly visible criticism of government mandates imposed to contain the ongoing COVID-19 pandemic. Her conduct breached Durham Regional Police Directive - Code of Professional Conduct (AO-09-010) and Durham Regional Police Directive - Social Media Policy (AO-16-004).

I find the conduct very troubling. Police services across Ontario made their positions and expectations very well known to their members and to the public during the Covid-19 pandemic; officers were expected to maintain and enforce public safety measures and

abide by the restrictions in place. In contravention of existing internal policy, knowingly in breach of her employer's expectations, Constable Howard attended a public rally, identified herself as a police officer, and accused her colleagues of being "brainwashed" and "influenced by politics." She informed the crowd that she was "ashamed," her badge had "been tarnished." This is powerful language which clearly damaged the reputation of all police services in Ontario.

Constable Howard addressed a large crowd in downtown Toronto for several minutes. She used a microphone and speakers to be heard. She openly criticized the policing profession asserting that police services were negligent in their duty. Constable Howard provided details of a conversation she had with a supervisor where she allegedly refused to abide by an order. I find Constable Howard's comments offensive to all serving police officers and to those in the community who strived to adhere to and support the mandates.

Equally concerning is her social media post which occurred while she was on-duty, being paid by public salary dollars. The 54-second video clip which was posted to Facebook, shows her in uniform, seated in a police car, obviously working as there was a portable radio attached to her uniform. The video is a close-up of Constable Howard, showing her surname and badge number on her uniform where she stated the following:

Hey there. So I'm Constable Erin Howard coming to you from Ontario, Canada. I'm just, I really wanted to give a shout out to all the truckers. I think what you guys are doing is incredible; you're fighting for our rights and freedoms and right now it feels like we're a little bit at war and those rights and freedoms are at stake, so you guys are honestly true heroes, what you're doing is just incredible. I will be in Ottawa when you guys roll in. I'm going to be speaking on behalf of Police on Guard and we are thrilled, thrilled, and honored to be able to be there. I can't wait to meet you guys, hope to talk to a lot of you in person. Anyway just wanted to give you guys a shout out and some support and keep rolling and will see you in Ottawa.

I find Constable Howard's behaviour deplorable; she encouraged and supported unlawful behaviour. Constable Howard's comments undermined police services' efforts of ensuring the safety and security of all persons in Ontario and beyond. The fact that the Durham Regional Police Service received thousands of media calls and social media comments, with Chief Rollauer receiving over 500 emails regarding the unprofessional comments and platform, is indicative of how many people not only viewed but were affected by this behaviour.

I share the concerns expressed by those who complained; Constable Howard used her position as a police officer as a stimulus to influence how members of the public ought to view and treat the rules, regulations, and mandates imposed. She publicly questioned the

integrity of all police officers in the province of Ontario. This was not isolated behaviour, it occurred twice, several months apart. Had this not been a joint penalty position, I would have considered a much more significant sanction based on the seriousness of misconduct alone.

I find the nature and seriousness of misconduct to be a significant aggravating factor.

Recognition of the Seriousness of the Misconduct

Counsel submitted that Constable Howard's guilty plea and joint submission on penalty demonstrate that she has accepted responsibility for her misconduct. Constable Howard's guilty plea and joint submission on penalty eliminated the need for a lengthy hearing and potential appellate proceedings. Furthermore, Constable Howard cooperated during the Professional Standards Unit investigation by taking responsibility for her actions, apologizing for her actions, and subsequently engaging in meaningful dialogue with the Durham Regional Police Service that allowed her to better understand their position and to allow the Service to better understand her position. Constable Howard has removed the videos in question from her social media.

I agree, this is a mitigating factor for consideration. Constable Howard did not address the tribunal nor offer an apology. This does not aggravate the penalty factor; she merely does not receive the degree of mitigation that would have been afforded if her remorse was exemplified further, accompanied by a sincere apology.

I find recognition of the seriousness of the misconduct to be a mitigating factor for consideration.

Deterrence

I accept Counsel's submission that it is crucial that Constable Howard's penalty serve as a general deterrent for all members of the Durham Regional Police Service and the penalty must act as a specific deterrent for Constable Howard.

General deterrence is a well-recognized principle of sentencing law meant to discourage others from participating in similar conduct. General deterrence is necessary to send a message to other police officers of the Durham Regional Police Service and to members of other police services in Ontario that behaviour of this nature will not be tolerated and will result in a significant sanction.

Despite the submission from Counsel that this decision is not to be relied upon as a precedent in other matters, I find it necessary to inform police officers across Ontario that misconduct which breaches internal policy and which discredits their employer's reputation, will attract a corresponding sanction.

Specific deterrence is meant to deal solely with the offending officer; in this instance, it is meant to ensure a clear message is sent to Constable Howard demonstrating that her misconduct was unacceptable and should not be repeated. Constable Howard must understand that repeated misconduct of this nature will most likely result in an increased sanction in keeping with the principle of progressive steps of discipline.

I am satisfied the joint penalty proposed by Counsel adequately addresses specific and general deterrence.

Damage to the Reputation of the Durham Regional Police Service

Counsel agreed that Constable Howard's misconduct damaged the reputation of the Durham Regional Police Service in the eyes of the public. I agree.

There is no doubt based on the public's response to Constable Howard's conduct that the behaviour in question damaged the reputation of her employer and other police services in Ontario. Police services in Ontario work diligently to develop a positive public image; building strong, trusting relationships between police services and the communities they serve is essential. Whenever a police officer commits misconduct of this nature; publicly disparaging police services and disregarding internal policy, it negatively impacts the reputation of all police services in Ontario.

