

**Durham Regional Police Service Discipline Hearing**

**In the Matter of Ontario Regulation 268/10**

**Made Under the Police Services Act, R.S.O. 1990,**

**And Amendments thereto:**

**And**

**In The Matter Of**

**The Durham Regional Police Service**

**And**

**Constable Clayton Harnum III #638**

**Charge: Discreditable Conduct  
Insubordination**

**Before:**

**Superintendent (Retired) M.P.B. Elbers  
Ontario Provincial Police Adjudicator**

**Appearances:**

**Counsel for the Prosecution: Mr. Alex Sinclair  
Durham Regional Police Service**

**Counsel for the Defense: Mr. Sandy Khehra  
Durham Regional Police Association**

## **Penalty Decision with Reasons:**

### **The Hearing:**

Constable Clayton Harnum # 638 pled guilty on October 05, 2022 at a Police Act Hearing conducted in Whitby, Ontario and was found guilty of One (1) count of Discreditable Conduct pursuant to Section 2 (1) (a) (xi) contained in the Schedule to Ontario Regulation 268/10 as amended. One count of Insubordination was withdrawn at the request of the Prosecutor, Mr. Alex Sinclair.

The charge pertains to an Instagram post shared by Constable Harnum with a picture of his wife in uniform with the caption "Freedom of Speech is Essential. Please show your support for Constable Erin Howard. Email: [trollauer@drps.ca](mailto:trollauer@drps.ca). Let them know you stand with Erin. An agreed statement of facts was submitted to this Hearing by Counsel for the affected parties and marked as Exhibit Four (4).

## **AGREED STATEMENT OF FACTS**

### **Agreed Statement of Facts:**

1. For the purposes of a plea of guilty to a single count of discreditable conduct, the prosecution and defense agree to the following facts:
2. Constable Harnum is married to another member of the Service; Constable Erin Howard.
3. On or about January 24, 2022, the Service became aware of a video featuring Cst. Howard which had been posted to social media. That video featured Cst. Howard in her police uniform and in a police vehicle, expressing support for the Freedom Convoy.
4. The Freedom Convoy was a protest and occupation in the downtown core of Ottawa. The protest and occupation initially related to COVID-19 vaccine mandates for crossing the border between Canada and the United States; however, it evolved to a protest about COVID-19 mandates generally. The protests involved some criminal activity and economic damage.

The City of Ottawa, Province of Ontario and Government of Canada all declared states of emergencies as a result. The Service sent approximately 35 members to Ottawa to support the Ottawa Police Service.

5. Cst. Howard's video post supporting the Freedom Convoy received significant attention through traditional media, social media, phone calls and complaints to the Service.
6. The Service commenced an investigation into Cst. Howard's conduct.
7. On or about January 26, 2022, the Service became aware of an Instagram post shared by Cst. Harnum. The post was of a photo of Cst. Howard in uniform with the caption: "Freedom of Speech is Essential! Please show your support for Constable Erin Howard. Email: [trollauer@drps.ca](mailto:trollauer@drps.ca). Let them know you stand with Erin." The email provided is the correct email for Chief of Police Rollauer.
8. Cst. Harnum had 118 followers at the time he shared the above post.
9. A copy of the post shared by Cst. Harnum is attached hereto as Appendix "A".
10. Cst. Harnum provided a duty statement during the course of the Service's investigation into his conduct. In that duty statement he admitted to having shared the post contained at Appendix "A". A copy of his duty statement is attached hereto as Appendix "B".
11. Chief Rollauer received over 500 emails regarding Cst. Howard.
12. The parties agree that Cst. Harnum's actions in soliciting and encouraging members of the public to email Chief Rollauer about Cst. Howard constitutes discreditable conduct. This conduct jeopardized the integrity and reputation of the Service.

### **Findings:**

A two day Disposition Hearing was conducted in Whitby, Ontario on October <sup>12</sup>23 and 13,, 2022.

Mr. Alex Sinclair, representing the Durham Regional Police Service has requested ninety (90) hours forfeiture of pay for Constable Harnum.

Mr. Sandy Khehra, representing Constable Harnum has requested a reprimand.

Counsel has presented the Tribunal with eleven (11) cases to offer assistance to the Tribunal in making an appropriate disposition.

