

IN THE MATTER OF  
ONTARIO REGULATION 123/98  
MADE UNDER THE POLICE SERVICES ACT, R.S.O. 1990, C.P. 15.  
AND AMMENDMENTS THERETO  
AND IN THE MATTER OF  
POLICE CONSTABLE JACK STELWAGEN. #3523  
AND THE  
DURHAM REGIONAL POLICE SERVICE

SENTENCE

APPEARANCES:

Mr. Alex Sinclair	for the Durham Regional Police Service
Mr. William MacKenzie	for Police Constable Jack Stelwagen

BEFORE:

Deputy Chief Terence Kelly  
York Regional Police (Retired)  
Hearing Officer

SENTENCE DATE: Monday April 20, 2026

## SENTENCE

Police Constable Jack Stelwagen #3523

Deputy Chief Terence Kelly (Ret); before commencing with the sentence in this matter, I wish to thank Mr. Alex Sinclair, the Service prosecutor, and Mr. William MacKenzie, who acted as Counsel for Police Constable Jack Stelwagen, for their comments and exhibits entered, all of which have assisted me.

### Hearing in Absentia.

On March 26<sup>th</sup>, 2026, Counsel William MacKenzie was granted to proceed in 'absentia'. Entered at this time was (*Exhibit 3*) written correspondence from Constable Jack Stelwagen authorizing Mr. Mackenzie to enter a guilty plea on his behalf to the charge of Discreditable Conduct for having been found guilty of a Criminal Offence.

The particulars of the charge are as follows:

**Cst Stelwagen was charged on August 22, 2018, with sexual assault.**

**A trial was held before Justice Frazer of the Ontario court of Justice,**

**At 150 Bond Street, Oshawa Ontario. On December 16, 2020, Cst.**

**Stelwagen was found guilty of sexual assault contrary to section**

**271 of the *Criminal Code of Canada*, consequently Cst. Stelwagen**

**Committed discreditable conduct, having been found guilty of a**

**Criminal offence**

The Prosecutor – Mr. Sinclair, in his submissions entered a Book of Documents (Exhibit 4) and a Book of Authorities (Exhibit 4).

In the Book of Documents, Justice Fraser succinctly summarized the crux of Cst. Stelwagen's egregious offence in his Sentencing decisions.

**The facts of the sexual assault are dealt with in detail in the Court's**

**Reasons for Judgment but can be summarized here as follows.**

**During an afternoon and evening barbecue gathering of friends and neighbours of the (redacted) family. One of their guests, (redacted), became so overcome by the consumption of alcohol that she had laid down on the (redacted)' bed and either fell asleep or passed out, the latter being much more likely as she could not be roused to be taken to the spare bedroom and had to be dragged or partially carried to that room, was laid down, still dressed, and covered without any indication of awakening or responsiveness.**

**The court found that at some time after that, the accused went looking for his complainant and entered the spare room and was seen performing oral sex (redacted). He was asked to leave the house. He did not do so but returned to her room where he was later seen under the covers with (redacted) "spooning" with her, both naked from the waist down.**

**On the overwhelming weight of the evidence that the Court did accept, Ms. (redacted) neither consented to any sexual activity nor did she have the capacity to consent given her unconsciousness.**

*At trial, Justice Fraser found Cst. Stelwagen guilty of sexual assault. Justice Fraser rejected Cst. Stelwagen's evidence, finding: "His evidence is simply unworthy of belief and is rejected", his account is unbelievable, and describing some of his account as "simply not credible".*

*On June 9, 2021, Justice Frazer imposed a custodial sentence of 12 months imprisonment, Two years of probation, and an order that Cst. Stelwagen be entered on the national sex offender registry for 10 years*

The above-described actions of Cst. Stelwagen constitute Discreditable Conduct under Section 2(1)(a)(ix) of the Prescribed Code of Conduct and, therefore contrary to Section (80)(1)(a) of the *Police Services Act*.

#### PENALTY SOUGHT

It is the Service's position that immediate dismissal is the only appropriate penalty having regard to the applicable penalty factors imposed in disciplinary hearings concerning sexual assault and similiar offences

The next principle of sentencing in determining the appropriate penalty the Prosecution submitted, a hearing officer must identify the relevant factors and determine whether they are aggravating, mitigating, or neutral.

There is no requirement that any one factor be given more weight than another. The seriousness of the offence alone may justify dismissal. Aggravating factors can serve to diminish the weight of any mitigating factors.

The Prosecution stated the objective of discipline is to correct unacceptable behaviour, deter other officers from similar behaviour and ensure the public that the police are under control. Constable Stelwagen's behaviour engages all three of these objectives.

Prosecution spoke to several cases dealing with the sentence and potential rehabilitation of Cst. Stelwagen and the evidence placed before this Tribunal in relation to them.

I will not recite all the cases in their totality. I have read and considered the cases provided and alluded to by counsel. These cases are for guidance with respect to dispositions of penalty which counsel have recommend being appropriate for the findings of guilt on the charge laid under the Police Services Act.

#### CONSISTENCY OF PENALTY DISPOSITION

The prosecutor stated there are many similarities between *White and the Windsor Police Service*, the Commission stated:

**The penalty also must be consistent with similar cases in order to maintain consistency in sentencing. While fact situations vary, a spectrum of misconduct and resulting penalties can provide a good comparative analysis to assist the Commission in determining an appropriate and fair penalty.**

*White and Windsor Police Service*, 2000 CanLII 45060 (ON CPC) at para 56.