This matter portrayed the Durham Regional Police Service in negative light having received extensive media attention. The public expects police officers to always behave in a professional manner. Constable Howard's behaviour fell well below that standard; therefore, the public expects a corresponding sanction to be levied. It is important that the sanction imposed correspond to the seriousness of the misconduct; an inadequate penalty or a sanction that is too excessive, could also damage the reputation of the employer.

As noted earlier, I would have supported a more severe penalty had that been suggested or had there been a guilty finding without a joint position on penalty. I find that the damage to the reputation of the Durham Regional Police Service is an aggravating feature, but the proposed sanction adequately addresses this issue.

Employment History

Counsel submitted Constable Howard has over four years of service with the Durham Regional Police Service with no record of formal discipline. Constable Howard's record of employment is largely positive and her recent performance reviews are favourable.

I was provided two annual appraisals. In the 2019 Performance Management Plan, her supervisor noted:

Constable Howard is very much in the developmental stage of her career in virtually every category of her performance goals. Having said this, there is nothing to indicate that her performance will not improve as she progresses with her investigations and calls for service...

Overall, Erin is performing her daily tasks at an acceptable level given her amount of time on...

Constable Howard's 2020 Performance Management Plan was positive as was the Performance Review Form dated January 2022.

Constable Howard's brief time with the Durham Regional Police Service has been average. While not a remarkable employment history, she is to be commended for her strong work ethic.

Employment history is a mitigating factor for consideration.

Potential to Rehabilitate

Counsel submitted Constable Howard's guilty plea demonstrates her recognition of the impropriety of her behavior and her lack of prior formal disciplinary history with positive performance reviews are indicative of her rehabilitative potential.

This was not isolated misconduct, on two occasions over several months, Constable Howard committed serious misconduct. In her speech, Constable Howard made specific reference to challenging her direct supervisor related to her position on her employer's response to the imposed mandates. Repeated behaviour creates concern for one's ability to rehabilitate because it is not simply an isolated mistake.

The misconduct in question was not simply a misunderstanding or disagreement, it was deliberate behaviour, an utter disregard for supervision and it illustrated a lack of respect for command staff. However, I defer to Counsel's submission that Constable Howard has

rehabilitative potential. Counsel submitted that the Durham Regional Police Service and Constable Howard have engaged in meaningful dialogue; I trust this was impactful and am hopeful that this behaviour will not be repeated.

Constable Howard's potential to rehabilitate is a mitigating factor.

Effect on the Officer and her Family:

The proposed penalty will have a negative monetary effect on Constable Howard and her family. A demotion in rank comes with a loss of pay which may have a negative effect on Constable Howard. However, despite the limited mitigating consideration, this is a necessary consequence considering the seriousness of her behaviour.

Consistency of Penalty

Counsel submitted two cases for my consideration suggesting that this matter falls between the two and subsequently, the joint submission is within the reasonable range.

In the matter of *Durham Regional Police and Caplan*, December 6, 2013, the officer entered a guilty plea to one count of discreditable conduct. Detective Caplan created a Twitter account in the name of another member of the Durham Regional Police Service and sent tweets without that officer's knowledge. He created a parody Twitter account linked to the former account and sent offensive tweets to the Ombudsman of Ontario. His actions erroneously caused the uninvolved officer to be identified in the media as being responsible for the misconduct. The hearing officer accepted the joint penalty submission and demoted the officer for a term of nine months.

In the matter of *Sudbury Police Service and Rheume*, June 12, 2019, the officer was found guilty of discreditable conduct for being responsible for making two social media posts breaching internal policy. The officer was ordered to forfeit 90 hours in the form of additional hours to be worked.

I was the hearing officer in the *Rheume* matter. I agree with Counsel; Constable Howard's misconduct was far more serious. I would suggest that the seriousness of misconduct in this matter is much closer to that in *Caplan*, suggesting that a sanction greater than three months could have been deemed acceptable. However, the purpose of this penalty factor is to ensure that the penalty proposed is reasonable, that it is consistent with cases of similar fact. While two cases is a small sample size to be guided by, I am satisfied that the three-month demotion is reasonable and consistent with the previous matters submitted for consideration.

Conclusion

I accept that the joint penalty proposed is based on unique circumstances, not all of which were referenced by Counsel in submissions. Consequently, Counsel submitted this disposition decision is not to be relied upon as a precedent in other matters. Nevertheless, I am bound by the joint penalty submission unless the sanction proposed is outside the reasonable range of available penalties and to accept it would bring the administration of justice into disrepute. I do not find this to be the case in this matter based on the evidence presented; the penalty proposed, despite being on the lower end of the spectrum, is reasonable.

Constable Howard entered a guilty plea, agreed to the facts in issue and agreed to a three-month demotion in rank; significant mitigating factors for consideration. She is deemed a candidate for rehabilitation. Therefore, I can see no reason to deviate from the sanction proposed; a three-month demotion in rank is balanced, fair, and satisfies the principles governing the appropriate determination of a disposition.

Disposition

Constable Howard pleaded guilty and was found guilty of discreditable conduct based on clear and convincing evidence. After weighing all aggravating and mitigating factors, I find the proposed sanction meets the goals of the discipline process; it strikes a balance between community expectations, fairness to Constable Howard and the needs of the organization.

I order Constable Howard demoted from the rank of first-class constable to the rank of second-class constable for a period of three months. Constable Howard will automatically return to the rank of first-class constable following the completion of the three-month demotion period.

This order is made pursuant to section 85(1)(c) of the *Police Services Act*, R.S.O. 1990 and was also provided orally on December 4, 2022, with these written reasons to follow.



Greg Walton
Superintendent (Ret.)
Ontario Provincial Police

Date electronically delivered: January 3, 2023.