They are found in Exhibits #10 for the Defense and Exhibits #8 for the Prosecution.

I will not recite the cases in their totality, however I have read and considered the cases that I was provided by Counsel. As learned Counsel have stated, there are no cases found which parallel the case that is before me at present. The cases as provided are for guidance to the disposition penalty that Counsel has sought to be appropriate for the finding of guilt on the Discreditable Conduct charge rendered on October 05, 2022.

In Williams and the Ontario Provincial Police, the Commission identified three key elements a Hearing Officer must take into account when imposing a penalty. These include: the nature of the seriousness of the misconduct, the ability to reform or rehabilitate the officer and the damage to the reputation of the Police Force that will occur if the officer remained on the Force.

Accountability, ethical behaviour and conduct are at a standard much higher than the public we serve. It is generally known and an accepted fact that the law requires a higher standard of conduct with Police Officers in their private lives than the ordinary citizen.

Credibility, honesty, integrity are characteristics that are earned. As one elevates him / herself through the ranks of this proud organization those characteristics are more revered and treasured. It helps to create the professional image and excellence that the Hanover Police officers strive to maintain.

The public observes and evaluates the police 24-7. We, as individuals and as a professional organization must be mindful of this fact. Our members, while on or off duty, must conduct themselves in a professional manner at all times.

Mr. Sinclair called one witness to give testimony for the Prosecution in support of the penalty he is seeking against Constable Harnum.

Sergeant Jennifer Bickle-Hearn #3025 testified that she was the investigator of this file. She testified to Exhibits #5 and #6 which contain the emails to the Chiefs office and the picture on Instagram which Constable Harnum distributed on Instagram. The volumes are extensive and speak for themselves. Over 500 emails were sent to the Chiefs office with Sgt. Bickle-Hearn receiving each one. She testified that Harnum had 118 followers on his Instagram page. She testified she had to conduct a threat assessment on the emails and this was extremely time consuming.

At Tab 18 of Exhibit #5 is the Social Media Policy AO-16-004 for Durham regional police officers. **At part (C) it establishes that a member of the DRPS requires that the content of those postings not jeopardize the integrity and reputation of the Service, the integrity of investigations or the reputation or safety of the member or other persons.**

**Under the section of personal use it lists for All members shall: and it goes on to list seven points at page 4/8 which the Sergeant read into the Tribunal. I will not recite the points as they are found at the above reference.**

The key point to adhere, remember and to comply is the word **SHALL**.

Sergeant Bickle-Hearn further elaborated to Tab 17 of exhibit #5 the DRPS Code of Professional Conduct AO-09-010 in particular Section 8.1.4 and 9.1.2. Again, the points are clear and unequivocal for DRPS members and can be referenced at page 3-6.

Tab 19 of Exhibit #5 is the Oath of Membership signed by all members of the DRPS upon joining the Service. This document was signed by Constable Harnum.

In cross examination by Mr. Khehra it was acknowledged by Bickle-Hearn that this was a private account of Harnum and that she was unable to identify the 118 followers of Constable Harnum. Khehra indicated that anyone could have sent these messages out as the names are on the business cards of the police officers.

Khehra also solicited from Bickle-Hearn that she knew Harnum and that he was a good officer. He conducted use of Force training to DRPS officers and that he was known to be respectful at all times. He was also respectful during the investigation which the Sergeant acknowledged.

Mr. Sinclair in his closing submissions wished the Tribunal to assess a ninety hour forfeiture of pay for Constable Harnum. He wished the Tribunal to consider the Rheume case of Greater Sudbury to strengthen his position as the closest similarity to this case. He stated that Seriousness of the offence, Public Interest and Lack of Remorse by this officer as aggravating factors to consider for the disposition he was proposing. Sinclair noted that Constable Harnum did not apologize to the Service or the Chief for his actions.

Mr. Khehra wished the Tribunal to consider a reprimand for this officer. He stated that this would be a lesson to this officer and others who may attempt to do something similar. He stated this officer has a discipline free record, is well respected in the Service, and was posted overseas. He is a good officer. He was supporting his wife and did not intentionally deceive the Service. He advised the post was not offensive. The penalty should be rehabilitative.

In Ontario, Legal Aspects of Policing (pages 6-14) provides that a police officer commits an offence against discipline by acting "in a disorderly manner prejudicial to discipline or likely to bring discredit upon the reputation of the police force".