***DRPS BOA at pp. 128-129***

The penalty of dismissal is most consistent with the penalties in discipline proceedings involving similar sexual misconduct. The OCPC has held that Dismissal is the appropriate penalty in the circumstances where an officer engages in nonconsensual misconduct, particularly where the officer is found guilty of a Criminal Offence.

The Service Prosecutor also spoke to the comments of the Commission in *The matter of Provincial Constable Colin A Hinds and the Ontario Provincial Police Service*, where he was found guilty of sexual assault contrary to the *Criminal Code*. Constable Hinds testified at the trial, and the trial judge rejected his evidence, finding that it was unreasonable and made the following comments.

**Apart from the bald fact of the conviction for this very serious offence, the assessing of penalty must take into account another fact. Constable Hinds pled not guilty to the criminal charge and testified. His evidence was not accepted. In his reasons for Decision, amongst other things, the Trial Judge said “I must reject the accused person’s testimony, it being evidence that not only do I not believe, but found it unreasonable.”**

The Commission when dealing with the dismissal penalty of the Provincial Constable Hinds Stated:

**It is an essential part of the duty of a police officer to testify in courts.  
When a police officer’s credibility is destroyed, as Constable Hind’s credibility has been, he can no longer function as a police officer.**

Provincial Constable Colin A. Hinds and the Ontario Provincial Police Service, 1990 CanLII 10505 (CPC) at paras 5-8, DRPS BOA at pp.

The Service Prosecutor then focussed on public interest, seriousness of the misconduct, recognition of the seriousness of misconduct, handicap and other personal circumstances, employment history, the potential to rehabilitate, specific and general deterrence, and damage to the reputation of the Police Service.

### **Public Interest**

The Service Prosecutor submitted that public interest must be considered in each case and the disposition for the misconduct of a police officer must give the public the impression that the officer is being held accountable and has received an appropriate penalty. Public faith in the running of a police service would not be well served and undermined if a police officer who commits criminal offences was allowed to remain on the Police Service.

### **Seriousness of the Misconduct**

Speaking to the seriousness of the misconduct the Prosecutor submits that the actions of Cst. Stelwagen in his criminal findings of guilt, show deliberation. He referred to the Comments of Justice Frazer in his oral reasons for sentence.

*The actions of the accused were not a momentary lapse in judgement but rather a persistent series of acts. He was thwarted in its commission only to return to continue the offence and to be interrupted for a second time. these fortuitous interventions ultimately were unsuccessful in deterring his actions. It is noteworthy that when he returned to continue the assault he moved a dresser across the door to ensure he would not be interrupted again, an indication of a clear and deliberate desire to continue the assault and a concerted effort to do so.*

Stelwagen Oral Reasons for Sentence, at p. 54 paras. 2-16, DRPS

The Service Prosecutor submitted in the present case the misconduct is extremely serious because Cst, Stelwagen made multiple deliberate attempts to engage in sexual acts with an incapacitated stranger for the purpose of satisfying his sexual desire.

In reaching a decision in this matter, I have considered the submissions by the Service Prosecutor. Mr. Alex Sinclair. There were no submissions to penalty made by Defence Counsel.

The Tribunal has given careful consideration to the seriousness of the offences; the public's trust in the police and possible damage to the Service's reputation; the officer's recognition of the seriousness of the offences; the possibility of rehabilitation, as well as specific and general deterrence

These are extremely serious charges that Police Constable Stelwagen has been found guilty in the Criminal forum and pled guilty to in this Tribunal. The seriousness of these charges is evident to everyone. The Tribunal has a duty to treat them as such; anything less would quite rightfully be subject to ridicule.

The disciplinary system of any organization is designed to ensure compliance with the rules and regulations that represent the requirements of good standing. How effectively and fairly the disciplinary system does its job is one measure of organizational integrity.

In a police service, the disciplinary system must function to reassure the public that basic standards of professional and ethical conduct are being met. At the same time, the disciplinary system must function to assure members of the service that they will receive swift justice, impartially administered, and that good faith efforts to carry out the mission statement of the service will be supported.

In reaching my decision in this matter, a prime consideration was that of responsibility in maintaining the public trust and confidence in this community.

Mr. Sinclair the Service Prosecutor argued the proper penalty in this case would be Dismissal from the Durham Regional Police Service. He said no other penalty would be appropriate due to the serious nature of the misconduct of Constable Stelwagen.

I concur with the comments of the Service prosecutor that the conduct of Constable Stelwagen in this matter was so egregious as to cause serious damage to the reputation of this Police Service. Police officers who commit serious criminal offences and breach the rule and regulations of their police service and the rights of private citizens should be severely dealt with and therefore, only one course of action is available to this Tribunal, which has a duty to prevent any further breaches of conduct.

Considering the seriousness of this allegation, and bearing in mind all the evidence before me, it is the decision of this Tribunal that Police Constable Jack Stelwagen Badge Number #3523 **shall be dismissed from the Durham Regional Police Service Immediately.**

Terence Kelly

**Terence Kelly, Deputy Chief (Retired)**

**York Regional Police**

**Hearing Officer.**

**Sentence Date April 17<sup>th</sup>, 2026**