The most recent application of the test for discreditable conduct in Ontario confirms that the test is "primarily an objective one" and that the conduct must be measured against the "reasonable expectations of the community".

The Ontario Civilian Commission on Police Services has articulated the following approach regarding the meaning of “likely” to bring discredit upon the reputation of the police force:

*The measure used to determine whether conduct has been discreditable is the extent of the potential damage to the reputation and image of the service should the action become public knowledge.*

Counsel has not offered any cases to support their positions on penalty in this case.

In considering a proper disposition the Tribunal must consider a number of issues. The Disposition should agree with the purpose of affecting a proper discipline process where it meets the standard for the Service in employing discipline in the workplace and the responsibility to treat the respondent officer fairly and also the actions incurred if a complainant is involved to assist in their reconciliation of the matter.

The overall purpose of the discipline process is to apply corrective measures to correct improper behaviour according to the standards of the discipline process and that of the affected Police Service in accordance with their policies and procedures that all officers are to adhere to in their policing duties.

Through disciplinary jurisprudence, a number of mitigating and aggravating considerations have emerged that affect disposition.

These include:

- Public interest.
- Seriousness of misconduct.
- Recognition of the seriousness of the misconduct.
- Handicap or other relevant personal circumstances.
- Provocation.
- Procedural fairness considerations.
- Employment history.
- Potential to reform or rehabilitate the police officer.
- Effect on police officer and police officer’s family.
- Consistency of disposition.
- Specific and general deterrence.
- Employer approach to misconduct in question.
- Damage to the reputation of the police force.

Not all of these factors are relevant to the present case before the Tribunal. Many of these factors stem from the decision of Williams and Ontario Provincial Police (1995), 2 O.P.R. 1047 (OCCPS)

I must be guided by the OCCPS decision of Schofield and Metropolitan Police Service.

*“Consistency in the disciplinary process is often the benchmark of principles. The penalty must be consistent with the facts, and consistent with similar cases that have been dealt with on earlier occasions.”*

The public must be confident that the police will strive to set the example for those in the community. Anything short of this will be seen as a contradiction and serve no other purpose but to undermine the efforts of all serving officers and the explicit goals of the Durham Regional Police Service.

You are accountable for your actions and any deviance from those actions, the Durham Regional Police Service will hold you accountable. This is what the public expects of the management of this Police Service. General Orders of the Service are expected to be adhered to forthwith as policy dictates.

In this case, we have a uniform employee who wished to support his wife actions as it relates to free speech. The issue that the Tribunal faces is that Harnum’s actions are in direct violation of his Oath of Office and the Services Policies and Directives of the Durham Regional Police Service. Rules are to be adhered to and must be obeyed. Constable Harnum is aware of this as he has served in the military. The chain of command must be obeyed. I recognize he is supporting his wife, however the policies and directives of the Service supercede this support for his wife. He may of thought what he did was not offensive or wrong. This was a mistake. The issue that Constable Harnum has to face is that he did not think through the process that he wished to proceed with by posting the picture of his wife and request to contact the Chief of Police to express your feelings completely before he pressed the **SEND KEY**.

Constable Harnum unleashed an Instagram that had 118 followers, however all those followers had followers. It grew to expectations that I am unaware if Constable Harnum was aware what may happen. The waste of time that was created in the Chiefs office to address the emails and then forward them for investigation is certainly an aggravating factor to consider.

Constable Harnum addressed the Tribunal. He is a well spoken individual who got caught up with emotion relating to his wife’s issues with the Service. He is well respected, a hard working and dedicated officer with no disciplinary record. This is evident with the Performance reviews, accolade letters, letters of support that were entered as exhibits at this Tribunal. These collectively are mitigating factors to consider.

The lack of an apology or an acknowledgement of wrongdoing is troubling. I am not sure that Constable Harnum recognizes the seriousness of his actions. Yes, he pled guilty to the charge, however I do not believe he understands or accepts the actions he has pled guilty to in this Tribunal.

The public must be confident that the police will strive to set the example for those in the community.

Anything short of this will be seen as a contradiction and serve no other purpose but to undermine the efforts of all serving officers and the explicit goals of the Durham Regional Police Service.

Seriousness of the misconduct is a fundamental consideration. Constable Harnum's conduct certainly can be considered as serious misconduct. As a police officer, one of Constable Harnum's primary duties is conduct himself in a professional manner and also to accept and obey the policies and directives of the police service. This can be tough in a situation as was presented to Constable Harnum however he made the wrong choice. It set into action needless hours of work for various members of the Service and especially the Chief of Police who could have attended to other important matters which confront a Chief of Police on a daily basis. This makes this indiscretion even more aggravating.

I am not confident that this experience, pleading guilty at the earliest opportunity that Constable Harnum has learned from his indiscretion and that he is fully prepared to take responsibility for his actions.

Pleading guilty to disciplinary allegations normally constitutes recognition of the seriousness of the misconduct, which is a mitigating factor for the Tribunal to consider. In this case I do not believe that this has happened.

Consideration of an officer's employment history is a standard factor to consider. It can serve as both a mitigating and aggravating factor. Constable Harnum as previously stated does not have any prior discipline on record. He has served for twenty three years now with the Service. His length of service and lack of discipline on record all serve as mitigating factors in this file.

An officer's potential to rehabilitate is an important consideration. As already indicated, Corrective Dispositions should prevail, where possible. Police Service Act case law has held that unless the offence is so egregious and unmitigated, the opportunity to reform should be a significant consideration. Constable Harnum must accept what he did was unacceptable. His emotions as a husband superceded his professionalism as a police officer for the Durham Regional Police Service.

Although the proposed penalty will result in a loss of salary for Constable Harnum, I do not believe that the proposed penalty will create an undue or special hardship on him or his family.

The Conduct exhibited by this officer while on duty in Durham Region will cause damage to the reputation of the Durham Regional Police Service.

It is unknown to me to what the extent of publicity or the knowledge of the events is to the residents of Durham Region. To some degree it does not matter as the incident has affected all involved and has caused damage to the organization.

It is our commitment and the Public's expectation that we the Durham Regional Police Service conduct ourselves 24-7, three hundred and sixty five days of the year with a degree of professionalism and commitment for policing excellence. Nothing less is acceptable.



I believe this addresses the specific and general deterrence for officers of the Service and the need to show the Public that the Service has their interest in mind to make officers accountable for their actions. The Service has treated this incident in a serious manner and the proposed penalty suggested by Counsel will serve the needs for the Service and to Constable Harnum.

I do not believe that a reprimand for this officer would be an acceptable disposition for this officer as I do not believe it will give this officer the appropriate penalty to discourage him or anyone else from this Service or any other Service to conduct themselves as Constable Harnum did on the day he pressed **SEND** on his computer. Technology is a wonderful tool if you understand all of the complexities it has to offer. I do not believe that Constable Harnum has this knowledge. If he had this knowledge it would not have led him to this Tribunal. This is not a “knock” on Constable Harnum, it is a reality that we must all understand.

The Durham Regional Police Service will not tolerate unacceptable behaviour by its members. The rank structure within the Durham Regional Police Service is the backbone of the organization. It must be respected. The proposed joint submission as submitted I believe sends a message to the organization and its members.

The Durham Regional Police Service views this misconduct as serious and is cognizant that a penalty must be imposed to protect the interest of the public we serve.

Constable Harnum as a senior member you have conducted yourself with a total lack of professionalism, judgment and courtesy, which is expected of all members of the Durham Regional Police Service.

I may have been more inclined to administer a more stringent penalty if it were not for the positive comments and observations relayed to me by Counsel.

I have considered the submissions by Counsel and the agreed statement of facts in factoring the appropriate disposition for Constable Harnum.

I do not believe that Harnum reaches the penalty that was rendered on the Rheaume file, but I also do not believe it is at a reprimand stage either.

**Disposition:**

**In light of the seriousness of these allegations and bearing in mind all the evidence placed before me, Constable Clayton Harnum III #638 will forfeit sixty (60) hours pursuant to Section 85 (1) (f) of the Police Services Act.**

**This means you will attend your office on either rest days or annual leave days and work the prescribed hours until sixty (60) hours have been accomplished. The timeline to complete these hours will be issued by your Divisional Commander. I would recommend six months to complete.**

  
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**M.P.B. Elbers, Superintendent**

**November 16, 2022**